**UNITED STATES**
**SECURITIES AND EXCHANGE COMMISSION**
**Washington, D.C. 20549**

# Form 10-Q

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

**For the quarterly period ended June 30, 2009**

**Or**

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

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

**Commission file number: 001-32136**

# Arbor Realty Trust, Inc.

*(Exact name of registrant as specified in its charter)*

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

**(516) 506-4200**
(Registrant's telephone number, including area code)

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☐ No ☐

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

| Large accelerated filer ☐ | Accelerated filer ☑ | Non-accelerated filer ☐ (Do not check if a smaller reporting company) | Smaller reporting company ☐ |
|---|---|---|---|

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

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. Common stock, $0.01 par value per share: 25,387,410 outstanding (excluding 279,400 shares held in the treasury) as of August 7, 2009.

**ARBOR REALTY TRUST, INC.**

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## CAUTIONARY STATEMENTS

**The information contained in this quarterly report on Form 10-Q 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 in our Annual Report on Form 10-K for the year ending December 31, 2008. 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" in our Annual Report on Form 10-K for the year ending December 31, 2008.

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. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

| | June 30, 2009 (Unaudited) | December 31, 2008 |
|---|---|---|
| **Assets:** | | |
| Cash and cash equivalents | $ 29,517,467 | $ 832,041 |
| Restricted cash | 66,605,006 | 93,219,133 |
| Loans and investments, net | 1,925,689,370 | 2,181,683,619 |
| Available-for-sale securities, at fair value | 146,973 | 529,104 |
| Securities held-to-maturity, net | 68,884,086 | 58,244,348 |
| Investment in equity affiliates | 66,264,744 | 29,310,953 |
| Real estate owned, net | 48,267,318 | 46,478,994 |
| Due from related party | — | 2,933,344 |
| Prepaid management fee — related party | 26,340,397 | 26,340,397 |
| Other assets | 71,054,687 | 139,664,556 |
| Total assets | $2,302,770,048 | $2,579,236,489 |
| **Liabilities and Equity:** | | |
| Repurchase agreements | $ 4,388,250 | $ 60,727,789 |
| Collateralized debt obligations | 1,113,600,316 | 1,152,289,000 |
| Junior subordinated notes to subsidiary trust issuing preferred securities | 259,173,610 | 276,055,000 |
| Notes payable | 442,186,353 | 518,435,437 |
| Note payable — related party | — | 4,200,000 |
| Mortgage note payable | 41,440,000 | 41,440,000 |
| Due to related party | 4,745,351 | 993,192 |
| Due to borrowers | 5,983,548 | 32,330,603 |
| Deferred revenue | 77,123,133 | 77,123,133 |
| Other liabilities | 82,187,665 | 134,647,667 |
| Total liabilities | 2,030,828,226 | 2,298,241,821 |
| Commitments and contingencies | — | — |
| Equity: | | |
| Arbor Realty Trust, Inc. stockholders' equity: | | |
| Preferred stock, $0.01 par value: 100,000,000 shares authorized; no shares issued or outstanding | — | — |
| Common stock, $0.01 par value: 500,000,000 shares authorized; 25,666,810 shares issued, 25,387,410 shares outstanding at June 30, 2009 and 25,421,810 shares issued, 25,142,410 shares outstanding at December 31, 2008 | 256,668 | 254,218 |
| Additional paid-in capital | 449,733,531 | 447,321,186 |
| Treasury stock, at cost - 279,400 shares | (7,023,361) | (7,023,361) |
| Accumulated deficit | (115,754,033) | (62,939,722) |
| Accumulated other comprehensive loss | (57,210,449) | (96,606,672) |
| Total Arbor Realty Trust, Inc. stockholders' equity | 270,002,356 | 281,005,649 |
| Noncontrolling interest in consolidated entity | 1,939,466 | (10,981) |
| Total equity | 271,941,822 | 280,994,668 |
| Total liabilities and equity | $2,302,770,048 | $2,579,236,489 |

See notes to consolidated financial statements.

**ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

For the Three and Six Months Ended June 30, 2009 and 2008

(Unaudited)

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| **Revenue:** | | | | |
| Interest income | $ 31,687,984 | $51,869,164 | $ 62,188,007 | $107,285,494 |
| Property operating income | 1,587,692 | — | 3,058,488 | — |
| Other income | 782,410 | 28,629 | 798,660 | 49,322 |
| Total revenue | 34,058,086 | 51,897,793 | 66,045,155 | 107,334,816 |
| **Expenses:** | | | | |
| Interest expense | 21,091,121 | 27,857,322 | 40,241,937 | 59,161,421 |
| Employee compensation and benefits | 3,509,911 | 2,686,002 | 5,901,895 | 4,663,345 |
| Selling and administrative | 2,681,579 | 2,793,161 | 4,763,921 | 4,331,227 |
| Property operating expenses | 1,612,965 | — | 2,944,110 | — |
| Depreciation and amortization | 283,022 | — | 566,044 | — |
| Other-than-temporary impairment | 382,130 | — | 382,130 | — |
| Provision for loan losses | 23,000,000 | 2,000,000 | 90,500,000 | 5,000,000 |
| Loss on restructured loans | 23,790,835 | — | 32,827,749 | — |
| Management fee — related party | 6,277,623 | 2,153,838 | 7,000,000 | 4,733,272 |
| Total expenses | 82,629,186 | 37,490,323 | 185,127,786 | 77,889,265 |
| (Loss) income before gain on exchange of profits interest, gain on extinguishment of debt, loss on termination of swaps and loss from equity affiliates | (48,571,100) | 14,407,470 | (119,082,631) | 29,445,551 |
| Gain on exchange of profits interest | — | — | 55,988,411 | — |
| Gain on extinguishment of debt | 21,464,957 | — | 47,731,990 | — |
| Loss on termination of swaps | (8,729,408) | — | (8,729,408) | — |
| Loss from equity affiliates | (12,664,152) | (562,000) | (10,157,018) | (562,000) |
| Net (loss) income | (48,499,703) | 13,845,470 | (34,248,656) | 28,883,551 |
| Net income attributable to noncontrolling interest | 57,292 | 2,117,464 | 18,562,077 | 4,450,754 |
| Net (loss) income attributable to Arbor Realty Trust, Inc. | $(48,556,995) | $11,728,006 | $ (52,810,733) | $ 24,432,797 |
| Basic (loss) earnings per common share | $ (1.92) | $ 0.56 | $ (2.09) | $ 1.18 |
| Diluted (loss) earnings per common share | $ (1.92) | $ 0.56 | $ (2.09) | $ 1.18 |
| Dividends declared per common share | $ — | $ 0.62 | $ — | $ 1.24 |
| Weighted average number of shares of common stock outstanding: | | | | |
| Basic | 25,333,564 | 20,906,383 | 25,238,515 | 20,739,081 |
| Diluted | 25,333,564 | 24,721,660 | 25,238,515 | 24,562,520 |

See notes to consolidated financial statements.

**ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENT OF CHANGES IN EQUITY**

For the Six Months Ended June 30, 2009

(Unaudited)

| | Comprehensive Income (1) | Common Stock Shares | Common Stock Par Value | Additional Paid-in Capital | Treasury Stock Shares | Treasury Stock | Accumulated Deficit | Accumulated Other Comprehensive Loss | Total Arbor Realty Trust, Inc. Stockholders' Equity | Non-controlling Interest in Consolidated Entity | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Balance — January 1, 2009 | | 25,421,810 | $254,218 | $447,321,186 | (279,400) | $(7,023,361) | $ (62,939,722) | $ (96,606,672) | $281,005,649 | $ (10,981) | $280,994,668 |
| Stock-based compensation | | 245,000 | 2,450 | 2,412,345 | | | | | 2,414,795 | | 2,414,795 |
| Distributions - preferred stock of private REIT | | | | | | | (3,578) | | (3,578) | | (3,578) |
| Net (loss) income | $ (34,248,656) | | | | | | (52,810,733) | | (52,810,733) | 18,562,077 | (34,248,656) |
| Distribution to non-controlling interest | | | | | | | | | | (16,611,630) | (16,611,630) |
| Unrealized gain on derivative financial instrument | 16,622,907 | | | | | | | 16,622,907 | 16,622,907 | | 16,622,907 |
| Reclassification of net realized loss on derivatives designated as cash flow hedges into earnings | 22,773,316 | | | | | | | 22,773,316 | 22,773,316 | | 22,773,316 |
| Balance — June 30, 2009 | $ 5,147,567 | 25,666,810 | $256,668 | $449,733,531 | (279,400) | $(7,023,361) | $(115,754,033) | $ (57,210,449) | $270,002,356 | $ 1,939,466 | $271,941,822 |

(1) Comprehensive income for the six months ended June 30, 2008 was $26,881,924.

See notes to consolidated financial statements.

**ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**
For the Six Months Ended June 30, 2009 and 2008
(Unaudited)

| | Six Months Ended June 30, | |
|---|---|---|
| | **2009** | **2008** |
| Operating activities: | | |
| Net (loss) income | $ (34,248,656) | $ 28,883,551 |
| Adjustments to reconcile net (loss) income to cash provided by operating activities: | | |
| Depreciation and amortization | 566,044 | 170,913 |
| Stock-based compensation | 2,414,795 | 2,055,922 |
| Other-than-temporary impairment | 382,130 | — |
| Gain on exchange of profits interest | (55,988,411) | — |
| Gain on extinguishment of debt | (47,731,990) | — |
| Provision for loan losses | 90,500,000 | 5,000,000 |
| Loss on restructured loans | 32,827,749 | — |
| Loss on termination of swaps | 8,729,408 | |
| Amortization and accretion of interest and fees | 1,890,442 | (766,404) |
| Change in fair value of non-qualifying swaps | 3,349,773 | (674,397) |
| Non-cash incentive compensation to manager — related party | — | 1,385,918 |
| Loss from equity affiliates | 10,157,018 | 562,000 |
| Changes in operating assets and liabilities: | | |
| Other assets | 15,186,786 | (11,797,584) |
| Other liabilities | (5,871,052) | (13,394,474) |
| Deferred fees | 2,467,808 | 1,014,315 |
| Due to (from) related party | 7,738,692 | (957,704) |
| Net cash provided by operating activities | $ 32,370,536 | $ 11,482,056 |
| Investing activities: | | |
| Loans and investments funded, originated and purchased, net | (4,169,262) | (287,005,064) |
| Payoffs and paydowns of loans and investments | 90,719,093 | 427,986,599 |
| Proceeds from sale of loans | 23,250,000 | — |
| Due to borrowers | (6,141,287) | (9,873,294) |
| Principal collection on securities held-to-maturity | 1,377,569 | — |
| Purchase of securities held-to-maturity | (10,670,000) | (58,062,500) |
| Investment in real estate, net | (59,986) | (1,073,153) |
| Distributions from equity affiliates | 1,151,217 | 177,499 |
| Net cash provided by investing activities | $ 95,457,344 | $ 72,150,087 |
| Financing activities: | | |
| Proceeds from notes payable and repurchase agreements | 10,680,633 | 212,693,265 |
| Payoffs and paydowns of notes payable and repurchase agreements | (123,478,929) | (219,647,463) |
| Payoff of junior subordinated notes to subsidiary trust issuing preferred securities | (1,265,625) | — |
| Payoff of notes payable — related party | (4,200,000) | — |
| Proceeds from collateralized debt obligations | 500,000 | 27,000,000 |
| Payoffs and paydowns of collateralized debt obligations | (14,570,938) | (48,360,000) |
| Change in restricted cash | 26,614,127 | (4,963,532) |
| Payments on swaps to hedge counterparties | (46,420,588) | (79,770,000) |
| Receipts on swaps from hedge counterparties | 56,105,000 | 83,810,000 |
| Distributions paid to noncontrolling interest | (111,630) | (4,682,326) |
| Distributions paid on stock | (3,578) | (25,736,290) |
| Payment of deferred financing costs | (2,990,926) | — |
| Net cash used in financing activities | $ (99,142,454) | $ (59,656,346) |
| Net increase in cash and cash equivalents | $ 28,685,426 | $ 23,975,797 |
| Cash and cash equivalents at beginning of period | 832,041 | 22,219,541 |
| Cash and cash equivalents at end of period | $ 29,517,467 | $ 46,195,338 |

**ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOW (*Continued*)**
For the Six Months Ended June 30, 2009 and 2008
(Unaudited)

| | Six Months Ended June 30, | |
|---|---|---|
| | **2009** | **2008** |
| Supplemental cash flow information: | | |
| Cash used to pay interest | $32,868,099 | $60,253,699 |
| Cash (received) used for taxes | $ (78,943) | $ 57,160 |
| Supplemental schedule of non-cash financing activities: | | |
| Investment in real estate, net | $ 2,925,428 | $ — |
| Margin calls applied to repurchase agreements | $ 4,845,810 | $ — |
| Termination of swaps | $17,034,929 | $ — |
| Retirement of common equity in trust preferred securities | $ 7,726,385 | $ — |
| Collateral on swaps to hedge counterparties | $ — | $ 3,500,000 |
| Assumption of mortgage note payable | $ — | $41,440,000 |
| Redemption of operating partnership units for common stock | $ — | $67,306,291 |
| Issuance of common stock for management incentive fee | $ — | $ 2,235,313 |

See notes to consolidated financial statements.

**Note 1 —Description of Business/Form of Ownership**

Arbor Realty Trust, Inc. (the "Company") is a Maryland corporation that was formed in June 2003 to invest in a diversified portfolio of multi-family and commercial real estate related assets, primarily consisting of bridge loans, mezzanine loans, junior participating interests in first mortgage loans, and preferred and direct equity. The Company may also directly acquire real property and invest in real estate-related notes and certain mortgage-related securities. The Company conducts substantially all of its operations through its operating partnership, Arbor Realty Limited Partnership ("ARLP"), and ARLP's wholly-owned subsidiaries. The Company is externally managed and advised by Arbor Commercial Mortgage, LLC ("ACM").

The Company is organized and conducts its operations to qualify as a real estate investment trust ("REIT") for federal income tax purposes. A REIT is generally not subject to federal income tax on its REIT–taxable income that it distributes to its stockholders, provided that it distributes at least 90% of its REIT–taxable income and meets certain other requirements. Certain assets of the Company that produce non-qualifying income are owned by its taxable REIT subsidiaries, the income of which is subject to federal and state income taxes.

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, 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 1,610,000 units (including an overallotment option), each consisting of five shares of common stock and one warrant to purchase one share of common stock at $75.00 per unit. The Company sold 8,050,000 shares of common stock in the offering. 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 Arbor Realty Trust, Inc. stockholders' equity and noncontrolling interest of $154.0 million as a result of the private placement.

In April 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 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. In October 2004, ARLP received proceeds of approximately $9.4 million from the exercise of warrants for 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") and received net proceeds of $12.9 million and $4.2 million, respectively.

On March 2, 2007, the Company filed a shelf registration statement on Form S-3 with the SEC under the Securities Act of 1933, as amended (the "1933 Act") with respect to an aggregate of $500.0 million of debt securities, common stock, preferred stock, depositary shares and warrants, that may be sold by the Company from time to time pursuant to Rule 415 of the 1933 Act. On April 19, 2007, the Commission declared this shelf registration statement effective.

In June 2007, the Company completed a public offering in which it sold 2,700,000 shares of its common stock registered for $27.65 per share, and received net proceeds of approximately $73.6 million after deducting the

underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down debt and finance its loan and investment portfolio. The underwriters did not exercise their over allotment option for additional shares. At June 30, 2009, the Company had $425.3 million remaining under the previously mentioned shelf registration.

In June 2008, the Company's external manager exercised its right to redeem its approximate 3.8 million operating partnership units in the Company's operating partnership for shares of the Company's common stock on a one-for-one basis. In addition, the special voting preferred shares paired with each operating partnership unit, pursuant to a pairing agreement, were redeemed simultaneously and cancelled by the Company.

The Company had 25,387,410 shares of common stock outstanding at June 30, 2009 and 25,142,410 shares of common stock outstanding at December 31, 2008.

**Note 2 — Summary of Significant Accounting Policies**

***Basis of Presentation and Principles of Consolidation***

The accompanying unaudited consolidated interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial statements and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements, although management believes that the disclosures presented herein are adequate to make the accompanying unaudited consolidated interim financial statements presented not misleading.

The accompanying unaudited consolidated financial statements include the financial statements of the Company, its wholly owned subsidiaries, and partnerships or other joint ventures which the Company controls. Entities which the Company does not control and entities which are variable interest entities in which the Company is not the primary beneficiary, are accounted for under the equity method. In the opinion of management, all adjustments (consisting only of normal recurring accruals) considered necessary for a fair presentation have been included. All significant inter-company transactions and balances have been eliminated in consolidation. Certain prior year amounts have been reclassified to conform to current period presentation. Upon adoption of SFAS No. 160 "Noncontrolling Interest in Consolidated Financial Statements – an Amendment of ARB No. 51," noncontrolling interest in consolidated entity is classified in the Company's Consolidated Balance Sheet in the "Equity" section of the current quarter's presentation and was disclosed as a separate mezzanine section in prior quarter's presentation and net (loss) income is split out between noncontrolling interest and Arbor Realty Trust, Inc. and was disclosed as one line in prior quarter's presentation.

The preparation of consolidated interim financial statements in conformity with Generally Accepted Accounting Principals in the United States ("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 interim financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates. Further, in connection with preparation of the consolidated interim financial statements and in accordance with the recently issued Statement of Financial Accounting Standards No. 165 "Subsequent Events" ("SFAS 165"), the Company evaluated subsequent events after the balance sheet date of June 30, 2009 through August 7, 2009.

The results of operations for the six months ended June 30, 2009 are not necessarily indicative of results that may be expected for the entire year ending December 31, 2009. The accompanying unaudited consolidated interim financial statements should be read in conjunction with the Company's audited consolidated annual financial statements and the related Management's Discussion and Analysis of Financial Condition and Results of Operations included in the Company's Annual Report on Form 10-K for the year ended December 31, 2008.

***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***

At June 30, 2009 and December 31, 2008, the Company had restricted cash of $66.6 million and $93.2 million, respectively, most of which was on deposit with the trustees for the Company's collateralized debt obligations ("CDOs"), see Note 8 – "Debt Obligations." Restricted cash primarily represents proceeds from loan repayments which will be used to purchase replacement loans as collateral for the CDOs and interest payments received from loans in the CDOs which are remitted to the Company quarterly in the month following the quarter.

***Loans and Investments***

Statement of Financial Accounting Standards ("SFAS") No. 115 "Accounting for Certain Investments in Debt and Equity Securities," ("SFAS 115") requires that at the time of purchase, the Company designate a security as held-to-maturity, available-for-sale, or trading depending on ability and intent. The Company does not have any securities designated as trading at this time. Securities available-for-sale are reported at fair value with the net unrealized gains or losses reported as a component of accumulated other comprehensive loss, while securities and investments held to maturity are reported at amortized cost. Unrealized losses that are determined to be other-than-temporary are recognized in earnings in accordance with SFAS 115. The determination of other-than-temporary impairment is a subjective process requiring judgments and assumptions. The process may include, but is not limited to, assessment of recent market events and prospects for near term recovery, assessment of cash flows, internal review of the underlying assets securing the investments, credit of the issuer and the rating of the security, as well as the Company's ability and intent to hold the investment. Management closely monitors market conditions on which it bases such decisions.

In April 2009, the FASB issued FASB Staff Position No. FAS 115-2 and FAS 124-2 ("FSP FAS 115-2 and FAS 124-2"), "Recognition and Presentation of Other-Than-Temporary Impairments." FSP FAS 115-2 and FAS 124-2 provides greater clarity about the credit and noncredit component of an other-than-temporary impairment event and more effectively communicates when it has occurred. FSP FAS 115-2 and FAS 124-2 requires the recording of a cumulative-effect adjustment as of the beginning of the period of adoption to reclassify the noncredit component of a previously recognized other-than-temporary impairment on debt securities from retained earnings to accumulated other comprehensive income. The adoption of FSP FAS 115-2 and FAS 124-2 did not have a material effect on the Company's Consolidated Financial Statements and no such reclassification was necessary in the second quarter of 2009.

In April 2009, the Securities and Exchange Commission's ("SEC") Office of the Chief Accountant and Division of Corporation Finance issued SEC Staff Accounting Bulletin 111 ("SAB 111"). SAB 111 amends and replaces SAB Topic 5M, "Miscellaneous Accounting—Other Than Temporary Impairment of Certain Investments in Equity Securities" to reflect FSP FAS 115-2 and FAS 124-2. The amended SAB Topic 5M maintains the prior staff views related to equity securities but has been amended to exclude debt securities from its scope. SAB 111 became effective upon the adoption of FSP FAS 115-2 and FAS 124-2. The adoption of SAB 111 did not have a material effect on the Company's Consolidated Financial Statements.

In accordance with Emerging Issues Task Force ("EITF") 99-20, "Recognition of Interest Income and Impairment on Purchased and Retained Beneficial Interests in Securitized Financial Assets" as amended by FSP EITF 99-20-1 "Amendments to the Impairment Guidance of EITF Issue No. 99-20" the Company also assesses certain of its held-to-maturity securities, other than those of high credit quality, to determine whether significant changes in estimated cash flows or unrealized losses on these securities, if any, reflect a decline in value which is other-than-temporary and, accordingly, written down to its fair value against earnings. On a quarterly basis, the

Company reviews these changes in estimated cash flows, which could occur due to actual prepayment and credit loss experience, to determine if an other-than-temporary impairment is deemed to have occurred. The determination of other-than-temporary impairment is a subjective process requiring judgments and assumptions. The Company calculates a revised yield based on the current amortized cost of the investment, including any other-than-temporary impairments recognized to date, and the revised yield is then applied prospectively to recognize interest income.

In January 2009, the FASB issued FASB Staff Position No. EITF 99-20-1 ("FSP EITF 99-20-1"), "Amendments to the Impairment Guidance of EITF Issue No. 99-20." FSP EITF 99-20-1 amends the impairment guidance in EITF Issue No. 99-20, "Recognition of Interest Income and Impairment on Purchased Beneficial Interests and Beneficial Interests That Continue to Be Held by a Transferor in Securitized Financial Assets," to achieve a more consistent determination of whether an other-than-temporary impairment has occurred. It also retains and emphasizes the objective of an other-than-temporary impairment assessment and related disclosure in SFAS No. 115 "Accounting for Certain Investments in Debt and Equity Securities" and requires judgment in assessing the probability of collecting future cash flows. FSP EITF 99-20-1 is effective for interim and annual reporting periods ending after December 15, 2008, and shall be applied prospectively. The adoption of FSP EITF 99-20-1 did not have a material effect on the Company's Consolidated Financial Statements.

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, loan purchase discounts, and net of the allowance for loan losses when 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.

***Impaired Loans and Allowance for Loan Losses***

The Company considers a loan impaired when, based upon current information and events, it is probable that it will be unable to collect all amounts due for both principal and interest according to the contractual terms of the loan agreement. 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 selecting the most appropriate valuation methodology, or methodologies, among several generally available and accepted in the commercial real estate industry. The determination of the most appropriate valuation methodology is based on the key characteristics of the collateral type. These methodologies include the evaluation of operating cash flow from the property during the projected holding period, and the estimated sales value of the collateral 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. The Company had an allowance for loan losses of $221.0 million relating to 22 loans with an aggregate carrying value, before reserves, of approximately $605.7 million at June 30, 2009 and $130.5 million in allowance for loan losses relating to ten loans with an aggregate carrying value, before reserves, of approximately $443.2 million at December 31, 2008.

***Revenue Recognition***

*Interest Income* — Interest income is recognized on the accrual basis as it is earned from loans, investments, and 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 from the purchase or origination of the loan or security. 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 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. The Company did not record interest income on such investments for the three and six month periods ended June 30, 2009 as compared to $0.3 million for the six months ended June 30, 2008. No such income had been recognized for the three months ended June 30, 2008. These amounts represent profits interest received in accordance with the contractual agreement with the borrower.

*Property operating income* — Property operating income represents operating income associated with the operations of two commercial real estate properties recorded as real estate owned, net. See Note 7 – "Real Estate Owned, Net" for further details. For the three and six month periods ended June 30, 2009, the Company recorded approximately $1.6 million and $3.1 million, respectively, of property operating income relating to the Company's real estate owned. There was no property operating income for the three and six months ended June 30, 2008.

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

***Income or Losses 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 the Company, and are not consolidated in its financial statements. These investments are recorded under either the equity or cost method of accounting as appropriate. The Company records its share of the net income and losses from the underlying properties and any other-than-temporary impairment on these investments on a single line item in the Consolidated Statements of Operations as income or losses from equity affiliates.

***Stock Based Compensation***

The Company records stock-based compensation expense at the grant date fair value of the related stock-based award in accordance with SFAS No. 123R, "Accounting for Stock-Based Compensation" ("SFAS 123R"). 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 cost of these grants is amortized over the vesting term using an accelerated method in accordance with Financial Accounting Standards Board ("FASB") Interpretation No. 28 "Accounting for Stock Appreciation Rights and Other Variable Stock Options or Award Plans" ("FIN 28"), and SFAS 123R. Dividends are paid on the restricted shares as dividends are paid on shares of the Company's common stock whether or not they are vested. Stock based compensation was disclosed in the Company's Consolidated Statements of Operations under "employee compensation and benefits" for employees and under "selling and administrative" expense for non-employees.

***Income Taxes***

The Company is organized and conducts its operations to qualify as a REIT for federal income tax purposes. A REIT is generally not subject to federal income tax on its REIT–taxable income that it distributes to its stockholders, provided that it distributes at least 90% of its REIT–taxable income and meets certain other requirements. Certain assets of the Company that produce non-qualifying income are owned by its taxable REIT subsidiaries, the income of which are subject to federal and state income taxes. The Company did not record a

provision for income taxes related to the assets that are held in taxable REIT subsidiaries for the three and six months ended June 30, 2009 and 2008. The Company's accounting policy with respect to interest and penalties related to tax uncertainties is to classify these amounts as provision for income taxes. The Company has not recognized any interest and penalties related to tax uncertainties for the three and six months ended June 30, 2009 and 2008.

In July 2006, the FASB issued Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an interpretation of FASB Statement No. 109" ("FIN 48"). This interpretation clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FAS 109 "Accounting for Income Taxes." This interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. This interpretation was effective January 1, 2007.

***Other Comprehensive Income / (Loss)***

SFAS No. 130 "Reporting Comprehensive Income," divides comprehensive income or loss into net income (loss) 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, "Accounting for Derivative Instruments and Hedging Activities," net unrealized gains or losses are reported as a component of accumulated other comprehensive income/(loss), see "Derivatives and Hedging Activities" below. At June 30, 2009 and December 31, 2008, accumulated other comprehensive loss was $57.2 million and $96.6 million, respectively, and consisted of net unrealized losses on derivatives designated as cash flow hedges.

***Derivatives and Hedging Activities***

The Company accounts for derivative financial instruments in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"), as amended by SFAS 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 balance sheets and to measure those instruments at fair value. Additionally, the fair value adjustments will affect either accumulated other comprehensive loss in Arbor Realty Trust, Inc. Stockholders' Equity 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. The Company relies on quotations from a third party to determine these fair values.

As required by SFAS 133, the Company records all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether a company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. The Company may enter into derivative contracts that are intended to economically hedge certain of its risk, even though hedge accounting does not apply or the Company elects not to apply hedge accounting under SFAS 133.

SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities, an amendment of SFAS No. 133" ("SFAS 161"), amends and expands the disclosure requirements of SFAS 133 with the intent to provide users of financial statements with an enhanced understanding of: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS 133 and its

related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about the fair value of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative instruments.

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. See Note 9 – "Derivative Financial Instruments" for further details.

***Variable Interest Entities***

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

The Company has evaluated its loans and investments and investments in equity affiliates to determine whether they are VIEs. This evaluation resulted in the Company determining that its bridge loans, junior participation 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) substantially all of the entities' activities do not involve or are not conducted on behalf of an investor that has disproportionately fewer voting rights in terms of its obligation to absorb the expected losses or its right to receive expected residual returns of the entity, or both. In addition, the Company has evaluated its investments in collateralized debt obligation securities and has determined that the issuing entities are considered VIEs under the provisions of FIN 46, but has determined that the Company is not the primary beneficiary. As of June 30, 2009, the Company has identified 40 loans and investments which were made to entities determined to be VIEs with an aggregate carrying amount of $864.5 million. These VIE entities had exposure to real estate debt of approximately $3.4 billion at June 30, 2009.

For the 40 VIEs identified, the Company has determined that it is not the primary beneficiary, and as such the VIEs 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 VIEs. As such, the Company has continued to account for these loans and investments as a loan or investment, as appropriate.

Entities that issue junior subordinated notes are considered VIEs. However, 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, they are not considered to be at risk.

***Recently Issued Accounting Pronouncements***

SFAS No. 168 – In July 2009, the FASB issued Statement of Financial Accounting Standards No. 168 ("SFAS 168"), "The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles – a replacement of FASB Statement No. 162." SFAS 168 replaces SFAS No. 162 "The Hierarchy of Generally Accepted Accounting Principles" by establishing the FASB Accounting Standards

Codification™ as the source of authoritative accounting principles recognized by the FASB to be applied to nongovernmental entities in the preparation of financial statements in conformity with GAAP. Rules and interpretive releases of the Securities and Exchange Commission under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. Accounting Standards Updates will serve to update the Codification. SFAS 168 is effective for reporting periods that end on or after September 15, 2009. The adoption of SFAS 168 is not expected to have a material effect on the Company's Consolidated Financial Statements.

SFAS No. 167 – In June 2009, the FASB issued Statement of Financial Accounting Standards No. 167 ("SFAS 167"), "Amendments to FASB Interpretation No. 46(R)." SFAS 167 amends FIN No. 46(R) "Consolidation of Variable Interest Entities – an interpretation of ARB No. 51" by prescribing an ongoing qualitative rather than quantitative assessment of the Company's ability to direct the activities of a variable interest entity that most significantly impact the entity's economic performance and the Company's rights or obligations to receive benefits or absorb losses in order to determine whether those entities will be required to be consolidated in the Company's Consolidated Financial Statements. SFAS 167 is effective for fiscal years beginning after November 15, 2009. The Company is currently evaluating the potential effect of adopting SFAS 167 on the Company's Consolidated Financial Statements.

SFAS No. 166 – In June 2009, the FASB issued Statement of Financial Accounting Standards No. 166 ("SFAS 166"), "Accounting for Transfers of Financial Assets – an amendment of Statement No. 140." SFAS 166 amends the de-recognition guidance in FASB Statement No. 140 "Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities – a replacement of FASB Statement No. 125", eliminating the exemption from consolidation for qualifying special-purpose entities, and requires more disclosure about the transfer and the transfer's continuing involvement in the assets. SFAS 166 is effective for fiscal years beginning after November 15, 2009. The adoption of SFAS 166 is not expected to have a material effect on the Company's Consolidated Financial Statements.

SFAS No. 165 – In May 2009, the FASB issued Statement of Financial Accounting Standards No. 165 ("SFAS 165"), "Subsequent Events." SFAS 165 establishes general standards of accounting and disclosure for events that occur after the balance sheet date but before financial statements are available to be issued, including disclosure of the date through which subsequent events have been evaluated and whether the date corresponds with the release of the financial statements. SFAS 165 is effective for interim and annual periods ending after June 15, 2009. The adoption of SFAS 165 did not have a material effect on the Company's Consolidated Financial Statements.

FSP FAS 141(R)-1 – In April 2009, the FASB issued FASB Staff Position No. FAS 141(R)-1 ("FSP FAS 141(R)-1"), "Accounting for Assets Acquired and Liabilities Assumed in a Business Combination That Arise from Contingencies." FSP FAS 141(R)-1 provides guidance on accounting for business combinations. It addresses issues raised by preparers, auditors, and members of the legal profession on initial recognition and measurement, subsequent measurement and accounting, and disclosure of assets and liabilities arising from contingencies in a business combination. FSP FAS 141(R)-1 applies to all assets or liabilities arising from contingencies in business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The adoption of FSP FAS 141(R)-1 did not have a material effect on the Company's Consolidated Financial Statements.

FSP FAS 157-4 – In April 2009, the FASB issued FASB Staff Position No. FSP 157-4 ("FSP FAS 157-4"), "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly." FSP FAS 157-4 provides additional guidance on determining whether a market for a financial asset is not active and a transaction is not distressed for fair value measurement under SFAS 157, "Fair Value Measurement." FSP FAS 157-4 applies to all fair value measurements prospectively and is effective for interim and annual periods ending after June 15, 2009. The adoption of FSP FAS 157-4 did not have a material effect on the Company's Consolidated Financial Statements.

**Note 3 — Loans and Investments**

The following table sets forth the composition of the Company's loan and investment portfolio at the dates indicated.

| | June 30, 2009 | Percent of Total | December 31, 2008 | Percent of Total | At June 30, 2009 Loan Count | At June 30, 2009 Wtd. Avg. Pay Rate | At December 31, 2008 Loan Count | At December 31, 2008 Wtd. Avg. Pay Rate |
|---|---|---|---|---|---|---|---|---|
| | (Unaudited) | | | | (Unaudited) | | | |
| Bridge loans | $1,318,849,841 | 61% | $1,441,846,251 | 62% | 58 | 5.52% | 58 | 6.22% |
| Mezzanine loans | 343,430,781 | 16% | 364,937,818 | 16% | 37 | 5.82% | 42 | 7.03% |
| Junior participation loans | 298,227,590 | 14% | 298,278,363 | 13% | 16 | 4.79% | 16 | 6.60% |
| Preferred equity Investments | 195,407,490 | 9% | 205,247,126 | 9% | 18 | 2.87% | 18 | 4.05% |
| Other | — | — | 12,418,110 | nm | — | — | 2 | 8.73% |
| | 2,155,915,702 | 100% | 2,322,727,668 | 100% | 129 | 5.23% | 136 | 6.22% |
| Unearned revenue | (9,226,332) | | (10,544,049) | | | | | |
| Allowance for loan losses | (221,000,000) | | (130,500,000) | | | | | |
| Loans and investments, net | $1,925,689,370 | | $2,181,683,619 | | | | | |

nm — not meaningful

*Concentration of Borrower Risk*

The Company is subject to concentration risk in that, as of June 30, 2009, the unpaid principal balance related to 31 loans with five unrelated borrowers represented approximately 29% of total assets. At December 31, 2008 the unpaid principal balance related to 34 loans with five unrelated borrowers represented approximately 28% of total assets. As of June 30, 2009 and December 31, 2008, the Company had 129 and 136 loans and investments, respectively. As of June 30, 2009, 37.7%, 13.1%, and 10.6% of the outstanding balance of the Company's loans and investments portfolio had underlying properties in New York, California, and Florida, respectively. As of December 31, 2008, 39.8%, 12.1%, and 9.8% of the outstanding balance of the Company's loans and investments portfolio had underlying properties in New York, California, and Florida, respectively.

*Impaired Loans and Allowance for Loan Losses*

The Company considers a loan impaired when, based upon current information and events, it is probable that it will be unable to collect all amounts due for both principal and interest according to the contractual terms of the loan agreement. As a result of the Company's normal quarterly loan review at June 30, 2009, it was determined that 22 loans with an aggregate carrying value, before reserves, of $605.7 million were impaired. The $605.7 million of impaired loans included five loans which were modified during the second quarter 2009 with an aggregate carrying value of $117.5 million, reserves of $25.0 million and unfunded loan commitments of $1.6 million as of June 30, 2009. At December 31, 2008, it was determined that ten loans with an aggregate carrying value, before reserves, of $443.2 million were impaired.

The Company performed an evaluation of the loans and determined that the fair value of the underlying collateral securing the impaired loans was less than the net carrying value of the loans, resulting in the Company recording a $23.0 million and $90.5 million provision for loan losses for the three and six months ended June 30, 2009, respectively. Of the $23.0 million of loan loss reserves recorded during the three months ended June 30, 2009, $19.2 million was on loans that previously had reserves while $3.8 million of reserves related to other loans in

the Company's portfolio. Of the $90.5 million of loan loss reserves recorded during the six months ended June 30, 2009, $29.7 million was on loans that previously had reserves while $60.8 million of reserves related to other loans in the Company's portfolio. The Company recorded a $2.0 million and $5.0 million provision for loan losses for the three and six months ended June 30, 2008, respectively.

A summary of the changes in the allowance for loan losses is as follows:

| | For the Six Months Ended June 30, 2009 |
|---|---|
| Allowance at beginning of the period | $130,500,000 |
| Provision for loan losses | 90,500,000 |
| Charge-offs | — |
| Allowance at end of the period | $221,000,000 |

As of June 30, 2009, nine loans with a net carrying value of approximately $188.4 million, net of related loan loss reserves of $97.2 million, were classified as non-performing. Income is recognized on a cash basis only to the extent it is received. Full income recognition will resume when the loan becomes contractually current and performance has recommenced. As of December 31, 2008, four loans with a net carrying value of approximately $113.0 million, net of related loan loss reserves of $20.5 million, were classified as non-performing for which income recognition had been suspended.

During the quarter ended June 30, 2009, the Company sold a bridge loan with a carrying value of $47.0 million, at a discount, for approximately $23.2 million and recorded a loss on restructuring of $23.8 million. In connection with this transaction, the Company used the proceeds to settle a $37.0 million repurchase facility in which this asset was financed for a cash payment of approximately $22.0 million, resulting in a gain on extinguishment of debt of approximately $15.0 million. See Note 8 – "Debt Obligations" for further information relating to this transaction.

During the quarter ended March 31, 2009, the Company received $11.8 million in principal paydowns on two loans with a carrying value of $22.9 million and recorded a loss on the restructuring of these loans of approximately $9.0 million.

**Note 4 — Available-For-Sale Securities**

The following is a summary of the Company's available-for-sale securities at June 30, 2009.

| | Carrying Value | Other-Than-Temporary Impairment | Unrealized Loss | Estimated Fair Value |
|---|---|---|---|---|
| Common equity securities | $529,104 | $ (382,131) | $ — | $146,973 |
| Total available-for-sale securities | $529,104 | $ (382,131) | $ — | $146,973 |

The following is a summary of the Company's available-for-sale securities at December 31, 2008.

| | Carrying Value | Other-Than-Temporary Impairment | Unrealized Loss | Estimated Fair Value |
|---|---|---|---|---|
| Common equity securities | $16,715,584 | $(16,186,480) | $ — | $529,104 |
| Total available-for-sale securities | $16,715,584 | $(16,186,480) | $ — | $529,104 |

During 2007, the Company purchased 2,939,465 shares of common stock of Realty Finance Corporation, formerly CBRE Realty Finance, Inc., a commercial real estate specialty finance company, for $16.7 million, which had a fair value of $0.1 million at June 30, 2009 and a fair value of $0.5 million at December 31, 2008. In 2008, the Company concluded that these securities were other-than-temporarily impaired under GAAP and recorded $16.2 million of impairment charges to the Consolidated Statements of Operations.

As of June 30, 2009, these securities have been in an unrealized loss position for more than twelve months. GAAP requires that these securities are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value. Management closely monitors market conditions on which it bases such decisions. At June 30, 2009, the Company believed that based on market events and the unfavorable prospects for near term recovery of value, that there was a lack of evidence to support the conclusion that the fair value decline was temporary. Therefore, at June 30, 2009, the Company concluded that these securities were other-than-temporarily impaired under GAAP and recorded a $0.4 million impairment charge to the Consolidated Statements of Operations.

These securities are carried at their estimated fair value with unrealized gains and losses reported in accumulated other comprehensive loss. At June 30, 2009 and December 31, 2008, all losses in fair value to date were recorded as other-than-temporary impairments, and therefore have been recognized in earnings.

**Note 5 — Securities Held-To-Maturity**

The following is a summary of the Company's securities held-to-maturity at June 30, 2009.

| | Face Value | Amortized Cost | Other-Than-Temporary Impairment (1) | Carrying Value | Unrealized Gain | Unrealized Loss | Estimated Fair Value (2) |
|---|---|---|---|---|---|---|---|
| Collateralized debt obligation bonds | $81,322,431 | $59,466,017 | $ (1,387,500) | $58,078,517 | $ 100,000 | $(42,043,517) | $16,135,000 |
| Commercial mortgage-backed securities | $15,000,000 | $10,805,569 | $ — | $10,805,569 | $3,627,401 | $ — | $14,432,970 |
| Total securities held-to-maturity | $96,322,431 | $70,271,586 | $ (1,387,500) | $68,884,086 | $3,727,401 | $(42,043,517) | $30,567,970 |

(1) Cumulative total.

(2) The aggregate estimated fair value of the five collateralized debt obligation bonds in an unrealized loss position at June 30, 2009 was $16,035,000.

The following is a summary of the Company's securities held-to-maturity at December 31, 2008.

| | Face Value | Amortized Cost | Other-Than-Temporary Impairment | Carrying Value | Unrealized Gain | Unrealized Loss | Estimated Fair Value (1) |
|---|---|---|---|---|---|---|---|
| Collateralized debt obligation bonds | $82,700,000 | $59,631,848 | $(1,387,500) | $58,244,348 | $175,000 | $(39,684,348) | $18,735,000 |
| Total securities held-to-maturity | $82,700,000 | $59,631,848 | $(1,387,500) | $58,244,348 | $175,000 | $(39,684,348) | $18,735,000 |

(1) The aggregate estimated fair value of the five collateralized debt obligation bonds in an unrealized loss position at December 31, 2008 was $18,560,000.

The following is a summary of the underlying credit rating of the Company's securities held-to-maturity at June 30, 2009 and December 31, 2008.

| | At June 30, 2009 | | | At December 31, 2008 | | |
|---|---|---|---|---|---|---|
| Rating (2) | # | Amortized Cost | Percent of Total | # | Amortized Cost | Percent of Total |
| AAA | 5 | $51,264,373 | 73% | 3 | $41,097,282 | 69% |
| AA+ | 1 | 7,781,503 | 11% | 1 | 7,659,013 | 13% |
| AA- | 1 | 9,838,210 | 14% | 1 | 9,488,053 | 16% |
| BB+ | 1 | 1,387,500 | 2% | 1 | 1,387,500 | 2% |
| | 8 | $70,271,586 | 100% | 6 | $59,631,848 | 100% |

(2) Based on the rating published by Standard & Poor's for each security.

During the second quarter of 2009, the Company purchased $15.0 million of investment grade commercial mortgage-backed securities ("CMBS") for $10.7 million plus accrued interest, representing a $4.3 million discount to their face value. This discount is accreted into interest income on an effective yield adjusted for actual prepayment activity over the average life of the related security as a yield adjustment. For the three months ended June 30, 2009, the Company accreted approximately $0.1 million of this discount into interest income. These securities bear interest at a weighted average coupon rate of 5.79%, have a weighted average stated maturity of 30.2 years but have an estimated average remaining life of 5.2 years due to the maturities of the underlying assets.

During the second quarter of 2008, the Company purchased $82.7 million of investment grade commercial real estate ("CRE") collateralized debt obligation bonds for $58.1 million, representing a $24.6 million discount to their face value. This discount is accreted into interest income on an effective yield adjusted for actual prepayment activity over the average life of the related security as a yield adjustment. For the three and six months ended June 30, 2009, the Company accreted approximately $0.6 million and $1.2 million, respectively, of this discount into interest income, representing accretion on approximately $21.0 million of the total discount. These securities bear interest at a weighted average spread of 40 basis points over LIBOR, have a weighted average stated maturity of 37.2 years but have an estimated average remaining life of 5.3 years due to the maturities of the underlying assets. During the three and six months ended June 30, 2009, the Company received repayments of principal of $0.4 million and $1.4 million, respectively on one of the Company's CDO bond securities held-to-maturity.

For the three and six months ended June 30, 2009, the average yield on the Company's held-to-maturity securities based on their face values was 4.93% and 4.66%, respectively, including the accretion of discount. For the three months ended June 30, 2008, the average yield on the Company's CDO bond securities held-to-maturity based on their face values was 7.52%, including the accretion of discount.

Securities held to maturity are carried at cost, net of unamortized premiums and discounts, which are recognized in interest income using an effective yield or "interest" method. GAAP accounting standards require that

held to maturity securities are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value. The Company's evaluation is based on its assessment of cash flows which is supplemented by third-party research reports, internal review of the underlying assets securing the investments, levels of subordination and the ratings of the securities and the underlying collateral. In addition, as of June 30, 2009, the Company does not intend to sell these investments, nor does the Company believe it is more likely than not that the Company will be required to sell the investments before recovery of their amortized cost bases, which may be at maturity. As of June 30, 2009, the Company's CDO bond investments were in an unrealized loss position for more than twelve months, as the Company's carrying value was in excess of their market value. However, based on its analysis as of June 30, 2009, the Company expects to fully recover the carrying value of these investments and has concluded that with exception of one $1.4 million bond, these investments are not other-than-temporarily impaired. During the fourth quarter of 2008, the Company determined that one BB+ rated CDO bond, with an amortized cost of approximately $1.4 million, was other-than-temporarily impaired, resulting in a $1.4 million impairment charge to the Company's financial statements. In addition, the Company's CMBS investments were not in an unrealized loss position for more than twelve months and were not determined to be other-than-temporarily impaired. The Company's estimation of cash flows expected to be generated by the securities portfolio is based upon an internal review of the underlying mortgage loans securing the investments both on an absolute basis and compared to the Company's initial underwriting for each investment. The Company's efforts are supplemented by third party research reports, third party market assessments and dialogue with market participants. As of June 30, 2009 the Company does not intend to sell the securities, nor does the Company believe it is more likely than not that the Company will be required to sell the securities before recovery of the amortized cost bases, which may be at maturity. This combined with the Company's assessment of cash flows, is the basis for the conclusion that these investments are not impaired despite the differences between estimated fair value and book value. The Company attributes the difference between book value and estimated fair value to the current market dislocation and a general negative bias against structured financial products such as CMBS and CDOs.

In 2008, the Company entered into a repurchase agreement with a financial institution for the purpose of financing a portion of the Company's CDO bond securities. During the six months ended June 30, 2009, the Company paid down approximately $1.3 million of this facility as a result of a decrease in values associated with a change in market interest rate spreads. At June 30, 2009 and December 31, 2008, current borrowings totaled approximately $1.6 million and $8.2 million, respectively.

**Note 6 — Investment in Equity Affiliates**

The following is a summary of the Company's investment in equity affiliates at June 30, 2009 and December 31, 2008:

| Equity Affiliates | Investment in Equity Affiliates at June 30, 2009 | Investment in Equity Affiliates at December 31, 2008 | Outstanding Loan Balance to Equity Affiliates at June 30, 2009 |
|---|---|---|---|
| 930 Flushing & 80 Evergreen | $ 491,975 | $ 491,975 | $ 24,515,849 |
| 450 West 33rd Street | 1,136,960 | 1,136,960 | 50,000,000 |
| 1107 Broadway | 5,720,000 | 5,720,000 | — |
| Alpine Meadows | — | 10,157,018 | 30,500,000 |
| St. John's Development | 2,348,783 | 3,500,000 | 25,000,000 |
| Lightstone Value Plus REIT L.P | 55,988,411 | — | — |
| Issuers of Junior Subordinated Notes | 578,615 | 8,305,000 | — |
| Total | $ 66,264,744 | $ 29,310,953 | $130,015,849 |

The Company accounts for the 450 West 33rd Street and Lightstone Value Plus REIT L.P. investments under the cost method of accounting and the remaining investments under the equity method in accordance with Accounting Principles Board ("APB") Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock."

*Alpine Meadows*

In July 2007, the Company invested $13.2 million in exchange for a 39% profits interest with an 18% preferred return in the Alpine Meadows ski resort, which consists of approximately 2,163 total acres in northwestern Lake Tahoe, California. The Company's invested capital represents 65% of the total equity of the transaction and the Company will be allocated 65% of the losses. The Company also provided a $30.5 million first mortgage loan that matures in August 2009 and bears interest at pricing over one month LIBOR. The outstanding balance on this loan was $30.5 million at June 30, 2009. For the three and six months ended June 30, 2009, the Company recorded a loss of $0.9 million and income of $1.6 million, respectively from this equity investment. This amount reflects Arbor's portion of the joint venture's income, net of depreciation expense, and was recorded in income from equity affiliates and as an increase to the Company's investment in equity affiliates on the balance sheet. In the second quarter of 2009, the Company recorded an other-than-temporary impairment of $11.7 million for the remaining amount of this investment in loss from equity affiliates in the Company's Consolidated Statements of Operations. APB 18 requires that these investments are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value.

*St. John's Development*

In December 2006, the Company originated a $25.0 million bridge loan with a maturity date in September 2007 with two, three month extensions that bore interest at a fixed rate of 12%. The loan is secured by 20.5 acres of usable land and 2.3 acres of submerged land located on the banks of the St. John's River in downtown Jacksonville, Florida and is currently zoned for the development of up to 60 dwellings per acre. In October 2007, the borrower sold the property to an investor group, in which the Company has a 50% non-controlling interest, for $25.0 million, and assumed the $25.0 million mortgage with a new maturity date of October 2009, and a change in the interest rate to LIBOR plus 6.48%. The Company also contributed $0.5 million to cover other operational costs of acquiring and maintaining the property.

The managing member of the investor group is an experienced real estate developer who retains a 50% interest in the partnership and funded a $2.9 million interest reserve for the first year. The Company was required to contribute $2.9 million to fund the interest reserve for the second year and made an additional capital contribution of $0.1 million during 2008. Interest received on the $25.0 million loan will be recorded as a return of capital and reduction of the Company's equity investment. For the three and six months ended June 30, 2009, the Company recorded $0.5 million and $1.2 million, respectively of such interest, and as a result, has a $2.3 million investment as of June 30, 2009. The Company retains a non-controlling 50% equity interest in the property and accounts for this investment under the equity method. No income from this equity interest has been recognized for the three and six months ended June 30, 2009 and 2008.

*Lightstone Value Plus REIT L.P. / Prime Outlets*

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 a portfolio of factory outlet shopping centers. The Company accounts for this investment under the equity method. Additionally, the Company owned a 16.67% carried profits interest through a consolidated entity which had a 25% interest in POM with a third party member owning the remaining 8.33%.

In June 2008, the Company entered into an agreement ("the agreement") to transfer its 16.67% interest in POM, at a value of approximately $37.2 million, in exchange for preferred and common operating partnership units of Lightstone Value Plus REIT L.P.

In connection with the agreement, the Company borrowed from Lightstone Value Plus Real Estate Investment Trust, Inc. approximately $33 million, which was initially secured by its 16.67% interest in POM, has an eight year term, and bears interest at a fixed rate of 4% with payment of the interest deferred until the closing of the transaction. In addition, the Company paid an incentive management fee to its manager of approximately $7.3 million related to this transaction during the third quarter of 2008. As a result, during the second quarter of 2008, the Company recorded approximately $33.0 million of cash, $49.5 million of debt related to the proceeds received from

the loan secured by the consolidated entity's 25% interest in POM which was recorded in notes payable, a $16.5 million receivable from the third party member share of the consolidated entity's 25% interest which was recorded in other assets and a deferred expense related to the incentive management fee of approximately $7.3 million.

In the fourth quarter of 2008, the Company received a $1.0 million distribution from POM related to its 24.17% equity and profits interest, the result of excess proceeds from the operations of the business. Of the distribution received by the Company, $1.0 million was recorded as interest income, representing the distribution received from the 25% profits interest, $0.3 million was recorded as net income attributable to noncontrolling interest relating to a third party member's 8.33% noncontrolling interest share of the profits interest and $0.3 million was recorded as income netted in loss from equity affiliates, representing the portion received from the Company's 7.5% equity interest. In accordance with the agreement, $0.7 million of the distribution relating to the 16.67% profits interest was used to pay down a portion of the $33 million of debt and will reduce the value of the Company's interest when exchanged for preferred and common operating partnership units at closing, thereby reducing the Company's future gain.

In March 2009, the Company exchanged its 16.67% interest in Prime Outlets for approximately $37.3 million of preferred and common operating partnership units in Lightstone Value Plus REIT L.P. and the $33.4 million loan is now secured by Arbor's preferred and common operating partnership units. The Company accounts for this investment under the cost method. In June 2013, the preferred units may be redeemed by Lightstone Value Plus REIT L.P. for cash and the loan would become due upon such redemption. The preferred operating partnership units yield 4.63% and the loan bears interest at a rate of 4%. The Company retained its 7.5% equity interest in POM. During the quarter ended June 30, 2009, the Company recorded $0.7 million of dividends from the preferred and common operating partnership units which were reflected in interest income in the Company's Consolidated Statement of Operations.

Through the consolidated entity that owned the 16.67%, the Company recorded in its first quarter 2009 financial statements an investment of approximately $56.0 million for the preferred and common operating partnership units, gain on exchange of profits interest of approximately $56.0 million, net income attributable to noncontrolling interest of approximately $18.7 million related to the third party members portion of income recorded, noncontrolling interest due to the third party member of approximately $2.1 million and a reduction of a $16.5 million receivable from the third party member which was previously recorded in other assets. In accordance with APB 29, "Accounting for Nonmonetary Transactions", as amended by FAS No. 153, "Exchanges of Nonmonetary Assets an Amendment of APB Opinion No. 29," the gain of $56.0 million reflects the fair value of the investment in preferred and operating partnership units received in exchange for the 16.67% profits interest. The Company's profits interest had no cost basis at the time of the exchange.

In addition, the Company prepaid approximately $7.3 million in incentive management fees to its manager in 2008 related to this transaction. In accordance with the management agreement, installments of the annual incentive fee are subject to potential reconciliation at the end of the 2009 fiscal year.

*Issuers of Junior Subordinated Notes*

As of December 31, 2008, the Company invested $8.3 million for 100% of the common shares of nine affiliate entities of the Company which were formed to facilitate the issuance of $276.1 million of junior subordinated notes. These entities pay dividends on both the common shares and preferred securities on a quarterly basis at a variable rate based on three-month LIBOR.

In May 2009, the Company exchanged $247.1 million of its outstanding trust preferred securities, consisting of $239.7 million of junior subordinated notes issued to third party investors and $7.4 million of common equity issued to the Company, which was recorded in investment in equity affiliates, in exchange for $268.4 million of newly issued unsecured junior subordinated notes. As a result of this transaction, the Company retired its $7.4 million of common equity and corresponding trust preferred securities reducing its investment in these entities to $0.6 million as of June 30, 2009. In addition, in March 2009, the Company purchased from its manager, ACM, approximately $9.4 million of junior subordinated notes originally issued by a wholly-owned subsidiary of the

Company's operating partnership for $1.3 million. In connection with this transaction, during the second quarter of 2009, the Company retired approximately $0.3 million of common equity related to these junior subordinated notes. See Note 8 — "Debt Obligations" for further information relating to these transactions.

**Note 7 — Real Estate Owned, Net**

The Company had a $4.0 million bridge loan secured by a hotel located in St. Louis, Missouri that matured in 2009 and bore interest at a variable rate of LIBOR plus 5.00%. In April 2009, the Company foreclosed on the property secured by the loan. As a result, during the second quarter of 2009 the Company recorded this investment on its balance sheet as real estate owned, net at a fair value of $2.9 million. For the three months ended June 30, 2009, the Company recorded property operating income of $0.2 million and property operating expenses of $0.3 million.

The Company had a $5.0 million mezzanine loan secured by an office building located in Indianapolis, Indiana that was scheduled to mature in June 2012 and bore interest at a fixed rate of 10.72%. During the first quarter of 2008, the Company established a $1.5 million provision for loan loss related to this property reducing the carrying value to $3.5 million at March 31, 2008. In April 2008, the Company was the winning bidder at a UCC foreclosure sale of the entity which owns the equity interest in the property securing this loan and a $41.4 million first mortgage on the property. As a result, during the second quarter of 2008, the Company recorded this investment on its balance sheet as real estate owned, net at fair value which included the Company's $3.5 million carrying value of the loan and $41.4 million first lien in mortgage notes payable. For the three and six months ended June 30, 2009, the Company recorded property operating income of $1.4 million and $2.9 million, property operating expenses of $1.3 million and $2.6 million and depreciation and amortization of $0.3 million and $0.6 million, respectively, to earnings. At June 30, 2009, this investment's balance sheet was comprised of land of $6.2 million, building and leasehold improvements net of depreciation and allowances totaling $39.1 million, cash of $0.1 million, other assets of $1.6 million, mortgage note payable of $41.4 million, and other liabilities of $1.5 million.

The Company had a $9.9 million bridge loan secured by a motel located in Long Beach, California that matured in 2008 and bore interest at a variable rate of LIBOR plus 4.00%. During 2008, the Company established a $2.5 million provision for loan loss related to this property reducing the carrying value to $7.4 million as of June 30, 2009. In August 2009, the Company was the winning bidder at a UCC foreclosure sale of the property securing this loan which will be recorded as real estate owned, net in the Company's third quarter 2009 Consolidated Financial Statements.

**Note 8 — Debt Obligations**

The Company utilizes repurchase agreements, term and revolving credit agreements, warehouse lines of credit, working capital lines, 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.

*Repurchase Agreements*

The following table outlines borrowings under the Company's repurchase agreements as of June 30, 2009 and December 31, 2008:

| | June 30, 2009 | | December 31, 2008 | |
|---|---|---|---|---|
| | Debt Carrying Value | Collateral Carrying Value | Debt Carrying Value | Collateral Carrying Value |
| Repurchase agreement, financial institution, $200 million committed line, terminated in June 2009, interest was variable based on one-month LIBOR, the weighted average note rate was 1.50% | $ — | $ — | $36,961,289 | $49,547,947 |
| Repurchase agreement, financial institution, $2.8 million committed line at June 30, 2009, expiration June 2010, interest is variable based on one-month LIBOR; the weighted average note rate was 2.34% and 3.07%, respectively | 2,810,000 | 4,123,938 | 15,554,000 | 19,240,188 |
| Repurchase agreement, financial institution, an uncommitted line, expiration May 2010, interest is variable based on one and three-month LIBOR; the weighted average note rate was 1.78% and 2.48%, respectively | 1,578,250 | 11,159,065 | 8,212,500 | 12,089,904 |
| Total repurchase agreements | $4,388,250 | $15,283,003 | $60,727,789 | $80,878,039 |

At June 30, 2009, the aggregate weighted average note rate for the Company's repurchase agreements was 2.14%. There were no interest rate swaps on these repurchase agreements at June 30, 2009.

The Company had a $200.0 million repurchase agreement with a financial institution which had a term expiring in October 2009 and bore interest at pricing over LIBOR, varying on the type of asset financed. In June 2009, this facility, with approximately $37.0 million outstanding, was satisfied at a discount for $22.0 million resulting in a $15.0 million gain on extinguishment of debt. In connection with this transaction, the Company sold a bridge loan financed in this facility with a carrying value of $47.0 million, at a discount, for approximately $23.2 million and recorded a loss on restructuring of $23.8 million. The proceeds were used to satisfy the $22.0 million cash payment.

The Company has a $100.0 million repurchase agreement that bears interest at 250 basis points over LIBOR and had a maturity date of June 2009. In June 2009, the Company amended this facility extending the maturity to June 2010, with a one year extension option. In addition, the amendment includes the removal of all financial covenants and a reduction of the committed amount to $2.8 million reflecting the one asset currently financed in this facility. During the six months ended June 30, 2009, the Company paid down approximately $12.7 million of this facility. At June 30, 2009, the aggregate outstanding balance under this facility was $2.8 million.

In April 2008, the Company entered into an uncommitted master repurchase agreement with a financial institution for the purpose of financing its CRE CDO bond securities. The facility has a term expiring in May 2010 and bears interest at pricing over LIBOR, varying on the type of asset financed. During 2009, the Company paid down approximately $1.3 million of this debt, due to a decrease in values associated with a change in the market interest rate spreads. At June 30, 2009, the aggregate outstanding balance in this facility was approximately $1.6 million.

In certain circumstances, the Company has financed the purchase of investments from a 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 the repurchase agreement as a liability on the Company's consolidated balance sheet. Interest income earned on the investments and interest expense incurred on the repurchase obligations are reported separately on the consolidated statements of operations. These transactions may not qualify as a purchase by the Company under FSP FAS 140-3 which is effective for fiscal years beginning after November 15, 2008. 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 statements of operations when certain criteria to treat these transactions not as part of the same arrangements (linked transactions) are not met. 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. However, FSP FAS 140-3 applies to prospective transactions occurring on or after the adoption date.

*Junior Subordinated Notes*

The following table outlines borrowings under the Company's junior subordinated notes as of June 30, 2009 and December 31, 2008:

| | June 30, 2009 Debt Carrying Value | December 31, 2008 Debt Carrying Value |
|---|---|---|
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $29.4 million and $27.1 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 5.25%, respectively | $ 26,263,144 | $ 27,070,000 |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $28.0 million and $25.8 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 8.32%, respectively | 25,025,187 | 25,780,000 |
| Junior subordinated notes, maturity April 2035, unsecured, face amount of $6.2 million and $25.8 million, respectively, interest rate variable based on three-month LIBOR, the weighted average note rate was 3.85% and 7.42%, respectively | 6,237,308 | 25,774,000 |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $28.0 million and $25.8 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 6.85%, respectively | 25,025,187 | 25,774,000 |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $27.3 million and $51.6 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 6.85%, respectively | 24,399,557 | 51,550,000 |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $28.0 million and $51.6 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 7.93%, respectively | 25,025,187 | 51,550,000 |
| Junior subordinated notes, maturity June 2036, unsecured, face amount of $13.0 million and $15.5 million, respectively, interest rate variable based on three-month LIBOR, the weighted average note rate was 3.16% and 7.86%, respectively | 13,041,307 | 15,464,000 |
| Junior subordinated notes, maturity April 2037, unsecured, face amount of $15.7 million and $14.4 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 7.22%, respectively | 14,012,613 | 14,433,000 |
| Junior subordinated notes, maturity April 2037, unsecured, face amount of $31.5 million and $38.7 million, respectively, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% and 7.22%, respectively | 28,150,338 | 38,660,000 |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $28.0 million, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% | 25,025,187 | — |
| Junior subordinated notes, maturity March 2034, unsecured, face amount of $28.7 million, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% | 25,650,817 | — |
| Junior subordinated notes, maturity April 2035, unsecured, face amount of $21.2 million, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% | 18,966,463 | — |
| Junior subordinated notes, maturity June 2035, unsecured, face amount of $2.6 million, interest rate fixed until 2012 then variable based on three-month LIBOR, the weighted average note rate was 0.50% | 2,351,315 | — |
| Total junior subordinated notes | $259,173,610 | $ 276,055,000 |

At June 30, 2009, the aggregate weighted average pay rate for the Company's junior subordinated notes was 0.70%, however, based upon the accounting treatment for the restructure, the effective rate was 3.93%. There were no interest rate swaps on these junior subordinated notes at June 30, 2009.

In May 2009, the Company exchanged $247.1 million of its outstanding trust preferred securities, consisting of $239.7 million of junior subordinated notes issued to third party investors and $7.4 million of common equity issued to the Company in exchange for $268.4 million of newly issued unsecured junior subordinated notes, representing 112% of the original face amount. The new notes bear a fixed interest rate of 0.50% per annum until April 30, 2012 (the "Modification Period"), and then interest is to be paid at the rates set forth in the existing trust agreements until maturity, equal to three month LIBOR plus a weighted average spread of 2.90%. The Company paid transaction fees of approximately $1.2 million to the issuers of the junior subordinated notes related to this restructuring which will be amortized on an effective yield over the life of the notes. Furthermore, the 12% increase to the face amount due upon maturity will be amortized into expense over the life of the notes.

In July 2009, the Company restructured its remaining $18.7 million of trust preferred securities that were not exchanged from the May 2009 restructuring transaction previously disclosed. The Company amended the $18.7 million of junior subordinated notes to $20.9 million of unsecured junior subordinated notes, representing 112% of the original face amount. The amended notes bear a fixed interest rate of 0.50% per annum for a period of approximately three years, the modification period. Thereafter, interest is to be paid at the rates set forth in the existing trust agreements until maturity, equal to three month LIBOR plus a weighted average spread of 2.74%. The Company paid a transaction fee of approximately $0.1 million to the issuers of the junior subordinated notes related to this restructuring.

During the Modification Periods, the Company will be permitted to make distributions of up to 100% of taxable income to common shareholders. The Company has agreed that such distributions will be paid in the form of the Company's stock to the maximum extent permissible under the Internal Revenue Service rules and regulations in effect at the time of such distribution, with the balance payable in cash. This requirement regarding distributions in stock can be terminated by the Company at any time, provided that the Company pays the note holders the original rate of interest from the time of such termination.

The junior subordinated notes are unsecured, have a maturity of 25 to 28 years, pay interest quarterly at a fixed rate or floating rate of interest based on three-month LIBOR and, absent the occurrence of special events, are not redeemable during the first two years. In connection with the issuance of the original variable rate junior subordinated notes, the Company had entered into various interest rate swap agreements which were subsequently terminated upon the exchange discussed above, resulting in a loss on termination of swaps of $8.7 million in the Company's second quarter 2009 Financial Statements. See Note 9 — "Derivative Financial Instruments" for further information relating to these derivatives.

In March 2009, the Company purchased from its manager, ACM, approximately $9.4 million of junior subordinated notes originally issued by a wholly-owned subsidiary of the Company's operating partnership for $1.3 million. In 2009, ACM purchased these notes from third party investors for $1.3 million. The Company recorded a net gain on extinguishment of debt of $8.1 million and a reduction of outstanding debt totaling $9.4 million from this transaction in the Company's first quarter 2009 Financial Statements. In connection with this transaction, during the second quarter of 2009, the Company retired approximately $0.3 million of common equity related to these junior subordinated notes.

The carrying value under these facilities was $259.2 million at June 30, 2009 and $276.1 million at December 31, 2008. The current weighted average note rate was 0.70% at June 30, 2009 and 7.21% at December 31, 2008, however, based upon the accounting treatment for the restructure, the effective rate was 3.93% at June 30, 2009. The impact of these entities in accordance with FIN 46R "Consolidation of Variable Interest Entities" is discussed in Note 2.

*Notes Payable*

The following table outlines borrowings under the Company's notes payable as of June 30, 2009 and December 31, 2008:

| | June 30, 2009 | | December 31, 2008 | |
|---|---|---|---|---|
| | Debt Carrying Value | Collateral Carrying Value | Debt Carrying Value | Collateral Carrying Value |
| Term credit agreement, Wachovia Bank, National Association, $473 million committed line, expiration November 2009, interest is variable based on one-month LIBOR; the weighted average note rate was 2.97% and 3.34%, respectively **(1)** | $237,680,634 | $362,016,619 | $280,182,244 | $476,593,594 |
| Revolving credit agreement, Wachovia Bank, National Association, $100 million committed line, expiration November 2009, interest is variable based on one-month LIBOR; the weighted average note rate was 2.96% and 3.08%, respectively **(1)** | 64,048,369 | 93,646,694 | 64,834,510 | 101,260,891 |
| Term credit agreement, Wachovia Bank, National Association, $69 million committed line, expiration November 2009, interest is variable based on one-month LIBOR; the weighted average note rate was 2.85% and 2.98%, respectively **(1)** | 30,256,263 | 16,264,516 | 32,948,717 | 29,604,167 |
| Bridge loan warehouse, financial institution, $13.5 million committed line, expiration May 2010, interest rate variable based on LIBOR or Prime, the weighted average note rate was 3.86% and 5.15%, respectively | 11,835,414 | 12,793,046 | 43,762,001 | 53,828,592 |
| Working capital facility, Wachovia Bank, National Association; $45 million committed line, expiration July 2009, interest is variable based on one-month LIBOR, the weighted average note rate was 5.38% and 5.51%, respectively **(1)** | 41,907,965 | — | 41,907,965 | — |
| Note payable relating to investment in equity affiliates, $50.2 million, expiration July 2016, interest is fixed, the weighted average note rate was 4.06%, respectively | 50,157,708 | 55,988,411 | 48,500,000 | — |
| Junior loan participations, maturity of July 2011, secured by the Company's interest in first mortgage loans with principal balances totaling $5.0 million, participation interest based on a portion of the interest received from the loans which have fixed rates of 16.00% | 5,000,000 | 5,000,000 | 5,000,000 | 5,000,000 |
| Junior loan participation, maturity May 2010, secured by the Company's interest in a first mortgage loan with a principal balance of $1.3 million, participation interest was based on a portion of the interest received from the loan which has a fixed rate of 9.57% | 1,300,000 | 1,300,000 | 1,300,000 | 1,300,000 |
| Total notes payable | $442,186,353 | $547,009,286 | $518,435,437 | $667,587,244 |

**(1)** In July 2009, the Company amended and restructured its term credit agreements, revolving credit agreement and working capital facility with Wachovia Bank, National Association ("Wachovia") as discussed below.

At June 30, 2009, the aggregate weighted average note rate for the Company's notes payable, including the cost of interest rate swaps on assets financed in these facilities, was 3.48%. Excluding the effect of swaps, the weighted average note rate at June 30, 2009 was 3.14%.

The Company had two credit agreements with Wachovia at June 30, 2009. The first credit agreement consisted of a $473.0 million term loan and a $100.0 million revolving commitment. The facility had a commitment period of two years with a one year auto extension feature, subject to certain criteria, to November 2010, bore

interest at pricing over LIBOR, and eliminated the mark to market risk as it relates to interest rate spreads that existed under the terms of the previous repurchase agreements. The advance rates for this term facility were similar to the advance rates that existed under the previous repurchase agreements. The $473.0 million term loan component had repayment provisions which included reducing the outstanding balance to $300.0 million by December 31, 2008. The outstanding balance under the term component of this facility was $237.7 million at June 30, 2009. In July 2009, the Company restructured this credit agreement as discussed below. The $100.0 million revolving commitment was used to finance new investments and could have been increased with lender approval to $200.0 million when the term loan was paid down to $400.0 million. The term loan was paid down to $400.0 million on February 15, 2008. The outstanding balance under the revolving component of this facility was $64.0 million at June 30, 2009. In July 2009, the Company restructured this revolving commitment as discussed below.

The second credit agreement was a $69.0 million term loan which had a commitment period of two years with a one year extension option to November 2010 and bore interest at pricing over LIBOR. This agreement included $10.0 million of annual repayment provisions in quarterly installments. The advance rate on this term facility was higher than the advance rate for the collateral that was in the repurchase agreement and the facility eliminated the mark to market risk as it relates to interest rate spreads that existed under the terms of the previous repurchase agreement. The Company had also pledged its 7.5% equity interest in POM as part of this agreement. In the second and third year of this term facility, the Company was required to paydown this facility by an additional amount equal to distributions in excess of $10.0 million per year received by the Company from its investment in POM, if any. See Note 6 — "Investment in Equity Affiliates" for further details. The outstanding balance under the term component of this facility was $30.3 million at June 30, 2009. In July 2009, the Company restructured this term loan as discussed below.

The Company had a $70.0 million bridge loan warehouse agreement which had a maturity date of October 2009. In May 2009, the Company amended this facility, extending the maturity to May 2010, with a one year extension option, and reducing the committed amount to $13.5 million. This agreement bears a rate of interest, payable monthly, based on LIBOR plus 3.75%. Pricing is available at Prime or over 1, 2, 3 or 6-month LIBOR, at our option. At June 30, 2009, the aggregate outstanding balance under this facility was $11.8 million. In July 2009, this facility was paid off.

The Company had a $45.0 million working capital facility with Wachovia with a maturity of June 2009. In June 2009, the maturity was amended to July 2009. The facility required quarterly paydowns of $3.0 million and interest rate pricing over LIBOR of 500 basis points. At June 30, 2009, the aggregate outstanding balance under this facility was $41.9 million. In July 2009, the Company restructured this working capital facility as discussed below.

During the second quarter of 2008, the Company recorded a $49.5 million note payable related to the POM exchange of profits interest transaction. The note was initially secured by the Company's interest in POM, matures in July 2016 and bore interest at a fixed rate of 4% with payment deferred until the closing of the transaction. Upon the closing of the POM transaction in March 2009, the note balance was increased to $50.2 million, bears interest at a fixed rate of 4% and is secured by the Company's investment in common and preferred operating partnership units in Lightstone Value Plus REIT, L.P. See Note 6 — "Investment in Equity Affiliates" for further details. At June 30, 2009, the outstanding balance of this note was $50.2 million.

The Company had three junior loan participations with a total outstanding balance at June 30, 2009 of $6.3 million. These participation borrowings have a maturity date 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 loans.

In July 2009, the Company amended and restructured its term credit agreements, revolving credit agreement and working capital facility with Wachovia Bank, National Association as follows:

- The term revolving credit agreement, with an outstanding balance of $64.0 million at June 30, 2009 was combined into the term debt facility with an outstanding balance of $237.7 million at June 30, 2009, along with a portion of the term debt facility with an outstanding balance of $30.3 million at June 30, 2009, and

$15.0 million of this term debt facility was combined into the working capital line with an outstanding balance of $41.9 at June 30, 2009. This debt restructuring resulted in the consolidation of these four facilities into one term debt facility with an outstanding balance of $317.0 million, which contains a revolving component with $35.0 million of availability, and one working capital facility with an outstanding balance of $56.9 million at July 2009.

- The maturity dates of the facilities were extended for three years, with a working capital facility maturity of June 8, 2012 and a term debt facility maturity of July 23, 2012.
- The term debt facility requires a $48.0 million reduction over the three year term, with approximately $8.0 million in reductions due every six months beginning in December 2009.
- Margin call provisions relating to collateral value of the underlying assets have been eliminated, as long as the term loan reductions are met, with the exception of limited margin call capability related to foreclosed or real estate-owned assets.
- The working capital facility requires quarterly amortization of up to $3.0 million per quarter, $1.0 million per CDO, only if both (a) the CDO is cash flowing to the Company and (b) the Company has a minimum quarterly liquidity level of $27.5 million.
- Interest rate of LIBOR plus 350 basis points for the term loan facility, compared to LIBOR plus approximately 200 basis points previously and LIBOR plus 800 basis points for the working capital facility, compared to LIBOR plus 500 basis points previously. The Company has also agreed to pay a commitment fee of 1.00% payable over 3 years.
- The Company issued Wachovia 1.0 million warrants at an average strike price of $4.00. 500,000 warrants are exercisable immediately at a price of $3.50, 250,000 warrants are exercisable after July 23, 2010 at a price of $4.00 and 250,000 warrants are exercisable after July 23, 2011 at a price of $5.00. All warrants expire on July 23, 2015.
- Annual dividends are limited to 100% of taxable income to common shareholders and are required to be paid in the form of the Company's stock to the maximum extent permissible (currently 90%), with the balance payable in cash. The Company will be permitted to pay 100% of taxable income in cash if the term loan facility balance is reduced to $210.0 million, the working capital facility is reduced to $30.0 million and the Company maintains $35.0 million of minimum liquidity.
- The Company's CEO and Chairman, Ivan Kaufman, is required to remain an officer or director of the Company for the term of the facilities.

In addition, the financial covenants have been reduced to the following:

- Minimum quarterly liquidity of $7.5 million in cash and cash equivalents.
- Minimum quarterly GAAP net worth of $150.0 million.
- Ratio of total liabilities to tangible net worth shall not exceed 4.5 to 1 quarterly.

The Company is currently evaluating the effect of this transaction on its Consolidated Financial Statements.

*Mortgage Note Payable*

During the second quarter of 2008, the Company recorded a $41.4 million first lien mortgage related to the foreclosure of an entity in which the Company had a $5.0 million mezzanine loan. The mortgage bears interest at a fixed rate, has a maturity date of June 2012 and was recorded in mortgage note payable. The outstanding balance of this mortgage was $41.4 million at June 30, 2009.

*Note Payable — Related Party*

During the fourth quarter of 2008, the Company borrowed $4.2 million from the Company's manager, ACM. At December 31, 2008, the Company had outstanding borrowings due to ACM totaling $4.2 million, which was recorded in notes payable — related party. In January 2009, the loan was repaid in full.

*Collateralized Debt Obligations*

The following table outlines borrowings under the Company's collateralized debt obligations as of June 30, 2009 and December 31, 2008:

| | June 30, 2009 Debt Carrying Value | December 31, 2008 Debt Carrying Value |
|---|---|---|
| CDO I — Issued four investment grade tranches January 19, 2005. Reinvestment period through April 2009. Interest is variable based on three-month LIBOR; the weighted average note rate was 3.91% and 2.41%, respectively | $ 261,807,428 | $ 275,319,000 |
| CDO II — Issued nine investment grade tranches January 11, 2006. Reinvestment period through April 2011. Interest is variable based on three-month LIBOR; the weighted average note rate was 3.21% and 3.03%, respectively | 331,642,888 | 343,270,000 |
| CDO III — Issued 10 investment grade tranches December 14, 2006. Reinvestment period through January 2012. Interest is variable based on three-month LIBOR; the weighted average note rate was 1.73% and 1.65%, respectively | 520,150,000 | 533,700,000 |
| Total CDOs | $1,113,600,316 | $ 1,152,289,000 |

At June 30, 2009, the aggregate weighted average note rate for the Company's collateralized debt obligations, including the cost of interest rate swaps on assets financed in these facilities, was 2.68%. Excluding the effect of swaps, the weighted average note rate at June 30, 2009 was 1.15%.

As of April 15, 2009, CDO I has reached the end of its replenishment date and will no longer make the $2.0 million amortization payments to investors. Investor capital will be repaid quarterly from proceeds received from loan repayments held as collateral in accordance with the terms of the CDO. Proceeds distributed will be recorded as a reduction of the CDO liability. Amortization proceeds from CDO II are distributed quarterly with approximately $1.1 million being paid to investors as a reduction of the CDO liability.

CDO III has a $100.0 million revolving note class that provides a revolving note facility. The outstanding note balance for CDO III was $520.2 million at June 30, 2009 which included $86.7 million outstanding under the revolving note facility. The outstanding note balance for CDO III was $533.7 million at December 31, 2008 which included $86.2 million outstanding under the revolving note facility.

The Company intends to own these portfolios of real estate-related assets until their maturities and accounts for these transactions on its balance sheet as financing facilities. For accounting purposes, CDOs are consolidated in the Company's financial statements. The investment grade tranches are treated as secured financings, and are non-recourse to the Company.

During the quarter ended June 30, 2009, the Company purchased, at a discount, approximately $4.2 million of investment grade rated notes originally issued by the Company's CDO II issuing entity for a price of $2.0 million and $7.0 million of investment grade rated notes originally issued by the Company's CDO III issuing entity for a price of $2.7 million. These notes were purchased from the Company's manager, ACM. In 2008, ACM purchased the notes from third party investors for $5.0 million. The Company recorded a net gain on extinguishment of debt of $6.5 million from these transactions in its Consolidated Statements of Operations.

During the quarter ended March 31, 2009, the Company purchased, at a discount, approximately $11.5 million of investment grade rated notes originally issued by the Company's CDO I issuing entity for a price of $2.1 million, $5.1 million of investment grade rated notes originally issued by the Company's CDO II issuing entity for a price of $1.2 million and $7.1 million of investment grade rated notes originally issued by the Company's CDO III issuing entity for a price of $2.3 million. Approximately $8.8 million of the investment grade rated CDO notes were purchased from the Company's manager, ACM for a price of $3.2 million. In 2008, ACM purchased these notes from third party investors for $3.2 million. The Company recorded a net gain on extinguishment of debt of $18.2 million from this transaction in its Consolidated Statements of Operations.

*Debt Covenants*

Each of the credit facilities contains various financial covenants and restrictions, including minimum net worth, minimum liquidity, debt-to-equity ratios and fixed and senior fixed charge coverage ratios. The Company was in compliance with all financial covenants and restrictions for the periods presented with the exception of a minimum tangible net worth requirement with Wachovia at June 30, 2009. The Company's tangible net worth was $307.2 million at June 30, 2009 and the Company was required to maintain a minimum tangible net worth of $350.0 million with this financial institution. The Company has obtained a waiver of this covenant for June 30, 2009 from this financial institution and the covenant was subsequently amended in conjunction with the debt restructuring with this financial institution as previously disclosed.

The Company's CDO bonds contain interest coverage and asset over collateralization covenants that must be met as of the waterfall distribution date in order for the Company to receive such payments. If the Company fails these covenants in any of its CDOs, all cash flows from the applicable CDO would be diverted to repay principal and interest on the outstanding CDO bonds and the Company would not receive any residual payments until that CDO regained compliance with such tests. The Company was in compliance with all such covenants as of June 30, 2009. In the event of a breach of the CDO covenants that could not be cured in the near-term, the Company would be required to fund its non-CDO expenses, including management fees and employee costs, distributions required to maintain REIT status, debt costs, and other expenses with (i) cash on hand, (ii) income from any CDO not in breach of a CDO covenant test, (iii) income from real property and unencumbered loan assets, (iv) sale of assets, (v) or accessing the equity or debt capital markets, if available. The Company has the right to cure covenant breaches which would resume normal residual payments to the Company by purchasing non-performing loans out of the CDOs.

**Note 9 — Derivative Financial Instruments**

The Company accounts for derivative financial instruments in accordance with SFAS No. 133 which requires an entity to recognize all derivatives as either assets or liabilities in the consolidated balance sheets and to measure those instruments at fair value. Additionally, the fair value adjustments will affect either accumulated other comprehensive loss in Arbor Realty Trust, Inc. Stockholders' Equity until the hedged item is recognized earnings or in net (loss) income attributable to Arbor Realty Trust, Inc., depending on whether the derivative instrument qualifies as a hedge for accounting purposes and, if so, the nature of the hedging activity.

In connection with the Company's interest rate risk management, the Company periodically hedges a portion of its interest rate risk by entering into derivative financial instrument contracts. Specifically, the Company's derivative financial instruments are used to manage differences in the amount, timing, and duration of its expected cash receipts and its expected cash payments principally related to its investments and borrowings. The Company's objectives in using interest rate derivatives are to add stability to interest income and to manage its exposure to interest rate movements. To accomplish this objective, the Company primarily uses interest rate swaps as part of its interest rate risk management strategy. Interest rate swaps designated as cash flow hedges involve the receipt of variable-rate amounts from a counterparty in exchange for the Company making fixed-rate payments over the life of the agreements without exchange of the underlying notional amount. The Company has entered into various interest rate swap agreements to hedge its exposure to interest rate risk on (i) variable rate borrowings as it relates to fixed rate loans; and (ii) the difference between the CDO investor return being based on the three-month LIBOR index while the supporting assets of the CDO are based on the one-month LIBOR index.

Derivative financial instruments must be effective in reducing the Company's 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. The Company does not use derivatives for trading or speculative purposes.

The following is a summary of the derivative financial instruments held by the Company as of June 30, 2009 and December 31, 2008: (Dollars in Thousands)

| | | | Notional Value | | | | Fair Value | |
|---|---|---|---|---|---|---|---|---|
| Designation\ Cash Flow | Derivative | Count | June 30, 2009 | December 31, 2008 | Expiration Date | Balance Sheet Location | June 30, 2009 | December 31, 2008 |
| Non-Qualifying | Basis Swaps | 10 | $ 1,208,144 | $ 1,303,631 | 2009 – 2015 | Other Assets | $ 3,843 | $ 7,193 |
| Qualifying | Interest Rate Swaps | 2 | $ 53,518 | $ — | 2012 – 2016 | Other Assets | $ 873 | $ — |
| Qualifying | Interest Rate Swaps | 32 | $ 668,786 | $ 926,428 | 2010 – 2017 | Other Liabilities | $ (51,429) | $ (98,162) |

The fair value of Non-Qualifying Hedges was $3.8 million and $7.2 million as of June 30, 2009 and December 31, 2008, respectively, and is recorded in other assets in the Consolidated Balance Sheet. These basis swaps are used to manage the Company's exposure to interest rate movements and other identified risks but do not meet the strict hedge accounting requirements of SFAS No. 133. The Company is exposed to changes in the fair value of certain of its fixed rate obligations due to changes in benchmark interest rates and uses interest rate swaps to manage its exposure to changes in fair value on these instruments attributable to changes in the benchmark interest rate. These interest rate swaps designated as fair value hedges involve the receipt of fixed-rate amounts from a counterparty in exchange for the Company making variable rate payments over the life of the agreements without the exchange of the underlying notional amount. In June 2009, $95.5 million of these basis swaps matured and the notional values were settled. For the six months ended June 30, 2009 and 2008, the change in fair value of the Non-Qualifying Swaps was $(3.3) million and $0.7 million, respectively and is recorded in interest expense on the Consolidated Statements of Operations.

The fair value of Qualifying Cash Flow Hedges as of June 30, 2009 and December 31, 2008 was $(50.6) million and $(98.2) million, respectively, and was recorded in other assets in the amount of $0.9 million and other liabilities in the amount of $(51.4) million at June 30, 2009 and other liabilities at December 31, 2008 and the change in accumulated other comprehensive loss in the Consolidated Balance Sheet. These interest rate swaps are used to hedge the variable cash flows associated with existing variable-rate debt, and amounts reported in accumulated other comprehensive loss related to derivatives will be reclassified to interest expense as interest payments are made on the Company's variable-rate debt. During the six months ended June 30, 2009, the Company entered into one new interest rate swap that qualifies as a cash flow hedge with a notional value of approximately $45.1 million and paid $1.7 million, which will be amortized into interest expense over the life of the swap. During the six months ended June 30, 2009, the Company terminated seven interest rate swaps related to the Company's restructured trust preferred securities, with a combined notional value of $185.0 million, an interest rate swap with a notional value of approximately $33.1 million and a $33.5 million portion of an interest rate swap with a total notional value of approximately $67.0 million. As of June 30, 2009, the Company expects to reclassify approximately $(27.7) million of other comprehensive loss from Qualifying Cash Flow Hedges to interest expense over the next twelve months assuming interest rates on that date are held constant.

Gains and losses on terminated swaps are being recognized in earnings over the original life of the hedging instruments as the hedged item was designated as current and future outstanding LIBOR based debt, which has an indeterminate life, and the hedged transaction is still more likely than not to occur. The Company deferred through accumulated other comprehensive loss approximately $3.3 million of such loss on the termination of an interest rate swap agreement in the second quarter of 2009 and $5.0 million of such loss on the termination of an interest rate swap agreement in the first quarter of 2009. As of June 30, 2009, the Company has a net loss of $6.7 million in accumulated other comprehensive loss. As of December 31, 2008, the Company had a net gain of $1.6 million in accumulated other comprehensive loss. The Company recorded $0.3 million as additional interest expense related to the amortization of the loss for the six months ended June 30, 2009 and $0.2 million as a reduction to interest expense related to the accretion of the net gains for both the six months ended June 30, 2009 and 2008. The Company expects to record approximately $1.4 million of net deferred loss to interest expense over the next twelve months. The Company also recorded a loss of $8.7 million on the termination of the interest rate swaps related to the restructured trust preferred securities directly to loss on terminated swaps in the second quarter of 2009 as interest rate swaps were determined to no longer be effective or necessary due to the modified interest payment structure of the newly issued unsecured junior subordinated notes.

The following table presents the effect of the Company's derivative financial instruments on the Statements of Operations as of June 30, 2009 and December 31, 2008: (Dollars in Thousands)

| Designation \Cash Flow | Derivative | Amount of Gain or (Loss) Recognized in Other Comprehensive Loss (Effective Portion) For the Six Months Ended | | Amount of Gain or (Loss) Reclassified from Accumulated Other Comprehensive Loss into Interest Expense (Effective Portion) For the Six Months Ended | | Amount of Gain or (Loss) Reclassified from Accumulated Other Comprehensive Loss into Loss on Terminated Swaps (Ineffective Portion) For the Six Months Ended | | Amount of Gain or (Loss) Recognized in Interest Expense (Ineffective Portion) For the Six Months Ended | |
|---|---|---|---|---|---|---|---|---|---|
| | | June 30, 2009 | June 30, 2008 | June 30, 2009 | June 30, 2008 | June 30, 2009 | June 30, 2008 | June 30, 2009 | June 30, 2008 |
| Non-Qualifying | Basis Swaps | $ — | $ — | $ — | $ — | $ — | $ — | $ 3,078 | $ 2,993 |
| Qualifying | Interest Rate Swaps | $ 39,396 | $ 3,583 | $ (14,043) | $ (5,749) | $ (8,730) | $ — | $ — | $ — |

The cumulative amount of other comprehensive loss related to net unrealized losses on derivatives designated as Cash Flow Hedges as of June 30, 2009 and December 31, 2008 of $(57.2) million and $(96.6) million, respectively, is a combination of the fair value of qualifying cash flow hedges of $(50.6) million and $(98.2) million, respectively, deferred losses on terminated interest swaps of $(8.0) million as of June 30, 2009, and deferred net gains on termination of interest swaps of $1.4 million and $1.6 million as of June 30, 2009 and December 31, 2008, respectively.

The Company has agreements with certain of its derivative counterparties that contain a provision where if the Company defaults on any of its indebtedness, including default where repayment of the indebtedness has not been accelerated by the lender, then the Company could also be declared in default on its derivative obligations. The Company also has an agreement with one of its derivative counterparties that contains a provision where if Arbor Realty Trust, Inc. stockholders' equity declines by more than 50%, then the Company could be declared in default on its derivative obligation. As of June 30, 2009, the fair value of derivatives in a net liability position, which includes accrued interest but excludes any adjustment for nonperformance risk, related to these agreements was $(19.1) million. As of June 30, 2009, the Company has minimum collateral posting thresholds with certain of its derivative counterparties and has posted collateral of $19.2 million. If the Company had breached any of these provisions as of June 30, 2009, it could have been required to settle its obligations under the agreements at their termination value of $(19.1) million, which is $0.1 million less than the posted collateral.

**Note 10 — Fair Value**

*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. In April 2009, the FASB issued FASB Staff Position No. FAS 107-1 and APB 28-1 ("FSP FAS 107-1 and APB 28-1"), "Interim Disclosures about Fair Value of Financial Instruments." FSP FAS 107-1 and APB 28-1 requires the Company to disclose in the notes of its interim financial statements as well as its annual financial statements, the fair value of all financial instruments as required by SFAS 107, "Disclosures about Fair Value of Financial Instruments." FSP FAS 107-1 and APB 28-1 applies to all financial instruments within the scope of SFAS 107.

The following table summarizes the carrying values and the estimated fair values of financial instruments as of June 30, 2009 and December 31, 2008. Fair value estimates are dependent upon subjective assumptions and involve significant uncertainties resulting in variability in estimates with changes in assumptions.

| | June 30, 2009 | | December 31, 2008 | |
|---|---|---|---|---|
| | Carrying Value | Estimated Fair Value | Carrying Value | Estimated Fair Value |
| **Financial assets:** | | | | |
| Loans and investments, net | $1,925,689,370 | $1,618,129,241 | $2,181,683,619 | $1,886,787,988 |
| Available-for-sale securities | 146,973 | 146,973 | 529,104 | 529,104 |
| Securities held-to-maturity | 68,884,086 | 30,567,970 | 58,244,348 | 18,735,000 |
| Derivative financial instruments | 4,716,333 | 4,716,333 | 7,192,967 | 7,192,967 |
| **Financial liabilities:** | | | | |
| Repurchase agreements | $ 4,388,250 | $ 4,224,706 | $ 60,727,789 | $ 58,390,888 |
| Collateralized debt obligations | 1,113,600,316 | 307,720,100 | 1,152,289,000 | 324,796,811 |
| Junior subordinated notes | 259,173,610 | 68,684,452 | 276,055,000 | 66,061,690 |
| Notes payable | 442,186,353 | 430,459,211 | 518,435,437 | 499,254,876 |
| Note payable — related party | — | — | 4,200,000 | 4,177,373 |
| Mortgage note payable | 41,440,000 | 40,393,093 | 41,440,000 | 40,893,904 |
| Derivative financial instruments | 51,428,653 | 51,428,653 | 98,161,523 | 98,161,523 |

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 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 based on current observed prices received from markets that trade such securities.

***Securities held-to-maturity:*** Fair values are approximated on current market quotes received from financial sources that trade such securities and are based on prevailing market data and derived from third party proprietary models based on well recognized financial principles and reasonable estimates about relevant future market conditions.

***Derivative financial instruments:*** Fair values are approximated on current market data received from financial sources that trade such instruments and are based on prevailing market data and derived from third party proprietary models based on well recognized financial principles and reasonable estimates about relevant future market conditions. These items are included in other assets and other liabilities on the consolidated balance sheet.

In accordance with SFAS 157, the Company incorporates credit valuation adjustments in the fair values of its derivative financial instruments to reflect counterparty nonperformance risk.

***Repurchase agreements, notes payable and mortgage note payable:*** Fair values are estimated using discounted cash flow methodology, using discount rates, which, in the opinion of management, best reflect current market interest rates for financings with similar characteristics and credit quality. Due to their reasonably short-term nature, the differences between fair values and carrying values were relatively small.

***Collateralized debt obligations***: Fair values are estimated based on broker quotations, representing the discounted expected future cash flows at a yield which reflects current market interest rates and credit spreads.

***Junior subordinated notes:*** Fair values are estimated based on broker quotations, representing the discounted expected future cash flows at a yield which reflects current market interest rates and credit spreads.

*Fair Value Measurement*

SFAS No. 157, "Fair Value Measurements" for financial assets and liabilities defines fair value, provides guidance for measuring fair value and requires certain disclosures. This standard does not require any new fair value measurements, but rather applies to all other accounting pronouncements that require or permit fair value measurements.

Fair value is defined as the price at which an asset could be exchanged in a current transaction between knowledgeable, willing parties. A liability's fair value is defined as the amount that would be paid to transfer the liability to a new obligor, not the amount that would be paid to settle the liability with the creditor. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation models are applied. These valuation techniques involve some level of management estimation and judgment, the degree of which is dependent on the price transparency for the instruments or market and the instruments' complexity.

Assets and liabilities disclosed at fair value are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Hierarchical levels, defined by SFAS 157 and directly related to the amount of subjectivity associated with the inputs to fair valuation of these assets and liabilities, are as follows:

- Level 1 — Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date. The types of assets and liabilities carried at Level 1 fair value generally are government and agency securities, equities listed in active markets, investments in publicly traded mutual funds with quoted market prices and listed derivatives.
- Level 2 — Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability through correlation with market data at the measurement date and for the duration of the instrument's anticipated life. Level 2 inputs include quoted market prices in markets that are not active for an identical or similar asset or liability, and quoted market prices in active markets for a similar asset or liability. Fair valued assets and liabilities that are generally included in this category are non-government securities, municipal bonds, certain hybrid financial instruments, certain mortgage and asset backed securities including CDO bonds, certain corporate debt, certain commitments and guarantees, certain private equity investments and certain derivatives.
- Level 3 — Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. These valuations are based on significant unobservable inputs that require a considerable amount of judgment and assumptions. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model. Generally, assets and liabilities carried at fair value and included in this category are certain mortgage and asset-backed securities, certain corporate debt, certain private equity investments, certain municipal bonds, certain commitments and guarantees and certain derivatives.

Determining which category as asset or liability falls within the hierarchy requires significant judgment and the Company evaluates its hierarchy disclosures each quarter.

The Company measures certain financial assets and financial liabilities at fair value on a recurring basis, including available-for-sale securities and derivative financial instruments. The fair value of these financial assets and liabilities was determined using the following inputs as of June 30, 2009.

| | Carrying Value | Fair Value | Fair Value Measurements Using Fair Value Hierarchy | | |
|---|---|---|---|---|---|
| | | | Level 1 | Level 2 | Level 3 |
| **Financial assets:** | | | | | |
| Available-for-sale securities (1) | $ 146,973 | $ 146,973 | $146,973 | $ — | $ — |
| Derivative financial instruments | 4,716,333 | 4,716,333 | — | 4,716,333 | — |
| **Financial liabilities:** | | | | | |
| Derivative financial instruments | 51,428,653 | 51,428,653 | — | 51,428,653 | — |

(1) During the year ended December 31, 2008, the Company's available-for-sale securities were written to their fair value of $0.5 million, resulting in the recognition of a $16.2 million impairment that was considered other-than-temporary and included in operations for the period. An additional impairment charge of $0.4 million was recorded to the Consolidated Statements of Operations during the quarter ended June 30, 2009 to reflect the investment at its market value as of June 30, 2009.

***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 data received from financial sources that trade such instruments and are based on prevailing market data and derived from third party proprietary models based on well recognized financial principles and reasonable estimates about relevant future market conditions. These items are included in other assets and other liabilities on the consolidated balance sheet. In accordance with SFAS 157, the Company incorporates credit valuation adjustments in the fair values of its derivative financial instruments to reflect counterparty nonperformance risk.

The Company measures certain financial assets and financial liabilities at fair value on a nonrecurring basis, such as loans and securities held-to-maturity. The fair value of these financial assets and liabilities was determined using the following inputs as of June 30, 2009.

| | Carrying Value | Fair Value | Fair Value Measurements Using Fair Value Hierarchy | | |
|---|---|---|---|---|---|
| | | | Level 1 | Level 2 | Level 3 |
| **Financial assets:** | | | | | |
| Impaired loans, net (1) | $384,667,048 | $362,362,488 | $ — | $ — | $362,362,488 |
| Securities-held-to maturity (2) | — | 100,000 | — | — | 100,000 |

(1) The Company had an allowance for loan losses of $221.0 million relating to 22 loans with an aggregate carrying value, before reserves, of approximately $605.7 million at June 30, 2009.

(2) During the year ended December 31, 2008, one of the Company's held-to-maturity securities was written down resulting in the recognition of a $1.4 million impairment that was considered other-than-temporary and included in earnings for the period.

***Loan impairment assessments:*** Fair values of loans 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. 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, loan purchase discounts, and net of the allowance for loan losses when such loan or investment is deemed to be impaired. The Company considers a loan impaired when, based upon current information and events, it is probable

that it will be unable to collect all amounts due for both principal and interest according to the contractual terms of the loan agreement. The Company performs evaluations of its loans to determine if the value of the underlying collateral securing the impaired loan is less than the net carrying value of the loan, which may result in an allowance and corresponding charge to the provision for loan losses.

***Securities held-to-maturity:*** Fair values are approximated on current market quotes received from financial sources that trade such securities.

**Note 11 — Commitments and Contingencies**

*Contractual Commitments*

As of June 30, 2009, the Company had the following material contractual obligations (payments in thousands):

| | Payments Due by Period (1) | | | | | | |
|---|---|---|---|---|---|---|---|
| **Contractual Obligations** | **2009** | **2010** | **2011** | **2012** | **2013** | **Thereafter** | **Total** |
| Notes payable (2) | $ 22,756 | $ 29,135 | $ 21,000 | $ 319,137 | $ — | $ 50,158 | $ 442,186 |
| Collateralized debt obligations (3) | 80,796 | 47,766 | 196,425 | 788,613 | — | — | 1,113,600 |
| Repurchase agreements | — | 4,388 | — | — | — | — | 4,388 |
| Trust preferred Securities (4) | — | — | — | — | — | 259,174 | 259,174 |
| Mortgage note payable | — | — | — | 41,440 | — | — | 41,440 |
| Outstanding unfunded commitments (5) | 22,735 | 31,622 | 12,599 | 1,201 | 401 | 723 | 69,281 |
| Totals | $126,287 | $112,911 | $230,024 | $1,150,391 | $ 401 | $310,055 | $1,930,069 |

(1) Represents amounts due based on contractual maturities.

(2) In July 2009, the Company amended and restructured its term credit agreements, revolving credit agreement and working capital facility with Wachovia described in Note 8 — "Debt Obligations," extending the maturity dates for three years, which is reflected in this table.

(3) Comprised of $261.8 million of CDO I debt, $331.6 million of CDO II debt and $520.2 million of CDO III debt with a weighted average remaining maturity of 1.65, 2.62 and 3.04 years, respectively, as of June 30, 2009. In the first and second quarter of 2009, the Company repurchased, at a discount, approximately $34.9 million of investment grade notes originally issued by the Company's CDO I, CDO II and CDO III issuers and recorded a reduction of the outstanding debt balance of $34.9 million.

(4) In the first quarter of 2009, the Company repurchased, at a discount, approximately $9.4 million of investment grade rated junior subordinated notes originally issued by the Company's issuing entity and recorded a reduction of the outstanding debt balance of $9.4 million.

(5) In accordance with certain loans and investments, the Company has outstanding unfunded commitments of $69.3 million as of June 30, 2009, 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. In relation to the $69.3 million outstanding balance at June 30, 2009, the Company's restricted cash balance contained approximately $31.3 million of cash held to fund the portion of the unfunded commitments for loans financed by the Company's CDO vehicles.

*Litigation*

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

**Note 12 — 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.

In 2007, the Company filed a shelf registration statement on Form S-3 with the SEC under the 1933 Act with respect to an aggregate of $500.0 million of debt securities, common stock, preferred stock, depositary shares and warrants that may be sold by the Company from time to time pursuant to Rule 415 of the 1933 Act. On April 19, 2007, the Commission declared this shelf registration statement effective. At June 30, 2009, the Company had $425.3 million available under this shelf registration.

In June 2008, the Company issued 3,776,069 common shares upon the exchange of OP units by ACM on a one-for-one basis. As a result, the special voting preferred shares paired with each OP unit, pursuant to a pairing agreement, were simultaneously redeemed and cancelled by the Company. In connection with this transaction, the Company's Board of Directors approved a resolution of the Company's charter allowing ACM and Ivan Kaufman to own more than the 7% ownership limitation of the Company's outstanding common stock.

In August 2008, the Company entered into an equity placement program sales agreement with a securities agent whereby the Company may issue and sell up to 3 million shares of its common stock through the agent who agrees to use its commercially reasonable efforts to sell such shares during the term of the agreement and under the terms set forth therein. To date, the Company has not utilized this equity placement program.

The Company had 25,387,410 and 25,142,410 shares of common stock outstanding at June 30, 2009 and December 31, 2008, respectively.

*Deferred Compensation*

On April 21, 2009, the Company issued an aggregate of 245,000 shares of restricted common stock under the 2003 Stock Incentive Plan, as amended in 2005 (the "Plan"), of which 155,000 shares were awarded to certain employees of the Company and ACM and 90,000 shares were issued to members of the board of directors. As a means of emphasizing retention at a critical time for the Company and due to their relatively low value, the 245,000 common shares underlying the restricted stock awards granted were fully vested as of the date of grant. In addition, on April 8, 2009, the Company accelerated the vesting of all unvested shares underlying restricted stock awards totaling 243,091 shares previously granted to certain employees of the Company and ACM and non-management members of the board. As a result of these transactions, the Company recorded approximately $2.1 million of expense in the Company's Consolidated Statements of Operations during the second quarter of 2009 of which, $1.7 million was recorded in employee compensation and benefits and $0.4 million was recorded in selling and administrative.

*Noncontrolling Interest*

At December 31, 2007, noncontrolling interest in the Company's operating partnership was $72.9 million reflecting ACM's 15.5% limited partnership interest in ARLP, the Company's operating partnership. In June 2008, ACM exercised its right to redeem its 3,776,069 operating partnership units ("OP units") in the Company's operating partnership for shares of the Company's common stock on a one-for-one basis. As a result, ACM's operating partnership ownership interest in the Company and the balance of noncontrolling interest in the operating partnership were reduced to zero as of June 30, 2008. In accordance with EITF 95-7, "Implementation Issues Related to the Treatment of Minority Interests in Certain Real Estate Investment Trusts," the redemption of the noncontrolling interest in operating partnership in exchange for the Company's common stock was recorded at book value and recorded directly to equity in additional paid-in capital. In addition, the special voting preferred shares paired with each OP unit, pursuant to a pairing agreement, were redeemed simultaneously and cancelled by the Company. In connection with this transaction, the Company's Board of Directors approved a resolution of the

Company's charter allowing ACM and Ivan Kaufman to own more than the 7% ownership limitation, up to 21.9% of the Company's outstanding common stock.

In December 2007, the FASB issued SFAS 160, effective for years beginning after December 15, 2008. SFAS 160 clarifies the classification of noncontrolling interests in consolidated statements of financial position and the accounting for and reporting of transactions between the Company and holders of such noncontrolling interests. Under SFAS 160, noncontrolling interests are considered equity and should be reported as an element of consolidated equity. Also under SFAS 160, net income encompasses the total income of all consolidated subsidiaries and requires separate disclosure on the face of the statements of operations of income attributable to the controlling and noncontrolling interests. When a subsidiary is deconsolidated, any retained, noncontrolling equity investment in the former subsidiary and the gain or loss on the deconsolidation of the subsidiary must be measured at fair value. The presentation and disclosure requirements have been applied retrospectively for all periods presented.

Noncontrolling interest in a consolidated entity on the Company's consolidated balance sheet as of June 30, 2009 was $1.9 million, representing a third party's interest in the equity of a consolidated subsidiary that owns an investment and carries a note payable related to the POM transaction discussed in Note 6 — "Investment in Equity Affiliates". As a result of the POM transaction in March 2009, the Company recorded $18.5 million of net income attributable to the noncontrolling interest holder and a distribution to the noncontrolling interest of $16.6 million during the quarter ended March 2009. For the three and six months ended June 30, 2008, $2.1 million and $4.5 million, respectively, of net income attributable to the noncontrolling interest on the Company's consolidated statements of operations represented income allocated to ACM's noncontrolling interest in the operating partnership.

**Note 13 — 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 attributable to Arbor Realty Trust, Inc. by the weighted average number of shares of common stock outstanding during each period inclusive of unvested restricted stock which participate fully in dividends. Diluted EPS is calculated by dividing income adjusted for noncontrolling interest in the operating partnership 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 the potential settlement of incentive management fees in common stock and ARLP's operating partnership units, prior to the redemption for common stock in June 2008.

The following is a reconciliation of the numerator and denominator of the basic and diluted earnings per share computations for the three months ended June 30, 2009 and 2008.

| | For the Three Months Ended June 30, 2009 | | For the Three Months Ended June 30, 2008 | |
|---|---|---|---|---|
| | Basic | Diluted | Basic | Diluted |
| Net (loss) income attributable to Arbor Realty Trust, Inc. | $(48,556,995) | $(48,556,995) | $11,728,006 | $11,728,006 |
| Add: net income attributable to noncontrolling interest in operating partnership | — | — | — | 2,117,464 |
| (Loss) earnings allocable to common stock | $(48,556,995) | $(48,556,995) | $11,728,006 | $13,845,470 |
| Weighted average number of common shares outstanding | 25,333,564 | 25,333,564 | 20,906,383 | 20,906,383 |
| Weighted average number of operating partnership units | — | — | — | 3,734,574 |
| Dilutive effect of incentive management fee shares | — | — | — | 80,703 |
| Total weighted average common shares outstanding | 25,333,564 | 25,333,564 | 20,906,383 | 24,721,660 |
| (Loss) earnings per common share | $ (1.92) | $ (1.92) | $ 0.56 | $ 0.56 |

The following is a reconciliation of the numerator and denominator of the basic and diluted earnings per share computations for the six months ended June 30, 2009 and 2008.

| | For the Six Months Ended June 30, 2009 | | For the Six Months Ended June 30, 2008 | |
|---|---|---|---|---|
| | Basic | Diluted | Basic | Diluted |
| Net (loss) income attributable to Arbor Realty Trust, Inc. | $(52,810,733) | $(52,810,733) | $24,432,797 | $24,432,797 |
| Add: net income attributable to noncontrolling interest in operating partnership | — | — | — | 4,450,754 |
| (Loss) earnings allocable to common stock | $(52,810,733) | $(52,810,733) | $24,432,797 | $28,883,551 |
| Weighted average number of common shares outstanding | 25,238,515 | 25,238,515 | 20,739,081 | 20,739,081 |
| Weighted average number of operating partnership units | — | — | — | 3,755,321 |
| Dilutive effect of incentive management fee shares | — | — | — | 68,118 |
| Total weighted average common shares outstanding | 25,238,515 | 25,238,515 | 20,739,081 | 24,562,520 |
| (Loss) earnings per common share | $ (2.09) | $ (2.09) | $ 1.18 | $ 1.18 |

**Note 14 — Related Party Transactions**

At June 30, 2009, due to related party was $4.7 million and consisted primarily of $5.8 million of base management fees that were due to ACM and remitted by the Company in the subsequent quarter. The balance also included $1.1 million of escrows due from ACM related to a second quarter 2009 foreclosed real estate asset. At December 31, 2008, due to related party was $1.0 million and consisted of $0.8 million of base management fees and $0.2 million of unearned fees due to ACM that were remitted by the Company in February 2009.

At December 31, 2008, due from related party was $2.9 million as a result of an overpayment of incentive management compensation based on the results of the twelve months ended December 31, 2008. During the quarter ended June 30, 2009, ACM repaid the $2.9 million overpayment in full. See Note 16 — "Management Agreement" for further details.

During the first quarter of 2009, the Company purchased from ACM, approximately $8.8 million of investment grade rated bonds originally issued by two of the Company's three CDO issuing entities and approximately $9.4 million of junior subordinated notes originally issued by a wholly-owned subsidiary of the Company's operating partnership for a net gain on early extinguishment of debt of $13.8 million. At March 31, 2009, ACM owned $11.3 million of CDO notes originally issued by the Company's CDOs that were purchased for $5.0 million from third party investors in 2008. During the second quarter of 2009, the Company purchased from ACM the remaining $11.2 million of CDO bonds, at a discount and net of a principal payment, and recorded a gain on early extinguishment of debt of $6.5 million. See Note 8 — "Debt Obligations" for further details.

At December 31, 2008, the Company had outstanding borrowings from ACM totaling $4.2 million. In January 2009, the loan was repaid in full. See Note 8 — "Debt Obligations" for further details.

The Company is dependent upon its manager (ACM), with whom it has a conflict of interest, to provide services to the Company that are vital to its operations. 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 92% of the outstanding membership interests of 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 approximately 5.4 million common shares, representing 21.2% of the voting power of the Company's outstanding stock as of June 30, 2009.

**Note 15 — Distributions**

The Board of Directors has announced that the Company has elected not to pay a common stock dividend for the quarter ended June 30, 2009. The Company decided, based on the continued difficult economic environment, to retain capital for working capital purposes.

In January 2009, the Board of Directors elected not to pay a common stock distribution with respect to the quarter ended December 31, 2008. The Company believes the dividends paid in 2008 fully satisfy its 2008 REIT distribution requirements.

**Note 16 — Management Agreement**

The Company, ARLP and Arbor Realty SR, Inc. have entered into a management agreement with ACM, which provides that for performing services under the management agreement, the Company will pay ACM an incentive compensation fee and base management fee.

For performing services under the management agreement, the Company paid 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 equaled 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. With respect to all loans and investments originated during the term of the management agreement, the Company had also agreed with ACM that the Company pay ACM an amount equal to 100% of the origination fees paid by the borrower up to 1% of the loan's principal amount.

The Company also paid ACM incentive compensation on a quarterly basis, 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.

On August 6, 2009, the Company amended its management agreement with ACM. The amendment was negotiated by a special committee of the Company's Board of Directors, consisting solely of independent directors and approved unanimously by all of the independent directors. JMP Securities LLC served as financial advisor to the special committee and Skadden, Arps, Slate, Meagher & Flom LLP served as its special counsel. The significant components of the amendment were as follows:

- The existing base management fee structure, which was calculated as a percentage of the Company's equity, will be replaced with an arrangement whereby the Company will reimburse ACM for its actual costs incurred in managing the Company's business based on the parties' agreement in advance on an

annual budget with subsequent quarterly true-ups to actual costs. This change will be adopted retroactively to January 1, 2009 and the Company estimates the 2009 base management fee will be in the range of $8.0 million to $9.0 million. Concurrent with this change, all future origination fees on investments will be retained by the Company as opposed to the manager earning up to the first one percent of all originations fees in the existing agreement. In addition, the Company will make a $3.0 million payment to the manager in consideration of expenses incurred by the manager in 2008 in managing the Company's business and certain other services. These changes were accounted for prospectively as a change in accounting estimate and a recognized subsequent event.

- The percentage hurdle for the incentive fee will be applied on a per share basis to the greater of $10.00 and the average gross proceeds per share, whereas the existing management agreement provides for such percentage hurdle to be applied only to the average gross proceeds per share. In addition, only 60% of any loan loss and other reserve recoveries will be eligible to be included in the incentive fee calculation, which will be spread over a three year period, whereas the existing management agreement does not limit the inclusion of such recoveries in the incentive fee calculation.
- The amended management agreement will allow the Company to consider, from time to time, the payment of additional incentive fees to the manager for accomplishing certain specified corporate objectives.
- The amended management agreement will modify and simplify the provisions related to the termination of the agreement and any related fees payable in such instances, including for internalization, with a termination fee of $10.0 million, rather than a multiple of base and incentive fees as currently exists.
- The amended management agreement will remain in effect until December 31, 2010, and will be renewed automatically for successive one-year terms thereafter.

The following table sets forth the Company's base and incentive compensation management fees for the periods indicated:

| | For the Three Months Ended June 30, | | For the Six Months Ended June 30, | |
|---|---|---|---|---|
| **Management Fees:** | **2009** | **2008** | **2009** | **2008** |
| Base | $ 6,277,623 | $ 900,924 | $7,000,000 | $ 1,799,928 |
| Incentive | — | 1,252,914 | — | 2,933,344 |
| Total expensed | $ 6,277,623 | $ 2,153,838 | $7,000,000 | $ 4,733,272 |
| Incentive compensation — deferred | — | 7,292,448 | — | 7,292,448 |
| Total management fee | $ 6,277,623 | $ 9,446,286 | $7,000,000 | $12,025,720 |

For the three months ended June 30, 2009 and 2008, the Company recorded $6.3 million and $0.9 million, respectively, of base management fees due to ACM of which $5.8 million and $0.3 million, respectively, were included in due to related party. For the three and six months ended June 30, 2009, as a result of the amended management agreement the Company recorded an additional $5.6 million of base management fees, or $0.22 per basic and diluted common share. For the six months ended June 30, 2009 and 2008, the Company recorded $7.0 million and $1.8 million, respectively, of base management fees.

For the three and six months ended June 30, 2009, ACM did not earn an incentive compensation installment. For the three and six months ended June 30, 2008, ACM earned incentive compensation installments totaling $8.5 million and $10.2 million, respectively. The $10.2 million included a $7.3 million deferred management fee recorded in the second quarter of 2008 related to the incentive compensation fee recognized from the monetization of the POM transaction in June 2008, which subsequently closed in the second quarter of 2009. In 2008, the $7.3 million deferred incentive compensation fee was paid in 355,903 shares of common stock and $4.1 million paid in

cash, and was reclassified to prepaid management fees. In accordance with the management agreement, installments of the annual incentive compensation are subject to quarterly recalculation and potential reconciliation at the end of the 2009 fiscal year and any overpayments are required to be repaid in accordance with the amended management agreement.

In addition, during the six months ended June 30, 2008, ACM received incentive compensation installments totaling $2.9 million, of which $1.4 million was paid in 116,680 shares of common stock and $1.5 million paid in cash. For the year ended December 31, 2008, ACM did not earn an incentive compensation fee and an overpayment of the incentive fee was recorded and included in due from related party in the amount of $2.9 million. In June, 2009, ACM repaid the $2.9 million in accordance with the amended management agreement described above. Additionally, in 2007, ACM received an incentive compensation installment totaling $19.0 million which was recorded as prepaid management fees related to the incentive compensation management fee on $77.1 million of deferred revenue recognized on the transfer of control of the 450 West 33rd Street property, of one of the Company's equity affiliates.

**Note 17 — 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.

## Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*You should read the following discussion in conjunction with the unaudited consolidated interim financial statements, and related notes included herein.*

### Overview

We are a Maryland corporation that was formed in June 2003 to invest in multi-family and commercial real estate-related bridge loans, junior participating interests in first mortgages, mezzanine loans, 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 have also invested 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 decreases or the cost of borrowings increases, this will have a negative impact on earnings. However, 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 and liquidity.
- *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. If there are increases in foreclosures and non-performing loans and investments, certain of these expenses, particularly employee compensation expenses and asset management related expenses, may increase.

We are organized and conduct our operations to qualify as a real estate investment trust ("REIT") for federal income tax purposes. A REIT is generally not subject to federal income tax on its REIT-taxable income that it distributes to its stockholders, provided that it distributes at least 90% of its REIT-taxable income and meets certain other requirements. Certain of our assets that produce non-qualifying income are owned by our taxable REIT subsidiaries, the income of which are subject to federal and state income taxes. We did not record a provision for income taxes related to the assets that are held in taxable REIT subsidiaries during the six months ended June 30, 2009 and 2008.

### Sources of Operating Revenues

We derive our operating revenues primarily through interest received from making real estate-related bridge, mezzanine and junior participation loans and preferred equity investments. For the three and six months ended June 30, 2009, interest income earned on these loans and investments represented approximately 90% and 91% of our total revenues, respectively. For the three and six months ended June 30, 2008, interest income earned on these loans and investments represented approximately 98% and 99% of our total revenues, respectively.

Interest income may also be derived from profits of equity participation interests. No such interest income had been recognized for the three and six months ended June 30, 2009. For the six months ended June 30, 2008, interest earned on these equity participation interests represented approximately 1% of our total revenues. No such interest income had been recognized for the three months ended June 30, 2008.

We derived interest income from our investments in commercial real estate ("CRE") collateralized debt obligation bond securities and commercial mortgage-backed securities ("CMBS"). For the three and six months ended June 30, 2009, interest on these investments represented approximately 3% of our total revenues, respectively. For the six months ended June 30, 2008, interest on these investments represented approximately 1% of our total revenues. No such income was recognized for the three months ended March 31, 2008.

Property operating income is derived from our real estate owned. For the three and six months ended June 30, 2009, property operating income represented approximately 5% of our total revenues, respectively. No such income was recognized for the three and six months ended June 30, 2008.

Additionally, we derive operating revenues from other income that represents loan structuring and defeasance fees, and miscellaneous asset management fees associated with our loans and investments portfolio. For the three and six months ended June 30, 2009, revenue from other income represented approximately 2% and 1% of our total revenues, respectively. For the three and six months ended June 30, 2008, revenue from other income represented less than 1% of our total revenues.

**Loss from Equity Affiliates and Gain on Sale of Loans and Real Estate**

We derive income or losses 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 either the equity or cost method of accounting as appropriate. We record our share of net income and losses from the underlying properties and any other-than-temporary impairment of these investments on a single line item in the consolidated statements of operations as income or loss from equity affiliates. For the three months ended June 30, 2009, loss from equity affiliates was approximately $(12.7) million and for the six months ended June 30, 2009, loss from equity affiliates totaled approximately $(10.2) million. For the three and six months ended June 30, 2008, loss from equity affiliates totaled approximately $(0.6) million.

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.

**Critical Accounting Policies**

Please refer to the section of our Annual Report on Form 10-K for the year ended December 31, 2008 entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations — Significant Accounting Estimates and Critical Accounting Policies" for a discussion of our critical accounting policies. During the six months ended June 30, 2009, there were no material changes to these policies, except for the updates discussed below.

**Revenue Recognition**

*Interest Income.* Interest income is recognized on the accrual basis as it is earned from loans, investments and 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 from the purchase or origination of the loan or security. 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 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. We did not record interest income on such investments for the three and six months ended June 30, 2009 as compared to $0.3 million for the six months ended June 30, 2008. No such income had been recognized for the three months ended June 30, 2008.

*Property operating income.* Property operating income represents operating income associated with the operations of two commercial real estate properties presented as real estate owned, net. For the three and six months ended June 30, 2009, we recorded approximately $1.6 million and $3.1 million of property operating income relating to real estate owned. There was no property operating income for the three and six months ended June 30, 2008.

**Derivatives and Hedging Activities**

In accordance with SFAS No. 133, the carrying values of interest rate swaps and the underlying hedged liabilities are reflected at their fair value. As of December 31, 2007 we retained the services of Chatham Financial Corporation, a Statement on Auditing Standards No. 70 ("SAS 70"), "Service Organizations" compliant, third party financial services company 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 (loss) 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 earnings.

SFAS 161, "Disclosures about Derivative Instruments and Hedging Activities", an amendment of FASB Statement No. 133, amends and expands the disclosure requirements of SFAS 133 with the intent to provide users of financial statements with an enhanced understanding of: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under SFAS 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. SFAS 161 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about the fair value of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative instruments.

As required by SFAS 133, we record all derivatives on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative, whether a company has elected to designate a derivative in a hedging relationship and apply hedge accounting and whether the hedging relationship has satisfied the criteria necessary to apply hedge accounting. Derivatives designated and qualifying as a hedge of the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives designated and qualifying as a hedge of the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges. Hedge accounting generally provides for the matching of the timing of gain or loss recognition on the hedging instrument with the recognition of the changes in the fair value of the hedged asset or liability that are attributable to the hedged risk in a fair value hedge or the earnings effect of the hedged forecasted transactions in a cash flow hedge. We may enter into derivative contracts that are intended to economically hedge certain of our risk, even though hedge accounting does not apply or we elect not to apply hedge accounting under SFAS 133.

During the six months ended June 30, 2009 we entered into one new interest rate swap that qualifies as a cash flow hedge with a notional value of approximately $45.1 million and paid $1.7 million, which will be amortized into interest expense over the life of the swap. During the six months ended June 30, 2008, we entered into six additional interest rate swaps, that qualify as cash flow hedges, having a total combined notional value of approximately $121.6 million. No such swaps had been entered into for the three months ended June 30, 2008. During the six months ended June 30, 2009, we terminated seven interest rate swaps related to our restructured trust preferred securities, with a combined notional value of $185.0 million, for a loss of $8.7 million recorded to loss on termination of swaps. Refer to the section titled "Liquidity and Capital Resources — Junior Subordinated Notes" below. During the six months ended June 30, 2009, we also terminated an interest rate swap

with a notional value of approximately $33.1 million and a $33.5 million portion of an interest rate swap with a total notional value of approximately $67.0 million. Additionally, during the six months ended June 30, 2009, two basis swaps had partially amortizing maturities totaling approximately $95.5 million. Losses on termination will be amortized to interest expense over the original life of the hedging instruments. The fair value of our qualifying hedge portfolio has increased by approximately $47.6 million from December 31, 2008 as a result of the terminated swaps, combined with a change in the projected LIBOR rates and credit spreads of both parties.

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 "Interest Rate Risk" in "Quantitative and Qualitative Disclosures About Market Risk", set forth in Item 3 hereof.

**Recently Issued Accounting Pronouncements**

For a discussion of the impact of new accounting pronouncements on our financial condition or results of operations, see Note 2 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof.

**Changes in Financial Condition**

Our loan and investment portfolio balance, including our held-to-maturity securities, at June 30, 2009 was $2.0 billion, with a weighted average current interest pay rate of 5.17% as compared to $2.2 billion, with a weighted average current interest pay rate of 6.13% at December 31, 2008. At June 30, 2009, advances on financing facilities totaled $1.8 billion, with a weighted average funding cost of 3.45% as compared to $2.0 billion, with a weighted average funding cost of 3.51% at December 31, 2008.

During the quarter ended June 30, 2009, two loans paid off on properties with an outstanding balance of $84.0 million, five loans partially repaid totaling $33.3 million and 12 loans were refinanced and or modified during the quarter totaling $374.8 million. These totals included a $23.8 million loss on the restructuring of a loan during the quarter. In addition, four loans totaling approximately $181.8 million were extended during the quarter in accordance with the extension options of the corresponding loan agreements.

Cash and cash equivalents increased $28.7 million, to $29.5 million at June 30, 2009 compared to $0.8 million at December 31, 2008. All highly liquid investments with original maturities of three months or less are considered to be cash equivalents. The increase was primarily due to payoffs and paydowns of our loan investments as well as cash received from an increase in the value of our interest rate swaps for which we had previously posted as collateral against these swaps.

Restricted cash decreased $26.6 million, or 29% to $66.6 million at June 30, 2009 compared to $93.2 million at December 31, 2008. The majority of restricted cash is kept on deposit with the trustees for our collateralized debt obligations ("CDOs"), and primarily represents proceeds from loan repayments which will be used to purchase replacement loans as collateral for the CDOs. The decrease was primarily due to the redeployment of funds during the six months ended June 2009 from proceeds received from the full satisfaction of loans held in the CDO and the transfer of loans from other financing facilities to the CDOs. This was partially offset by a $2.5 million cash reserve due to one our borrowers classified as restricted cash during the quarter ended June 30, 2009.

Securities held-to-maturity increased $10.6 million, to $68.9 million at June 30, 2009 compared to $58.2 million at December 31, 2008 as a result of purchasing $15.0 million of investment grade CMBS for $10.7 million during the second quarter of 2009. The $4.3 million discount received on the purchases of these securities will be accreted into interest income on an effective yield adjusted for actual prepayment activity over the estimated life remaining of the securities as a yield adjustment. See Note 5 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for a further description of these transactions.

Investment in equity affiliates increased $37.0 million to $66.3 million at June 30, 2009 compared to $29.3 million at December 31, 2008. In June 2008, we entered into an agreement to transfer our 16.67% interest in POM, in exchange for preferred and common operating partnership units of Lightstone Value Plus REIT L.P. Upon closing this transaction in March 2009, we recorded an investment of approximately $56.0 million for the preferred and common operating partnership units. This was partially offset by a $11.7 million other-than-temporary

impairment on an equity investment in an unconsolidated joint venture, a seasonal ski resort operation, for the remaining amount of the investment recorded in loss from equity affiliates in our Consolidated Statements of Operations in the second quarter of 2009. In addition, in May 2009, we exchanged $247.4 million of our outstanding trust preferred securities, consisting of $239.7 million of junior subordinated notes issued to third party investors and $7.7 million of common equity issued to us, including $0.3 million already purchased, which was previously recorded as an investment in equity affiliates, in exchange for $268.4 million of newly issued unsecured junior subordinated notes. As a result of this transaction, we retired our $7.7 million of common equity and corresponding trust preferred securities reducing our investment in these entities to $0.6 million at June 30, 2009. See Note 6 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

Real estate owned, net increased $1.8 million to $48.3 million at June 30, 2009 compared to $46.5 million at December 31, 2008. In the second quarter of 2009, we foreclosed on a property secured by our $4.0 million bridge loan and as a result, we recorded $2.9 million on our balance sheet as real estate owned, net at a fair value. See Note 7 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

Due from related party was fully settled at June 30, 2009, compared to $2.9 million at December 31, 2008, due to a payment by ACM, our manager, of $2.9 million in June 2009 for prior year overpaid incentive management fees. Refer to "Management Agreement" below for further details.

Other assets decreased $68.6 million, or 49% to $71.1 million at June 30, 2009 compared to $139.7 million at December 31, 2008. The decrease was primarily due to a $27.3 million decrease in collateral posted for a portion of our interest rate swaps whose value had increased and which includes $17.6 million in funded cash collateral from the termination of seven swaps related to our restructured trust preferred securities which was restructured and two other terminated interest rate swaps. The decrease was also due to a reduction of a $16.5 million third party member receivable in March 2009 in connection with the closing of the POM transaction, a $15.9 million decrease in interest receivable as a result of non-performing loans, lower rates on refinanced and modified loans, lower LIBOR rates, and the effect of a decrease in LIBOR rates on a portion of our interest rate swaps, a $4.8 million reduction of margin calls related to other financing in 2008 and a $3.3 million decrease in the fair value of non-qualifying CDO basis swaps. See Item 3 "Quantitative and Qualitative Disclosures About Market Risk" for further information relating to our derivatives.

Other liabilities decreased $52.4 million, or 39%, to $82.2 million at June 30, 2009 compared to $134.6 million at December 31, 2008. The decrease was primarily due to a $44.3 million decrease in accrued interest payable primarily due to the increase in value of our interest rate swaps, as well as the termination of interest rate swaps, a reduction in LIBOR rates, the timing of reset dates and a decline in the outstanding balance of our financing facilities.

During the second quarter of 2009, we settled a $37.0 million repurchase financing facility for a cash payment of approximately $22.0 million, resulting in a gain on extinguishment of debt of approximately $15.0 million. In connection with this transaction, we sold a loan financed in this facility with a carrying value of $47.0 million, at a discount, for approximately $23.2 million and recorded a loss on restructuring of $23.8 million. The proceeds were used to satisfy the $22.0 million cash payment.

On April 21, 2009, we issued an aggregate of 245,000 shares of restricted common stock under the 2003 Stock Incentive Plan, as amended in 2005 (the "Plan"), of which 155,000 shares were awarded to certain of our and ACM employees and 90,000 shares were issued to members of the board of directors. As a means of emphasizing retention at a critical time for Arbor and due to their relatively low value, the 245,000 common shares underlying the restricted stock awards granted were fully vested as of the date of grant. In addition, on April 8, 2009, we accelerated the vesting of all unvested shares underlying restricted stock awards totaling 243,091 shares previously granted to certain of our and ACM employees and non-management members of the board. As a result of these transactions, we recorded approximately $2.1 million of expense in our Consolidated Statements of Operations during the second quarter of 2009 of which, $1.7 million was recorded in employee compensation and benefits and $0.4 million was recorded in selling and administrative.

In March 2009, we exchanged our 16.67% interest in Prime Outlets Member, LLC ("POM") for preferred and common operating partnership units of Lightstone Value Plus REIT L.P. at a value of approximately $37.3 million. As a result, during the first quarter of 2009, we recorded a gain on exchange of profits interest of

approximately $56.0 million and income attributable to noncontrolling interest of approximately $18.7 million related to the third party member's portion of income recorded. See Note 6 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

In March 2009, we purchased from our manager, ACM, approximately $9.4 million of junior subordinated notes originally issued by a wholly-owned subsidiary of our operating partnership for $1.3 million. In 2009, ACM purchased these notes from third party investors for $1.3 million. We recorded a net gain on extinguishment of debt of $8.1 million and a reduction of outstanding debt totaling $9.4 million from this transaction. In addition, during the three months ended March 31, 2009, we purchased approximately $23.7 million of investment grade rated notes originally issued by our CDO issuing entities for a price of $5.6 million. Of the $23.7 million purchased, $8.8 million of the CDO notes were purchased from ACM for a price of $3.2 million. In 2008, ACM purchased these notes from third party investors for $3.2 million. During the three months ended June 30, 2009, we purchased the remaining CDO notes from ACM for a price of $4.7 million. In 2008, ACM purchased these notes from third party investors for $5.0 million. We recorded a net gain on extinguishment of debt of $18.2 million and a reduction of outstanding debt totaling $23.7 million from these transactions in our first quarter 2009 financial statements and a gain on extinguishment of debt of $6.5 million and a reduction of outstanding debt totaling $11.2 million in our second quarter 2009 financial statements.

**Comparison of Results of Operations for the Three Months Ended June 30, 2009 and 2008**

The following table sets forth our results of operations for the three months ended June 30, 2009 and 2008:

| | Three Months Ended June 30, | | Increase/(Decrease) | |
|---|---|---|---|---|
| | 2009 | 2008 | Amount | Percent |
| | (Unaudited) | | | |
| Revenue: | | | | |
| Interest income | $ 31,687,984 | $51,869,164 | $(20,181,180) | (39)% |
| Property operating income | 1,587,692 | — | 1,587,692 | nm |
| Other income | 782,410 | 28,629 | 753,781 | nm |
| Total revenue | 34,058,086 | 51,897,793 | (17,839,707) | (34)% |
| Expenses: | | | | |
| Interest expense | 21,091,121 | 27,857,322 | (6,766,201) | (24)% |
| Employee compensation and benefits | 3,509,911 | 2,686,002 | 823,909 | 31% |
| Selling and administrative | 2,681,579 | 2,793,161 | (111,582) | (4)% |
| Property operating expenses | 1,612,965 | — | 1,612,965 | nm |
| Depreciation and amortization | 283,022 | — | 283,022 | nm |
| Other-than-temporary impairment | 382,130 | — | 382,130 | nm |
| Provision for loan losses | 23,000,000 | 2,000,000 | 21,000,000 | nm |
| Loss on restructured loans | 23,790,835 | — | 23,790,835 | nm |
| Management fee — related party | 6,277,623 | 2,153,838 | 4,123,785 | 191% |
| Total expenses | 82,629,186 | 37,490,323 | 45,138,863 | 120% |
| (Loss) income before gain on exchange of profits interest, gain on extinguishment of debt, loss on termination of swaps and loss from equity affiliates | (48,571,100) | 14,407,470 | (62,978,570) | nm |
| Gain on exchange of profits interest | — | — | — | nm |
| Gain on extinguishment of debt | 21,464,957 | — | 21,464,957 | nm |
| Loss on termination of swaps | (8,729,408) | | (8,729,408) | nm |
| Loss from equity affiliates | (12,664,152) | (562,000) | (12,102,152) | nm |
| Net (loss) income | (48,499,703) | 13,845,470 | (62,345,173) | nm |
| Net income attributable to noncontrolling interest | 57,292 | 2,117,464 | (2,060,172) | (97)% |
| Net (loss) income attributable to Abor Realty Trust, Inc. | $(48,556,995) | $11,728,006 | $(60,285,001) | nm |

nm — not meaningful

*Revenue*

Interest income decreased $20.2 million, or 39%, to $31.7 million for the three months ended June 30, 2009 from $51.9 million for the three months ended June 30, 2008. This decrease was primarily due to a 32% decrease in the average yield on assets from 7.91% for the three months ended June 30, 2008 to 5.41% for the three months ended June 30, 2009. This decrease in yield was the result of a decrease in average LIBOR over the same period, along with the suspension of interest on our non-performing loans, lower rates on refinanced and modified loans and a decrease in loans and investments due to payoffs and paydowns. In addition, interest income from cash equivalents decreased $1.1 million to $0.1 million for the three months ended June 30, 2009 compared to $1.2 million for the three months ended June 30, 2008 as a result of decreased average cash balances, as well as decreases in interest rates from 2008 to 2009.

Property operating income of $1.6 million for the three months ended June 30, 2009 represents operating income associated with the operations of two commercial real estate properties recorded as real estate owned, net. There was no property operating income for the three months ended June 30, 2008.

Other income increased $0.8 million for the three months ended June 30, 2009 from $28,629 for the three months ended June 30, 2008. This is primarily due the sale of the securities used as collateral in association with the defeasance of one of our loans in the second quarter of 2009, which had a value in excess of the principal of the loan outstanding.

*Expenses*

Interest expense decreased $6.8 million, or 24%, to $21.1 million for the three months ended June 30, 2009 from $27.9 million for the three months ended June 30, 2008. This decrease was primarily due to a 12% decrease in the average cost of these borrowings from 5.06% for the three months ended June 30, 2008 to 4.45% for the three months ended June 30, 2009 due to a reduction in average LIBOR on the portion of our debt that was floating over the same period. In addition, there was a 14% decrease in the average balance of our debt facilities from $2.2 billion for the three months ended June 30, 2008 to $1.9 billion for the three months ended June 30, 2009. This decrease in average balance was related to decreased leverage on our portfolio due to the repayment of certain debt resulting from loan payoffs and paydowns, along with the transfer of assets into our CDO vehicles.

Employee compensation and benefits expense increased $0.8 million, or 31%, to $3.5 million for the three months ended March 31, 2009 from $2.7 million for the three months ended June 30, 2008. This increase was primarily due to grants of restricted stock awards to employees and the acceleration of all previously unvested restricted stock in the second quarter of 2009. These expenses represent salaries, benefits, stock-based compensation related to employees, and incentive compensation for those employed by us during these periods.

Selling and administrative expense decreased $0.1 million, or 4%, to $2.7 million for the three months ended June 30, 2009 from $2.8 million for the three months ended June 30, 2008. These costs include, but are not limited to, professional and consulting fees, marketing costs, insurance expense, director's fees, licensing fees, travel and placement fees, and stock-based compensation relating to the cost of restricted stock granted to our directors and certain employees of our manager. This decrease was primarily due to expenses related to the POM transaction in the second quarter of 2008 netted by an increase in general corporate legal expenses associated with the exchange of our junior subordinated notes as well as debt restructuring in the first and second quarters of 2009, as well as grants of restricted stock awards to directors and certain employees of our manager, ACM, and the acceleration of all previously unvested restricted stock in the second quarter of 2009.

Property operating expenses of $1.6 million for the three months ended June 30, 2009 represents all expenses related to the operations of two commercial real estate properties recorded as real estate owned, net. There were no property operating expenses for the three months ended June 30, 2008.

Depreciation and amortization expense of $0.3 million for the three months ended June 30, 2009 represents depreciation on property, leasehold improvements, and equipment associated with the consolidation of an office building as real estate owned, net. There were no depreciation and amortization expenses for the three months ended June 30, 2008.

Other-than-temporary impairment charges of $0.4 million for the three months ended June 30, 2009 represents the recognition of an additional impairment to the fair market value of our available-for-sale securities at June 30, 2009, that was considered other-than-temporary. GAAP accounting standards require that investments are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value. There were no other-than-temporary impairment charges for the three months ended June 30, 2008. See Note 6 and Note 4 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

Provision for loan losses totaled $23.0 million for the three months ended June 30, 2009, and $2.0 million for the three months ended June 30, 2008. The provision recorded for the three months ended June 30, 2009 was based on our normal quarterly loan review at June 30, 2009, where it was determined that 22 loans with a aggregate carrying value of $605.7 million, before reserves, were impaired. We performed an evaluation of the loans and determined that the fair value of the underlying collateral securing the impaired loans was less than the net carrying value of the loans, resulting in us recording an additional $23.0 million provision for loan losses. The provision recorded for the three months ended June 30, 2008 was based on one loan with a carrying value of $9.9 million, before reserves, that was determined to be impaired.

Loss on restructured loans of $23.8 million for the three months ended June 30, 2009 represents the settlement of a bridge loan with a carrying value of $47.0 million at a discount, for $23.2 million. There were no losses on restructured loans for the three months ended June 30, 2008.

Management fees increased $4.1 million to $6.3 million for the three months ended June 30, 2009 from $2.2 million for the three months ended June 30, 2008. These amounts represent compensation in the form of base management fees and estimated incentive management fees as provided for in the management agreement with our manager. The incentive management fee expense for the three months ended June 30, 2008 was $1.3 million. No incentive management fee was earned for the three months ended June 30, 2009 as a result of a cumulative loss for the trailing 12-month period. The base management fee expense was $6.3 million for the three months ended June 30, 2009 as compared to $0.9 million for the three months ended June 30, 2008 due to the newly amended management agreement with ACM, our manager, in July 2009 which was retroactive. Refer to "Management Agreement" below for further details.

Gain on extinguishment of debt totaled $21.5 million for the three months ended June 30, 2009. During the second quarter of 2009, we settled a $37.0 million repurchase facility with a financial institution for a cash payment of approximately $22.0 million, resulting in a gain on extinguishment of debt of approximately $15.0 million. In connection with this transaction, we sold a bridge loan financed in this facility at a discount, and recorded a loss on restructured loans of $23.8 million. Also during the second quarter of 2009, we purchased, at a discount, approximately $11.2 million of investment grade rated bonds originally issued by two of our three CDO issuing entities and recorded a net gain on early extinguishment of debt of $6.5 million related to these transactions.

Loss on termination of swaps of $8.7 million for the three months ended June 30, 2009 resulted from the exchange of our outstanding trust preferred securities for newly issued unsecured junior subordinated notes in May 2009. Refer to "Junior Subordinated Notes" below for further details. In connection with the original issuance of the trust preferred securities, we had entered into various interest rate swap agreements. Due to the modified interest payment structure of the newly issued unsecured junior subordinated notes, the swaps were determined to no longer be effective or necessary and were subsequently terminated, resulting in a loss of $8.7 million.

Loss from equity affiliates of $12.7 million for the three months ended June 30, 2009 included an $11.7 million impairment charge on an investment in an equity affiliate that was considered other-than-temporary. GAAP accounting standards require that investments are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value. There were no other-than-temporary impairment charges for the three months ended June 30, 2008. Loss from equity affiliates also included $0.9 million and $0.6 million of loss recorded during the three months ended June 30, 2009 and June 30 2008, respectively, which reflect a portion of the joint venture's losses from our Alpine Meadows equity investment. See Note 6 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

*Net Income Attributable to Noncontrolling Interest*

Net income attributable to noncontrolling interest totaled $0.1 million for the three months ended June 30, 2009 representing the portion of income allocated to a third party's interest in a consolidated subsidiary, which holds a note payable that is accruing interest expense.

Net income attributable to noncontrolling interest in our operating partnership totaled $2.1 million for the three months ended June 30, 2008 representing the portion of our income allocated to our manager. There was no net income attributable to noncontrolling interest in our operating partnership for the three months ended June 30, 2009. Our manager had a weighted average limited partnership interest of 15.2% during the three months ended June 30, 2008. In June 2008, our manager exercised its right to redeem its 3,776,069 operating partnership units in our operating partnership for shares of our common stock on a one-for-one basis. As a result, our manager's operating partnership ownership interest percentage was reduced to zero.

In December 2007, the FASB issued SFAS No. 160 "Noncontrolling Interests in Consolidated Financial Statements — an amendment of Accounting Research Bulletin No. 51" ("SFAS 160"), effective for years beginning after December 15, 2008. SFAS 160 clarifies the classification of noncontrolling interests in consolidated statements of financial position and the accounting for and reporting of transactions between us and holders of such noncontrolling interests. Under SFAS 160, noncontrolling interests are considered equity and should be reported as an element of consolidated equity. Also under SFAS 160, net income encompasses the total income of all consolidated subsidiaries and requires separate disclosure on the face of the statements of operations of income attributable to the controlling and noncontrolling interests. When a subsidiary is deconsolidated, any retained, noncontrolling equity investment in the former subsidiary and the gain or loss on the deconsolidation of the subsidiary must be measured at fair value. The presentation and disclosure requirements have been applied retrospectively for all periods presented.

*Provision for Income Taxes*

We are organized and conduct our operations to qualify as a REIT for federal income tax purposes. As a REIT, we are generally not subject to federal income tax on our REIT-taxable income that we distribute to our stockholders, provided that we distribute at least 90% of our REIT-taxable income and meet certain other requirements. As of June 30, 2009 and 2008, we were in compliance with all REIT requirements and, therefore, have not provided for income tax expense on our REIT- taxable income for the three months ended June 30, 2009 and 2008.

Certain of our assets that produce non-qualifying income are owned by our taxable REIT subsidiaries, the income of which is subject to federal and state income taxes. During the three months ended June 30, 2009 and 2008, we did not record any provision on income from these taxable REIT subsidiaries.

**Comparison of Results of Operations for the Six Months Ended June 30, 2009 and 2008**

The following table sets forth our results of operations for the six months ended June 30, 2009 and 2008:

| | Six Months Ended June 30, | | Increase/(Decrease) | |
|---|---|---|---|---|
| | 2009 | 2008 | Amount | Percent |
| | (Unaudited) | | | |
| Revenue: | | | | |
| Interest income | $ 62,188,007 | $107,285,494 | $ (45,097,487) | (42)% |
| Property operating income | 3,058,488 | — | 3,058,488 | nm |
| Other income | 798,660 | 49,322 | 749,338 | nm |
| Total revenue | 66,045,155 | 107,334,816 | (41,289,661) | (38)% |
| Expenses: | | | | |
| Interest expense | 40,241,937 | 59,161,421 | (18,919,484) | (32)% |
| Employee compensation and benefits | 5,901,895 | 4,663,345 | 1,238,550 | 27% |
| Selling and administrative | 4,763,921 | 4,331,227 | 432,694 | 10% |
| Property operating expenses | 2,944,110 | — | 2,944,110 | nm |
| Depreciation and amortization | 566,044 | — | 566,044 | nm |
| Other-than-temporary impairment | 382,130 | — | 382,130 | nm |
| Provision for loan losses | 90,500,000 | 5,000,000 | 85,500,000 | nm |
| Loss on restructured loans | 32,827,749 | — | 32,827,749 | nm |
| Management fee — related party | 7,000,000 | 4,733,272 | 2,266,728 | 48% |
| Total expenses | 185,127,786 | 77,889,265 | 107,238,521 | 138% |
| (Loss) income before gain on exchange of profits interest, gain on extinguishment of debt, loss on termination of swaps and loss from equity affiliates | (119,082,631) | 29,445,551 | (148,528,182) | nm |
| Gain on exchange of profits interest | 55,988,411 | — | 55,988,411 | nm |
| Gain on extinguishment of debt | 47,731,990 | — | 47,731,990 | nm |
| Loss on termination of swaps | (8,729,408) | | (8,729,408) | nm |
| Loss from equity affiliates | (10,157,018) | (562,000) | (9,595,018) | nm |
| Net (loss) income | (34,248,656) | 28,883,551 | (63,132,207) | nm |
| Net income attributable to noncontrolling interest | 18,562,077 | 4,450,754 | 14,111,323 | nm |
| Net (loss) income attributable to Abor Realty Trust, Inc. | $ (52,810,733) | $ 24,432,797 | $ (77,243,530) | nm |

nm — not meaningful

*Revenue*

Interest income decreased $45.1 million, or 42%, to $62.2 million for the six months ended June 30, 2009 from $107.3 million for the six months ended June 30, 2008. This decrease was primarily due to a 35% decrease in the average yield on assets from 8.13% for the six months ended June 30, 2008 to 5.26% for the six months ended June 30, 2009. This decrease in yield was the result of a decrease in average LIBOR over the same period, along with the suspension of interest on our non-performing loans, lower rates on refinanced and modified loans and a decrease in loans and investments due to payoffs and paydowns. In addition, interest income from cash equivalents decreased $2.6 million to $0.4 million for the six months ended June 30, 2009 compared to $3.0 million for the six

months ended June 30, 2008 as a result of decreased average cash balances, as well as decreases in interest rates from 2008 to 2009. Interest income for the six months ended June 30, 2008 also included the recognition of $0.3 million from a 25.0% carried profits interest in a $0.3 million preferred equity investment.

Property operating income of $3.1 million for the six months ended June 30, 2009 represents operating income associated with the operations of two commercial real estate properties recorded as real estate owned, net. There was no property operating income for the six months ended June 30, 2008.

Other income increased $0.8 million for the six months ended June 30, 2009 from $49,322 for the six months ended June 30, 2008. This is primarily due to the sale of the securities used as collateral in association with the defeasance of one of our loans in the second quarter of 2009, which had a value in excess of the principal of the loan outstanding.

*Expenses*

Interest expense decreased $18.9 million, or 32%, to $40.2 million for the six months ended June 30, 2009 from $59.2 million for the six months ended June 30, 2008. This decrease was primarily due to a 22% decrease in the average cost of these borrowings from 5.35% for the six months ended June 30, 2008 to 4.19% for the six months ended June 30, 2009 due to a reduction in average LIBOR on the portion of our debt that was floating over the same period. In addition, there was a 14% decrease in the average balance of our debt facilities from $2.2 billion for the six months ended June 30, 2008 to $1.9 billion for the six months ended June 30, 2009 as a result of decreased leverage on our portfolio due to the paying down of certain outstanding indebtedness by repayment of loans, the transfer of assets to our CDO vehicles which carry a lower cost of funds and from available capital.

Employee compensation and benefits expense increased $1.2 million, or 27%, to $5.9 million for the six months ended June 30, 2009 from $4.7 million for the six months ended June 30, 2008. This increase was primarily due to grants of restricted stock awards to employees and the acceleration of all previously unvested restricted stock in the second quarter of 2009. These expenses represent salaries, benefits, stock-based compensation related to employees, and incentive compensation for those employed by us during these periods.

Selling and administrative expense increased $0.4 million, or 10%, to $4.8 million for the six months ended June 30, 2009 from $4.3 million for the six months ended June 30, 2008. These costs include, but are not limited to, professional and consulting fees, marketing costs, insurance expense, director's fees, licensing fees, travel and placement fees, and stock-based compensation relating to the cost of restricted stock granted to our directors and certain employees of our manager. This increase was primarily due to an increase in general corporate legal expenses associated with the exchange of our junior subordinated notes as well as debt restructuring in the first and second quarters of 2009, as well as grants of restricted stock awards to directors and certain employees of our manager, ACM, and the acceleration of all previously unvested restricted stock in the second quarter of 2009.

Property operating expenses of $2.9 million for the six months ended June 30, 2009 represents all expenses related to the operations of two commercial real estate properties recorded as real estate owned, net. There were no property operating expenses for the six months ended June 30, 2008.

Depreciation and amortization expense of $0.6 million for the six months ended June 30, 2009 represents depreciation on property, leasehold improvements, and equipment associated with the consolidation of an office building as real estate owned, net. There were no depreciation and amortization expenses for the six months ended June 30, 2008.

Other-than-temporary impairment charges of $0.4 million for the six months ended June 30, 2009 represents the recognition of an additional impairment to the fair market value of our available-for-sale securities at June 30, 2009, that was considered other-than-temporary. GAAP accounting standards require that investments are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value. There were no other-than-temporary impairment charges for the three months ended June 30, 2008. See Note 6 and Note 4 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

Provision for loan losses totaled $90.5 million for the six months ended June 30, 2009, and $5.0 million for the six months ended June 30, 2008. The provision recorded for the six months ended June 30, 2009 was based on our normal quarterly loan review at June 30, 2009, where it was determined that 22 loans with a aggregate carrying value of $605.7 million, before reserves, were impaired. We performed an evaluation of the loans and determined that the fair value of the underlying collateral securing the impaired loans was less than the net carrying value of the loans, resulting in us recording an additional $90.5 million provision for loan losses. The provision recorded for the six months ended June 30, 2008 was based on four loans with an aggregate carrying value of $80.3 million, before reserves, that were determined to be impaired.

Loss on restructured loans of $32.8 million for the six months ended June 30, 2009 represents $9.0 million in losses incurred as a result of restructuring certain of our loans primarily due to the unfavorable changes in market conditions in the first quarter of 2009 and the settlement of a bridge loan with a carrying value of $47.0 million at a discount, for $23.2 million in the second quarter of 2009. There were no losses on restructured loans for the six months ended June 30, 2008.

Management fees increased $2.3 million to $7.0 million for the six months ended June 30, 2009 from $4.7 million for the six months ended June 30, 2008. These amounts represent compensation in the form of base management fees and estimated incentive management fees as provided for in the management agreement with our manager. The incentive management fee expense for the six months ended June 30, 2008 was $2.9 million. No incentive management fee was earned for the six months ended June 30, 2009 as a result of a cumulative loss for the trailing 12-month period. The base management fee expense was $7.0 million for the six months ended June 30, 2009 as compared to $1.8 million for the six months ended June 30, 2008 due to the newly amended management agreement with ACM, our manager, in July 2009 which was retroactive. Refer to “Management Agreement” below for further details.

Gain on exchange of profits interest of $56.0 million was due to the recognition of income attributable to the POM exchange of profits interest transaction recognized in the six months ended June 30, 2009. See Note 6 of the “Notes to the Consolidated Financial Statements” set forth in Item 1 hereof for further details on the POM transaction recorded in the quarter ended March 2009.

Gain on extinguishment of debt totaled $47.7 million for the six months ended June 30, 2009. During the first quarter of 2009, we purchased, at a discount, approximately $23.7 million of investment grade rated bonds originally issued by our three CDO issuing entities. In addition, we purchased, at a discount, approximately $9.4 million of junior subordinated notes originally issued by a wholly-owned subsidiary of our operating partnership. We recorded a net gain on early extinguishment of debt of $26.3 million related to these transactions. During the second quarter of 2009, we purchased, at a discount, approximately $11.2 million of investment grade rated bonds originally issued by two of our three CDO issuing entities and recorded a net gain on early extinguishment of debt of $6.5 million related to these transactions. Also, during the second quarter of 2009, we settled a bridge loan secured by a condominium project in New York City, as well as our debt for the loan resulting in a gain on early extinguishment of the debt of $15.0 million.

Loss on termination of swaps of $8.7 million for the six months ended June 30, 2009 resulted from the exchange of our outstanding trust preferred securities for newly issued unsecured junior subordinated notes in the second quarter of 2009. Refer to “Junior Subordinated Notes” below. In connection with the original issuance of the trust preferred securities, we had entered into various interest rate swap agreements. Due to the modified interest payment structure of the newly issued unsecured junior subordinated notes, the swaps were determined to no longer be effective or necessary and were subsequently terminated, resulting in a loss of $8.7 million.

Loss from equity affiliates of $10.2 million for the six months ended June 30, 2009 included a $11.7 million impairment charge on an investment in an equity affiliate that was considered other-than-temporary. GAAP accounting standards require that investments are evaluated periodically to determine whether a decline in their value is other-than-temporary, though it is not intended to indicate a permanent decline in value. There were no other-than-temporary impairment charges for the six months ended June 30, 2008. Loss from equity affiliates also included $1.6 million of income and $0.6 million of loss recorded during the six months ended June 30, 2009 and June 30 2008, respectively, which reflect a portion of the joint venture’s losses from our Alpine Meadows equity investment. See Note 6 of the “Notes to the Consolidated Financial Statements” set forth in Item 1 hereof for further details.

*Net Income Attributable to Noncontrolling Interest*

Net income attributable to noncontrolling interest totaled $18.6 million for the six months ended June 30, 2009 representing the portion of income allocated to the third party's interest in a consolidated subsidiary, primarily the result of the $56.0 million gain recorded from the exchange of our profits interest in POM during the first quarter of 2009. This is related to the POM transaction discussed in Note 6 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof.

Net income attributable to noncontrolling interest in our operating partnership totaled $4.5 million for the six months ended June 30, 2008 representing the portion of our income allocated to our manager. There was no net income attributable to noncontrolling interest in our operating partnership for the six months ended June 30, 2009. Our manager had a weighted average limited partnership interest of 15.3% for the six months ended June 30, 2008. In June 2008, our manager, exercised its right to redeem its 3,776,069 operating partnership units in our operating partnership for shares of our common stock on a one-for-one basis. As a result, our manager's operating partnership ownership interest percentage was reduced to zero.

*Provision for Income Taxes*

We are organized and conduct our operations to qualify as a REIT for federal income tax purposes. As a REIT, we are generally not subject to federal income tax on our REIT-taxable income that we distribute to our stockholders, provided that we distribute at least 90% of our REIT-taxable income and meet certain other requirements. As of June 30, 2009 and 2008, we were in compliance with all REIT requirements and, therefore, have not provided for income tax expense on our REIT- taxable income for the six months ended June 30, 2009 and 2008.

Certain of our assets that produce non-qualifying income are owned by our taxable REIT subsidiaries, the income of which is subject to federal and state income taxes. During the six months ended June 30, 2009 and 2008, we did not record any provision on income from these taxable REIT subsidiaries.

**Liquidity and Capital Resources**

***Sources of Liquidity***

Liquidity is a measurement of the ability to meet potential cash requirements. Our short-term and long-term liquidity needs include ongoing commitments to repay borrowings, fund future loans and investments, fund additional cash collateral from potential declines in the value of a portion of our interest rate swaps, fund operating costs and distributions to our stockholders as well as other general business needs. Our primary sources of funds for liquidity consist of proceeds from equity offerings, debt facilities and cash flows from operations. Our equity sources 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, net proceeds from our public offering of our common stock in June 2007 and depending on market conditions, proceeds from capital market transactions including the future issuance of common, convertible and/or preferred equity securities. Our debt facilities include the issuance of floating rate notes resulting from our CDOs, the issuance of junior subordinated notes and borrowings under credit agreements. Net cash provided by operating activities include interest income from our loan and investment portfolio reduced by interest expense on our debt facilities, cash from equity participation interests, repayments of outstanding loans and investments and funds from junior loan participation arrangements.

We believe our existing sources of funds will be adequate for purposes of meeting our short-term and long-term liquidity needs. 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.

Current conditions in capital and credit markets have made certain forms of financing less attractive, and in certain cases less available, therefore we will continue to rely on cash flows provided by operating and investing activities for working capital.

To maintain our status as a REIT under the Internal Revenue Code, we must distribute annually at least 90% of our REIT-taxable income. These distribution requirements limit our ability to retain earnings and thereby replenish or increase capital for operations. However, we believe that our 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. In December 2008, the IRS issued "Revenue Procedure 2008-68" that allows listed REITs to offer shareholders elective stock dividends, which are paid in a combination of cash and common stock with at least 10% of the total distribution paid in cash, to satisfy the dividend requirement through 2009.

*Equity Offerings*

Our authorized capital 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.

In March 2007, we filed a shelf registration statement on Form S-3 with the SEC under the 1933 Act with respect to an aggregate of $500.0 million of debt securities, common stock, preferred stock, depositary shares and warrants, that may be sold by us from time to time pursuant to Rule 415 of the 1933 Act. On April 19, 2007, the Commission declared this shelf registration statement effective.

In June 2007, we sold 2,700,000 shares of our common stock registered on the shelf registration statement in a public offering at a price of $27.65 per share, for net proceeds of approximately $73.6 million after deducting the underwriting discount and the other estimated offering expenses. We used the proceeds to pay down debt and finance our loan and investment portfolio. The underwriters did not exercise their over allotment option for additional shares.

In August 2008, we entered into an equity placement program sales agreement with a securities agent whereby we may issue and sell up to three million shares of our common stock through the agent who agrees to use its commercially reasonable efforts to sell such shares during the term of the agreement and under the terms set forth therein. To date, we have not utilized this equity placement program.

At June 30, 2009, we had $425.3 million available under the shelf registration described above and 25,387,410 shares outstanding.

*Debt Facilities*

We also currently maintain liquidity through a term credit agreement, two master repurchase agreements, one working capital facility, one note payable, three junior loan participations and one bridge loan warehousing credit agreement with six different financial institutions or companies. In addition, we have issued three collateralized debt obligations or CDOs and 13 separate junior subordinated notes. London inter-bank offered rate, or LIBOR, refers to one-month LIBOR unless specifically stated. As of June 30, 2009, these facilities had aggregate borrowings of approximately $1.8 billion.

The following is a summary of our debt facilities as of June 30, 2009:

| Debt Facilities | At June 30, 2009 Commitment | Debt Carrying Value | Available | Maturity Dates |
|---|---|---|---|---|
| Repurchase agreements. Interest is variable based on pricing over LIBOR | $ 4,388,250 | $ 4,388,250 | $ — | 2010 |
| Collateralized debt obligations. Interest is variable based on pricing over three-month LIBOR | 1,126,900,316 | 1,113,600,316 | 13,300,000 | 2011 - 2013 |
| Junior subordinated notes. Interest is variable based on pricing over three-month LIBOR | 259,173,610 | 259,173,610 | — | 2034 - 2037 |
| Notes payable. Interest is variable based on pricing over Prime or LIBOR **(1)** | 479,809,934 | 442,186,353 | 37,623,581 | 2009 - 2016 |
| | $1,870,272,110 | $1,819,348,529 | $50,923,581 | |

**(1)** In July 2009, we amended and restructured our term credit agreements, revolving credit agreement and working capital facility with Wachovia Bank, National Association as discussed below.

These debt facilities are discussed in further detail in Note 8 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof.

*Repurchase Agreements*

Repurchase obligation financings provide us with a revolving component to our debt structure. Repurchase agreements provide stand alone financing for certain assets and interim, or warehouse financing, for assets that we plan to contribute to our CDOs. At June 30, 2009, the aggregate outstanding balance under these facilities was $4.4 million.

We had a $200.0 million repurchase agreement with a financial institution which had a term expiring in October 2009 and had interest at pricing over LIBOR, varying on the type of asset financed. In June 2009, this facility, with approximately $37.0 million outstanding, was satisfied at a discount for $22.0 million resulting in a $15.0 million gain on extinguishment of debt. In connection with this transaction, we sold a bridge loan financed in this facility with a carrying value of $47.0 million, at a discount, for approximately $23.2 million and recorded a loss on restructuring of $23.8 million. The proceeds were used to satisfy the $22.0 million cash payment.

We have a $100 million repurchase agreement with a second financial institution that bears interest at 250 basis points over LIBOR and had a term expiring in June 2009. In June 2009, we amended this facility extending the maturity to June 2010, with a one year extension option. In addition, the amendment includes the removal of all financial covenants and a reduction of the committed amount to $2.8 million reflecting the one asset currently financed in this facility. During the six months ended June 30, 2009, we paid down approximately $12.7 million of this facility. At June 30, 2009, the outstanding balance under this facility was $2.8 million with a current weighted average note rate of 2.34%.

We have an uncommitted master repurchase agreement with a third financial institution, effective April 2008, entered into for the purpose of financing a portion of our CRE CDO bond securities. The agreement has a term expiring in May 2010 and bears interest at pricing over LIBOR, varying on the type of asset financed. During the first and second quarters of 2009, we paid down approximately $1.3 million of this facility, due to a decrease in values associated with a change in market interest rate spreads. At June 30, 2009, the outstanding balance under this facility was $1.6 million with a current weighted average note rate of 1.78%.

*CDOs*

We completed three separate CDOs since 2005 by issuing to third party investors, tranches of investment grade collateralized debt obligations through newly-formed wholly-owned subsidiaries (the "Issuers"). The Issuers hold assets, consisting primarily of real-estate related assets and cash which serve as collateral for the CDOs. The assets pledged as collateral for the CDOs were contributed from our existing portfolio of assets. By contributing these real estate assets to the various CDOs, these transactions resulted in a decreased cost of funds relating to the corresponding CDO assets and created capacity in our existing credit facilities.

The Issuers issued tranches of investment grade floating-rate notes of approximately $305.0 million, $356.0 million and $447.5 million for CDO I, CDO II and CDO III, respectively. CDO III also has a $100.0 million revolving note which was not drawn upon at the time of issuance. The revolving note facility has a commitment fee of 0.22% per annum on the undrawn portion of the facility. The tranches were issued with floating rate coupons based on three-month LIBOR plus pricing of 0.44% — 0.77%. Proceeds from the sale of the investment grade tranches issued in CDO I, CDO II and CDO III of $267.0 million, $301.0 million and $317.1 million, respectively, were used to repay higher costing outstanding debt under our repurchase agreements and notes payable. The CDOs may be replenished with substitute collateral for loans that are repaid during the first four years for CDO I and the first five years for CDO II and CDO III, subject to certain customary provisions. Thereafter, the outstanding debt balance will be reduced as loans are repaid. Proceeds from the repayment of assets which serve as collateral for the CDOs must be retained in its structure as restricted cash 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. Proceeds from CDO II are distributed quarterly with approximately $1.1 million being paid to investors as a reduction of the CDO liability. As of April 15, 2009, CDO I reached the end of its replenishment date and will no longer make quarterly amortization payments to investors. Investor capital will be repaid quarterly from proceeds received from loan repayments held as collateral in accordance with the terms of the CDO. Proceeds distributed will be recorded as a reduction of the CDO liability. For accounting purposes, CDOs are consolidated in our financial statements.

During the quarter ended June 30, 2009, we purchased, at a discount, approximately $11.2 million of investment grade rated notes originally issued by our CDO issuing entities for a price of $4.7 million. We recorded a net gain on extinguishment of debt of $6.5 million and a reduction of outstanding debt totaling $11.2 million from these transactions in our second quarter 2009 financial statements.

During the quarter ended March 31, 2009, we purchased, at a discount, approximately $23.7 million of investment grade rated notes originally issued by our CDO issuing entities for a price of $5.6 million. We recorded a net gain on extinguishment of debt of $18.2 million and a reduction of outstanding debt totaling $23.7 million from these transactions in our first quarter 2009 financial statements.

At June 30, 2009, the outstanding note balance under CDO I, CDO II and CDO III was $261.8 million, $331.6 million and $520.2 million, respectively.

The continued turmoil in the structured finance markets, in particular the sub-prime residential loan market, has negatively impacted the credit markets generally, and, as a result, investor demand for commercial real estate collateralized debt obligations has been substantially curtailed. In recent years, we have relied to a substantial extent on CDO financings to obtain match funded financing for our investments. Until the market for commercial real estate CDOs recovers, we may be unable to utilize CDOs to finance our investments and we may need to utilize less favorable sources of financing to finance our investments on a long-term basis. There can be no assurance as to when demand for commercial real estate CDOs will return or the terms of such securities investors will demand or whether we will be able to issue CDOs to finance our investments on terms beneficial to us.

Our CDO bonds contain interest coverage and asset over collateralization covenants that must be met as of the waterfall distribution date in order for us to receive such payments. If we fail these covenants in any of our CDOs, all cash flows from the applicable CDO would be diverted to repay principal and interest on the outstanding CDO bonds and we would not receive any residual payments until that CDO regained compliance with such tests. We were in compliance with all such covenants with the exception of the over collateralization test of CDO I as of

March 31, 2009. In April 2009, this covenant was cured prior to the waterfall distribution date and, as a result, we are currently in compliance with all CDO covenants. In the event of a breach of the CDO covenants that could not be cured in the near-term, we would be required to fund our non-CDO expenses, including management fees and employee costs, distributions required to maintain REIT status, debt costs, and other expenses with (i) cash on hand, (ii) income from any CDO not in breach of a covenant test, (iii) income from real property and unencumbered loan assets, (iv) sale of assets, (v) or accessing the equity or debt capital markets, if available. We have the right to cure covenant breaches which would resume normal residual payments to us by purchasing non-performing loans out of the CDOs. However, we may not have sufficient liquidity available to do so at such time.

*Junior Subordinated Notes*

In May 2009, we exchanged $247.1 million of our outstanding trust preferred securities, consisting of $239.7 million of junior subordinated notes issued to third party investors and $7.4 million of common equity issued to us in exchange for $268.4 million of newly issued unsecured junior subordinated notes, representing 112% of the original face amount. The new notes bear a fixed interest rate of 0.50% per annum until April 30, 2012 (the "Modification Period"), and then interest is to be paid at the rates set forth in the existing trust agreements until maturity, equal to a weighted average three month LIBOR plus 2.90%. We paid a transaction fee of approximately $1.2 million to the issuers of the junior subordinated notes related to this restructuring.

In July 2009, we restructured the remaining $18.7 million of trust preferred securities that were not exchanged from the May 2009 restructuring transaction previously disclosed. We amended the $18.7 million of junior subordinated notes to $20.9 million of unsecured junior subordinated notes, representing 112% of the original face amount. The amended notes bear a fixed interest rate of 0.50% per annum for a period of approximately three years, the modification period. Thereafter, interest is to be paid at the rates set forth in the existing trust agreements until maturity, equal to a weighted average three month LIBOR plus 2.74%. We paid a transaction fee of approximately $0.1 million to the issuers of the junior subordinated notes related to this restructuring.

During the Modification Period, we will be permitted to make distributions of up to 100% of taxable income to common shareholders. We have agreed that such distributions will be paid in the form of our stock to the maximum extent permissible under the Internal Revenue Service rules and regulations in effect at the time of such distribution, with the balance payable in cash. This requirement regarding distributions in stock can be terminated by us at any time, provided that we pay the note holders the original rate of interest from the time of such termination.

The junior subordinated notes are unsecured, have a maturity of 25 to 28 years, pay interest quarterly at a fixed rate or floating rate of interest based on three-month LIBOR and, absent the occurrence of special events, are not redeemable during the first two years. In connection with the issuance of the original variable rate junior subordinated notes, we had entered into various interest rate swap agreements which were subsequently terminated upon the exchange discussed above. See Item 3 "Quantitative and Qualitative Disclosures About Market Risk" for further information relating to our derivatives.

In March 2009, we purchased, at a discount, approximately $9.4 million of investment grade rated junior subordinated notes originally issued by a wholly-owned subsidiary of our operating partnership for $1.3 million. We recorded a net gain on extinguishment of debt of $8.1 million and a reduction of outstanding debt totaling $9.4 million from this transaction in our first quarter 2009 financial statements. In connection with this transaction, during the second quarter of 2009, we retired approximately $0.3 million of common equity related to these junior subordinated notes.

At June 30, 2009, the aggregate carrying value under these facilities was $259.2 million with a current weighted average pay rate of 0.70%, however, based upon the accounting treatment for the restructure, the effective rate was 3.93% at June 30, 2009.

*Notes Payable*

At June 30, 2009, notes payable consisted of two term credit agreements, a revolving credit line, a working capital facility, a bridge loan warehousing credit agreement, a note payable and three junior loan participations, and the aggregate outstanding balance under these facilities was $442.2 million.

In November 2007, we had entered into two credit agreements with Wachovia which replaced two previously existing repurchase agreements with Wachovia and an affiliate of Wachovia. The first credit agreement consisted of a $473.0 million term loan and a $100.0 million revolving commitment which has a commitment period of two years with a one year auto extension feature, subject to certain criteria, to November 2010. The second credit agreement was a $69.0 million term loan which has a commitment period of two years with a one year extension period to November 2010. These two credit agreements each had interest at pricing over LIBOR, and eliminated the mark to market risk as it relates to interest rate spreads that existed under the terms of the previous repurchase agreements.

The $473.0 million term loan had repayment provisions which required a reduction of the outstanding balance to $300.0 million by December 31, 2008. At December 31, 2008, the outstanding balance under this facility was $280.2 million. At June 30, 2009, the outstanding balance under this facility was $237.7 million with a weighted average note rate of 2.97%. In July 2009, we restructured this credit agreement as discussed below. The $100.0 million revolving commitment was used to finance new investments and could have been increased with lender approval to $200.0 million when the term loan was paid down to $400.0 million in February 2008. At June 30, 2009, the outstanding balance under this revolving facility was $64.0 million with a weighted average note rate of 2.96%. In July 2009, we restructured this revolving commitment as discussed below.

The $69.0 million term loan included $10.0 million of annual repayment provisions in quarterly installments. We had also pledged our 24% equity interest in POM as part of the agreement. In the second and third year of this term facility, we were required to paydown this facility by an additional amount equal to distributions in excess of $10.0 million per year received by us from our investment in POM, if any. In connection with the POM transaction in July 2008, we agreed to pay down approximately $11.6 million of this facility from proceeds received from this transaction. In addition, 16.7% of our 24.2% equity interest in POM was released as collateral in conjunction with this paydown. At June 30, 2009, the outstanding balance under this facility was $30.3 million with a current weighted average note rate of 2.85%. In July 2009, we restructured this term loan as discussed below.

We had a $70.0 million bridge loan warehousing credit agreement with a financial institution, with a maturity date of October 2009, to provide financing for bridge loans. In May 2009, we amended this facility, extending the maturity to May 2010 with a one year extension option and reducing the committed amount to $13.5 million. This agreement bears a rate of interest, payable monthly, based on one month LIBOR plus 3.75%. Pricing is available at Prime or over 1, 2, 3 or 6-month LIBOR, at our option. At June 30, 2009, the outstanding balance under this facility was $11.8 million with a current weighted average note rate of 3.86%. Subsequently, in July 2009, the facility was repaid in full.

We had a $45.0 million working capital facility with Wachovia that had a term expiring in June 2009. In June 2009, the maturity was amended to July 2009. The facility required quarterly paydowns of $3.0 million and an interest rate of 500 bps over LIBOR. At June 30, 2009, the aggregate outstanding balance under this facility was $41.9 million with a current weighted average note rate of 5.38%. In July 2009, we restructured this working capital facility as discussed below.

We have a $50.2 million note payable related to the POM transaction. During the second quarter of 2008, we recorded a $49.5 million note payable related to the POM exchange of profits interest transaction. The note was initially secured by our interest in POM, matures in July 2016 and bore interest at a fixed rate of 4% with payment deferred until the closing of the transaction. Upon the closing of the POM transaction in March 2009, the note balance was increased to $50.2 million, bears interest at a fixed rate of 4% and is secured by our investment in common and preferred operating partnership units in Lightstone Value Plus REIT, L.P.

We have three junior loan participations with a total outstanding balance at June 30, 2009 of $6.3 million. These participation borrowings have a maturity date equal to the corresponding mortgage loan and are secured by the participant's interest in the mortgage loans. Interest expense is based on a portion of the interest received from the loans.

In July 2009, we amended and restructured our term credit agreements, revolving credit agreement and working capital facility with Wachovia Bank, National Association as follows:

- The term revolving credit agreement with an outstanding balance of $64.0 million at June 30, 2009 was combined into the term debt facility with an outstanding balance of $237.7 million at June 30, 2009, along with a portion of the term debt facility with an outstanding balance of $30.3 million at June 30, 2009, and $15.0 million of this term debt facility was combined into the working capital line with an outstanding balance of $41.9 at June 30, 2009. This debt restructuring resulted in the consolidation of these four facilities into one term debt facility with an outstanding balance of $317.0 million, which contains a revolving component with $35.0 million of availability, and one working capital facility with an outstanding balance of $56.9 million at July 2009.
- The maturity dates of the facilities were extended for three years, with a working capital facility maturity of June 8, 2012 and a term debt facility maturity of July 23, 2012.
- The term loan facility requires a $48.0 million reduction over the three year term, with approximately $8.0 million in reductions due every six months beginning in December 2009.
- Margin call provisions relating to collateral value of the underlying assets have been eliminated, as long as the term loan reductions are met, with the exception of limited margin call capability related to foreclosed or real estate-owned assets.
- The working capital facility requires quarterly amortization of up to $3.0 million per quarter, $1.0 million per CDO, only if both (a) the CDO is cash flowing to us and (b) we have a minimum quarterly liquidity level of $27.5 million.
- Interest rate of LIBOR plus 350 basis points for the term loan facility, compared to LIBOR plus approximately 200 basis points previously and LIBOR plus 800 basis points for the working capital facility, compared to LIBOR plus 500 basis points previously. We have also agreed to pay a commitment fee of 1.00% payable over 3 years.
- We issued Wachovia 1.0 million warrants at an average strike price of $4.00. 500,000 warrants are exercisable immediately at a price of $3.50, 250,000 warrants are exercisable after July 23, 2010 at a price of $4.00 and 250,000 warrants are exercisable after July 23, 2011 at a price of $5.00. All warrants expire on July 23, 2015.
- Annual dividends are limited to 100% of taxable income to common shareholders and are required to be paid in the form of our stock to the maximum extent permissible (currently 90%), with the balance payable in cash. We will be permitted to pay 100% of taxable income in cash if the term loan facility balance is reduced to $210.0 million, the working capital facility is reduced to $30.0 million and we maintain $35.0 million of minimum liquidity.
- Our CEO and Chairman, Ivan Kaufman, is required to remain an officer or director of the Company for the term of the facilities.

In addition, the financial covenants have been reduced to the following:

- Minimum quarterly liquidity of $7.5 million in cash and cash equivalents.
- Minimum quarterly GAAP net worth of $150.0 million.
- Ratio of total liabilities to tangible net worth shall not exceed 4.5 to 1 quarterly.

We are currently evaluating the effect of this transaction on our Consolidated Financial Statements.

*Mortgage Note Payable*

During the second quarter of 2008, we recorded a $41.4 million first lien mortgage related to the foreclosure of an entity in which we had a $5.0 million mezzanine loan. The mortgage bears interest at a fixed rate, has a maturity date of June 2012 and the outstanding balance of this mortgage was $41.4 million at June 30, 2009.

*Note Payable — Related Party*

During the fourth quarter of 2008, we borrowed $4.2 million from our manager, ACM. At December 31, 2008, we had outstanding borrowings due to ACM totaling $4.2 million, which was recorded in notes payable — related party. In January 2009, the loan was repaid in full.

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

The working capital facility, term and revolving credit agreements, 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.

*Cash Flow From Operations*

We continually monitor our cash position to determine the best use of funds to both maximize our return on funds and maintain an appropriate level of liquidity. Historically, in order to maximize the return on our funds, cash generated from operations has generally been used to temporarily pay down borrowings under credit facilities whose primary purpose is to fund our new loans and investments. Consequently, when making distributions in the past, we have borrowed the required funds by drawing on credit capacity available under our credit facilities. However, given current market conditions, we may have to maintain adequate liquidity from operations to make any future distributions.

*Restrictive Covenants*

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 pledge more collateral, or 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. If we are unable to retire our borrowings in such a situation, (i) we may need to prematurely sell the assets securing such debt, (ii) the lenders could accelerate the debt and foreclose on the assets that are pledged as collateral to such lenders, (iii) such lenders could force us into bankruptcy, (iv) such lenders could force us to take other actions to protect the value of their collateral and (v) our other debt financings could become immediately due and payable. Any such event would have a material adverse effect on our liquidity, the value of our common stock, our ability to make distributions to our stockholders and our ability to continue as a going concern. Violations of these covenants may also result in our being unable to borrow unused amounts under our credit facilities, even if repayment of some or all borrowings is not required. Additionally, to the extent that we were to realize additional losses relating to our loans and investments, it would put additional pressure on our ability to continue to meet these covenants.

We were in compliance with all financial covenants and restrictions for the periods presented with the exception of a minimum tangible net worth requirement with one financial institution at June 30, 2009. Our tangible net worth was $307.2 million at June 30, 2009 and we were required to maintain a minimum net worth of $350.0 million for this financial institution. We have obtained a waiver of this covenant for June 30, 2009 from this financial institution and the covenant was subsequently amended in conjunction with the debt restructuring with this financial institution as previously disclosed.

***Contractual Commitments***

As of June 30, 2009, we had the following material contractual obligations (payments in thousands):

| Contractual Obligations | Payments Due by Period (1) | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2009 | 2010 | 2011 | 2012 | 2013 | Thereafter | Total |
| Notes payable (2) | $ 22,756 | $ 29,135 | $ 21,000 | $ 319,137 | $ — | $ 50,158 | $ 442,186 |
| Collateralized debt obligations (3) | 80,796 | 47,766 | 196,425 | 788,613 | — | — | 1,113,600 |
| Repurchase agreements | — | 4,388 | — | — | — | — | 4,388 |
| Trust preferred Securities (4) | — | — | — | — | — | 259,174 | 259,174 |
| Mortgage note payable | — | — | — | 41,440 | — | — | 41,440 |
| Outstanding unfunded commitments (5) | 22,735 | 31,622 | 12,599 | 1,201 | 401 | 723 | 69,281 |
| Totals | $126,287 | $112,911 | $230,024 | $1,150,391 | $ 401 | $310,055 | $1,930,069 |

(1) Represents amounts due based on contractual maturities.

(2) In July 2009, we amended and restructured our term credit agreements, revolving credit agreement and working capital facility with Wachovia Bank, National Association described above in "*Debt Facilities*," extending the maturity dates for three years, which is reflected in this table.

(3) Comprised of $261.8 million of CDO I debt, $331.6 million of CDO II debt and $520.2 million of CDO III debt with a weighted average remaining maturity of 1.65, 2.62 and 3.04 years, respectively, as of June 30, 2009. In the first and second quarters of 2009, we repurchased, at a discount, approximately $34.9 million of investment grade notes originally issued by our CDO I, CDO II and CDO III issuers and recorded a reduction of the outstanding debt balance of $34.9 million.

(4) In the first quarter of 2009, we repurchased, at a discount, approximately $9.4 million of investment grade rated junior subordinated notes originally issued by our issuing entity and recorded a reduction of the outstanding debt balance of $9.4 million.

(5) In accordance with certain loans and investments, we have outstanding unfunded commitments of $69.3 million as of June 30, 2009, 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. In relation to the $69.3 million outstanding balance at June 30, 2009, our restricted cash balance contained approximately $31.3 million of cash held to fund the portion of the unfunded commitments for loans financed by our CDO vehicles.

***Management Agreement***

*Base Management Fees.* In exchange for the services that ACM provides us pursuant to the management agreement, we historically paid 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 was not calculated based on the manager's performance or the types of assets it selects for investment on our behalf, but it was affected by the performance of these assets because it is based on the value of our operating partnership's equity.

*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.

*Origination Fees.* Our manager was 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 had an initial term of two years and was renewable automatically for an additional one year period every year thereafter, unless terminated with six months' prior written notice. If we terminated or elected not to renew the management agreement in order to manage our portfolio internally, we were 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 terminated or elected not to renew the management agreement for any other reason, including a change of control of us, we were 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.

On August 6, 2009, we amended our management agreement with ACM. The amendment was negotiated by a special committee of our Board of Directors, consisting solely of independent directors and approved unanimously by all of the independent directors. JMP Securities LLC served as financial advisor to the special committee and Skadden, Arps, Slate, Meagher & Flom LLP served as its special counsel. The agreement includes the following new terms:

- The existing base management fee structure, which is calculated as a percentage of our equity, will be replaced with an arrangement whereby we will reimburse the manager for its actual costs incurred in managing our business based on the parties' agreement in advance on an annual budget with subsequent quarterly true-ups to actual costs. This change was adopted retroactively to January 1, 2009 and we estimate the 2009 base management fee will be in the range of $8.0 million to $9.0 million. Concurrent with this change, all future origination fees on investments will be retained by us as opposed to the manager earning up to the first one percent of all originations fees previously. In addition, we will make a $3.0 million payment to the manager in consideration of expenses incurred by the manager in 2008 in managing our business and certain other services. These changes were accounted for prospectively as a change in accounting estimate and a recognized subsequent event.
- The percentage hurdle for the incentive fee will be applied on a per share basis to the greater of $10.00 and the average gross proceeds per share, whereas the existing management agreement provides for such percentage hurdle to be applied only to the average gross proceeds per share. In addition, only 60% of any loan loss and other reserve recoveries will be eligible to be included in the incentive fee calculation, which will be spread over a three year period, whereas the existing management agreement does not limit the inclusion of such recoveries in the incentive fee calculation.
- The amended management agreement allows us to consider, from time to time, the payment of additional incentive fees to the manager for accomplishing certain specified corporate objectives.
- The amended management agreement modifies and simplifies the provisions related to the termination of the agreement and any related fees payable in such instances, including for internalization, with a termination fee of $10.0 million, rather than a multiple of base and incentive fees as previously existed.
- The amended management agreement will remain in effect until December 31, 2010, and will be renewed automatically for successive one-year terms thereafter.

We incurred $6.3 million and $7.0 million of base management fees for services rendered in the three and six months ended June 30, 2009, respectively. We incurred $0.9 million and $1.8 million of base management fees for services rendered in the three and six months ended June 30, 2008, respectively.

For the three and six months ended June 30, 2009, ACM did not earn an incentive compensation installment. For the three and six months ended June 30, 2008, ACM received incentive compensation installments of $8.5 million and $10.2 million, respectively. The $10.2 million included a $7.3 million deferred management fee recorded in the second quarter of 2008 related to the incentive compensation fee recognized from the monetization of the POM transaction in June 2008, which subsequently closed in the second quarter of 2009. In 2008, the $7.3 million deferred incentive compensation fee was paid in 355,903 shares of common stock and $4.1 million paid in cash, and was reclassified to prepaid management fees. In accordance with the amended management agreement, installments of the annual incentive compensation are subject to quarterly recalculation and potential reconciliation at the end of the 2009 fiscal year and any overpayments are required to be repaid in accordance with the management agreement. See Note 6 of the "Notes to the Consolidated Financial Statements" set forth in Item 1 hereof for further details.

In addition, during the six months ended June 30, 2008, ACM received incentive compensation installments totaling $2.9 million, of which $1.4 million was paid in 116,680 shares of common stock and $1.5 million paid in cash. For the year ended December 31, 2008, ACM did not earn an incentive compensation fee and an overpayment of the incentive fee was recorded and included in due from related party in the amount of $2.9 million. In June, 2009, ACM repaid the $2.9 million in accordance with the amended management agreement described above. Additionally, in 2007, ACM received an incentive compensation installment totaling $19.0 million which was recorded as prepaid management fees related to the incentive compensation management fee on $77.1 million of deferred revenue recognized on the transfer of control of the 450 West 33rd Street property, of one of our equity affiliates.

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, and any overpayments are required to be repaid in accordance with the amended management agreement. 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.

***Related Party Transactions***

Due to related party was $4.7 million at June 30, 2009 and consisted primarily of $5.8 million of base management fees. The balance also included $1.1 million of escrows due from ACM related to a second quarter 2009 foreclosed real estate asset. At December 31, 2008, due to related party was $1.0 million and consisted of $0.8 million of base management fees and $0.2 million of unearned fees.

At June 30, 2009, due from related party was reduced to zero due to the repayment by ACM of a $2.9 million overpayment of incentive management compensation from 2008. At December 31, 2008, due from related party was $2.9 million as a result of this overpayment of incentive management compensation based on the results of the twelve months ended December 31, 2008. Refer to the section "Management Agreement" above for further details.

During the first quarter of 2009, we purchased from ACM, approximately $8.8 million of investment grade rated bonds originally issued by two of our three CDO issuing entities and approximately $9.4 million of junior subordinated notes originally issued by a wholly-owned subsidiary of our operating partnership for a net gain on early extinguishment of debt of $13.8 million. At March 31, 2009, ACM owned $11.3 million of CDO notes originally issued by our CDOs that were purchased for $5.0 million from third party investors in 2008. During the second quarter of 2009, we purchased from ACM the remaining $11.2 million of CDO bonds, at a discount and net of a principal payment, and recorded a gain on early extinguishment of debt of $6.5 million.

During the fourth quarter of 2008, we borrowed $4.2 million from our manager, ACM. At December 31, 2008, we had outstanding borrowings due to ACM totaling $4.2 million, which was recorded in notes payable — related party. In January 2009, the loan was repaid in full.

We are dependent upon our manager (ACM), with whom we have a conflict of interest, 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, 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 92% 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 approximately 5.4 million common shares, representing 21.2% of the voting power of its outstanding stock as of June 30, 2009.

***Funds from Operations***

We are presenting funds from operations (FFO) because we believe it to be an important supplemental measure of our operating performance in that it is frequently used by analysts, investors and other parties in the evaluation of real estate investment trusts (REITs). We also use FFO for the calculation of the incentive management fee for our management company (ACM). The revised White Paper on FFO approved by the Board of Governors of the National Association of Real Estate Investment Trusts, or NAREIT, in April 2002 defines FFO as net income (loss) attributable to Arbor Realty Trust, Inc. (computed in accordance with generally accepted accounting principles in the United States (GAAP)), excluding gains (losses) from sales of depreciated real properties, plus real estate related depreciation and amortization and after adjustments for unconsolidated partnerships and joint ventures. We consider gains and losses on the sales of real estate investments to be a normal part of our recurring operating activities in accordance with GAAP and should not be excluded when calculating FFO.

FFO is not intended to be an indication of our cash flow from operating activities (determined in accordance with GAAP) or a measure of our liquidity, nor is it entirely indicative of funding our cash needs, including our ability to make cash distributions. Our calculation of FFO may be different from the calculation used by other companies and, therefore, comparability may be limited.

FFO for the three and six months ended June 30, 2009 and 2008 are as follows:

| (Unaudited) | Three Months Ended June 30, 2009 | Three Months Ended June 30, 2008 | Six Months Ended June 30, 2009 | Six Months Ended June 30, 2008 |
|---|---|---|---|---|
| Net (loss) income attributable to Arbor Realty Trust Inc., GAAP basis | $(48,556,995) | $11,728,006 | $(52,810,733) | $24,432,797 |
| Add: | | | | |
| Noncontrolling interest in operating partnership | — | 2,117,464 | — | 4,450,754 |
| Depreciation — real estate owned | 283,022 | 170,913 | 566,044 | 170,913 |
| Depreciation — investment in equity affiliates | 214,599 | 750,532 | 419,923 | 750,532 |
| Funds from operations ("FFO") | $(48,059,374) | $14,766,915 | $(51,824,766) | $29,804,996 |
| | | | | |
| Diluted FFO per common share | $ (1.90) | $ 0.60 | $ (2.05) | $ 1.21 |
| Diluted weighted average shares outstanding | 25,333,564 | 24,721,660 | 25,238,515 | 24,562,520 |

## Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

### Market Conditions

We are subject to market changes in the debt and secondary mortgage markets. These markets are currently experiencing disruptions, which could have a short-term adverse impact on our earnings and financial condition.

Current conditions in the debt markets include reduced liquidity and increased risk adjusted premiums. These conditions may increase the cost and reduce the availability of debt. We attempt to mitigate the impact of debt market disruptions by obtaining adequate debt facilities from a variety of financing sources. There can be no assurance, however, that we will be successful in these efforts, that such debt facilities will be adequate or that the cost of such debt facilities will be at similar terms.

The secondary mortgage markets are also currently experiencing disruptions resulting from reduced investor demand for collateralized debt obligations and increased investor yield requirements for these obligations. In light of these conditions, we currently expect to finance our loan and investment portfolio with our current capital and debt facilities.

### 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, events such as natural disasters including hurricanes and earthquakes, acts of war and/or terrorism (such as the events of September 11, 2001) and others that may cause unanticipated and uninsured performance declines and/or losses to us or the owners and operators of the real estate securing our investment; 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 delays, 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 reducing the value of collateral, and a lack of liquidity in the market, could reduce 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 our loans, securities held-to-maturity and liabilities as of June 30, 2009, and assuming the balances of these loans, securities and liabilities remain unchanged for the subsequent twelve months, a 0.25% increase in LIBOR would decrease our annual net income and cash flows by approximately $0.3 million. This is primarily due to various interest rate floors that are in effect at a rate that is above a 0.25% increase in LIBOR which would limit the effect of a 0.25% increase, and increased expense on variable rate debt, partially offset by 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 0.25% increase. Based on the loans, securities held-to-maturity and liabilities as of June 30, 2009, and assuming the balances of these loans, securities and liabilities remain unchanged for the subsequent twelve months, a 0.25% decrease in LIBOR would increase our annual net income and cash flows by approximately $0.5 million. This is primarily due to various interest rate floors which limit the effect of a decrease on interest income and decreased expense on variable rate debt, partially offset by our interest rate swaps that effectively converted 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 0.25% decrease.

Based on the loans, securities held-to-maturity and liabilities as of December 31, 2008, and assuming the balances of these loans, securities and liabilities remain unchanged for the subsequent twelve months, a 0.5% increase in LIBOR would decrease our annual net income and cash flows by approximately $2.6 million. This is primarily due to various interest rate floors that are in effect at a rate that is above a 0.5% increase in LIBOR which would limit the effect of a 0.5% increase, and increased expense on variable rate debt, partially offset by 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 0.5% increase. Based on the loans, securities held-to-maturity and liabilities as of December 31, 2008, and assuming the balances of these loans, securities and liabilities remain unchanged for the subsequent twelve months, a 0.5% decrease in LIBOR would increase our annual net income and cash flows by approximately $1.8 million. This is primarily due to various interest rate floors which limit the effect of a decrease on interest income and decreased expense on variable rate debt, partially offset by our interest rate swaps that effectively converted 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 decrease.

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.

In connection with our CDOs described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” we entered into interest rate swap agreements to hedge the 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.

We had ten of these interest rate swap agreements outstanding that had combined notional values of $1.2 billion and $1.3 billion at June 30, 2009 and December 31, 2008, respectively. The market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. If there were a 25 basis point and 50 basis point increase in forward interest rates as of June 30, 2009 and December 31, 2008, respectively, the value of these interest rate swaps would have decreased by approximately $0.1 million for both periods. If there were a 25 basis point and 50 basis point decrease in forward interest rates as of June 30, 2009 and December 31, 2008, respectively, the value of these interest rate swaps would have increased by approximately $0.1 million for both periods.

We also have interest rate swap agreements outstanding to hedge current and outstanding LIBOR based debt relating to certain fixed rate loans within our portfolio. We had 34 of these interest rate swap agreements outstanding that had a combined notional value of $722.3 million as of June 30, 2009 compared to 33 interest rate swap agreements outstanding with combined notional values of $689.9 million as of December 31, 2008. The fair market value of these interest rate swaps is dependent upon existing market interest rates and swap spreads, which change over time. If there had been a 25 basis point and 50 basis point increase in forward interest rates as of June 30, 2009 and December 31, 2008, respectively, the fair market value of these interest rate swaps would have increased by approximately $6.9 million and $15.7 million, respectively. If there were a 25 basis point and 50 basis

point decrease in forward interest rates as of June 30, 2009 and December 31, 2008, respectively, the fair market value of these interest rate swaps would have decreased by approximately $7.0 million and $16.2 million, respectively.

We have, in the past, entered into various interest rate swap agreements in connection with the issuance of variable rate junior subordinated notes. These swaps had total notional values of $236.5 million as of December 31, 2008. We no longer utilize interest rate swaps for the newly issued junior subordinated notes exchanged for the aforementioned junior subordinated notes due to the modified interest payment structure. If there had been a 50 basis point increase in forward interest rates as of December 31, 2008, the fair market value of these interest rate swaps would have increased by approximately $3.3 million. If there were a 50 basis point decrease in forward interest rates as of December 31, 2008, the fair market value of these interest rate swaps would have decreased by approximately $3.4 million.

Certain of our interest rate swaps, which are designed to hedge interest rate risk associated with a portion of our loans and investments, could require the funding of additional cash collateral for changes in the market value of these swaps. Due to the prolonged volatility in the financial markets that began in 2007, the value of these interest rate swaps have declined substantially. As a result, at June 30, 2009 and December 31, 2008, we funded approximately $19.2 million and $46.5 million, respectively, in cash related to these swaps. If we continue to experience significant changes in the outlook of interest rates, these contracts could continue to decline in value, which would require additional cash to be funded. However, at maturity the value of these contracts return to par and all cash will be recovered. If we do not have available cash to meet these requirements, this could result in the early termination of these interest rate swaps, leaving us exposed to interest rate risk associated with these loans and investments, which could adversely impact our financial condition.

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.

**Item 4. CONTROLS AND PROCEDURES**

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

There have not been any changes in our internal controls over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during our most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II. OTHER INFORMATION**

**Item 1. LEGAL PROCEEDINGS**

None.

**Item 1A. RISK FACTORS**

There have been no material changes to the risk factors set forth in Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2008.

**Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

None.

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.

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

The annual meeting of stockholders of the Company was held on June 18, 2009, for the purpose of considering and acting upon the following:

(1) **Election of Directors.** Three Class III directors were elected and the votes cast for or against/withheld were as follows:

| | Aggregate Votes | |
|---|---|---|
| Nominees | For | Withheld |
| Walter K. Horn | 21,832,968 | 1,450,733 |
| William Helmreich | 21,490,908 | 1,792,793 |
| Karen K. Edwards | 21,854,373 | 1,429,328 |

The continuing directors of the Company are John J. Bishar, Jr., Archie R. Dykes, Joseph Martello, Kyle A. Permut, Ivan Kaufman, C. Michael Kojaian and Melvin F. Lazar.

(2) **Approval of Amendment and Restatement of 2003 Omnibus Stock Incentive Plan.** Amendment and restatement was approved. The votes cast for, against and abstentions were as follows:

| | Aggregate Votes | | |
|---|---|---|---|
| Proposal | For | Against | Abstained |
| Approval of amendment and restatement of the Company's 2003 Omnibus Stock Incentive Plan, as amended and restated | 10,673,481 | 2,504,159 | 138,566 |

(3) **Ratification of Auditors.** Ernst & Young LLP was ratified as the Company's independent registered public accounting firm for fiscal year 2009. The votes cast for, against and abstentions were as follows:

| | Aggregate Votes | | |
|---|---|---|---|
| Proposal | For | Against | Abstained |
| Ratification of Ernst & Young LLP as the Company's independent registered public accounting firm for fiscal year 2009 | 22,641,548 | 478,840 | 163,313 |

**Item 5. OTHER INFORMATION**

On August 6, 2009, the Company, ALRP and Arbor Realty SR, Inc. entered into an amended and restated management agreement with ACM, as manager, which amends and replaces the existing management agreement with ACM.

Pursuant to the amended management agreement, the Company will no longer pay ACM a base management fee, which was calculated as a percentage of the Company's equity, but instead the Company will reimburse ACM for its actual costs incurred in managing the Company's business based on the parties' agreement in advance on an annual budget with subsequent quarterly true-ups to actual costs. This change will be adopted retroactively to January 1, 2009 and the Company estimates the 2009 base management fee will be in the range of $8.0 million to $9.0 million. Concurrent with this change, all future origination fees on investments will be retained by the Company as opposed to the manager earning up to the first one percent of all originations fees in the existing agreement. In addition, the Company will make a $3.0 million payment to the manager in consideration of expenses incurred by the manager in 2008 in managing the Company's business and certain other services.

Pursuant to the amended management agreement, the Company will continue to pay ACM an incentive compensation fee, but the percentage hurdle for the incentive fee will be applied on a per share basis to the greater of $10.00 and the average gross proceeds per share, whereas the existing management agreement provided for such percentage hurdle to be applied only to the average gross proceeds per share. In addition, only 60% of any loan loss and other reserve recoveries will be eligible to be included in the incentive fee calculation, which will be spread over a three year period, whereas the existing management agreement did not limit the inclusion of such recoveries in the incentive fee calculation. The amended management agreement will allow the Company to consider, from time to time, the payment of additional incentive fees to the manager for accomplishing certain specified corporate objectives.

The amended management agreement modifies and simplifies the provisions related to the termination of the agreement and any related fees payable in such instances, including for internalization, with a termination fee of $10.0 million, rather than a multiple of base and incentive fees as previously existed.

The amended management agreement will remain in effect until December 31, 2010, and will be renewed automatically for successive one-year terms thereafter.

**Item 6. EXHIBITS**

In reviewing the agreements included as exhibits to this Quarterly Report on Form 10-Q, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about Arbor or the other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about Arbor may be found elsewhere in this report and Arbor's other public filings, which are available without charge through the SEC's website at http://www.sec.gov.

| Exhibit Number | Description |
|---|---|
| 3.1 | Articles of Incorporation of Arbor Realty Trust, Inc. * |
| 3.2 | Articles of Amendment to Articles of Incorporation of Arbor Realty Trust, Inc. ▲ |
| 3.3 | Articles Supplementary of Arbor Realty Trust, Inc. * |
| 3.4 | Amended and Restated Bylaws of Arbor Realty Trust, Inc. ▲▲ |
| 4.1 | Form of Certificate for Common Stock. * |
| 10.1 | Second and Restated Management Agreement, dated August 6, 2009, 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 18, 2005, by and among Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc. and Arbor Realty GPOP, Inc. † |
| 10.5 | Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Commercial Mortgage, LLC. * |
| 10.6 | 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. * |
| 10.7 | 2003 Omnibus Stock Incentive Plan, (as amended and restated on June 18, 2009). |
| 10.8 | Form of Restricted Stock Agreement. * |
| 10.9 | Benefits Participation Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Management, LLC. * |
| 10.10 | Form of Indemnification Agreement. * |
| 10.11 | Structured Facility Warehousing Credit and Security Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership and Residential Funding Corporation. * |
| 10.12 | 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. ** |

| Exhibit Number | Description |
|---|---|
| 10.13 | Master Repurchase Agreement, dated as of November 18, 2002, by and between Nomura Credit and Capital, Inc. and Arbor Commercial Mortgage, LLC. * |
| 10.14 | 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. † |
| 10.15 | 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. † |
| 10.16 | 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. ‡ |
| 10.17 | Master Repurchase Agreement, dated as of October 26, 2006, by and between Column Financial, Inc. and Arbor Realty SR, Inc. and Arbor TRS Holding Company Inc., as sellers, Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, as guarantors, and Arbor Realty Mezzanine LLC. ‡‡‡ |
| 10.18 | 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. † |
| 10.19 | 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. ‡ |
| 10.20 | Indenture, dated December 14, 2006, by and between Arbor Realty Mortgage Securities Series 2006-1, Ltd., Arbor Realty Mortgage Securities Series 2006-1 LLC, Arbor Realty SR, Inc. and Wells Fargo Bank, National Association. ◆ |
| 10.21 | Note Purchase and Placement Agreement, dated December 14, 2006, by and between Arbor Realty Mortgage Securities Series 2006-1, Ltd., Arbor Realty Mortgage Securities Series 2006-1 LLC and Wachovia Capital Markets, LLC and Credit Suisse Securities (USA) LLC. ◆ |
| 10.22 | Note Purchase Agreement, dated December 14, 2006, by and between Arbor Realty Mortgage Securities Series 2006-1, Ltd., Arbor Realty Mortgage Securities Series 2006-1 LLC and Wells Fargo Bank, National Association. ◆ |
| 10.23 | Master Repurchase Agreement, dated as of March 30, 2007, by and between Variable Funding Capital Company LLC, as purchaser, Wachovia Bank, National Association, as swingline purchaser, Wachovia Capital Markets, LLC, as deal agent, Arbor Realty Funding LLC, Arbor Realty Limited Partnership and ARSR Tahoe, LLC, as sellers, Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Arbor Realty SR, Inc., as guarantors. ◆◆ |
| 10.24 | Credit Agreement, dated November 6, 2007, by and between Arbor Realty Funding, LLC, ARSR Tahoe, LLC, Arbor Realty Limited Partnership, and ART 450 LLC, as Borrowers, Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, and Arbor Realty SR, Inc., as Guarantors, and Wachovia Bank, National Association, as Administrative Agent. ◆◆◆ |
| 10.25 | Equity Placement Program Sales Agreement, dated August 15, 2008, between Arbor Realty Trust, Inc. and JMP Securities LLC. ❖❖ |
| 10.26 | Junior Subordinated Indenture, dated May 6, 2009, between Arbor Realty SR, Inc. and The Bank of New York Mellon Trust Company, National Association, as Trustee relating to $29,400,000 aggregate principal amount of Junior Subordinated Notes due 2034. ❖❖❖ |
| 10.27 | Junior Subordinated Indenture, dated May 6, 2009, between Arbor Realty SR, Inc. and The Bank of New York Mellon Trust Company, National Association, as Trustee relating to $168,000,000 aggregate principal amount of Junior Subordinated Notes due 2034. ❖❖❖ |

| Exhibit Number | Description |
|---|---|
| 10.28 | Junior Subordinated Indenture, dated May 6, 2009, among Arbor Realty SR, Inc. Arbor Realty Trust, Inc., as Guarantor, and Wilmington Trust Company, as Trustee, relating to $21,224,000 aggregate principal amount of Junior Subordinated Notes due 2035. ❖❖❖ |
| 10.29 | Junior Subordinated Indenture, dated May 6, 2009, among Arbor Realty SR, Inc. Arbor Realty Trust, Inc., as Guarantor, and Wilmington Trust Company, as Trustee, relating to $2,632,000 aggregate principal amount of Junior Subordinated Notes due 2036. ❖❖❖ |
| 10.30 | Junior Subordinated Indenture, dated May 6, 2009, among Arbor Realty SR, Inc. Arbor Realty Trust, Inc., as Guarantor, and Wilmington Trust Company, as Trustee, relating to $47,180,000 aggregate principal amount of Junior Subordinated Notes due 2037. ❖❖❖ |
| 10.31 | Exchange Agreement, dated May 6, 2009, among Arbor Realty Trust, Inc., Arbor Realty SR, Inc., Kodiak CDO II, Ltd., Attentus CDO I, Ltd. and Attentus CDO III, Ltd. ❖❖❖ |
| 10.32 | Exchange Agreement, dated May 6, 2009, among Arbor Realty SR, Inc., Arbor Realty Trust, Inc., Taberna Preferred Funding I, Ltd., Taberna Preferred Funding II, Ltd., Taberna Preferred Funding III, Ltd., Taberna Preferred Funding IV, Ltd., Taberna Preferred Funding V, Ltd., Taberna Preferred Funding VII, Ltd. and Taberna Preferred Funding VIII, Ltd. ❖❖❖ |
| 10.33 | First Amended and Restated Credit Agreement, dated as of July 23, 2009, among Arbor Realty Funding, LLC, a Delaware limited liability company, as a Borrower, ARSR Tahoe, LLC, a Delaware limited liability company, as a Borrower, Arbor ESH II LLC, a Delaware limited liability company, as a Borrower, Arbor Realty Limited Partnership, a Delaware limited partnership, as a Borrower and a Guarantor, ART 450 LLC, a Delaware limited liability company, as a Borrower, Arbor Realty Trust, Inc., a Maryland corporation, as a Guarantor, Arbor Realty SR, Inc., a Maryland corporation, as a Borrower and a Guarantor, the several Lenders from time to time a party thereto, and Wachovia Bank, National Association, a national banking association, as administrative agent for the Lenders thereunder. |
| 10.34 | First Amended and Restated Revolving Loan Agreement, dated as of July 23, 2009, among Arbor Realty Trust, Inc., a Maryland corporation, 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, Arbor Realty Collateral Management, LLC, as Borrowers, the several Lenders from time to time a party thereto, and Wachovia Bank, National Association, a national banking association, as administrative agent for the Lenders thereunder and initial lender. |
| 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. |

**Exhibit Index**

▲ Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007.

▲▲ Incorporated by reference to Exhibit 99.2 of the Registrant's Current Report on Form 8-K (No. 001-32136) which was filed with the Securities and Exchange Commission on December 11, 2007.

* 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 of Form 10-Q for the quarter ended September 30, 2004.

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

‡ Incorporated by reference to the Registrant's Annual Report of Form 10-K for the year ended December 31, 2005.

‡‡ Incorporated by reference to the Registrant's Quarterly Report of Form 10-Q for the quarter ended June 30, 2005.

‡‡‡ Incorporated by reference to the Registrant's Quarterly Report of Form 10-Q for the quarter ended September 30, 2006.

◆ Incorporated by reference to the Registrant's Annual Report of Form 10-K for the year ended December 31, 2006.

◆◆ Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2007.

◆◆◆ Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q for the quarter ended September 30, 2007.

❖ Incorporated by reference to the Registrant's Quarterly Report of Form 10-Q for the quarter ended June 30, 2008.

❖❖ Incorporated by reference to Exhibit 1.1 of the Registrant's Current Report on Form 8-K (No. 001-32136) which was filed with the Securities and Exchange Commission on August 15, 2008.

❖❖❖ Incorporated by reference to the Registrant's Quarterly Report of Form 10-Q for the quarter ended March 31, 2009.

In reviewing the agreements included as exhibits to this Quarterly Report on Form 10-Q, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about Arbor or the other parties to the agreements. The agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. Additional information about Arbor may be found elsewhere in this report and Arbor's other public filings, which are available without charge through the SEC's website at http://www.sec.gov.

**SIGNATURES**

**Pursuant to the requirements 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:**

**ARBOR REALTY TRUST, INC**.
(Registrant)

By: /s/ Ivan Kaufman

Name: Ivan Kaufman
Title: Chief Executive Officer

By: /s/ Paul Elenio

Name: Paul Elenio
Title: Chief Financial Officer

Date: August 7, 2009

**Exhibit 10.1**

**SECOND AMENDED AND RESTATED**
**MANAGEMENT AND ADVISORY AGREEMENT**

THIS SECOND AMENDED AND RESTATED MANAGEMENT AND ADVISORY AGREEMENT is made as of August 6, 2009 (the "Agreement") by and among ARBOR REALTY TRUST, INC., a Maryland corporation ("Parent REIT"), ARBOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership ("Operating Partnership"), ARBOR REALTY SR, INC., a Maryland corporation ("Sub-REIT" and together with the Parent REIT and the Operating Partnership, the "Company"), and ARBOR COMMERCIAL MORTGAGE, LLC, a New York limited liability company (together with its permitted assigns, "Manager").

**W I T N E S S E T H :**

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

WHEREAS, Parent REIT, Manager, the Operating Partnership and the Sub-REIT agreed to amend and restate the Original Management Agreement by entering into the Amended and Restated Management and Advisory Agreement, dated as of January 18, 2005, as amended on February 17, 2007, and as further amended on June 18, 2008 (as amended, the "First Amended Management Agreement").

WHEREAS, Parent REIT, Manager, Operating Partnership and Sub-REIT desire to amend and restate the First Amended Management Agreement in its entirety on the terms and conditions hereinafter set forth.

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

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

(a) "2009 Incentive Fee" has the meaning assigned in Section 8(c)(v)(A).

(b) "450 West 33rd Street Incentive Fee" means the Company's payment of $19,047,949 to the Manager in August 2007 in accordance with the terms of the amendment, dated February 17, 2007, to the First Amended Management Agreement.

(c) "450 West 33rd Street Guaranty" means, collectively, (1) the guaranty by Sub-REIT pursuant to that certain Guaranty, dated as of June 12, 2007, by the parties identified as Guarantors on Exhibit A thereto to 450 Holding LLC and for the benefit of Wachovia Bank, National Association, a true and correct copy of which is attached hereto as Annex I, and (2) [Sub-REIT]'s obligations as a member of 450 Holding LLC pursuant to that certain Guaranty, dated as of June 12, 2007, by 450 Holding LLC to Wachovia Bank, National Association, a true and correct copy of which is attached hereto as Annex II.

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

(e) "Agreed-Upon Manager Budget" has the meaning assigned in Section 8(a)(i)(A).

(f) "Approved Bonus Amount" has the meaning assigned in Section 8(a)(iv)(B).

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

(h) "Calculation Delivery Date" has the meaning assigned in Section 8(c)(iv).

(i) "CDO Special Servicing Fees" means any fees and other compensation payable to any servicer or special servicer of any collateralized debt obligation of any Subsidiary.

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

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

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

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

(n) "Company Cause" means any reason for termination of this Agreement set forth in Section 13(c).

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

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

(q) "Compensation Committee" means the Compensation Committee of the Board of Directors.

(r) "Cost Reimbursement Installment" has the meaning assigned in Section 8(a)(ii).

(s) "Covered Manager Employee" has the meaning assigned in Section 8(a)(i)(A).

(t) "Credit Committee" means the Company's Credit Committee consisting of the Company's Chief Financial Officer and Chief Credit Officer and certain other officers of the Company and the Manager.

(u) "Cure Period" has the meaning assigned in Section 13(e).

(v) "Discretionary Bonus Recipients" has the meaning assigned in Section 8(a)(iv)(A).

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

(x) "Effective Manager Termination Date" has the meaning assigned in Section 13(d).

(y) "Excess Funds" has the meaning assigned in Section 2(g).

(z) "Excess Quarterly Costs" has the meaning assigned in Section 8(a)(i)(C).

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

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

(i) for the calendar quarter and corresponding fiscal year in which Parent REIT records a book gain on the 450 West 33rd Street Investment, the amount of such book gain will be excluded from Funds from Operations in such calendar quarter and corresponding fiscal year, and

(ii) if an allowance for a loss or an impairment of an Investment that is a Company Target Investment is recognized in the Company's income statement prepared in accordance with GAAP, any subsequent recovery of such loss or impairment that is recorded in the Company's income statement prepared in accordance with GAAP shall be excluded from Funds from Operations, except as follows: (A) 20% of the amount of such subsequent recovery will be included in Funds from Operations for the remainder of the fiscal year in which such subsequent recovery occurs, applied proportionally for each remaining quarter in such fiscal year, (B) an additional 20% of such amount shall be included in Funds from Operations for the next succeeding year at the rate of one-fourth per calendar quarter, and (C) an additional 20% of such amount shall be included in Funds from Operations for the second succeeding year at the rate of one-fourth per calendar quarter.

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

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

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

(ff) "Incentive Fee" has the meaning assigned in Section 8(c)(i).

(gg) "Incentive Fee Payment" has the meaning assigned in Section 8(c)(ii).

(hh) "Includable Gains" means gains from debt restructurings and sales of properties, subject to the limitation on the inclusion of certain gains in Funds From Operations set forth in Section 1(bb)(ii) with respect to any subsequent recovery of prior recognized losses and impairments of any such applicable debt restructurings and sales of properties.

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

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

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

(ll) "Management Fee" means the Cost Reimbursement plus the Incentive Fee.

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

(nn) "Manager Cause" means any reason for termination of this Agreement set forth in Section 13(e).

(oo) "Manager Change of Control" means a change in the direct or indirect (i) beneficial ownership of more than fifty percent (50%) of the combined voting power (of any Person together with any affiliates of such Person or Persons otherwise associated or acting in concert with such Person) of Manager's then outstanding equity interests, or (ii) power to direct or control the management policies of Manager, whether through the ownership of beneficial equity interests, common directors or officers, by contract or otherwise. Manager Change of Control shall not include (A) transfer by the Principal of equity interests in the Manager or Arbor Management, LLC, the managing member of the Manager pursuant to the Operating Agreement of the Manager, to any immediate family member of the Principal as of the date of this Agreement, or to any estate or trust of which any immediate family member of the Principal as of the date of this Agreement is the beneficiary, (B) public offerings of the capital stock of Manager, or (C) any assignment of this Agreement by Manager as permitted hereby and in accordance with the terms hereof.

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

(qq) "Manager Multifamily Bridge Loans" means any bridge loan with respect to a multifamily property made by the Manager to a borrower seeking to obtain a longer term mortgage or other loan from the Manager pursuant to the Manager's Fannie Mae loan program.

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

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

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

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

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

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

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

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

(zz) "Prime Outlets Excess" has the meaning assigned in Section 8(c)(v)(A)(3).

(aaa) "Prime Outlets Incentive Fee" means the Company's payment of $7,292,448 to the Manager in August 2008 in accordance with the terms of the amendment, dated June 18, 2008, to the First Amended Management Agreement.

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

(ccc) "Proposed Manager Budget" has the meaning assigned in Section 8(a)(i)(A).

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

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

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

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

(hhh) "Supervisory Certification" has the meaning assigned in Section 8(a)(i)(C).

(iii) "Ten Year U.S. Treasury Rate" means the arithmetic average of the weekly average yield to maturity for actively traded current coupon U.S. Treasury fixed interest

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

(jjj) "Termination Fee" means an amount equal to ten million U.S. dollars ($10,000,000.00).

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

2. Appointment and Duties of Manager.

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

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

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

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

(iii) with respect to prospective investments by the Company and dispositions of Investments, conducting negotiations with real estate brokers, sellers and

purchasers, and their respective agents and representatives, investment bankers, mortgage bankers and owners of privately and publicly held real estate companies;

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

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

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

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

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

(ix) evaluating and recommending to the Board of Directors hedging strategies and, as the Board of Directors shall request or Manager shall deem appropriate, engaging in hedging activities on behalf of the Company, in a manner consistent with such strategies, as so modified from time to time, Parent REIT's status as a REIT, Sub-REIT's status as a REIT and the Guidelines;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Reporting Requirements.

(i) As frequently as Manager may deem necessary or advisable, or at the direction of the Board of Directors, Manager shall prepare, or cause to be prepared, with respect to any Investment (i) at the Company's sole cost and expense, an appraisal prepared by an independent real estate appraiser, (ii) reports and information on the Company's operations and Investment performance, and (iii) such other information reasonably requested by the Company. The Company shall pay all expenses, and reimburse Manager for Manager's expenses incurred on its behalf, in connection with the foregoing clauses (ii) and (iii) to the extent such expenses are reimbursable by the Company to Manager pursuant to Section 9.

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

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

(g) Excess Funds. Notwithstanding anything contained in this Agreement to the contrary, except to the extent that the payment of additional moneys is proven by the Company to have been required as a direct result of Manager's acts or omissions which result in the right of the Company to terminate this Agreement pursuant to Section 13(c) and except as expressly provided in Section 11(c), Manager shall not be required to expend money ("Excess Funds") in excess of that contained in any applicable Company Account or otherwise made available by the Company to be expended by Manager hereunder.

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

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

(a) Devotion of Time. Manager will provide the Company with a management team, including the Chief Executive Officer and the Chief Financial Officer of the Manager, to provide the management services to be provided by Manager to the Company hereunder, the members of which team shall devote such of their time to the management of the Company as the Independent Directors determine is necessary and appropriate, commensurate with the level of activity of the Company from time to time. The portion of the compensation of such officers payable by the Company pursuant to the Agreed-Upon Budget, as such Agreed Upon-Budget may be adjusted pursuant to the quarterly review contemplated in Section 8(a)(i)(C), shall reflect such determination. The Company shall have the benefit of Manager's best judgment and effort in rendering services and, in furtherance of the foregoing, Manager shall not undertake activities which, in its reasonable judgment, will substantially adversely affect the performance of its obligations under this Agreement.

(b) Additional Activities; Right of First Refusal. Except to the extent set forth in Section 3(a) and subject to the provisions of this Section 3(b), Manager and any of its affiliates, and any of the officers and employees of any of the foregoing (the "Manager Parties"), may engage in other businesses and render services of any kind to any other Person, including investment in, or advisory service to others investing in, Company Target Investments and other real estate and real estate-related transactions; provided, however, prior to any Manager Party engaging in transactions involving or rendering services relating to Company Target Investments other than on behalf of or to the Company, if (i) such transaction is consistent with the Company's investment objectives and within the Guidelines, and (ii) the parameters of the transaction are of a character which would not adversely affect the status of Parent REIT or Sub-REIT as REITs, Manager shall offer such investment opportunity to the Company by delivering to the Credit Committee a written description thereof containing the economic and other material terms of the transaction. The Credit Committee shall have five (5) days to accept or reject the offer by a majority vote of the members of the Credit Committee. If the Credit Committee

rejects the offer or does not respond to the offer within such five-day period, Manager shall present the investment opportunity to the Independent Directors who shall have five (5) days to accept or reject the offer by majority vote. If the Independent Directors reject the offer and allow Manager to pursue the investment opportunity or do not respond to the offer within such five-day period, any Manager Party may pursue the same provided the economic and other material terms thereof are not materially more beneficial to the applicable Manager Party than the economic and other material terms to the Company would have been under the transaction described in the original offer. If the economic and other material terms of the transaction to be engaged in by the applicable Manager Party are modified so that the benefits thereof to the applicable Manager Party are materially more beneficial to the applicable Manager Party than such terms to the Company would have been under the transaction described in the original offer, then Manager must offer the revised transaction opportunity to the Company and the provisions of this Section 3(b) shall apply to the revised offer as though it were an original offer. If the Company accepts, either by majority vote of the Credit Committee or the Independent Directors, an investment opportunity offered by Manager hereunder, the Company must reimburse Manager for its expenses relating thereto to the extent the same would be reimbursable by the Company to Manager pursuant to Section 9. Notwithstanding the foregoing, Manager may pursue investments in Manager Multifamily Bridge Loans, subject to the following: (i) the Manager obtains the prior approval of the Independent Directors to make Manager Multifamily Bridge Loans, and (ii) within 20 business days following each calendar quarter in which the Manger has made investments in any Manager Multifamily Bridge Loans, Manager provides the Independent Directors with a written report describing the type and amount of such Manager Multifamily Bridge Loans.

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

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

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

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

6. Records; Confidentiality.

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

(b) Confidentiality. Manager shall keep confidential any nonpublic information obtained in connection with the services rendered under this Agreement and shall not disclose any such information (or use the same except in furtherance of its duties under this Agreement), except: (i) with the prior written consent of the Board of Directors; (ii) to legal counsel, accountants and other professional advisors, so long as Manager informs such Persons of the confidential nature of such information and directs them to treat such information confidentially; (iii) to appraisers in the ordinary course of business; (iv) to governmental officials having jurisdiction over Manager; (v) as required by law or legal process to which Manager or any Person to whom disclosure is permitted hereunder is a party or in connection with Manager's assertion in any judicial or nonjudicial proceeding of any claim, counterclaim or defense against the Company; or (vi) information which has previously become available through the actions of a Person other than Manager not resulting from Manager's violation of this Section 6(b).

7. Obligations of Manager; Restrictions.

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

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

directors, officers, stockholders and employees shall not be liable to Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary, the Board of Directors, Parent REIT or Sub-REIT's stockholders or the Operating Partnership's partners for any act or omission by Manager, its directors, officers, stockholders or employees except as provided in Section 11.

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

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

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

(f) Insurance. Manager shall at all times during the term of this Agreement (including the initial term and any renewal term) maintain a tangible net worth equal to or greater than $3,000,000. In addition, Manager shall maintain "errors and omissions" insurance coverage and such other insurance coverage which is customarily carried by property, asset and investment managers performing functions similar to those of Manager under this Agreement with respect to assets similar to the Investments of the Company, in an amount which is comparable to that customarily maintained by other managers or servicers of similar assets.

8. Compensation.

(a) Cost Reimbursement.

(i) General. Subject to the provisions of this Section 8(a), the Company shall reimburse the Manager for the costs incurred by the Manager in performing the duties set forth in Section 2 (other than any Expenses incurred on behalf of the Company which shall be reimbursed pursuant to Section 9) pursuant to the following procedures and guidelines.

(A) On or prior to December 1st of each fiscal year (beginning on December 1, 2009), Manager shall submit to the Independent Directors a proposed annual budget of Manager to perform the duties set forth in Section 2 in the immediately following fiscal year (the "Proposed Manager Budget"). The

Proposed Manager Budget should include a reasonably detailed description of each type and amount of cost expected to be incurred by Manager in performing such duties. Such costs may include pro rata allocations of Manager's costs for (1) the property and services of Manager expected to be utilized by the Company and (2) the base salaries and "annual bonus potential," if any, of each employee of the Manager expected to perform services on behalf of both the Company and Manager (a "Covered Manager Employee"). As soon as practicable after the Proposed Manager Budget is provided to the Independent Directors, the Independent Directors shall review the amount and type of costs included in the Proposed Manager Budget.

(B) On or prior to December 31st of each fiscal year (beginning on December 31, 2009), Manager and the Company each agree to use commercially reasonable efforts to agree upon the amount and type of each cost expected to be incurred by Manager in performing the duties set forth in Section 2 in the immediately following year that will be reimbursed by the Company (the "Agreed-Upon Manager Budget").

(C) Within forty-five (45) days after the last day of each calendar quarter beginning with the quarter ending March 31, 2010, Manager shall submit a report to the Independent Directors setting forth (1) Manager's actual costs to perform the duties set forth in Section 2 in such quarter, and (2) the amounts set forth in the Agreed-Upon Manager Budget allocable to such quarter. In addition, the Manager shall cause each supervisor of a Covered Manager Employee to certify to the Company whether or not there have been any material changes in the amount of time dedicated to the Company's business in such quarter (a "Supervisor Certification").

(1) If the total cost incurred by Manager to perform the duties set forth in Section 2 in any given quarter exceeds 110% of the amount set forth in the Agreed-Upon Manager Budget allocable to such quarter, excluding any annual bonus potential amounts for any Covered Manager Employee (the "Excess Quarterly Costs"), Manager may request that the Independent Directors reimburse the Manager for such Excess Quarterly Costs if Manager submits a written request to the Independent Directors describing the type and amount of such excess costs and Manager's business reasons for such excess costs. The Company may reimburse Manager for such Excess Quarterly Costs if (i) such Excess Quarterly Costs represent types of costs contemplated in the Agreed-Upon Manager Budget, and (ii) the Independent Directors determine, in their reasonable discretion, that Manager's business reason for the incurrence of the Excess Quarterly Costs is reasonable in the context of the performance of Manager's duties set forth in Section 2.

(2) If the total cost incurred by Manager to perform the duties set forth in Section 2 in any given quarter does not exceed 90% of the amount set forth in the Agreed-Upon Manager Budget allocable to

such quarter, excluding any annual bonus potential amounts for any Covered Manager Employee, Manager shall refund to the Company the difference between the actual amount incurred by Manager to perform the duties set forth in Section 2 in such quarter and the amount set forth in the Agreed-Upon Manager Budget allocable to such quarter, subject to an annual reconciliation of the actual costs incurred by the Manager to perform the duties set forth in Section 2 for each year.

(3) If the total cost incurred by Manager to perform the duties set forth in Section 2 in any given quarter is equal to an amount between 90% and 110% of the amount set forth in the Agreed-Upon Manager Budget allocable to such quarter, excluding any annual bonus potential amounts for any Covered Manager Employee, the Company shall continue to pay Manager 100% of the amount set forth in the Agreed-Upon Manager Budget allocable to such quarter, subject to an annual reconciliation of the actual costs incurred by the Manager to perform the duties set forth in Section 2 for each year.

(4) At the end of each fiscal year, the sum of the quarterly payments made to Manager pursuant to this Section 8(a)(i)(C) will be reconciled with the actual costs incurred by Manager for such fiscal year, excluding any annual bonus potential amounts for any Covered Manager Employees. If the sum of such quarterly payments is less than the lesser of (A) 100% of the Agreed-Upon Manager Budget for such fiscal year or the actual costs incurred by Manager, excluding any annual bonus potential amounts for any Covered Manager Employees, the Company shall pay such amount to Manager within three (3) business days of such reconciliation. If, as result of this reconciliation, the sum of such quarterly payments exceeds the lesser of 100% of the Agreed-Upon Manager Budget for such fiscal year or the actual costs incurred by Manager, excluding any annual bonus potential amounts for any Covered Manager Employees, Manager shall pay such amount to the Company within three (3) business days of such reconciliation.

(5) At the end of each fiscal year, the Company and Manager shall reconcile the Agreed-Upon Manager Budget with the actual costs incurred by the Manager, excluding any annual bonus potential amounts for any Covered Manager Employees. If, as a result of such annual reconciliation, it is determined that Manager's costs for such fiscal year exceed the Agreed-Upon Budget for such fiscal year, Manager may request that the Company reimburse Manager for such excess costs if Manager submits a written request to the Independent Directors describing the type and amount of such excess costs and Manager's business reasons for such excess costs. The Company may reimburse Manager for such excess costs if (i) such excess costs represent types of costs contemplated in the Agreed-Upon Manager Budget, and (ii) the Independent Directors determine, in their reasonable discretion, that Manager's business reason

for the incurrence of such excess costs is reasonable in the context of the performance of Manager's duties set forth in Section 2.

(ii) Cost Reimbursement Installments. Subject to clauses (i)(C) and (iii) of this Section 8(a), the Company shall pay the Manager one-twelfth (1/12) of the Agreed-Upon Manager Budget (other than any amounts identified as the "annual bonus potential" of any Covered Manager Employee) in cash on a monthly basis in arrears (each, a "Cost Reimbursement Installment") within twenty (20) days of the last day of the calendar month with respect to which such Cost Reimbursement Installment is payable.

(A) If the Company agrees to reimburse Manager for any Excess Quarterly Costs pursuant to Section 8(a)(i)(C), the Company shall pay Manager the agreed-upon amount for any prior periods within three (3) business days of such determination and the Company shall include the agreed-upon amount for any subsequent periods in the monthly Cost Reimbursement Installments payable to Manager immediately following such determination.

(B) The Cost Reimbursement Installment payable to Manager for any given calendar month shall be reduced by the dollar amount representing the aggregate of the amounts set forth in clauses (A), (B), (C) and (D) of Section 8(a)(iii) applicable to such month. If the aggregate of such amounts applicable to any month exceeds the amount of the Cost Reimbursement Installment otherwise payable for such month, the Company shall not pay Manager any Cost Reimbursement Installment for such month and shall retain the excess and apply it to reduce the Cost Reimbursement Installment otherwise payable to Manager for the next calendar month or months until fully applied. Upon the expiration or earlier termination of this Agreement, if any such excess amounts remain to be applied against a succeeding monthly Cost Reimbursement Installment, Manager shall pay to the Company the amount of such excess unapplied amounts.

(iii) Cost Reimbursement Credits.

(A) CDO Special Servicing Fees. Any CDO Special Servicing Fees payable to, or received by, Manager with respect to any period beginning on or after January 1, 2009 shall be retained by the Manager and the Cost Reimbursement Installment due to Manager for the month in which such fees were paid to Manager shall be reduced by an amount equal to one hundred percent (100%) of the amount of any such fees.

(B) Asset Management Services. The cost of services provided by the Company's Asset Management Group to Manager for which Manager is required to reimburse the Company pursuant to Section 1(c) of the Services Agreement shall be retained by the Manager and the Cost Reimbursement Installment due to Manager for the month in which such costs were incurred by the Company shall be reduced by an amount equal to one hundred percent (100%) of the amount of any such costs.

(C) Origination Fees. Any origination fees paid by borrowers with respect to any Investments, after deducting (i) any fees or commissions paid by the Company to any brokers who are not affiliates of the Company, and (ii) any other costs of third parties who are not affiliates of the Company that are related to the origination of such Investments, shall be retained by the Manager and the Cost Reimbursement Installment due to Manager for the month in which such origination fee is paid by the borrower shall be reduced by an amount equal to one hundred percent (100%) of the amount of any such origination fee.

(D) Exit Fee Waivers. To the extent that the Company agrees to waive the requirement of any borrower under an Investment to pay an exit fee as a result of such borrower's refinancing of such Investment with permanent financing by Manager as contemplated in Section 8(b), the Cost Reimbursement Installment due to Manager for the month in which such waiver is made shall be reduced by an amount equal to fifty percent (50%) of the amount of any such exit fee.

(iv) Covered Manager Employee Bonuses. The Company shall reimburse Manager for a portion of the annual bonus amounts proposed to be paid to each Covered Manager Employee by the Manager, subject the following procedures and guidelines:

(A) Prior to the Compensation Committee's consideration of the annual bonus amounts to be paid to (1) the Covered Manager Employees who are expected to be the seven (7) most highly compensated Covered Manager Employees for such year, (2) any Covered Manager Employee whose proposed annual bonus amount exceeds 50% of his or her base salary for such year, and (3) any Covered Manager Employee whose proposed annual bonus amount is in excess of $200,000 (collectively, the "Discretionary Bonus Recipients"), Manager shall provide the Compensation Committee with (i) the total bonus amounts proposed to be paid by Manager to each Discretionary Bonus Recipient, and (ii) the portion of such total bonus amounts proposed to be paid by the Company to Manager, accompanied by a Supervisor Certification for each Covered Manager Employee with respect to the applicable year or bonus period.

(B) The Compensation Committee and the Independent Directors shall have the sole discretion to approve the amount of annual bonus of each Discretionary Bonus Recipient to be paid by the Company to Manager (the "Approved Bonus Amount"). If the proposed bonus amount for the Discretionary Bonus Recipient is less than or equal to such person's annual bonus potential as set forth in the Agreed-Upon Manager Budget for such year, and the Compensation Committee does not approve such proposed bonus amount, the Company shall give Manager a commercially reasonable reason for its decision.

(C) Within fifteen (15) days after the approval contemplated in clause (B) above, the Company shall pay Manager (1) the Approved Bonus Amount for each Discretionary Bonus Recipient, and (2) the Company's allocable

portion of the total bonus amount to be paid by the Manager to each other Covered Manager Employee, subject to such amounts not exceeding the Covered Manager Employees' aggregate annual bonus potential set forth in the Agreed-Upon Manager Budget for the applicable year.

(v) 2009 Cost Reimbursement. The Agreed-Upon Manager Budget for fiscal year 2009 is attached hereto as Annex III. In consideration of Manager's performance of the duties set forth in Section 2 in the first six (6) months of fiscal year 2009, the Company shall pay Manager the difference between the aggregate of the monthly Cost Reimbursement Installments that would have been paid to Manager for such months based on such Agreed-Upon Budget, less (A) any amounts set forth in Section 8(a)(ii)(B) applicable to such months, and (B) all Management Fees (as defined in the First Amended Management Agreement) paid by the Company to Manager for such months, equal to $1,201,461 in the aggregate. With respect to the subsequent six months of 2009, the Company shall pay Manager pursuant to the Agreed-Upon Manager Budget for 2009 in accordance, and subject to, all terms and provisions of this Agreement.

(b) Characterization and Waiver of Exit Fees. With respect to any Investments providing for the payment of any exit fees by the borrowers thereunder, (i) Manager shall use commercially reasonable efforts to structure the applicable loan and other documents in such a manner that it is reasonably likely that any such exit fees may be characterized as interest or deferred interest for U.S. federal income tax purposes, and (ii) the Company agrees to waive any such exit fees if such borrowers refinance their Investments with permanent financing provided by Manager.

(c) Incentive Fee.

(i) In addition to the Cost Reimbursement, the Company shall pay Manager an annual incentive fee (the "Incentive Fee") on a cumulative, but not compounding, basis, equal to the product of (A) twenty-five percent (25%) of the dollar amount by which (1)(a) the Operating Partnership's Funds from Operations (before giving effect to payment of the Incentive Fee) per OP Unit (based on the weighted average number of OP Units outstanding, including OP Units issued to Parent REIT corresponding to outstanding Common Shares), plus (b) Includable Gains or losses from debt restructuring and sales of property per OP Unit (based on the weighted average number of OP Units outstanding, including OP Units issued to Parent REIT corresponding to outstanding Common Shares), exceed (2) the product of (a) the greater of (x) $10.00 and (y) the weighted average (based on Common Shares and OP Units) of (i) the book value per OP Unit of the net assets contributed by Manager to the Operating Partnership on July 1, 2003, (ii) $15, (iii) the offering price per Common Share (including Common Shares issued upon the exercise of warrants or options) at any secondary Common Share offerings by Parent REIT (adjusted for any prior capital dividends or distributions), and (iv) the issue price per OP Unit for subsequent contributions to the Operating Partnership, and (b) the greater of (i) nine and one-half percent (9.5%) per annum, and (ii) the Ten Year U.S. Treasury Rate plus three and one-half percent (3.5%) per annum, and (B) the weighted average number of OP Units

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

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

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

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

the amount of the Incentive Fee due and payable for any fiscal year (or partial fiscal year, if applicable) is less than the sum of the Incentive Fee Payments made with respect to such fiscal year (or partial fiscal year, if applicable), Manager shall refund to the Company the portion of Incentive Fee Payments received with respect to such fiscal year that exceeds the Incentive Fee due for such fiscal year, in cash, within fifteen (15) days of the Calculation Delivery Date.

(v) Prime Outlets Incentive Fee.

(A) 2009 Reconciliation. Notwithstanding that the Manager may earn an Incentive Fee pursuant to the formula set forth in Section 8(c)(i) for the twelve months ending December 31, 2009 (the "2009 Incentive Fee"), the Company and Manager agree as follows:

(1) If the amount of the 2009 Incentive Fee exceeds the amount of the Prime Outlets Incentive Fee, the Company shall only pay Manager the portion of the 2009 Incentive Fee that exceeds the amount of the Prime Outlets Incentive Fee shall and the Manager shall retain the Prime Outlets Incentive Fee in satisfaction of the Company's obligation to pay Manager the remainder of such Incentive Fee;

(2) If the 2009 Incentive Fee equals the Prime Outlets Incentive Fee, no Incentive Fee shall be payable to the Manager with respect to the twelve months ended December 31, 2009 in satisfaction of the Company's obligation to pay Manager such Incentive Fee; and

(3) If the Prime Outlets Incentive Fee exceeds the 2009 Incentive Fee, no Incentive Fee shall be payable to Manager with respect to the twelve months ended December 31, 2009, and Manager shall refund to the Company the portion of the Prime Outlets Incentive Fee that exceeds the amount of the 2009 Incentive Fee (the "Prime Outlets Excess") as follows: (a) 25% of the Prime Outlets Excess shall be due and payable by December 31, 2010, and (b) 75% of the Prime Outlets Excess shall be due and payable by June 30, 2012. Either installment of the Prime Outlets Excess may be paid earlier than such due dates. In the event that the Manager terminates this Agreement, any unpaid portion of the Prime Outlets Excess shall become due and payable as of the earlier of (a) the effective date of such termination and (b) the due dates set forth above.

(B) Payment of Prime Outlets Excess in Shares. All or any portion of either installment of the Prime Outlet Excess may be paid by surrendering Common Shares to the Company as long as (x) at least 50% of the Prime Outlets Excess in the aggregate is repaid in cash, and (y) Manager gives the Company five (5) business days' irrevocable written notice of its intent to surrender Common Shares in lieu of paying cash. Notwithstanding the foregoing, the Independent Directors may, in their sole discretion, permit the Manager to pay up to 100% of the Prime Outlets Excess in Common Shares. Any surrender of

Common Shares by the Manager shall be valued at the closing price for the Common Shares on the day the Manager surrenders the Common Shares.

(C) Set-off. At any time after the Prime Outlets Incentive Fee is determined to exceed the 2009 Incentive Fee and prior to the time that the Prime Outlets Excess has been repaid in full, all compensation otherwise payable to the Manager pursuant to this Section 8(c) will be retained by the Company to the extent of the unpaid dollar amount of the Prime Outlets Excess and will be applied to reduce the Manager's obligation to repay the Prime Outlets Excess in cash and shares of Common Stock.

(vi) 450 West 33rd Street Incentive Fee. The Company and Manager agree that Manager's right to retain the 450 West 33rd Street Incentive Fee is subject the Company's obligation to pay any amounts pursuant to the 450 West 33rd Street Guaranty. To the extent that the Company is required to pay any amounts pursuant to the 450 West 33rd Street Guaranty, Manager shall be responsible for paying 25% of any such amount by surrendering the applicable portion of the 450 West 33rd Street Incentive Fee.

(vii) Special Incentive Fees. The Independent Directors may from time to time in their sole discretion consider and approve the payment of special incentive fees to Manager in consideration of the accomplishment of certain specified corporate objectives.

(d) 2008 Special Fee. The Company shall pay Manager a special fee equal to three million dollars ($3,000,000.00) in consideration of (i) expenses incurred by Manager in fiscal year 2008 in connection with the management of the Company's business and Investments, (ii) the imputed value of the $4.2 million loan made by Manager to the Company in December 2008, and (iii) special services provided by Manager in 2008 in addition to the services contemplated in the First Amended Management Agreement.

9. Expenses. Subject to Section 8(a), the Company shall be responsible for all expenses incurred on its behalf in accordance with this Agreement. The Company shall reimburse Manager pursuant to Section 10 for all third party expenses incurred by Manager on behalf of the Company, which expenses may include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

The types of expenses referred to in clauses (a) through (m) of this Section 9 are collectively referred to as the "Reimbursable Expenses." For the avoidance of doubt, Manager

shall not be entitled to reimbursement of the following types of expenses pursuant to this Section 9: (i) any expenses that the Company is required to reimburse Manager for pursuant to Section 8(a), (ii) any item included in a Proposed Manager Budget for any given fiscal year and subsequently excluded from the Agreed-Upon Manager Budget for such year, and (iii) any Excess Quarterly Cost which the Independent Directors has determined shall not be reimbursed pursuant to Section 8(a)(i)(C).

Except as set forth in Section 8(a), Manager shall bear the following expenses: (i) the wages and salaries of Manager's officers and employees; (ii) rent attributable to the offices occupied by Manager separate from the office maintained for the Company; and (iii) all other "overhead" expenses of Manager.

10. Reimbursable Expense Reports and Reimbursements. Manager shall prepare a statement documenting the Reimbursable Expenses incurred during, and deliver the same to the Company within forty-five (45) days following, each fiscal quarter. Reimbursable Expenses incurred by Manager on behalf of the Company shall be reimbursed by the Company within sixty (60) days following each fiscal quarter.

11. Limits of Manager Responsibility; Indemnification.

(a) Limits of Manager Responsibility. Manager assumes no responsibility under this Agreement other than to render the services set forth herein in good faith and shall not be responsible for any action of the Board of Directors in following or declining to follow any advice or recommendations of Manager, including as set forth in Section 7(b). Manager, its members, managers, officers and employees will not be liable to Parent REIT, Sub-REIT, the Operating Partnership, any other Subsidiary, the Board of Directors, Parent REIT or the Sub-REIT's stockholders, the Operating Partnership's partners or any other Subsidiary's stockholders or partners for any acts or omissions by Manager, its members, managers, officers or employees pursuant to or in accordance with this Agreement, except as otherwise expressly provided in Section 11(c).

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

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

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

13. Term; Termination.

(a) Term. This Agreement shall remain in full force and effect until December 31, 2010 unless earlier terminated by the Company or Manager as set forth below. This Agreement shall be renewed automatically for successive one (1) year periods after December 31, 2010, until this Agreement is terminated in accordance with the terms hereof.

(b) Non-Renewal/Termination Without Company Cause by Company. The Company may (i) elect not to renew this Agreement at the expiration of any one-year term described in Section 13(a), or (ii) terminate this Agreement at any time without Company Cause, subject to the provisions of Section 13(c). If the Company elects not to renew this Agreement, or to terminate this Agreement without Company Cause, the Company shall (i) deliver to Manager a written notice (the "Company Termination Notice") specifying the date, which may not be less than six (6) months from the date of the Company Termination Notice, on which this Agreement shall terminate (the "Effective Company Termination Date"), and (ii) pay to Manager the Termination Fee no later than the Effective Company Termination Date. Such termination by the Company will be effective upon Effective Company Termination Date. For the avoidance of doubt, any internalization of the Company's management shall be deemed a termination of this Agreement pursuant to which the Company shall pay the Manager the Termination Fee unless the Company shall have exercised its right to terminate this Agreement pursuant to Section 13(c) prior to such internalization.

(c) Termination With Company Cause by Company. The Company may terminate this Agreement, by a majority vote of the Independent Directors and without payment of the Termination Fee, if:

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

(ii) Manager misappropriates or embezzles Company funds;

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

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

(v) a Manager Change of Control occurs;

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

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

Termination of this Agreement pursuant to this Section 13(c) shall become effective, in case of the foregoing (A) clauses (i) through (iv), upon seven (7) days' prior written notice to Manager, (B) clauses (v) and (vi), upon thirty (30) days' prior written notice to Manager, and (C) clause (vii), in the event of Manager's failure to cure and provided the Company has delivered to Manager a termination notice, upon the expiration of the applicable cure period.

(d) Non-Renewal/Termination Without Manager Cause by Manager. Manager may, without payment of the Termination Fee, (i) elect not to renew this Agreement at the expiration of any one-year term described in Section 13(a), or (ii) terminate this Agreement at any time without Manager Cause. If Manager elects not to renew this Agreement, or to terminate this Agreement without Manager Cause, the Manager shall (i) deliver to the Company a written notice (the "Manager Termination Notice") specifying the date, which may not be less than six (6) months from the date of the Manager Termination Notice, on which this Agreement shall terminate (the "Effective Manager Termination Date"). Such termination by the Company will be effective upon Effective Manager Termination Date.

(e) Termination With Manager Cause by Manager. Manager may terminate this Agreement if the Company defaults in the performance or observance of any material term, condition or covenant contained in this Agreement to be performed or observed on its part, and such default continues for a period of thirty (30) days after written notice thereof from Manager specifying such default and requesting that the same be remedied within such thirty (30) day period (the "Cure Period"). In the event of the Company's failure to cure such default within the Cure Period, this Agreement shall terminate upon the expiration of the Cure Period provided

Manager has delivered to the Company a written notice of such termination upon the expiration of the Cure Period.

14. Assignment.

(a) Manager Assignment. Except as set forth in Section 14(c), this Agreement shall terminate at the Company's election and without payment of any Termination Fee, and any such assignment shall be null and void, in the event of its assignment, in whole or in part, by Manager, unless Manager obtains the prior written consent of Parent REIT and a majority of the Independent Directors; provided, however, no such consent shall be required in the case of an assignment by Manager to any affiliate whose day-to-day business and operations are managed and supervised by Principal. Any permitted assignment by Manager shall bind the assignee in the same manner as Manager is bound by the terms of this Agreement, and Manager shall be liable to the Company for all errors or omissions of the assignee under any such assignment. In addition, the assignee shall execute and deliver to the Company a counterpart of this Agreement naming such assignee as Manager. For purposes of this Section 14(a) and Section 14(c), "affiliate" means any Person controlling, controlled by or under common control with Manager, and "control" means the direct or indirect ownership of at least fifty-one percent (51%) of the beneficial equity interests in and voting power of such Person (and "controlling" and "under common control with" have meanings correlative to the foregoing).

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

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

15. Action Upon Termination. From and after the effective date of termination of this Agreement pursuant to Sections 13 or 14, Manager shall not be entitled to compensation for further services under this Agreement but shall be paid all compensation accruing to the date of such termination and the Termination Fee, if applicable. Upon such termination, Manager shall forthwith:

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

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

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

16. Survival

Sections 6(b), 10 and 11 shall survive termination or expiration of this Agreement. The Company's obligation to pay the Termination Fee as contemplated in Section 13(b) shall survive any such termination or expiration. The obligation of the Company to pay any of the amounts set forth in Section 8 with respect to any period prior to the effective date of any termination or expiration of this Agreement shall survive such termination or expiration. The obligation of the Manager to pay the Prime Outlets Excess shall survive any termination or expiration of this Agreement.

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

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

registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

| | |
|---|---|
| If to Parent REIT, Sub-REIT or the Operating Partnership: | Arbor Realty Trust, Inc.<br>333 Earle Ovington Boulevard, Suite 900<br>Uniondale, New York 11553<br>Attention:<br>Facsimile: |
| If to Manager: | Arbor Commercial Mortgage, LLC<br>333 Earle Ovington Boulevard<br>Uniondale, New York 11553<br>Attention:<br>Facsimile: |

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

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

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

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

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

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

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

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

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

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

28. References to Original Management Agreement and First Amended Management Agreement

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

***[NO FURTHER TEXT ON THIS PAGE]***

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

Manager:

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

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

Parent REIT:

ARBOR REALTY TRUST, INC.,
a Maryland corporation

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer
and Executive Vice President

Operating Partnership:

ARBOR REALTY LIMITED PARTNERSHIP,
a Delaware limited partnership

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

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer
and Executive Vice President

Sub-REIT:

ARBOR REALTY SR, INC.,
a Maryland corporation

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer
and Executive Vice President

**Annex I**

**Annex III**

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**Exhibit 10.7**

**AMENDED AND RESTATED**

**ARBOR REALTY TRUST, INC.**

**2003 OMNIBUS STOCK INCENTIVE PLAN**

**Approved by the Company's Stockholders on June 18, 2009**

**Section 1. General Purpose of Plan; Definitions.**

The name of this plan is the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan, as amended and restated (the "Plan").

The purpose of the Plan is to enable the Company to attract and retain highly qualified personnel who will contribute to the Company's success and to provide incentives to Participants (defined below) that are linked directly to stockholder value and will therefore inure to the benefit of all stockholders of the Company.

For purposes of the Plan, the following terms shall be defined as set forth below:

(a) "Administrator" means the Board, or if and to the extent the Board does not administer the Plan, the Committee in accordance with Section 2 below.

(b) "Award" means any award under the Plan.

(c) "Award Agreement" means, with respect to each Award, the signed written agreement between the Company and the Participant setting forth the terms and conditions of the Award.

(d) "Board" means the Board of Directors of the Company.

(e) "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any successor thereto.

(f) "Committee" means any committee the Board may appoint to administer the Plan. If at any time or to any extent the Board shall not administer the Plan, then the functions of the Board specified in the Plan shall be exercised by the Committee.

(g) "Common Stock" means the common stock, par value $.01 per share, of the Company.

(h) "Company" means Arbor Realty Trust, Inc., a Maryland corporation (or any successor corporation).

(i) "Disability" means the inability of a Participant to perform substantially his or her duties and responsibilities to the Company or to any Parent or Subsidiary by reason of a physical or mental disability or infirmity (i) for a continuous period of six months, or (ii) at such earlier time as the Participant submits medical evidence satisfactory to the Administrator that the Participant has a physical or mental disability or infirmity that will likely prevent the Participant from returning to the performance of the Participant's work duties for six months or longer. The date of such Disability shall be the last day of such six-month period or the day on which the Participant submits such satisfactory medical evidence, as the case may be.

(j) "Eligible Recipient" means an officer, director, employee, consultant (including employees of the Manager who provide services to the Company) or advisor of the Company or of any Parent or Subsidiary.

(k) "Exercise Price" means the per share price, if any, at which a holder of an Option may purchase the Shares issuable upon exercise of the Option.

(l) "Fair Market Value" as of a particular date shall mean the fair market value of a share of Common Stock as determined by the Administrator in its sole discretion; provided, however, that (i) if the Common Stock is admitted to trading on a national securities exchange, fair market value of a share of Common Stock on any date shall be the closing sale price reported for such share on such exchange on such date or, if no sale was reported on such date, on the last date preceding such date on which a sale was reported, (ii) if the Common Stock is admitted to quotation on the National Association of Securities Dealers Automated Quotation ("Nasdaq") System or other comparable quotation system and has been designated as a National Market System ("NMS") security, fair market value of a share of Common Stock on any date shall be the closing sale price reported for such share on such system on such date or, if no sale was reported on such date, on the last date preceding such date on which a sale was reported, or (iii) if the Common Stock is admitted to quotation on the Nasdaq System but has not been designated as an NMS security, fair market value of a share of Common Stock on any date shall be the average of the highest bid and lowest asked prices of such share on such system on such date or, if no bid and ask prices were reported on such date, on the last date preceding such date on which both bid and ask prices were reported.

(m) "Incentive Stock Option" means any Option intended to be designated as an "incentive stock option" within the meaning of Section 422 of the Code.

(n) "Manager" means Arbor Commercial Mortgage, LLC, a New York limited liability company.

(o) "Nonqualified Stock Option" means any Option that is not an Incentive Stock Option, including any Option that provides (as of the time such Option is granted) that it will not be treated as an Incentive Stock Option.

(p) "Option" means an option to purchase Shares granted pursuant to Section 6 below.

(q) "Parent" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations in the chain (other than the Company) owns stock possessing 50% or more of the combined voting power of all classes of stock in one of the other corporations in the chain.

(r) "Participant" means any Eligible Recipient selected by the Administrator, pursuant to the Administrator's authority in Section 2 below, to receive grants of Options and/or awards of Restricted Stock.

(s) "Restricted Stock" means Shares subject to certain restrictions granted pursuant to Section 6 below.

(t) "Shares" means shares of Common Stock reserved for issuance under the Plan, as adjusted pursuant to Sections 3 and 4, and any successor security.

(u) "Subsidiary" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations (other than the last corporation) in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in the chain.

**Section 2. Administration.**

The Plan shall be administered by the Board or, at the Board's sole discretion, by the Committee, which shall be appointed by the Board, and which shall serve at the pleasure of the Board. Pursuant to the terms of the Plan, the Administrator shall have the power and authority:

(a) to select those Eligible Recipients who shall be Participants;

(b) to determine whether and to what extent Options or awards of Restricted Stock are to be granted hereunder to Participants;

(c) to determine the number of Shares to be covered by each Award granted hereunder;

(d) to determine the terms and conditions, not inconsistent with the terms of the Plan, of each Award granted hereunder; and

(e) to determine the terms and conditions, not inconsistent with the terms of the Plan, which shall govern all written instruments evidencing Options or awards of Restricted Stock granted hereunder.

The Administrator shall have the authority, in its sole discretion, to adopt, alter and repeal such administrative rules, guidelines and practices governing the Plan as it shall from time to time deem advisable; to interpret the terms and provisions of the Plan and any Award issued under the Plan (and any Award Agreement relating thereto); and to otherwise supervise the administration of the Plan.

All decisions made by the Administrator pursuant to the provisions of the Plan shall be final, conclusive and binding on all persons, including the Company and the Participants.

**Section 3. Shares Subject to Plan.**

The total number of shares of Common Stock reserved and available for issuance under the Plan shall be 2,385,000 shares. Such shares may consist, in whole or in part, of authorized and unissued shares or treasury shares.

To the extent that (i) an Option expires or is otherwise terminated without being exercised, or (ii) any Shares subject to any award of Restricted Stock are forfeited, such Shares shall again be available for issuance in connection with future Awards granted under the Plan.

**Section 4. Corporate Transactions.**

In the event of any merger, reorganization, consolidation, recapitalization, stock dividend or other change in corporate structure affecting the Common Stock, an equitable substitution or proportionate adjustment shall be made in (i) the aggregate number of Shares reserved for issuance under the Plan, (ii) the kind, number and Exercise Price of Shares subject to outstanding Options granted under the Plan, and (iii) the kind, number and purchase price of Shares subject to outstanding awards of Restricted Stock granted under the Plan, in each case as may be determined by the Administrator, in its sole discretion. Such other substitutions or adjustments shall be made as may be determined by the Administrator, in its sole discretion. In connection with any event described in this paragraph, the Administrator may provide, in its sole discretion, for the cancellation of any outstanding awards and payment in cash or other property therefor.

**Section 5. Eligibility.**

Eligible Recipients may be granted Options and/or awards of Restricted Stock.

The Participants under the Plan shall be selected from time to time by the Administrator, in its sole discretion, from among the Eligible Recipients.

The Administrator shall have the authority to grant to any Eligible Recipient who is an employee of the Company or of any Parent or Subsidiary (including directors who are also officers of the Company) Incentive Stock Options, Nonqualified Stock Options, or both types of Options, and/or Restricted Stock. Non-employee Directors of the Company or of any Parent or Subsidiary, consultants (including employees of the Manager who provide services to the Company) or advisors who are not also employees of the Company or of any Parent or Subsidiary may only be granted Options that are Nonqualified Stock Options and/or Restricted Stock.

**Section 6. Options.**

Options may be granted alone or in addition to other awards of Restricted Stock granted under the Plan. Any Option granted under the Plan shall be in such form as the Administrator may from time to time approve, and the provisions of each Option need not be the same with respect to each Participant. Participants who are granted Options shall enter into an Award Agreement with the Company, in such form as the Administrator shall determine, which Award Agreement shall set forth, among other things, the Exercise Price of the Option, the term of the Option and provisions regarding exercisability of the Option granted thereunder.

The Options granted under the Plan may be of two types: (i) Incentive Stock Options and (ii) Nonqualified Stock Options. To the extent that any Option does not qualify as an Incentive Stock Option, it shall constitute a separate Nonqualified Stock Option. More than one Option may be granted to the same Participant and be outstanding concurrently hereunder.

Options granted under the Plan shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable:

(a) Option Exercise Price. The per share Exercise Price of Shares purchasable under an Option shall be determined by the Administrator in its sole discretion at the time of grant but shall not, (i) in the case of Incentive Stock Options, be less than 100% of the Fair Market Value of the Common Stock on such date (110% of the Fair Market Value per Share on such date if, on such date, the Eligible Recipient owns (or is deemed to own under Section 424(d) of the Code) stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company, or any Parent or Subsidiary), and (ii) in the case of Nonqualified Stock Options, be less than 100% of the Fair Market Value of the Common Stock on such date.

(b) Option Term. The term of each Option shall be fixed by the Administrator, but no Option shall be exercisable more than ten years after the date such Option is granted; provided, however, that if an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or of any Parent or Subsidiary and an Incentive Stock Option is granted to such employee, the term of such Incentive Stock Option (to the extent required by the Code at the time of grant) shall be no more than five years from the date of grant.

(c) Exercisability. Options shall be exercisable at such time or times and subject to such terms and conditions as shall be determined by the Administrator at or after the time of grant. The Administrator may also provide that any Option shall be exercisable only in installments, and the Administrator may waive such installment exercise provisions at any time, in whole or in part, based on such factors as the Administrator may determine, in its sole discretion.

(d) Method of Exercise. Subject to Section 6(c), Options may be exercised in whole or in part at any time during the Option period, by giving written notice of exercise to the Company specifying the number of Shares to be purchased, accompanied by (i) payment in full of the aggregate Exercise Price of the Shares so purchased in cash, (ii) delivery of outstanding shares of Common Stock with a Fair Market Value on the date of exercise equal to the aggregate Exercise Price payable with respect to the Options' exercise or (iii) simultaneous sale through a broker reasonably acceptable to the Administrator of Shares acquired on exercise, as permitted under Regulation T of the Federal Reserve Board.

In the event a grantee elects to pay the Exercise Price payable with respect to an Option pursuant to clause (ii) above: (A) only a whole number of share(s) of Common Stock (and not fractional shares of Common Stock) may be tendered in payment, (B) such grantee must present evidence acceptable to the Company that he or she has owned any such shares of Common Stock tendered in payment of the Exercise Price (and that such tendered shares of Common Stock have not been subject to any substantial risk of forfeiture) for at least six months prior to the date of exercise, and (C) Common Stock must be delivered to the Company. Delivery for this purpose may, at the election of the grantee, be made either by (i) physical delivery of the certificate(s) for all such shares of Common Stock tendered in payment of the Exercise Price, accompanied by duly executed instruments of transfer in a form acceptable to the Company, or (ii) direction to the grantee's broker to transfer, by book entry, of such shares of Common Stock from a brokerage account of the grantee to a brokerage account specified by the Company. When payment of the Exercise Price is made by delivery of Common Stock, the difference, if any, between the aggregate Exercise Price payable with respect to the Option being exercised and the Fair Market Value of the shares of Common Stock tendered in payment (plus any applicable taxes) shall be paid in

cash. No grantee may tender shares of Common Stock having a Fair Market Value exceeding the aggregate Exercise Price payable with respect to the Option being exercised (plus any applicable taxes).

(e) Non-Transferability of Options. Except as otherwise provided by the Administrator or in the Award Agreement, Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution.

(f) Termination of Employment or Service. The rights of Participants granted Options upon termination of employment or service as a director, consultant or advisor to the Company or to any Parent or Subsidiary for any reason prior to the exercise of such Options shall be set forth in the Award Agreement governing such Options.

(g) Annual Limit on Incentive Stock Options. To the extent that the aggregate Fair Market Value (determined as of the date the Incentive Stock Option is granted) of Shares with respect to which Incentive Stock Options granted to a Participant under this Plan and all other option plans of the Company or of any Parent or Subsidiary become exercisable for the first time by the Participant during any calendar year exceeds $100,000 (as determined in accordance with Section 422(d) of the Code), the portion of such Incentive Stock Options in excess of $100,000 shall be treated as Nonqualified Stock Options.

(h) Rights as Stockholder. An Optionee shall have no rights to dividends or any other rights of a stockholder with respect to the Shares subject to the Option until the Optionee has given written notice of exercise, has paid in full for such Shares, has satisfied the requirements of Section 10(d) hereof and, if requested, has given the representation described in Section 10(b) hereof.

**Section 7. Restricted Stock.**

Awards of Restricted Stock may be issued either alone or in addition to Options granted under the Plan. The Administrator shall determine the Eligible Recipients to whom, and the time or times at which, awards of Restricted Stock shall be made; the number of Shares to be awarded; the price, if any, to be paid by the Participant for the acquisition of Restricted Stock; the Restricted Period (as defined in Section 7(b)) applicable to awards of Restricted Stock. The Administrator may also condition the grant of the award of Restricted Stock upon the exercise of Options or upon such other criteria as the Administrator may determine, in its sole discretion. The provisions of the awards of Restricted Stock need not be the same with respect to each Participant.

(a) Awards and Certificates. The prospective recipient of awards of Restricted Stock shall not have any rights with respect to any such Award, unless and until such recipient has executed an Award Agreement evidencing the Award (a "Restricted Stock Award Agreement") and delivered a fully executed copy thereof to the Company, within a period of sixty days (or such other period as the Administrator may specify) after the award date. Except as otherwise provided below in Section 7(b), each Participant who is granted an award of Restricted Stock shall be issued a stock certificate in respect of such shares of Restricted Stock, which certificate shall be registered in the name of the Participant and shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to any such Award.

The Company may require that the stock certificates evidencing Restricted Stock granted hereunder be held in the custody of the Company until the restrictions thereon shall have lapsed, and that, as a condition of any award of Restricted Stock, the Participant shall have delivered a stock power, endorsed in blank, relating to the Shares covered by such Award.

(b) Restrictions and Conditions. The awards of Restricted Stock granted pursuant to this Section 7 shall be subject to the following restrictions and conditions:

(i) Subject to the provisions of the Plan and the Restricted Stock Award Agreement governing any such Award, during such period as may be set by the Administrator commencing on the date of grant (the "Restricted Period"), the Participant shall not be permitted to sell, transfer, pledge or assign shares of Restricted Stock awarded under the Plan; provided, however, that the Administrator may, in its sole discretion, provide for the lapse of such restrictions in installments and may accelerate or waive such restrictions in whole or in part based on such factors and such circumstances as the Administrator may determine, in its sole discretion.

(ii) Except as provided in Section 7(b)(i), the Participant shall generally have the rights of a stockholder of the Company with respect to Restricted Stock during the Restricted Period. Certificates for unrestricted Shares shall be delivered to the Participant promptly after, and only after, the Restricted Period shall expire without forfeiture in respect of such awards of Restricted Stock except as the Administrator, in its sole discretion, shall otherwise determine.

(iii) The rights of Participants granted awards of Restricted Stock upon termination of employment or service as a director, consultant or advisor to the Company or to any Parent or Subsidiary for any reason during the Restricted Period shall be set forth in the Restricted Stock Award Agreement governing such Awards.

**Section 8. Amendment and Termination.**

The Board may amend, alter or discontinue the Plan, but no amendment, alteration, or discontinuation shall be made that would impair the rights of a Participant under any Award theretofore granted without such Participant's consent. To the extent necessary and desirable, the Board shall obtain approval of the stockholders (as described below), for any amendment that would:

(a) except as provided in Sections 3 or 4 of the Plan, increase the total number of Shares reserved for issuance under the Plan;

(b) change the class of officers, directors, employees, consultants and advisors eligible to participate in the Plan; or

(c) extend the maximum Option term under Section 6(b) of the Plan.

The Administrator may amend the terms of any Award theretofore granted, prospectively or retroactively, but, subject to Section 4 of the Plan, no such amendment shall impair the rights of any Participant without his or her consent.

**Section 9. Unfunded Status of Plan.**

The Plan is intended to constitute an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant by the Company, nothing contained herein shall give any such Participant any rights that are greater than those of a general creditor of the Company.

**Section 10. General Provisions.**

(a) Shares shall not be issued pursuant to any Award granted hereunder unless such Award and the issuance and delivery of such Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, and the requirements of any stock exchange upon which the Common Stock may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) The Administrator may require each person acquiring Shares to represent to and agree with the Company in writing that such person is acquiring the Shares without a view to distribution thereof. The certificates for such Shares may include any legend which the Administrator deems appropriate to reflect any restrictions on transfer.

All certificates for Shares delivered under the Plan shall be subject to such stock-transfer orders and other restrictions as the Administrator may deem advisable under the rules, regulations, and other requirements of the Securities and Exchange Commission, any stock exchange upon which the Common Stock is then listed, and any applicable Federal or state securities law, and the Administrator may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions.

(c) Nothing contained in the Plan shall prevent the Board from adopting other or additional compensation arrangements, subject to stockholder approval, if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Plan shall not confer upon any Eligible Recipient any right to continued employment or service with the Company or any Parent or Subsidiary, as the case may be, nor shall it interfere in any way with the right of the Company or any Parent or Subsidiary to terminate the employment or service of any of its Eligible Recipients at any time.

(d) Unless otherwise determined by the Administrator, a Participant may elect to deliver shares of Common Stock (or have the Company withhold shares) to satisfy, in whole or in part, the amount the Company is required to withhold for taxes in connection with the exercise of an Option or the delivery of Restricted Stock upon grant or vesting, as the case may be. Such election must be made on or before the date the amount of tax to be withheld is determined. Once made, the election shall be irrevocable. The fair market value of the Shares to be withheld or delivered will be the Fair Market Value as of the date the amount of tax to be withheld is determined. In the event a Participant elects to deliver or have the Company withhold Shares of Common Stock pursuant to this Section 10(d), such delivery or withholding must be made subject to the conditions and pursuant to the procedures set forth in Section 6(d) with respect to the delivery or withholding of Common Stock in payment of the Exercise Price of Options.

(e) No member of the Board or the Administrator, nor any officer or employee of the Company acting on behalf of the Board or the Administrator, shall be personally liable for any action, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board or the Administrator and each and any officer or employee of the Company acting on their behalf shall, to the extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, determination or interpretation.

**Section 11. Effective Date of Plan.**

(a) The Plan was originally adopted by the Board on June 25, 2003 (the "Effective Date").

(b) The Plan is amended and restated effective upon the Board's approval on April 30, 2009, subject to the approval by the stockholders of the Company.

**Section 12. Term of Plan.**

No Award shall be granted pursuant to the Plan on or after the tenth anniversary of the Effective Date, but Awards theretofore granted may extend beyond that date.

**Section 13. Governing Law.**

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

**Exhibit 10.33**

$352,000,000

FIRST AMENDED AND RESTATED CREDIT AGREEMENT

among

ARBOR REALTY FUNDING, LLC,
ARSR TAHOE, LLC,
ARBOR REALTY LIMITED PARTNERSHIP,
ART 450 LLC,
ARBOR REALTY SR, INC., and
ARBOR ESH II LLC
as Borrowers,

ARBOR REALTY TRUST, INC.
ARBOR REALTY LIMITED PARTNERSHIP, and
ARBOR REALTY SR, INC.,
as Guarantors,

THE LENDERS PARTY HERETO,

and

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Administrative Agent

Dated as of July 23, 2009

WELLS FARGO SECURITIES, LLC
(formerly known as Wachovia Capital Markets, LLC),
as Sole Lead Arranger and Sole Bookrunner

Prepared by:

Moore&VanAllen

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**Schedules**



**Exhibits**

**THIS FIRST AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of July 23, 2009, among ARBOR REALTY FUNDING, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Arbor Realty Funding"), as a Borrower, ARSR TAHOE, LLC, a Delaware limited liability company (together with its successors and permitted assigns, "ARSR Tahoe"), as a Borrower, ARBOR ESH II LLC, a Delaware limited liability company (together with its successors and permitted assigns, "Arbor ESH"), as a Borrower, ARBOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (together with its successors and permitted assigns, "Arbor Realty"), as a Borrower and a Guarantor, ART 450 LLC, a Delaware limited liability company (together with its successors and assigns, "ART 450"), as a Borrower, ARBOR REALTY TRUST, INC., a Maryland corporation (together with its successors and permitted assigns, "ART"), as a Guarantor, ARBOR REALTY SR, INC., a Maryland corporation (together with its successors and permitted assigns, "ARSR"), as a Borrower and a Guarantor, the other entities from time to time party hereto pursuant to Section 5.10, the several banks and other financial institutions as are, or may from time to time become parties to this Agreement (each, together with its successors and assigns, a "Lender" and, collectively, the "Lenders"), and WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, as administrative agent for the Lenders hereunder (in such capacity, the "Administrative Agent").

**W I T N E S S E T H:**

**WHEREAS**, the Credit Parties (as hereinafter defined), the Lenders and the Administrative Agent are parties to that certain Credit Agreement, dated as of November 6, 2007, as amended by the First Amendment to Credit Agreement, dated as of February 15, 2008, the Second Amendment to Credit Agreement, dated as of April 23, 2008, the Third Amendment to Credit Agreement, dated as of June 26, 2008, the Fourth Amendment to Credit Agreement, dated as of September 30, 2008, the Fifth Amendment to Credit Agreement, dated as of December 31, 2008, the Sixth Amendment to Credit Agreement, dated as of December 31, 2008, and the Seventh Amendment to Credit Agreement, dated as of April 16, 2009 (the "Original Agreement");

**WHEREAS**, the Credit Parties, the Lenders and the Administrative Agent desire to amend and restate the Original Agreement in several respects.

**NOW, THEREFORE**, based upon the foregoing Recitals, the mutual premises and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE I

## DEFINITIONS

Section 1.1 Defined Terms.

As used in this Agreement, terms defined in the preamble to this Agreement have the meanings therein indicated, and the following terms have the following meanings:

"40 Act" shall mean the Investment Company Act of 1940, as amended, restated or modified from time to time.

"450 Income" shall mean cash income received by ART and/or one or more of its Consolidated Subsidiaries with respect to the 450 Transaction, which is not recognized per GAAP, net of related expenses.

"450 Transaction" shall mean the Preferred Equity Interests of ART and/or one or more of its Consolidated Subsidiaries in AT 450 I LLC and AT 450 II LLC.

"ABR Default Rate" shall have the meaning set forth in Section 2.6.

"Accepted Servicing Practices" shall mean, with respect to each item of Collateral, those mortgage, mezzanine loan and/or secured lending servicing practices, as applicable, of prudent lending institutions that service Collateral of the same type, size and structure as such Collateral in the jurisdiction where the related Underlying Mortgaged Property is located, as applicable, but in any event, (a) in accordance with the terms of the Credit Documents and Requirements of Law, (b) without prejudice to the interests of the Administrative Agent or any Lender, (c) with a view to the maximization of the recovery on such Collateral on a net present value basis and (d) without regard to (i) any relationship that any Credit Party or any Affiliate or any Subsidiary of the foregoing may have with the related Obligor, mortgagor, any Servicer, any PSA Servicer, any Credit Party or any Affiliate or any Subsidiary of any of the foregoing; (ii) the right of any Credit Party or any Subsidiary or Affiliate of the foregoing to receive compensation or other fees for its services rendered pursuant to this Agreement, the other Credit Documents, the Mortgage Loan Documents or any other document or agreement; (iii) the ownership, servicing or management by any Credit Party or any Affiliate or any Subsidiary of the foregoing for others of any other mortgage loans, assets or mortgaged property; (iv) any obligation of any Credit Party or any Affiliate or any Subsidiary of the foregoing to repurchase, repay or substitute any item of Collateral; (v) any obligation of any Credit Party or any Affiliate or any Subsidiary of the foregoing to cure a breach of a representation and warranty with respect to any Collateral and (vi) any debt any Credit Party or any Affiliate or any Subsidiary of the foregoing has extended to any Obligor, mortgagor or any Affiliate of such Obligor or mortgagor.

"Account Control Agreement" shall mean that certain first amended and restated letter agreement, dated as of the Restatement Date, among the Borrowers, the Administrative Agent and Wachovia substantially in the form of Exhibit 1.1(c) attached hereto, as amended, restated, modified or supplemented from time to time.

"Account Designation Notice" shall mean the Account Designation Notice, dated as of the Closing Date, from the Borrowers to the Administrative Agent in substantially the form attached hereto as Exhibit 1.1(a), as amended, restated, modified or supplemented from time to time.

"Additional Credit Party" shall mean each Person that becomes a Borrower or Guarantor by execution of a Joinder Agreement in accordance with Section 5.10.

"Additional Term Loan Collateral" shall mean the Alpine Asset and the Pledged Mortgage Assets referred to as Woodgate at Jordan and Homewood/Lake Tahoe 4th mortgage loan, each as more specifically described in the related Confirmations.

"Additional Term Loan Collateral Release Amount" shall mean, (i) for each item of Additional Term Loan Collateral other than the Alpine Asset, the Additional Term Loan Collateral Release Amount set forth on Schedule 3 to the Fee Letter, as increased from time to time or reduced from time to time by the amount of any principal payments, prepayments or reductions applied against such Additional Term Loan Collateral pursuant to the terms of this Agreement or the Fee Letter, and (ii) for the Alpine Asset, the sum of (a) the Alpine ESH Release Amount and (b) the Additional Term Loan Collateral Release

Amount for the Alpine Asset, as set forth on Schedule 3 to the Fee Letter, as such amounts may be increased or reduced from time to time by the amount of any principal payments, prepayments or reductions applied against the Alpine Asset pursuant to the terms of this Agreement or the Fee Letter.

"Adjusted Tangible Net Worth" shall mean Tangible Net Worth plus the aggregate principal amount outstanding under the Eligible Subordinated Debt plus deferred revenues relating to the 450 Transaction to the extent classified as a liability according to GAAP.

"Administrative Agent" or "Agent" shall have the meaning set forth in the first paragraph of this Agreement and shall include any successors in such capacity.

"Administrative Borrower" shall mean Arbor Realty Funding.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in a form supplied by the Administrative Agent, as amended, restated, modified or supplemented from time to time.

"Affiliate" shall mean, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Agreement" or "Credit Agreement" shall mean this Agreement, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

"Allocated Revolving Loan Amount" shall mean, for each item of Revolving Loan Collateral, the outstanding principal amount of the Revolving Loans allocated by the Administrative Agent, in its discretion, to the related Revolving Loan Collateral, which Allocated Revolving Loan Amount shall be set forth in the related Confirmation, as increased from time to time by additional Revolving Loans or reduced from time to time by the amount of any principal payments, prepayments or reductions applied against such Revolving Loans pursuant to the terms of this Agreement or the Fee Letter.

"Allocated Term Loan Amount" shall mean, for each item of Term Loan Collateral, the outstanding principal amount of the Term Loan allocated by the Administrative Agent, in its discretion, to the related Term Loan Collateral, which Allocated Term Loan Amount shall be set forth in the related Confirmation and which amount shall include, for ESH Allocated Assets, the ESH Release Amount allocated to such Pledged Mortgage Asset, in each case, as increased from time to time (if at all) or reduced from time to time by the amount of any principal payments, prepayments or reductions applied against such Term Loans pursuant to the terms of this Agreement or the Fee Letter.

"Alpine Asset" shall mean the Pledged Mortgage Asset referred to Alpine Meadows Ski Resort (including the equity investment of $13,219,802), as more specifically described in the related Confirmation.

"Alpine ESH Release Amount" shall mean the amount specified as the "ESH Release Amount" for the Alpine Asset on Schedule 1-B to the Fee Letter.

"Alternate Base Rate" shall mean, for any day, a rate per annum equal to the greater of (a) the Prime Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day plus 1/2 of 1%. For purposes hereof: "Prime Rate" shall mean, at any time, the rate of interest per annum publicly announced or otherwise identified from time to time by Wachovia at its principal office in Charlotte, North Carolina as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in the Prime Rate occurs. The parties hereto acknowledge

that the rate announced publicly by Wachovia as its Prime Rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks; and "Federal Funds Effective Rate" shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published on the next succeeding Business Day, the average of the quotations for the day of such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by it. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive in the absence of manifest error) that it is unable to ascertain the Federal Funds Effective Rate, for any reason, including the inability or failure of the Administrative Agent to obtain sufficient quotations in accordance with the terms above, the Alternate Base Rate shall be determined without regard to clause (b) of the first sentence of this definition, as appropriate, until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the opening of business on the date of such change.

"Alternate Base Rate Loans" shall mean Loans that bear interest at an interest rate based on the Alternate Base Rate.

"Applicable Advance Rate" shall mean, with respect to each Mortgage Asset, (a) with respect to Term Loan Collateral under the Term Loans, the Applicable Advance Rate set forth on Schedule 1-A to the Fee Letter and (b) in the case of Revolving Loan Collateral (including Mixed Collateral) under the Revolving Loans, the Applicable Advance Rate determined by the Administrative Agent in its discretion and set forth in the related Confirmation, which shall be no greater than the Applicable Advance Rate set forth in Schedule 1-B to the Fee Letter (as applicable).

"Applicable Percentage" shall have the meaning set forth in the Fee Letter.

"Approved Bank" shall have the meaning set forth in the definition of "Cash Equivalents."

"Approved Fund" shall mean any Fund that is administered, managed or underwritten by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arbor ESH" shall have the meaning set forth in the first paragraph of this Agreement.

"Arbor Realty" shall have the meaning set forth in the first paragraph of this Agreement.

"Arbor Realty Funding" shall have the meaning set forth in the first paragraph of this Agreement.

"Arranger" shall mean Wells Fargo Securities, LLC (formerly known as Wachovia Capital Markets, LLC), together with its successors and assigns.

"ARSR" shall have the meaning set forth in the first paragraph of this Agreement.

"ARSR Tahoe" shall have the meaning set forth in the first paragraph of this Agreement.

"ART" shall have the meaning set forth in the first paragraph of this Agreement.

"ART 450" shall have the meaning set forth in the first paragraph of this Agreement.

"Asset Schedule and Exception Report" shall have the meaning set forth in the Custodial Agreement.

"Asset Valuation Period" shall have the meaning set forth in the Fee Letter.

"Asset Value" shall have the meaning set forth in the Fee Letter.

"Assignment and Assumption" shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by the definition of Eligible Assignee and Section 10.6), and accepted by the Administrative Agent, in substantially the form of Exhibit 1.1(b) or any other form approved by the Administrative Agent.

"Assignment of Leases" shall mean, with respect to any Mortgage, an assignment of leases thereunder, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the Underlying Mortgaged Property is located to reflect the assignment of leases to the holder of the Mortgage or any secured party, as applicable, as any such Assignment of Leases may be amended, restated, modified or supplemented from time to time.

"Assignment of Mortgage" shall mean, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment of the Mortgage to the holder of the Mortgage or any secured party, as applicable, as any such Assignment of Mortgage may be amended, restated, modified or supplemented from time to time.

"Assignments" shall mean the transfer of all of the Borrowers' rights and interests under an Eligible Asset pursuant to an assignment executed by the Borrowers in blank, which assignment shall be in the form of Exhibit 1.1(g) and shall be otherwise satisfactory to the Administrative Agent in its discretion, as any such Assignments may be amended, restated, modified or supplemented from time to time.

"Authority Documents" shall mean, as to any Person, the articles or certificate of incorporation or formation, by-laws, limited liability company agreement, general partnership agreement, limited partnership agreement, trust agreement, joint venture agreement or other applicable organizational or governing documents and the applicable resolutions of such Person.

"Availability" shall mean at any time, an amount equal to the positive excess (if any) of (a) the lesser of (i) the Revolving Committed Amount, and (ii) the Asset Value of all Revolving Loan Collateral, minus (b) the aggregate outstanding principal amount for all Revolving Loans on such day made on or after the Restatement Date; provided, however, for so long as and to the extent that the Administrative Agent does not have a first priority perfected security interest in any item of Collateral, then such Collateral shall be disregarded for the purposes of calculating Availability; provided, further, however, on and after the occurrence of the Maturity Date or an Event of Default, the Availability shall be zero (0).

"Availability Correction Deadline" shall have the meaning set forth in Section 2.5.

"Bailee" shall mean, with respect to each Table Funded Mortgage Asset, the related title company or other settlement agent, in each case, approved in writing by the Administrative Agent in its discretion.

"Bailee Agreement" shall mean, the Bailee Agreement among the applicable Borrower, the Administrative Agent and the Bailee in the form of Annex 13 to the Custodial Agreement.

"Bailee's Trust Receipt" shall have the meaning set forth in the Custodial Agreement.

"Bankruptcy Code" shall mean the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Bankruptcy Event" shall mean any of the events described in Section 7.1(f).

"Bankruptcy Event of Default" shall mean an Event of Default specified in Section 7.1(f).

"Basic Mortgage Asset Documents" shall have the meaning set forth in the Custodial Agreement.

"Book Value" shall mean, with respect to any Mortgage Asset at any time, an amount as certified by the applicable Borrower, equal to the lesser of (a) face or par value and (b) the price that the applicable Borrower initially paid or advanced in respect thereof plus any additional amounts advanced by the applicable Borrower for or in respect of such Mortgage Asset, as such Book Value may be marked down by the applicable Borrower from time to time, including, as applicable, any loss/loss reserve/price adjustments, less an amount equal to the sum of all principal payments, prepayments or paydowns paid and realized losses and other writedowns recognized relating to such Mortgage Asset.

"Borrower" or "Borrowers" shall mean, individually and/or collectively, Arbor Realty Funding, ARSR Tahoe, Arbor Realty, ART 450, ARSR, Arbor ESH and any other entity that becomes a party to this Agreement pursuant to Section 5.10 from time to time, in each case together with their successors and permitted assigns.

"Borrower Joinder Agreement" shall mean a Borrower Joinder Agreement in substantially the form of Exhibit 1.1(d)(i), executed and delivered by an Additional Credit Party in accordance with the provisions of Section 5.10, as amended, restated, supplemented or modified from time to time.

"Borrower Asset Schedule" shall have the meaning set forth in the Custodial Agreement.

"Borrower Release Letter" shall mean a letter in the form of Exhibit 1.1(h), duly executed by the applicable Borrower.

"Borrowing Date" shall mean, the date any Loan is made or any item of Collateral is pledged to the Administrative Agent pursuant to the terms hereof and the other Credit Documents.

"Bridge Loan" shall mean, a Whole Loan, Junior Interest or Mezzanine Loan that is otherwise an Eligible Asset except that the Underlying Mortgaged Property is not stabilized, or is otherwise considered to be in a transitional state, which exceptions shall be disclosed to and be acceptable to the Administrative Agent in its discretion. A Bridge Loan may not include an interest in a Preferred Equity Interest. Unless waived in writing by the Administrative Agent in its discretion, a Bridge Loan must satisfy all of the terms and conditions contained in this Agreement (other than those eligibility criteria waived in accordance with the first sentence of this definition) that are applicable to Whole Loans, Junior Interests and Mezzanine Loans, as applicable.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in North Carolina, New York or Minnesota are authorized or required by Requirements of Law to close; provided, however, that when used in connection with a rate determination, borrowing or payment in respect of a LIBOR Rate Loan, the term "Business Day" shall also exclude any day on which banks in London, England are not open for dealings in Dollar deposits in the London interbank market.

"Capital Lease" shall mean any lease of (or other agreement conveying the right to use) Property, real or personal, the obligations with respect to which are required to be capitalized on a balance sheet of the lessee in accordance with GAAP.

"Capital Lease Obligations" shall mean, for any Person and its Consolidated Subsidiaries, all obligations of such Person to pay rent or other amounts under a Capital Lease, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Cash Collateral" shall mean the cash or payments received by the Administrative Agent pursuant to Section 2.5 of this Agreement or as Income on any Collateral.

"Cash Equivalents" shall mean any of the following: (a) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one (1) year from the date of acquisition, (b) time deposits or certificates of deposit of any commercial bank incorporated under the laws of the United States or any state thereof, of recognized standing having capital and unimpaired surplus in excess of $1,000,000,000 and whose short-term commercial paper rating at the time of acquisition is at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's (any such bank, an "Approved Bank"), with such deposits or certificates having maturities of not more than one (1) year from the date of acquisition, (c) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (a) and (b) above entered into with any Approved Bank, (d) commercial paper or finance company paper issued by any Person incorporated under the laws of the United States or any state thereof and rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, and in each case maturing not more than one (1) year after the date of acquisition, and (e) investments in money market funds that are registered under the 40 Act, which have net assets of at least $1,000,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (e) above. All such Cash Equivalents must be denominated solely for payment in Dollars.

"CDO Issuance" shall mean any securitization transaction involving the issuance of collateralized debt obligations.

"CDO Issuer" shall mean the issuer of securities in a CDO Issuance.

"Change in Law" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"Change of Control" shall mean, unless approved by the Administrative Agent in advance, with respect to any Borrower or any Guarantor, a change of control shall be deemed to have occurred upon the occurrence of any of the following: (a) a Person or two or more Persons acting in concert shall have acquired "beneficial ownership", directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of, or control over, Voting Interests of such Borrower or such Guarantor (or other securities convertible into such Voting Interests) representing more than 50% of the combined voting power of all Voting Interests of any Borrower or any Guarantor, (b) Continuing Directors shall cease for any reason to constitute a majority of the members of the board of directors of any Borrower or any Guarantor then in office, (c) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or

consolidation), in one or a series of related transactions, of all or substantially all of the assets of any Borrower (together with its Subsidiaries), or any Guarantor (together with its Subsidiaries) taken as a whole to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) or (d) the adoption by the equity holders of any Borrower or any Guarantor of a plan or proposal for the liquidation or dissolution of any Borrower or any Guarantor. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 and 13d-5 of the Exchange Act. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall be deemed to approve or have approved any internalization of management as a result of this definition or any other provision.

"Class" shall mean with respect to a Mortgage Asset, such Mortgage Asset's classification as a Whole Loan, a Junior Interest, a Mezzanine Loan, a Preferred Equity Interest, a Bridge Loan, an Equity Asset, a Condominium Loan or a Land Loan (and, with respect to each Bridge Loan, Condominium Loan or Land Loan, its sub–classification as a Whole Loan, Junior Interest Loan or Mezzanine Loan, as applicable).

"Closing Date" shall mean November 6, 2007.

"Closing Officer's Certificate" shall mean a certificate substantially in the form of Exhibit 4.1(n), duly executed by each of the Credit Parties.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean the collective reference to the collateral described in the Security Documents that secures all Obligations (including, without limitation, the Term Loan and the Revolving Loan).

"Collateral Default" shall mean any Mortgage Asset included or proposed to be included in the Collateral (a) that is thirty (30) or more days delinquent under the terms of the related Mortgage Loan Documents (including any Preferred Equity Interest or Equity Asset that has not been paid during such period), (b) for which there is a non-monetary default (beyond any applicable notice and cure period) under the terms of the related Mortgage Loan Documents, (c) for which there is any breach or a representation or warranty under Schedule 1.1(c) or (d) with respect to which the related Obligor is the subject of an Insolvency Proceeding or Insolvency Event.

"Collection Account" shall mean the account set forth on Schedule 1.1(b), which is established in the name of one or more Borrowers and subject to the Account Control Agreement and into which all Income and Cash Collateral shall be deposited. Funds in the Collection Account may be invested at the direction of the Administrative Agent in Cash Equivalents.

"Commercial Real Estate" shall mean any real estate included in the definition of Property Type.

"Commercial Real Estate Loan" shall mean any loan secured directly or indirectly by Commercial Real Estate or, as applicable, Equity Interests in an entity that owns directly or indirectly Commercial Real Estate.

"Commitment" shall mean the Revolving Commitments and the Term Loan Commitments, individually or collectively, as appropriate.

"Commitment Fee" shall mean the "Commitment Fee" payable under the Fee Letter.

"Commitment Percentage" shall mean the Revolving Commitment Percentage and/or the Term Loan Commitment Percentage, as appropriate.

"Commitment Period" shall mean the period from and including the Restatement Date to but excluding the Maturity Date.

"Commonly Controlled Entity" shall mean an entity, whether or not incorporated, which is under common control with a Borrower or any other Credit Party within the meaning of Section 4001(b)(1) of ERISA or is part of a group which includes any Borrower or any other Credit Party and which is treated as a single employer under Section 414(b) or 414(c) of the Code or, solely for purposes of Section 412 of the Code to the extent required by such section, Section 414(m) or 414(o) of the Code.

"Compliance Certificate" shall mean a certificate in the form of Exhibit 1.1(i) attached hereto, duly executed by the Credit Parties.

"Condominium Loan" shall mean Mortgage Asset (other than a Bridge Loan, a Preferred Equity Interest or an Equity Asset) the Underlying Mortgaged Property for which is owned, is in the process of being converted to be owned or is otherwise expected to be owned, in whole or in part, by a condominium form of ownership. Condominium Loans are not Eligible Assets unless deemed so by the Administrative Agent on a case–by–case basis.

"Confirmation" shall have the meaning set forth in Section 2.1.

"Consolidated" shall mean, when used with reference to financial statements or financial statement items of the Borrowers, the Guarantors and their Subsidiaries or any other Person, such statements or items on a consolidated basis in accordance with the consolidation principles of GAAP.

"Construction Costs" shall mean with respect to a Mortgage Asset that is a Bridge Loan, as of any date of determination, the reasonable hard and soft costs of proposed construction of the improvements on the Underlying Mortgaged Property, which reasonable costs shall be disclosed to and approved by the Administrative in its discretion, plus the market value of the related Underlying Mortgaged Property at such time, as determined by the Administrative Agent in its discretion based on such sources of information as the Administrative Agent may determine to rely on in its discretion.

"Construction Draw Deliveries" shall mean the deliveries required under Schedule 1.1(f) to this Agreement.

"Contingent Liabilities" shall mean, with respect to any Person and its Consolidated Subsidiaries (without duplication): (a) liabilities and obligations (including any Guarantee Obligations) of such Person or any Consolidated Subsidiary of such Person in respect of "off-balance sheet arrangements" (as defined in the SEC Off-Balance Sheet Rules), (b) any obligation, including, without limitation, any Guarantee Obligation, whether or not required to be disclosed in the footnotes to such Person's and its Consolidated Subsidiaries' financial statements, guaranteeing partially or in whole any Non-Recourse Indebtedness, lease, dividend or other obligation, exclusive of (i) contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets) and (ii) guarantees of non-monetary obligations (other than guarantees of completion, environmental indemnities and guarantees of customary carve-out matters made in connection with Non-Recourse Indebtedness, such as (but not limited to) fraud, misappropriation, bankruptcy and misapplication) which have not yet been called on or quantified, of such Person or of any other Person, and (c) any forward commitment or obligation to fund or provide proceeds with respect to any loan or other financing which is obligatory and non-discretionary on the part of the lender. The amount of any Contingent Liabilities

described in clause (b) shall be deemed to be, (i) with respect to a guarantee of interest or interest and principal, or operating income guarantee, the sum of all payments required to be made thereunder (which, in the case of an operating income guarantee, shall be deemed to be equal to the debt service for the note secured thereby), through, (x) in the case of an interest or interest and principal guarantee, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (y) in the case of an operating income guarantee, the date through which such guarantee will remain in effect, and (ii) with respect to all guarantees not covered by the preceding clause (i), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of such Person. As used in this definition, the term "SEC Off-Balance Sheet Rules" means the Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Securities Act Release No. 33-8182, 34-47264; FR-67 International Series Release No. 1266 File No. S7-42-02, 68 Fed. Reg. 5982 (Feb. 5, 2003) (codified at 17 CFR pts. 228, 229 and 249).

"Continuing Director" shall mean (a) an individual who is a member of any Person's board of directors (or the equivalent thereof) on the date hereof or (b) any new director (or the equivalent thereof) whose appointment was approved by a majority of the individuals who were already Continuing Directors at the time of such appointment, election or approval.

"Contractual Obligation" shall mean, as to any Person, any provision of any security issued by such Person or of any contract, agreement, instrument or undertaking to which such Person is a party or by which it or any of its Property is bound.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Correction Amount" shall have the meaning set forth in Section 2.5.

"Credit Documents" shall mean this Agreement, each of the Notes, any Joinder Agreement, the Fee Letter, the Guaranty, each Notice of Borrowing, each Confirmation, the Warrant Agreements, the Registration Rights Agreement, the Custodial Fee Letter and the Security Documents and all other agreements, documents, certificates and instruments delivered to the Administrative Agent or any Lender by any Credit Party in connection therewith (other than any agreement, document, certificate or instrument relating to any Derivatives Contract), as each such agreement, document, certificate or instrument is amended, restated, modified or supplemented from time to time.

"Credit Party" shall mean any of the Borrowers, the Guarantors, the Pledgor, any Additional Credit Party or any pledgor or obligor under the Security Documents.

"Credit Party–Related Obligations" shall mean any obligations, liabilities and/or Indebtedness of the Credit Parties under each Credit Document and under any other arrangement between any Credit Party or any Affiliate or Subsidiary of any Credit Party, on the one hand, and the Administrative Agent, any Affiliate or Subsidiary of the Administrative Agent and/or any commercial paper conduit for which Wachovia or an Affiliate or Subsidiary of Wachovia acts as a liquidity provider, administrator or agent, on the other hand, including, without limitation, such obligations, liabilities and/or Indebtedness under the Working Capital Facility, as any such Credit Party-Related Obligations are amended, restated or modified from time to time.

"Custodial Agreement" shall mean that certain First Amended and Restated Custodial Agreement, dated as of the Restatement Date, by and among the Borrowers, the Administrative Agent and the Custodian, as the same shall be amended, modified, waived, supplemented, extended, replaced or restated from time to time.

"Custodial Fee Letter" shall mean that certain Custodial Fee Letter between the Borrowers and the Custodian, as such letter may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Custodial Identification Certificate" shall have the meaning set forth in the Custodial Agreement.

"Custodian" shall mean Wells Fargo Bank, National Association, and its successor in interest as the custodian under the Custodial Agreement, and any successor Custodian under the Custodial Agreement.

"DSCR" shall mean with respect to any Mortgage Asset, as of any date of determination, for the period of time to be determined in the Administrative Agent's discretion (it being understood that it is the Administrative Agent's intent to make the determination based on the period of twelve (12) consecutive complete calendar months preceding such date (or, if such Mortgage Asset was originated less than twelve (12) months from the date of determination, the number of months from the date of origination)), the ratio of (a) the aggregate Net Cash Flow in respect of the Underlying Mortgaged Properties relating to such Mortgage Asset for such period (including, in the case of Bridge Loans and, as applicable, Condominium Loans and Land Loans, interest reserves held by a Borrower or a Servicer with respect to such asset, to (b) the sum of (i) the aggregate of all amounts due for such period in respect of all Indebtedness that was outstanding from time to time during such period that is secured, directly or indirectly, by such Underlying Mortgaged Properties (including, without limitation, by way of a pledge of the equity of the owner(s) of such Underlying Mortgaged Properties) or that is otherwise owing by the owner(s) of such Underlying Mortgaged Properties, including, without limitation, all scheduled principal and/or interest payments due for such period in respect of each Mortgage Asset that is secured or supported by such Underlying Mortgaged Properties plus (ii) the amount of all Ground Lease payments to be made in respect of such Underlying Mortgaged Properties during such period, as any of the foregoing elements of DSCR may be adjusted by the Administrative Agent as determined by the Administrative Agent in its discretion; provided, however, that all such calculations shall be made taking into account any senior or *pari passu* debt or other senior or *pari passu* obligations, including senior or *pari passu* debt or other senior or *pari passu obligations* secured directly or indirectly by the applicable Underlying Mortgaged Property.

"Default" shall mean any of the events specified in Section 7.1, whether or not any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.

"Defaulting Lender" shall mean, at any time, any Lender that, at such time (a) has failed to make a Loan required pursuant to the terms of this Agreement, (b) has failed to pay to the Administrative Agent or any Lender an amount owed by such Lender pursuant to the terms of this Agreement and such default remains uncured, or (c) has been deemed insolvent or has become subject to an Insolvency Proceeding, Insolvency Event or to a receiver, trustee or similar official.

"Deficit" shall have the meaning set forth in Section 2.5(b)(iv).

"Derivatives Contract" shall mean any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward

commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement. Not in limitation of the foregoing, the term "Derivatives Contract" includes any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such master agreement.

"Derivatives Contract Provider" shall mean Wachovia, together with its successors and assigns.

"Derivatives Termination Value" shall mean, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Derivatives Contracts, (a) for any date on or after the date such Derivatives Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Derivatives Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Derivatives Contracts (which may include the Administrative Agent).

"Dollars" and "$" shall mean dollars in lawful currency of the United States of America.

"Domestic Lending Office" shall mean, initially, the office of each Lender designated as such Lender's Domestic Lending Office shown in such Lender's Administrative Questionnaire; and thereafter, such other office of such Lender as such Lender may from time to time specify to the Administrative Agent and the Borrowers as the office of such Lender at which Alternate Base Rate Loans of such Lender are to be made.

"Domestic Subsidiary" shall mean any Subsidiary that is organized and existing under the laws of the United States or any state or commonwealth thereof or under the laws of the District of Columbia.

"Due Diligence Costs" shall have the meaning set forth in Section 10.27.

"Due Diligence Review" shall mean the performance by the Administrative Agent of any or all of the reviews permitted under Section 10.27 with respect to any or all of the Collateral, as desired by the Administrative Agent from time to time.

"Electronic Transmission" shall mean the delivery of information and executed documents in an electronic format acceptable to the applicable recipient thereof.

"Eligible Asset" shall mean a Mortgage Asset that as of any date of determination:

(a) is not subject to a Collateral Default;

(b) with respect to the portion of such Mortgage Asset to be pledged to the Administrative Agent, the funding obligations have been satisfied in full and there is no unfunded commitment with respect thereto;

(c) has been approved in writing by the Administrative Agent in its discretion;

(d) has an LTV not in excess of the Maximum LTV, and, with respect to Bridge Loans, an LTC not in excess of the Maximum LTC;

(e) has a DSCR equal to or greater than the Minimum DSCR;

(f) is not a construction loan; provided, however, the Administrative Agent may, in its discretion, waive this restriction on a case–by–case basis and permit the pledge of one (1) or more Condominium Loans or Land Loans that are construction loans provided each such Mortgage Asset otherwise satisfies the definition of Eligible Asset and the other requirements of the Credit Documents, such assets shall be treated like Bridge Loans for the purpose of determining Asset Value and LTC and such Mortgage Asset and the applicable Borrower satisfies such other terms, conditions or requirements as the Administrative Agent may require in its discretion, such requirements to be set forth in the related Confirmation;

(g) is not a loan to an operating business (other than a hotel);

(h) [reserved];

(i) satisfies each of the applicable representations and warranties set forth in Article III of this Agreement and the Security Documents (to the extent any such representations or warranties relate to the Mortgage Assets or the Administrative Agent's rights or remedies with respect thereto), in Schedule 1.1(c) hereto, the Mortgage Loan Documents and in any statement, affirmation or certification made or information, document, agreement, notice or report provided to the Administrative Agent with respect to such Mortgage Asset;

(j) in the case a Ground Lease, the Ground Lease has a remaining term of no less than twenty (20) years from the maturity date of the Mortgage Asset;

(k) the Underlying Mortgaged Property is located, and the Obligor is domiciled, in the United States of America;

(l) such Mortgage Asset is denominated and payable in Dollars;

(m) the Obligor is not a Sanctioned Person or Sanctioned Entity; and

(n) does not involve an equity or similar interest by any Credit Party that would result in (i) a conflict of interest or a potential conflict of interest or (ii) an affiliation with an Obligor under the terms of the Mortgage Loan Documents which results or could result in the loss or impairment of any material rights of the holder of the Mortgage Asset; provided, however, the Borrowers must disclose to the Administrative Agent prior to the related Borrowing Date all equity or similar interests held or to be held by any Credit Party regardless of whether it satisfies any of the foregoing clauses (i) or (ii).

provided, however, notwithstanding a Mortgage Asset's failure to conform to the criteria set forth above, the Administrative Agent may, in its discretion, designate in writing any such non–compliant Mortgage Asset as an Eligible Asset, which may include a temporary or permanent waiver of one (1) or more Eligible Asset requirements.

"Eligible Assignee" shall mean (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by the Administrative Agent; provided

that notwithstanding the foregoing, "Eligible Assignee" shall not include the Borrowers, Guarantors or any Borrower's or Guarantor's Affiliates or Subsidiaries.

"Eligible Subordinated Debt" shall mean (a) the debt securities of ARSR issued under (i) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, and The Bank of New York Mellon Trust Company, National Association ("BONY"), as trustee, pursuant to which ARSR issued $29,400,000 in original aggregate principal amount of Junior Subordinated Notes, (ii) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, and BONY, as trustee, pursuant to which ARSR issued $168,000,000 in original aggregate principal amount of Junior Subordinated Notes, (iii) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, pursuant to which ARSR issued $21,224,000 in original aggregate principal amount of Junior Subordinated Notes, (iv) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, pursuant to which ARSR issued $2,632,000 in original aggregate principal amount of Junior Subordinated Notes, (v) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, pursuant to which ARSR issued $47,180,000 in original aggregate principal amount of Junior Subordinated Notes, (vi) Junior Subordinated Indenture, dated April 6, 2005 (as amended), between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, and (vii) Junior Subordinated Indenture, dated June 2, 2006, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee (the indentures described in (vi) and (vii), collectively, the "Original Kodiak Indentures"), (b) any future debt securities of ARSR issued in exchange for the securities held under the Original Kodiak Indentures that (i) have express subordination provisions substantially the same as those contained in the indentures for the transactions listed in clause (a) of this definition of Eligible Subordinated Debt, (ii) has enforceable subordination provisions, (iii) has a maturity date no earlier than the date that is six (6) months following the Maturity Date, (iv) the Administrative Agent is in receipt of an Opinion of Counsel acceptable to the Administrative Agent in its discretion addressing the enforceability of the subordination provisions contained in the documents governing the proposed Eligible Subordinated Debt, and (c) any future debt securities of ART and its Consolidated Subsidiaries that (i) has express subordination provisions substantially the same as those contained in the indentures for the transactions listed in clause (i) of this definition of Eligible Subordinated Debt, (ii) has enforceable subordination provisions, (iii) has a maturity date no earlier than the date that is six (6) months following the Maturity Date, (iv) the Administrative Agent is in receipt of an Opinion of Counsel acceptable to the Administrative Agent in its discretion addressing the enforceability of the subordination provisions contained in the documents governing the proposed Eligible Subordinated Debt and (v) has been specifically approved in writing by the Administrative Agent in its discretion.

"Environmental Laws" shall mean any and all applicable foreign, federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health or the environment, as now or may at any time be in effect during the term of this Agreement.

"Equity Asset" shall mean an equity investment in an amount as approved by the Administrative Agent in its discretion represented by Equity Interests in an entity that owns directly or indirectly Commercial Real Estate, including, but not limited to, all Equity Interests representing a dividend on any of the Equity Interests of the Equity Asset Grantor or representing a distribution or return of capital upon or in respect of the Equity Interests of the Equity Asset Grantor, in each case as it relates to an Equity Asset; provided, however, (a) the funding of the Equity Asset is subject to regulatory and compliance criteria applicable to banks generally with respect to this type of asset, and (b) the Administrative Agent reserves the right to require, as a condition to such financing, that each Equity Asset be acquired by and pledged to

the Administrative Agent by a bankruptcy remote, special purpose entity, which entity shall join the Credit Documents as a co-Borrower pursuant to a Borrower Joinder Agreement as a condition to the pledge of such Equity Asset and for the Equity Interests in such Borrower to be pledged to the Administrative Agent as additional Collateral for the Obligations.

"Equity Asset Documents" shall mean the related Authority Documents of the Equity Asset Grantor, together with a certificate, instrument or other tangible evidence of the Equity Interests in the Equity Asset Grantor.

"Equity Asset Grantor" shall mean the entity in which an Equity Asset represents an Investment.

"Equity Interests" shall mean with respect to any Person, any share, interest, participation and other equivalent (however denominated) of capital stock of (or other ownership, equity or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership, equity or profit interests in) such Person, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

"Equity Issuance" shall mean any issuance by any Borrower, Guarantor or any Consolidated Subsidiary or Affiliate of any Borrower or any Guarantor to any Person that is not a Borrower, Guarantor or Consolidated Subsidiary or Affiliate of a Borrower or Guarantor of (a) shares or interests of its Equity Interests, (b) any shares or interests of its Equity Interests pursuant to the exercise of options, warrants or similar rights (other than shares issued upon the exercise of options or warrants that were issued to officers, directors or employees of a Credit Party), (c) any shares or interests of its Equity Interests pursuant to the conversion of any debt securities to equity or (d) (other than warrants issued by any Borrower, Guarantor or any Consolidated Subsidiary or Affiliate of any Borrower or any Guarantor for which no cash is paid to the applicable Borrower, Guarantor or Consolidated Subsidiary or Affiliate of any Borrower or any Guarantor or options or warrants issued to officers, directors or employees of a Borrower or any Guarantor) warrants, options or similar rights that are exercisable or convertible into shares or interests of its Equity Interests; provided, however, "Equity Issuance" shall not include an Equity Issuance in connection with an issuance of shares (i) in ART to Arbor Commercial Mortgage, LLC, a New York limited liability company, as compensation for acting as servicer or (ii) in any Guarantor or Consolidated Subsidiary or Affiliate of any Guarantor (other than a Borrower) in connection with the acquisition of a company.

"Equity/Preferred Equity Pledge and Security Agreement" shall mean the First Amended and Restated Equity/Preferred Equity Pledge and Security Agreement, dated as of the Restatement Date, by the Borrowers for the benefit of the Administrative Agent and each Lender, as such agreement may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ESH Allocated Assets" shall mean the Pledged Mortgage Assets to which allocated loan amounts relating to the ESH Pledged Mortgage Assets were allocated on the Restatement Date.

"ESH Pledged Mortgage Assets" shall mean the Equity Assets and Preferred Equity Interests pledged to the Administrative Agent that relate to the Underlying Mortgaged Properties involving the Extended Stay Hotel chain and more specifically described in the related Underwriting Package and Confirmation.

"ESH Release Amount" shall mean, with respect to each ESH Allocated Asset, the amount specified as the "ESH Release Amount" on Schedule 1-B to the Fee Letter.

"Event of Default" shall mean any of the events specified in Section 7.1; provided, however, that any requirement for the giving of notice or the lapse of time, or both, or any other condition, has been satisfied.

"Exception Report" shall have the meaning set forth in the Custodial Agreement.

"Exceptions" shall have the meaning set forth in the Custodial Agreement.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Accounts" shall mean all accounts established to hold Obligor Reserve Payments and all accounts holding funds that are required to be disbursed to an Obligor under the terms of the related Mortgage Loan Documents.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of the Borrowers hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which a Borrower is located and (c) in the case of a Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 2.14, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrowers with respect to such withholding tax pursuant to Section 2.14.

"Existing Agreement" shall mean, collectively, the Original Agreement and that certain Credit Agreement, dated as of November 6, 2007, as amended by the First Amendment to Credit Agreement, dated as of April 23, 2008, the Second Amendment to Credit Agreement, dated as of June 26, 2008, the Third Amendment to Credit Agreement, dated as of September 30, 2008, the Fourth Amendment to Credit Agreement, dated as of December 31, 2008 and the Fifth Amendment to Credit Agreement, dated as of December 31, 2008, among ARSR, Arbor ESH, ART, Arbor Realty, each lender party thereto, and Wachovia Bank, National Association, as the administrative agent.

"Existing Borrower" shall mean, collectively, the Credit Parties who were Borrowers under the Existing Agreement.

"Extension of Credit" shall mean, as to any Lender, the making of a Loan by such Lender, any conversion of a Loan from one Type to another Type, any extension of any Loan and any pledge of a Mortgage Asset to the Administrative Agent.

"Extraordinary Receipt" shall mean any Income received by or paid to or for the account of any Credit Party relating to any item of Collateral and not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments.

"Fair Market Value" shall mean, with respect to (a) a security listed on a national securities exchange or recognized automated quotation system, the price of such security as reported on such exchange by any widely recognized reporting method customarily relied upon by financial institutions, and (b) with respect to any other assets or Property, including realty, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction.

"Federal Funds Effective Rate" shall have the meaning set forth in the definition of "Alternate Base Rate".

"Fee Letter" shall mean the First Amended and Restated Fee Letter, dated as of the Restatement Date, among the Borrowers, the Guarantors and the Administrative Agent, as amended, modified, extended, restated, replaced, or supplemented from time to time.

"Financial Covenants" shall mean the covenants set forth in Section 5.9 of this Agreement.

"Fitch" shall mean Fitch Ratings, Inc.

"Foreclosed Mortgage Asset" shall mean a Mortgage Asset for which a foreclosure proceeding has been commenced and completed.

"Foreign Lender" shall mean any Lender that is organized under the laws of a jurisdiction other than that in which a Borrower is resident for tax purposes. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Fund" shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Funding Date" shall mean the date upon which all conditions set forth in Sections 4.1 and 4.2 have been satisfied.

"GAAP" shall mean generally accepted accounting principles in effect in the United States of America applied on a consistent basis, subject, however, in the case of determination of compliance with the financial covenants set out in Section 5.9, to the provisions of Section 1.3.

"Governmental Authority" shall mean the government of the United States of America or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Ground Lease" shall mean with respect to any Underlying Mortgaged Property for which the Obligor has a leasehold interest in the related Underlying Mortgaged Property or space lease within such Underlying Mortgaged Property, the lease agreement creating such leasehold interest.

"Guarantee Obligation" shall mean, as to any Person (the "guaranteeing person"), without duplication, any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of the obligations for which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends, Contractual Obligation, Derivatives Contract or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the maximum stated amount of the primary obligation relating to such Guarantee Obligation (or, if less, the maximum stated liability set forth in the instrument embodying such Guarantee Obligation); provided, however, that in the absence of any such stated amount or stated liability, the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as reasonably determined by such Person in good faith.

"Guarantor" shall mean, individually and/or collectively, ART, Arbor Realty, ARSR and any other entity that becomes party to this Agreement pursuant to Section 5.10 from time to time, in each case together with their successors and permitted assigns.

"Guarantor Joinder Agreement" shall mean a Guarantor Joinder Agreement in substantially the form of Exhibit 1.1(d)(ii), executed and delivered by an Additional Credit Party in accordance with the provisions of Section 5.10, as amended, restated, supplemented or modified from time to time.

"Guaranty" shall mean the guaranty of the Guarantors set forth in that certain First Amended and Restated Guaranty Agreement, dated as of the Restatement Date, by and among the Guarantors and the Administrative Agent, as amended, restated, supplemented or modified from time to time.

"Homewood Account Control Agreement" shall mean that certain executed first amended and restated account control agreement, dated as of the Restatement Date, among the Borrowers, the Administrative Agent and Wachovia granting control over the Homewood Interest Reserve identified therein to the Administrative Agent as agent for the Secured Parties, in the form of Exhibit 1.1(m), as amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Homewood Interest Reserve" shall mean the account maintained at Wachovia identified in the Homewood Account Control Agreement into which the interest reserve for the second, third and fourth mortgage loans under the Homewood Mortgage Asset shall be held. Subject to the terms of this Agreement, on each Payment Date, the monthly debt service amount for the Homewood Mortgage Asset will be withdrawn from the Homewood Interest Reserve by the Administrative Agent and deposited into the Collection Account to be applied under Section 2.9 of this Agreement; provided, however, (i) no

amounts withdrawn from the Homewood Interest Reserve shall be paid to the Borrowers after an Event of Default and (ii) after an event of default under the Mortgage Loan Documents for the Homewood Mortgage Asset, and subject to the terms of the Mortgage Loan Documents for the Homewood Mortgage Asset, the Administrative Agent shall be entitled to withdraw all of the funds in the Homewood Interest Reserve and apply such funds to the Allocated Term Loan Amount and/or the Allocated Revolving Loan Amount, as applicable, for the Homewood Mortgage Asset and any other Obligations.

"Homewood Mortgage Asset" shall mean the second, third and fourth mortgage Whole Loans referred to as Homewood Village Resorts in Placer County, California, which are pledged to the Administrative Agent, as Collateral, under the Security Documents.

"Income" shall mean with respect to the Collateral and to the extent of a Borrower's or the holder's interest therein, at any time, all of the following: all payments, collections, prepayments, recoveries, proceeds (including, without limitation, insurance and condemnation proceeds), Extraordinary Receipts and all other payments or amounts of any kind or nature whatsoever paid, received, collected, recovered or distributed on, in connection with or in respect of the Collateral or any other collateral for the Obligations, including, without limitation, principal payments, interest payments, principal and interest payments, prepayment fees, extension fees, exit fees, defeasance fees, transfer fees, late charges, late fees and all other fees or charges of any kind or nature, premiums, yield maintenance charges, penalties, default interest, dividends, gains, receipts, allocations, rents, interests, profits, payments in kind, returns or repayment of contributions and all other distributions, payments and other amounts of any kind or nature whatsoever payable thereon, in connection therewith, or with respect thereto, together with amounts received from any Interest Rate Protection Agreement and amounts withdrawn from the Homewood Interest Reserve by the Administrative Agent; provided, however, (i) prior to an Event of Default, the Borrowers may net the Servicing Fee from Income and (ii) Income shall not include any Obligor Reserve Payments unless a Borrower, a Servicer or a PSA Servicer has exercised rights with respect to such payments under the terms of the related Mortgage Loan Documents, the Servicing Agreements or the Pooling and Servicing Agreements, as applicable.

"Indebtedness" shall mean, with respect to any Person, including such Person's Consolidated Subsidiaries determined on a consolidated basis, at the time of computation thereof, all indebtedness of any kind including, without limitation (without duplication): (a) all obligations of such Person in respect of money borrowed (including, without limitation, principal, interest, assumption fees, prepayment fees, yield maintenance charges, penalties, exit fees, contingent interest and other monetary obligations whether choate or inchoate and whether by loan, the issuance and sale of debt securities or the sale of Property or assets to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property or assets, or otherwise); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, letters of credit or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or services rendered, or (iv) in connection with the issuance of preferred equity or trust preferred securities; (c) Capital Lease Obligations of such Person; (d) all reimbursement obligations of such Person under any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off–Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatory Redeemable Stock issued by such Person or any other Person (inclusive of forward equity contracts), valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) as applicable, all obligations of such Person (but not the obligation of others) in respect of any keep well arrangements, credit enhancements, contingent or future funding obligations under any Mortgage Asset or any obligation senior to the Mortgage Asset, unfunded interest reserve

amount under any Mortgage Asset or any obligation that is senior to the Mortgage Asset, purchase obligation, repurchase obligation, sale/buy–back agreement, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement (excluding any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatory Redeemable Stock)); (h) net obligations under any Derivatives Contract not entered into as a hedge against existing indebtedness, in an amount equal to the Derivatives Termination Value thereof; (i) all Non–Recourse Indebtedness, recourse indebtedness and all indebtedness of other Persons which such Person has guaranteed or is otherwise recourse to such Person; (j) all indebtedness of another Person secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien (other than certain Permitted Liens) on Property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness or other payment obligation; provided, however, if such Person has not assumed or become liable for the payment of such indebtedness, then for the purposes of this definition the amount of such indebtedness shall not exceed the market value of the property subject to such Lien; (k) all Contingent Liabilities; (l) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person or obligations of such Person to pay the deferred purchase or acquisition price of Property or assets, including contracts for the deferred purchase price of Property or assets that include the procurement of services; (m) indebtedness of general partnerships of which such Person is liable as a general partner (whether secondarily or contingently liable or otherwise); and (n) obligations of such Person to fund capital commitments under any Authority Document, subscription agreement or otherwise.

"Indemnified Amounts" shall have the meaning set forth in Section 10.5(b).

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes.

"Indemnitee" shall have the meaning set forth in Section 10.5(b).

"Independent Director" shall mean natural Person who (a) is not at the time of initial appointment as Independent Director, and may not have been at any time during the five (5) years preceding such initial appointment or at any time while serving as Independent Director, (i) a stockholder, partner, member or direct or indirect legal or beneficial owner of a Borrower, a Guarantor or any Subsidiary or Affiliate of any Credit Party; (ii) a contractor, creditor, customer, supplier, director (with the exception of serving as the Independent Director of a Borrower), officer, employee, attorney, manager or other Person who derives any of its purchases or revenues from its activities with a Borrower, a Guarantor or any Affiliate or Subsidiary of any Credit Party; (iii) a natural Person who controls (directly or indirectly or otherwise) a Borrower, a Guarantor or any Affiliate or Subsidiary of any Credit Party or who controls or is under common control with any Person that would be excluded from serving as an Independent Director under (i) or (ii), above; or (iv) a member of the immediate family of a natural Person excluded from servicing as an Independent Director under clauses (i) or (ii) above and (b) otherwise satisfies the then current requirements of the Rating Agencies. A Person who is an employee of a nationally recognized organization that supplies independent directors and who otherwise satisfies the criteria in clause (a) but for the fact that such organization receives payment from a Borrower or a Guarantor for providing such independent director shall not be disqualified from serving as an Independent Director hereunder.

"Information Materials" shall have the meaning set forth in Section 5.15.

"Insolvency" shall mean, with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of such term as used in Section 4245 of ERISA.

"Insolvency Event" shall mean, with respect to a specified Person, (a) the filing of a decree or order for relief by a court having jurisdiction in the premises in respect of such Person or any substantial part of its Property in an involuntary case under any applicable Insolvency Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its Property, or ordering the winding-up or liquidation of such Person's affairs, and such decree or order shall remain unstayed and in effect for a period of sixty (60) consecutive days; or (b) the commencement by such Person of a voluntary case under any applicable Insolvency Law now or hereafter in effect, or the consent by such Person to the entry of an order for relief in an involuntary case under any such law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its Property, or the making by such Person of any general assignment for the benefit of creditors, or the failure by such Person generally to pay its debts as such debts become due, or the taking of action by such Person in furtherance of any of the foregoing.

"Insolvency Laws" shall mean the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Insolvency Proceeding" shall mean any case, action or proceeding before any court or other Governmental Authority relating to any Insolvency Event.

"Instrument" shall mean any "instrument" (as defined in Article 9 of the UCC), other than an instrument that constitutes part of chattel paper.

"Intercreditor Agreement" shall mean that certain Intercreditor Agreement to be entered into by and among the Administrative Agent and Wachovia, as administrative agent under the Working Capital Facility, as amended, restated, modified or supplemented from time to time.

"Interest Expense" shall mean, for ART and its Consolidated Subsidiaries, the total interest expense incurred (in accordance with GAAP), including capitalized or accruing interest (but excluding interest funded under a construction loan), by ART and its Consolidated Subsidiaries, without duplication for the most recent period.

"Interest Period" shall mean, with respect to any LIBOR Rate Loan,

(a) initially, the period commencing on the Borrowing Date or conversion date, as the case may be, with respect to such LIBOR Rate Loan and ending one, two, three or six months thereafter, subject to availability to all applicable Lenders, as selected by Borrowers in the Notice of Borrowing or Notice of Conversion given with respect thereto; and

(b) thereafter, each period commencing on the last day of the immediately preceding Interest Period applicable to such LIBOR Rate Loan and ending one, two, three or six months thereafter, subject to availability to all applicable Lenders, as selected by the Borrowers by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto; provided that the foregoing provisions are subject to the following:

(i) if any Interest Period pertaining to a LIBOR Rate Loan would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such

Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period pertaining to a LIBOR Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the relevant calendar month;

(iii) if the Borrowers shall fail to give notice of the applicable Interest Period, in any Notice of Borrower or otherwise, the applicable Borrower shall be deemed to have selected a one-month LIBOR Rate Loan;

(iv) no Interest Period in respect of any Loan shall extend beyond the applicable Maturity Date and, further with regard to the Term Loan, no Interest Period shall extend beyond any principal amortization payment date with respect to such Term Loan unless the portion of such Term Loan consisting of Alternate Base Rate Loans together with the portion of such Term Loan consisting of LIBOR Rate Loans with Interest Periods expiring prior to or concurrently with the date such principal amortization payment date is due, is at least equal to the amount of such principal amortization payment due on such date; and

(v) no more than six (6) LIBOR Rate Loans may be in effect at any time. For purposes hereof, LIBOR Rate Loans with different Interest Periods shall be considered as separate LIBOR Rate Loans, even if they shall begin on the same date and have the same duration, although borrowings, extensions and conversions may, in accordance with the provisions hereof, be combined at the end of existing Interest Periods to constitute a new LIBOR Rate Loan with a single Interest Period.

"Interest Rate Protection Agreement" shall mean with respect to any or all of the Mortgage Assets, (a) any Derivatives Contract required under the terms of the related Mortgage Loan Documents providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, and acceptable to the Administrative Agent in its discretion and (b) any Derivatives Contract put in place by any Borrower, any Guarantor or any Subsidiary or Affiliate of the foregoing with respect to any Mortgage Asset.

"Internal Control Event" shall mean a material weakness in, or fraud that involves management or other employees who have a significant role in, any Credit Party's internal controls over financial reporting, in each case as described in the Securities Laws.

"Investment" shall mean, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, whether by means of (a) the purchase or other acquisition of any Equity Interests in another Person, (b) a loan, advance or extension of credit to, capital contribution to, guaranty or credit enhancement of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. Any binding commitment or option to make an Investment in any other Person shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in the Credit Documents, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Irrevocable Instruction" shall mean an irrevocable instruction letter in the form of Exhibit 1.1(j) hereto duly executed by the applicable Credit Party, as amended, restated, modified or supplemented from time to time.

"Joinder Agreement" shall mean a Borrower Joinder Agreement and/or a Guarantor Joinder Agreement, as applicable, as each may be amended, restated, supplemented or modified from time to time.

"Junior Interest" shall mean (a) a senior, *pari passu* or junior participation interest in a performing Commercial Real Estate Loan or (b) a senior, *pari passu* or junior note or certificate in an "A/B" or similar structure in a performing Commercial Real Estate Loan, in each case where the Underlying Mortgaged Property is stabilized and non-transitional.

"Junior Interest Document" shall mean the original executed promissory note, Participation Certificate, Participation Agreement and any other evidence of a Junior Interest, as applicable.

"Land Loan" shall mean a Commercial Real Estate Loan secured by entitled land intended for construction, which loan is acceptable to the Administrative Agent in its discretion. Land Loans are not Eligible Assets unless deemed so on a case by case basis in the Administrative Agent's discretion.

"Lender" shall have the meaning set forth in the first paragraph of this Agreement and shall include the Revolving Lenders and the Term Loan Lenders.

"Lender Commitment Letter" shall mean, with respect to any Lender, the letter (or other correspondence) to such Lender from the Administrative Agent notifying such Lender of its Revolving Commitment Percentage and its portion of the Commitment Fee and/or Term Loan Commitment Percentage, as applicable.

"Lender Consent" shall mean any lender consent delivered by a Lender on the Restatement Date in the form of Exhibit 4.1(a).

"LIBOR" shall mean, for any LIBOR Rate Loan for any Interest Period therefor, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters Screen LIBOR01 Page (or any successor page) as the London interbank offered rate for deposits in Dollars at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period for a term comparable to such Interest Period. If for any reason such rate is not available, then "LIBOR" shall mean the rate per annum at which, as determined by the Administrative Agent in accordance with its customary practices, Dollars in an amount comparable to the Loans then requested are being offered to leading banks at approximately 11:00 a.m. London time, two (2) Business Days prior to the commencement of the applicable Interest Period for settlement in immediately available funds by leading banks in the London interbank market for a period equal to the Interest Period selected.

"LIBOR Lending Office" shall mean, initially, the office(s) of each Lender designated as such Lender's LIBOR Lending Office in such Lender's Administrative Questionnaire; and thereafter, such other office of such Lender as such Lender may from time to time specify to the Administrative Agent and the Borrowers as the office of such Lender at which the LIBOR Rate Loans of such Lender are to be made.

"LIBOR Rate" shall mean a LIBOR rate per annum (rounded upwards, if necessary, to the next higher 1/100th of 1%) determined by the Administrative Agent in accordance with the definition of "LIBOR".

"LIBOR Rate Loan" shall mean Loans the rate of interest applicable to which is based on the LIBOR Rate.

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement and any Capital Lease having substantially the same economic effect as any of the foregoing).

"Liquidity" shall mean an amount equal to the (a) sum of (without duplication) (i) the amount of unrestricted cash and unrestricted Cash Equivalents, plus (ii) the borrowing availability (if any) under the Working Capital Facility, in each case in clauses (i) and (ii), solely to the extent that such amounts exceed the amounts necessary to satisfy at such time all of the Financial Covenants (other than Subsection 5.9(a) hereunder and all financial covenants (other than any liquidity covenants) under the Working Capital Facility and, in each case, to the extent ART continues to be in compliance thereof, less, (b) amounts necessary to satisfy margin deficits or other prepayment obligations under the Working Capital Facility.

"Loan" shall mean a Revolving Loan and/or the Term Loan, as appropriate.

"Loan–to–Value Ratio" or "LTV" shall mean with respect to any Mortgage Asset, as of any date of determination, the ratio of the outstanding principal amount of such Mortgage Asset to the market value of the related Underlying Mortgaged Property at such time, as determined by the Administrative Agent in its discretion, as such LTV may be adjusted by the Administrative Agent as the Administrative Agent determines in its discretion; provided, however, that all such calculations shall be made taking into account any senior or *pari passu* debt or other senior or *pari passu* obligations, including senior or *pari passu* debt or other senior or *pari passu obligations* secured directly or indirectly by the applicable Underlying Mortgaged Property.

"LTC" shall mean, with respect to any Mortgage Asset, that is a Bridge Loan, as of any date of determination, the ratio of the outstanding principal amount of such Mortgage Asset to the Construction Costs for such Mortgage Asset, as determined by the Administrative Agent in its discretion, as such LTC may be adjusted by the Administrative Agent as the Administrative Agent determines in its discretion; provided, however, that all such calculations shall be made taking into account any senior or *pari passu* debt or other senior or *pari passu* obligations, including senior or *pari passu* debt or other senior or *pari passu obligations* secured directly or indirectly by the applicable Underlying Mortgaged Property.

"Mandatory Redeemable Stock" shall mean, with respect to any Person and any Subsidiary thereof, any Equity Interests of such Person which by the terms of such Equity Interests (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (a) matures or is required to be redeemed, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other equivalent common Equity Interests), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatory Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or in part (other than an Equity Interest which is redeemable solely in exchange for common stock or other equivalent common Equity Interests); in the case of each clause (a) through (c), on or prior to the Maturity Date.

"Market Value" shall mean, as of any date of determination in respect of any Mortgage Asset, the price at which such Mortgage Asset could readily be sold, as determined by the Administrative Agent in its discretion based on such sources and information (if any) as the Administrative Agent may determine

to rely on in its discretion (which value may be determined to be zero (0)), as such Market Value may be adjusted at any time by the Administrative Agent as the Administrative Agent determines in its discretion (subject to the last sentence of the definition of Asset Value).

"Material Adverse Effect" shall mean, any material adverse effect on or change in or to (a) the Properties, assets, business, operations, financial condition, credit quality or prospects of any Borrower or any Guarantor, (b) the ability of any Borrower, any Guarantor or any other Credit Party to perform its obligations under any of the Credit Documents or any of the Mortgage Loan Documents to which it is a party, (c) the validity, enforceability, legality or binding effect of any of the Credit Documents or any Loan granted thereunder, (d) the rights and remedies of the Administrative Agent or any Lender under any of the Credit Documents or the Collateral, (e) the timely payment of any amounts payable under the Credit Documents, or (f) any Collateral, the perfection or priority of any Loan granted with respect to the Collateral or the value or Asset Value of any Collateral.

"Material Contract" shall mean (a) any contract or other agreement listed on Schedule 3.23, (b) any contract or other agreement, written or oral, of the Credit Parties or any of their Subsidiaries involving monetary liability of or to any such Person in an amount in excess of $3,000,000 per annum, (c) any contract or other agreement, written or oral, of the Credit Parties or any of their Subsidiaries representing at least $3,000,000 of the total Consolidated revenues of the Credit Parties and their Subsidiaries for any fiscal year and (d) any other contract, agreement, permit or license, written or oral, of the Credit Parties or any of their Subsidiaries as to which the breach, nonperformance, cancellation or failure to renew by any party thereto, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

"Materials of Environmental Concern" shall mean any gasoline or petroleum (including crude oil or any extraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, perchlorate, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date" shall mean the earlier of (a) the date that is three (3) years following the Restatement Date, and (b) the date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of Requirements of Law. For the avoidance of doubt, the Borrowers may not extend the Maturity Date without the Lenders' and the Administrative Agent's consent in their discretion.

"Maximum LTC" shall mean with respect to any Mortgage Asset that is a Bridge Loan, at any time the Maximum LTC for related Underlying Mortgaged Property (a) in the case of Term Loan Collateral for the Term Loans, as set forth on Schedule 1-A to the Fee Letter and (b) in the case of Revolving Loan Collateral (including Mixed Collateral) for the Revolving Loans, the Maximum LTC, determined by the Administrative Agent in its discretion and set forth in the related Confirmation, which shall be no greater than the Maximum LTC set forth in Schedule 1-B to the Fee Letter; provided, however, that all such calculations shall be made taking into account any senior or *pari passu* debt or other senior or *pari passu* obligations, including senior or *pari passu* debt or other senior or *pari passu obligations* secured directly or indirectly by the applicable Underlying Mortgaged Property.

"Maximum LTV" shall mean with respect to any Mortgage Asset, at any time, the Maximum LTV for the related Underlying Mortgaged Property (a) in the case of Term Loan Collateral for the Term Loans, as set forth on Schedule 1-A to the Fee Letter and (b) in the case of Revolving Loan Collateral (including Mixed Collateral) for the Revolving Loans, the Maximum LTV set forth in the related Confirmation, which shall be no greater than the Maximum LTV set forth in Schedule 1-B to the Fee Letter; provided, however, that all such calculations shall be made taking into account any senior or *pari*

*passu* debt or other senior or *pari passu* obligations, including senior or *pari passu* debt or other senior or *pari passu obligations* secured directly or indirectly by the applicable Underlying Mortgaged Property.

"Mezzanine Loan" shall mean a performing mezzanine loan secured by pledges of all (or, in the Administrative Agent's discretion, less than all) the Equity Interest of the Person that owns, directly or indirectly, income producing Underlying Mortgaged Property that is stabilized and non-transitional.

"Mezzanine Note" shall mean the original executed promissory note or other evidence of Mezzanine Loan Indebtedness.

"Minimum DSCR" shall mean with respect to any Mortgage Asset, at any time, the Minimum DSCR for the related Underlying Mortgaged Property (a) in the case of Term Loan Collateral for the Term Loans, as set forth on Schedule 1-A to the Fee Letter and (b) in the case of Revolving Loan Collateral (including Mixed Collateral) for the Revolving Loans, the Minimum DSCR, determined by the Administrative Agent in its discretion and set forth in the related Confirmation, which shall be no less than the Minimum DSCR set forth in Schedule 1-B to the Fee Letter; provided, however, that all such calculations shall be made taking into account any senior or *pari passu* debt or other senior or *pari passu* obligations, including senior or *pari passu* debt or other senior or *pari passu obligations* secured directly or indirectly by the applicable Underlying Mortgaged Property.

"Mixed Collateral" shall mean the portion of the Pledged Mortgage Assets included in the Collateral with respect to which advances under the Term Loan (if any) are calculated and determined and, with respect to any future advances under such Collateral that the Administrative Agent determines to make in its discretion under the Revolving Loan Commitments, with respect to which Revolving Loans (if any) are determined and calculated; provided, however, Mixed Collateral shall be limited to the Mortgage Assets identified on Schedule 1.1(d).

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgage" shall mean each mortgage, assignment of rents, security agreement and fixture filing, or deed of trust, assignment of rents, security agreement and fixture filing, or similar instrument creating and evidencing a Lien on real property, fixtures and other Property and rights incidental thereto.

"Mortgage Asset" shall mean a Whole Loan, a Junior Interest, a Mezzanine Loan, a Bridge Loan, a Preferred Equity Interest, an Equity Asset or, as applicable, a Condominium Loan or Land Loan, in each case, the Underlying Mortgaged Property for which is included in the categories for Property Types of Mortgage Assets; provided, however, the portion of any Mortgage Asset to be pledged to the Administrative Agent shall not include any Retained Interest (if any).

"Mortgage Asset Data Summary" shall have the meaning set forth in Section 5.2(h).

"Mortgage Asset File" shall have the meaning set forth in the Custodial Agreement.

"Mortgage Asset File Checklist" shall have the meaning set forth in the Custodial Agreement.

"Mortgage Asset Security Agreement" shall mean, with respect to any Mortgage Asset, any contract, instrument or other document related to security for repayment thereof (other than the related Mortgage, Mortgage Note, Mezzanine Note or any other note, certificate or instrument) executed by an Obligor and/or others in connection with such Mortgage Asset, including, without limitation, any security agreement, UCC financing statement, Liens, warranties, guaranty, title insurance policy, hazard insurance

policy, chattel mortgage, letter of credit, accounts, bank accounts or certificates of deposit or other pledged accounts, and any other documents and records relating to any of the foregoing.

"Mortgage Loan Documents" shall have the meaning set forth in the Custodial Agreement.

"Mortgage Note" shall mean, that certain original executed promissory note or other evidence of the Indebtedness of an Obligor under a Whole Loan that is secured by a Mortgage on the related Underlying Mortgaged Property.

"Mortgaged Property" shall mean the Commercial Real Estate (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the related debt evidenced by the Mortgage Loan Documents.

"Mortgagee" shall mean the record holder of a Mortgage Note secured by a Mortgage.

"Multiemployer Plan" shall mean a Plan that is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Cash Flow" shall mean, with respect to any Underlying Mortgaged Property, for any period, the net income (or deficit) attributable to such Property for such period, determined in accordance with GAAP, less the amount of all (a) capital expenditures incurred, (b) reserves established, (c) leasing commissions paid (other than commissions paid from reserves held under the Mortgage Loan Documents) and (d) tenant improvements paid during such period (other than tenant improvements paid from reserves held under the Mortgage Loan Documents) in each case attributable to such Underlying Mortgaged Property, plus all non–cash charges deducted in the calculation of such net income.

"Net Cash Proceeds" shall mean the aggregate cash proceeds, Cash Equivalents and the Fair Market Value of all other Property and assets received by, or payable to, any Credit Party or any Subsidiary or Affiliate in respect of any sale or other disposition of any Collateral, net of (a) direct costs (including, without limitation, legal, accounting and investment banking fees, and sales commissions) associated therewith, and (b) taxes paid or payable as a result thereof; it being understood that "Net Cash Proceeds" shall include, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received by any Credit Party, any Subsidiary or any Affiliate in any sale or other disposition of any Collateral.

"Net Income" shall mean, with respect to ART and its Consolidated Subsidiaries for any period, the net income of ART and its Consolidated Subsidiaries for such period as determined in accordance with GAAP.

"Net Total Liabilities" shall mean Total Liabilities minus the sum of (a) aggregate principal amount outstanding under the Eligible Subordinated Debt and (b) deferred revenues relating to the 450 Transaction to the extent classified as a liability according to GAAP.

"New Stock Class" shall have the meaning set forth in the Fee Letter.

"Non-Recourse Indebtedness" shall mean, with respect to any Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, and other similar exceptions to non-recourse provisions (including exceptions relating to bankruptcy, insolvency, receivership, non-approved transfers

or other customary or similar events)) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

"Non–Table Funded Mortgage Asset" shall mean a Mortgage Asset that is not a Table Funded Mortgage Asset.

"Non–Wachovia Assets" shall mean any Mortgage Asset issued, extended or originated by a Person other than Wachovia Corporation or an Affiliate of Wachovia Corporation.

"Note" or "Notes" shall mean the Revolving Notes and/or the Term Loan Notes, collectively, separately or individually, as appropriate, as any shall be amended, restated, modified or supplemented from time to time.

"Notice of Borrowing" shall mean a request for a Revolving Loan borrowing pursuant to Section 2.1(b)(i), as amended, restated, modified or supplemented from time to time. A Form of Notice of Borrowing is attached as Exhibit 1.1(e).

"Notice of Conversion/Extension" shall mean the written notice of conversion of a LIBOR Rate Loan to an Alternate Base Rate Loan or an Alternate Base Rate Loan to a LIBOR Rate Loan, or extension of a LIBOR Rate Loan, in each case substantially in the form of Exhibit 1.1(f).

"Obligations" shall mean, without duplication, all of the obligations, indebtedness and liabilities of the Credit Parties to the Lenders and the Administrative Agent, whenever arising, under the Loans, this Agreement, the Notes, any of the other Credit Documents and all of the other Credit Party-Related Obligations, including principal, interest, fees, reimbursements and indemnification obligations and other amounts (including, but not limited to, any interest accruing after the occurrence of a filing of a petition of bankruptcy under the Bankruptcy Code with respect to any Credit Party, regardless of whether such interest is an allowed claim under the Bankruptcy Code).

"Obligor" shall mean, individually and collectively, as the context may expressly provide or require, the borrowers, mortgagors, obligors or debtors under a Mortgage Asset, including, but not limited to, any guarantor, any pledgor, any subordinator, any credit support party, any indemnitor and any Person that is directly or indirectly obligated in respect thereof, the borrowers, mortgagors, obligors or debtors of any debt, including any guarantor, any pledgor, any subordinator, any credit support party, any indemnitor and any Person that is directly or indirectly obligated in respect thereof, senior to the Mortgage Asset, including any of the foregoing such Persons with respect to the debt secured by any Underlying Mortgaged Property, and any Person that has not signed the related Mortgage Note, Junior Interest Documents, Mezzanine Note or other note, certificate or instrument but owns an interest in the related Underlying Mortgaged Property, which interest has been encumbered to secure such Mortgage Asset.

"Obligor Reserve Payments" shall mean any payments made by an Obligor under the applicable Mortgage Loan Documents which, pursuant to the terms of such Mortgage Loan Documents, are required to be deposited into escrow or into a reserve to be used for a specific purpose (e.g., tax and insurance escrows), excluding, however, the Homewood Interest Reserve.

"OFAC" shall mean The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Off-Balance Sheet Obligations" shall mean, with respect to any Person and its Consolidated Subsidiaries, as of any date of determination thereof, without duplication and to the extent not included as

a liability on the consolidated balance sheet of such Person and its Consolidated Subsidiaries in accordance with GAAP: (a) the monetary obligations under any financing lease or so-called "synthetic", tax retention or off-balance sheet lease transaction which, upon the application of any Insolvency Laws to such Person or any of its Consolidated Subsidiaries, would be characterized as indebtedness; (b) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person and its Consolidated Subsidiaries; or (c) any other monetary obligation arising with respect to any other transaction which (i) is characterized as indebtedness for tax purposes but not for accounting purposes in accordance with GAAP or (ii) is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheet of such Person and its Consolidated Subsidiaries (for purposes of this clause (c), any transaction structured to provide tax deductibility as interest expense of any dividend, coupon or other periodic payment will be deemed to be the functional equivalent of a borrowing).

"Officer's Certificate" shall mean, a certificate signed by a Responsible Officer of a Borrower or a Guarantor, as applicable.

"Operating Lease" shall mean, as applied to any Person, any lease (including, without limitation, leases which may be terminated by the lessee at any time) of any Property (whether real, personal or mixed) which is not a Capital Lease other than any such lease in which that Person is the lessor.

"Opinion of Counsel" shall mean, a written opinion of counsel, which opinion and counsel are acceptable to the Administrative Agent in its discretion.

"Original Agreement" shall have the meaning set forth in the Recitals of this Agreement.

"Original Kodiak Indenture" shall have the meaning set forth in the definition of "Eligible Subordinated Debt."

"Originator" shall mean, with respect to each Mortgage Asset, the Person who originated such Mortgage Asset.

"Other Taxes" shall mean all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Credit Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Credit Document.

"Participant" has the meaning assigned to such term in clause (d) of Section 10.6.

"Participation Agreement" shall mean, with respect to any Junior Interest, any executed participation agreement, sub–participation agreement, intercreditor, servicing, loan or administrative agreement or any agreement that is similar to any of the foregoing agreements under which the Junior Interest is created, evidenced, issued, serviced, administered and/or guaranteed.

"Participation Certificate" shall mean, with respect to any Junior Interest, an executed certificate, note, instrument or other document representing the interest, participation interest or sub–participation interest granted under a Participation Agreement.

"Patriot Act" shall mean The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended, restated modified or supplemented from time to time.

"paying Borrower" shall have the meaning set forth in Section 10.29(b).

"Payment Date" shall mean (a) the 28th day of each calendar month; provided, however, if such day is not a Business Day (i) if the next Business Day occurs during the succeeding month, the previous Business Day and (ii) if the next Business Day does not occur during the succeeding month, the next succeeding Business Day and (b) as to any Loan which is the subject of a mandatory prepayment required pursuant to Section 2.5(b), the date on which such mandatory prepayment is due.

"PBGC" shall mean the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

"Permitted Indebtedness" shall mean, with respect to Preferred Equity Interests or Equity Assets, as applicable, Indebtedness that is permitted under the related Mortgage Loan Documents and disclosed in writing to the Administrative Agent in a Confirmation.

"Permitted Liens" shall mean any of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for state, municipal or other local Taxes if such Taxes shall not at the time be due and payable, (b) Liens imposed by Requirements of Law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens, arising in the ordinary course of business securing obligations that are not overdue for a period of more than thirty (30) days, (c) Liens granted pursuant to or by the Security Documents and (d) in the case of the Mortgage Assets only and not any Borrower's interest therein, with respect to any Underlying Mortgaged Property, Liens which are permitted pursuant to the terms of the Mortgage Loan Documents.

"Person" shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" shall mean, as of any date of determination, any employee benefit plan which is covered by Title IV of ERISA and in respect of which any Credit Party or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Pledge Agreements" shall mean each Pledge and Security Agreement and the Equity/Preferred Equity Pledge and Security Agreement, as each such agreement may be amended, modified, restated or supplemented from time to time.

"Pledge and Security Agreement" shall mean, individually or collectively, as the context may require, (a) the First Amended and Restated Pledge and Security Agreement, dated as of the Restatement Date, by ARSR for the benefit of the Lenders and the Administrative Agent, and (b) the First Amended and Restated Pledge and Security Agreement, dated as of the Restatement Date, by Arbor ESH Holdings LLC for the benefit of the Lenders and the Administrative Agent, as each such agreement may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Pledged Collateral" shall have the meaning given to such term in the Pledge and Security Agreement.

"Pledged Mortgage Asset" shall mean the Mortgage Assets that have been pledged to the Administrative Agent as Collateral under the Security Documents.

"Pledgor" shall mean Arbor Realty SR, Inc., a Maryland corporation, and Arbor ESH Holdings LLC, a Delaware limited liability company, together with each of their successors and assigns.

"Pooling and Servicing Agreements" shall mean any and all pooling and servicing agreements governing servicing and other matters entered into in connection with a securitization of one (1) or more interests that are senior, junior or *pari passu* with a Mortgage Asset.

"Preferred Equity Grantor" shall mean the entity in which a Preferred Equity Interest represents an Investment.

"Preferred Equity Interest" shall mean all (or, if approved by the Administrative Agent in its discretion, less than all) of the Equity Interests representing the preferred equity interest in an entity that owns, directly or indirectly, stabilized and non-transitional Commercial Real Estate, including, but not limited to, all equity interests representing a dividend on any of the Equity Interests of the Preferred Equity Grantor or representing a distribution or return of capital upon or in respect of the Equity Interests of the Preferred Equity Grantor, in each case as it relates to a Preferred Equity Interest; provided, however, (a) such Preferred Equity Interest must contain a synthetic maturity feature acceptable to the Administrative Agent in its discretion, (b) the funding of the Preferred Equity Interest is subject to regulatory and compliance criteria, and (c) the Administrative Agent reserves the right to require that each Preferred Equity Interest be acquired by and pledged to the Administrative Agent by a bankruptcy remote special purpose entity, which entity shall join the Credit Documents as a co–Borrower pursuant to a Borrower Joinder Agreement as a condition to the pledge of the Preferred Equity Interest, and for the Equity Interests in such Borrower to be pledged to the Administrative Agent as additional Collateral for the Obligations. All references to, and calculations required to be made in respect of, any principal and/or interest associated with any Mortgage Asset, shall, with respect to Mortgage Assets consisting of Preferred Equity Interests, be deemed to refer, respectively, to the face amount of such Preferred Equity Interest and the preferred return or yield (however such terms are denominated, as set forth in the related Mortgage Loan Documents), whether payable or accrued.

"Preferred Equity Interest Documents" shall mean the Authority Documents of the Preferred Equity Grantor, together with a certificate, instrument or other tangible evidence of the Equity Interests in the Preferred Equity Grantor.

"Prime Pledged Mortgage Asset" shall mean the Equity Asset pledged to the Administrative Agent that relates to the Underlying Mortgaged Properties involving the Prime Retail Outlets and more specifically described in the related Underwriting Package and Confirmation.

"Prime Rate" shall have the meaning set forth in the definition of Alternate Base Rate.

"Principal Reduction Date" shall have the meaning set forth in Section 2.2(b).

"Private Information" shall have the meaning set forth in Section 5.15.

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether tangible or intangible; provided that the term "Property" or "Properties" as used in Section 3.10 shall include only the right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether tangible or intangible of any Credit Party.

"Property Type" shall mean, with respect to a Mortgage Asset, such Mortgaged Property's classification as one of the following: multifamily, retail, office, industrial, hotel or self–storage facility.

"PSA Servicer" shall mean a third party servicer (other than a Borrower) servicing all or a portion of the Collateral under a Pooling and Servicing Agreement.

"Public Information" shall have the meaning set forth in Section 5.15.

"Rating Agencies" shall mean each of S&P, Moody's, Fitch and any other nationally recognized statistical rating agency that has been requested to issue a rating with respect to the matter at issue, including successors of the foregoing.

"Register" shall have the meaning set forth in Section 10.6(c).

"Registration Rights Agreement" means that certain Arbor Realty Trust, Inc. Registration Rights Agreement, dated as of the Restatement Date, by and between ART and Wachovia, as amended, restated, modified or supplemented from time to time.

"REIT" shall mean a "real estate investment trust" within the meaning of the Code.

"Related Parties" shall mean, with respect to any Person, such Person's Subsidiaries and Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person's Subsidiaries and Affiliates.

"Related Party Loan" shall mean any loan, Indebtedness or preferred equity investment identified or presented as a related party loan in ART's consolidated financial statements or in the notes to the consolidated financial statements, in accordance with GAAP; provided, however, Related Party Loan shall not include any loan or preferred equity investment (i) which is held as collateral in a CDO Issuance involving ART or any Consolidated Subsidiary of ART or (ii) to which the Administrative Agent in its discretion has consented in writing to its exclusion from the definition of Related Party Loan.

"Release" shall mean any generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of any Property or Underlying Mortgaged Property.

"Release Amount" shall mean, (i) with respect to any Collateral other than the ESH Pledged Mortgage Assets or the Additional Term Loan Collateral, the Allocated Term Loan Amount for such Collateral, plus, if applicable, the Allocated Revolving Loan Amount allocated to such Collateral, (ii) with respect to the ESH Pledged Mortgage Assets, the Total ESH Release Amount, (iii) with respect to the Additional Term Loan Collateral other than the Alpine Asset, the Additional Term Loan Collateral Release Amount applicable to such Pledged Mortgage Asset, and (iv) with respect to the Alpine Asset, the Additional Term Loan Collateral Release Amount applicable to the Alpine Asset plus the ESH Release Amount applicable to the Alpine Asset.

"Remedial Work" shall mean any investigation, inspection, site monitoring, containment, clean–up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of any Property or Underlying Mortgaged Property of any Materials of Environmental Concern, including any action to comply with any applicable Environmental Laws or directives of any Governmental Authority with regard to any Environmental Laws.

"REMIC" shall mean a real estate mortgage investment conduit.

"REO Property" shall mean an Underlying Mortgaged Property acquired by a Credit Party or a nominee thereof through foreclosure, acceptance of a deed-in-lieu of foreclosure or otherwise in accordance with Requirements of Law.

"Reorganization" shall mean, with respect to any Multiemployer Plan, the condition that such Plan is in reorganization within the meaning of such term as used in Section 4241 of ERISA.

"Reportable Event" shall mean any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty-day notice period is waived under PBGC Reg. §4043.

"Required Lenders" shall mean, as of any date of determination, Lenders holding at least a majority of (a) the outstanding Revolving Commitments and Term Loan or (b) if the Revolving Commitments have been terminated, the outstanding Loans; provided, however, that if any Lender shall be a Defaulting Lender at such time, then there shall be excluded from the determination of Required Lenders the Obligations owing to such Defaulting Lender and such Defaulting Lender's Commitments.

"Required Payments" shall mean all payments required under Section 2.5(b)(iii) of this Agreement or subject to or required to be subject to an Irrevocable Instruction, which amounts shall be free of any deductions for or on account of any set–off, counterclaim or defense and shall be deposited into the Collection Account for application in accordance with the terms of this Agreement.

"Requirement of Law" shall mean, as to any Person, (a) the Authority Documents of such Person, and (b) all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority (in each case whether or not having the force of law); in each case applicable to or binding upon such Person or any of its Property or to which such Person or any of its Property is subject.

"Responsible Officer" shall mean, for any Credit Party, any duly authorized officer thereof with direct responsibility for the administration of the Credit Documents, and also, with respect to any particular matter, any other duly authorized officer with knowledge of or familiarity with the particular subject matter and, in each case, the Administrative Agent has an incumbency certificate indicating such officer is a duly authorized officer thereof.

"Restatement Date" shall mean the date of this Agreement.

"Restricted Payment" shall mean (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of any Credit Party or any Consolidated Subsidiary of any Credit Party now or hereafter outstanding, except a dividend payable solely in Equity Interests of identical class to the holders of that class; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of any Credit Party or any Consolidated Subsidiary of any Credit Party now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of any Credit Party or any Consolidated Subsidiary of any Credit Party now or hereafter outstanding.

"Retained Interest" shall mean (a) with respect to any Mortgage Asset with an unfunded commitment on the part of a Borrower, all of the obligations, if any, to provide additional funding,

contributions, payments or credits with respect to such Mortgage Asset, (b) all duties, obligations and liabilities of a Borrower under any Mortgage Asset or any related Interest Rate Protection Agreement, including but not limited to any payment or indemnity obligations and (c) with respect to any Mortgage Asset that is pledged or to be pledged to the Administrative Agent, (i) all of the obligations, if any, of the agent(s), trustee(s), servicer(s), administrators or other similar Persons under the documentation evidencing such Mortgage Asset and (ii) the applicable portion of the interests, rights and obligations under the documentation evidencing such Mortgage Asset that relate to such portion(s) of the Indebtedness that is owned by another lender or is being retained by a Borrower pursuant to clause (a) of this definition.

"Revolving Commitment" shall mean, with respect to each Revolving Lender, the commitment of such Revolving Lender to make Revolving Loans in an aggregate principal amount at any time outstanding up to an amount equal to such Revolving Lender's Revolving Commitment Percentage of the Revolving Committed Amount.

"Revolving Commitment Percentage" shall mean, for each Lender, the percentage identified as its Revolving Commitment Percentage in its Lender Commitment Letter or in the Assignment and Assumption pursuant to which such Lender became a Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 10.6(c).

"Revolving Committed Amount" shall have the meaning set forth in Section 2.1(a).

"Revolving Lender" shall mean, as of any date of determination, a Lender holding a Revolving Commitment or a Revolving Loan on such date.

"Revolving Loan" shall have the meaning set forth in Section 2.1(a).

"Revolving Loan Collateral" shall mean the portion of the Pledged Mortgage Assets included in the Collateral (including, without limitation, the portion of any Mixed Collateral with respect to which Revolving Loan advances, if any, are calculated and determined) with respect to which Revolving Loans (if any) are calculated and determined.

"Revolving Note" or "Revolving Notes" shall mean the first amended and restated promissory notes of the Borrowers provided pursuant to Section 2.1(f) in favor of any of the Revolving Lenders evidencing the Revolving Loans provided by any such Revolving Lender pursuant to Section 2.1(a), individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc.

"Sale" shall have the meaning set forth in Section 5.7(j).

"Sanctioned Entity" shall mean (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, or (d) a person or entity resident in or determined to be resident in a country, that is subject to a country sanctions program administered and enforced by OFAC described or referenced at http://www.ustreas.gov/offices/enforcement/ofac/ or as otherwise published from time to time.

"Sanctioned Person" shall mean a person named on the list of Specially Designated Nationals maintained by OFAC available at or through http://www.ustreas.gov/offices/enforcement/ofac/ or as otherwise published from time to time.

"Sarbanes-Oxley" shall mean the Sarbanes-Oxley Act of 2002, as amended or modified from time to time.

"SEC" shall mean the Securities and Exchange Commission or any successor Governmental Authority.

"Secured Parties" shall mean the Administrative Agent and the Lenders.

"Securities Act" shall mean the Securities Act of 1933, together with any amendment thereto or replacement thereof and any rules or regulations promulgated thereunder.

"Securities Laws" shall mean the Securities Act, the Exchange Act, Sarbanes-Oxley, the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, and applicable blue sky and state securities laws and regulations, as each of the foregoing may be amended and in effect on any applicable date hereunder.

"Security Agreement" shall mean the First Amended and Restated Security Agreement, dated as of the Restatement Date, executed by Borrowers in favor of the Administrative Agent, for the benefit of the Secured Parties, as amended, modified, extended, restated, replaced, or supplemented from time to time in accordance with its terms.

"Security Documents" shall mean the Security Agreement, the Account Control Agreement, the Custodial Agreement, all Assignments, all Irrevocable Instructions, the Homewood Account Control Agreement, the Intercreditor Agreement, the Pledge Agreements and all other agreements, documents and instruments relating to, arising out of, or in any way connected with any of the foregoing documents or granting to the Administrative Agent Liens or security interests to secure, inter alia, the Obligations whether now or hereafter executed and/or filed, each as may be amended from time to time in accordance with the terms hereof, executed and delivered in connection with the granting, attachment and perfection of the Administrative Agent's security interests and Liens arising thereunder, including, without limitation, UCC financing statements, as such agreements or instruments are amended, restated, modified or supplemented from time to time.

"Servicer" shall mean a Person (other than a Borrower) servicing all or a portion of a Mortgage Asset under a Servicing Agreement, which Servicer shall be acceptable to the Administrative Agent in its reasonable discretion.

"Servicer Account" shall mean any account established by a Servicer or a PSA Servicer in connection with the servicing of the Mortgage Asset.

"Servicer Default" shall have the meaning set forth in Section 9.12.

"Servicer Redirection Notice" shall mean a notice from a Borrower to a Servicer, substantially in the form of Exhibit 1.1(k) attached hereto, duly executed by the parties thereto.

"Servicing Agreement" shall mean an agreement entered into by the applicable Borrower and a third party for the servicing of a Mortgage Asset, the form and substance of which has been approved in writing by the Administrative Agent in its reasonable discretion.

"Servicing Fee" shall have the meaning set forth in Section 9.9.

"Servicing File" shall mean, with respect to each Mortgage Asset, the file retained by a Borrower consisting of the originals of all documents in the Mortgage Asset File that are not delivered to the Custodian and copies of all documents in the Mortgage Asset File set forth in Section 3.1 of the Custodial Agreement.

"Servicing Records" shall have the meaning set forth in Section 9.2.

"Single Employer Plan" shall mean any Plan that is not a Multiemployer Plan.

"Solvent" shall mean, as to any Person at any time, having a state of affairs such that all of the following conditions are met: (a) the fair value of the Property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (b) the present fair salable value of the Property of such Person in an orderly liquidation of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its Property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's Property would constitute unreasonably small capital.

"Stock Exchange" shall have the meaning set forth in Section 3.38.

"Subsidiary" shall mean, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, limited liability company, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of any Credit Party.

"Table Funded Mortgage Asset" shall mean a Mortgage Asset which is pledged to the Administrative Agent simultaneously with the origination or acquisition thereof, which origination or acquisition, pursuant to a Borrower's request, is financed with the proceeds of a Revolving Loan and paid directly to a title company or other settlement agent, in each case, approved in writing by the Administrative Agent in its discretion, for disbursement to the parties entitled thereto in connection with such origination or acquisition. A Mortgage Asset shall cease to be a Table Funded Mortgage Asset after the Custodian has delivered a Trust Receipt (along with a completed Mortgage Asset File Checklist attached thereto) to the Administrative Agent certifying its receipt of the Mortgage Asset File therefor.

"Table Funded Trust Receipt" shall mean a Trust Receipt in the form of Annex 2–B to the Custodial Agreement.

"Tangible Net Worth" shall mean net worth as determined in accordance with GAAP.

"Target Reduced Principal Amount" shall have the meaning set forth in Section 2.2(b) (as set forth in the Fee Letter).

"Taxes" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Loan" shall have the meaning set forth in Section 2.2(a).

"Term Loan Collateral" shall mean the portion of the Pledged Mortgage Assets included in the Collateral (including, without limitation, the portion of any Mixed Collateral with respect to which Term Loan advances, if any, are calculated and determined) with respect to which advances under the Term Loan (if any) are calculated and determined.

"Term Loan Commitment" shall mean, with respect to each Term Loan Lender, the commitment of such Term Loan Lender to make its portion of the Term Loan in a principal amount equal to such Term Loan Lender's Term Loan Commitment Percentage of the Term Loan Committed Amount.

"Term Loan Commitment Percentage" shall mean, for any Term Loan Lender, the percentage identified as its Term Loan Commitment Percentage in its Lender Commitment Letter, or in the Assignment and Assumption pursuant to which such Lender became a Lender hereunder, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 10.6(c).

"Term Loan Committed Amount" shall have the meaning set forth in Section 2.2(a).

"Term Loan Lender" shall mean a Lender holding a Term Loan Commitment or a portion of the outstanding Term Loan.

"Term Loan Note" or "Term Loan Notes" shall mean the first amended and restated promissory notes of the Borrowers (if any) in favor of any of the Term Loan Lenders evidencing the portion of the Term Loan provided by any such Term Loan Lender pursuant to Section 2.2(a), individually or collectively, as appropriate, as such promissory notes may be amended, modified, extended, restated, replaced, or supplemented from time to time.

"Test Period" "shall mean the immediately preceding calendar quarter.

"Total Assets" shall mean Total assets of ART and its Consolidated Subsidiaries, determined in accordance with GAAP.

"Total ESH Release Amount": The aggregate ESH Release Amounts for all ESH Allocated Assets, which cumulative amount is equal to $15,000,000. For purposes hereof, so long as (a) no Underlying Mortgaged Properties for the related Pledged Mortgage Asset are being released in connection with the related payment, prepayment or reduction, (b) the related Pledged Mortgage Asset is not a Foreclosed Mortgage Asset or REO Property and (c) no Default or Event of Default has occurred and is continuing, the first dollars received on or after the Restatement Date with respect to an ESH Allocated Asset will be applied to the ESH Release Amount, or, if (x) any Underlying Mortgaged Properties for the related Pledged Mortgage Asset are being released in connection with the related payment, prepayment or reduction, (y) the related Pledged Mortgage Asset is not a Foreclosed Mortgage

Asset or REO Property and (z) no Default or Event of Default has occurred and is continuing, the dollars received on or after the Restatement Date with respect to an ESH Allocated Asset will be applied, on a pro rata basis, to (i) the Allocated Term Loan Amount that is unrelated to the ESH Release Amount and (ii) that portion of the Allocated Term Loan Amount that is ESH Release Amount; provided, that with respect to an ESH Allocated Asset that becomes REO Property, any amounts received in addition to payments required pursuant to Section 2.5(b)(viii) hereof shall be applied toward the ESH Release Amount for such ESH Allocated Asset. In all other circumstances, dollars received on or after the Restatement Date with respect to an ESH Allocated Asset will be applied to the ESH Release Amount last.

"Total Liabilities" shall mean all Indebtedness of any Person (without duplication) and all of such Person's Consolidated Subsidiaries determined on a consolidated basis.

"Tranche" shall mean the collective reference to (a) LIBOR Rate Loans whose Interest Periods begin and end on the same day and (b) Alternate Base Rate Loans made on the same day.

"Transactions" shall mean the closing of this Agreement, the other Credit Documents and the other transactions contemplated hereby to occur in connection with such closing (including, without limitation, the initial borrowings under the Credit Documents and the payment of fees and expenses in connection with all of the foregoing).

"Transfer Effective Date" shall have the meaning set forth in each Assignment and Assumption.

"Trust Preferred Debt" shall mean (a) the existing indebtedness of ART and its Consolidated Subsidiaries under any securities and guarantees issued by them in any debt securities transaction related to any of the indentures identified in clause (a) of the definition of "Eligible Subordinated Debt" and (b) any future indebtedness of ART and its Consolidated Subsidiaries in connection with any debt securities transaction for which the related indenture (i) has subordination provisions substantially the same as those in the indentures identified in clause (a) of the definition of "Eligible Subordinated Debt", (ii) has enforceable subordination provisions, and (iii) has a maturity date no earlier than the date that is six (6) months following the Maturity Date.

"Trust Receipt" shall have the meaning set forth in the Custodial Agreement.

"Type" shall mean, as to any Loan, its nature as an Alternate Base Rate Loan or LIBOR Rate Loan, as the case may be.

"UCC" shall mean the Uniform Commercial Code from time to time in effect in any applicable jurisdiction.

"Underlying Mortgaged Property" shall mean (a) in the case of a Whole Loan, the Mortgaged Property securing the Whole Loan, (b) in the case of a Junior Interest, the Mortgaged Property securing such Junior Interest (if the Junior Interest is of the type described in clause (b) of the definition thereof), or the Mortgaged Property securing the mortgage loan in which such Junior Interest represents a participation (if the Junior Interest is of the type described in clause (a) of the definition thereof), (c) in the case of a Mezzanine Loan or a Junior Interest in a Mezzanine Loan, the Mortgaged Property that is owned directly or indirectly by the Person the Equity Interests of which are pledged as collateral security for such Mezzanine Loan, (d) in the case of a Bridge Loan, a Condominium Loan or a Land Loan, depending on such Bridge Loan's, a Condominium Loan's or a Land Loan's classification as a Whole Loan, Junior Interest or Mezzanine Loan, the Underlying Mortgaged Property for the Whole Loan, Junior Loan or Mezzanine Loan, as applicable, (e) in the case of a Preferred Equity Interest, the Mortgaged

Property that is owned directly or indirectly by the Preferred Equity Grantor and (f) in the case of an Equity Asset, the Mortgaged Property that is owned directly or indirectly by the Equity Asset Grantor.

"Underwriting Package" shall mean, any internal document prepared by the applicable Borrower for its evaluation of a Mortgage Asset, to include at a minimum the data required in the relevant Confirmation. In addition, with respect to each Mortgage Asset, the Underwriting Package shall include, to the extent applicable, (a) a copy of the appraisal, (b) the current rent roll, (c) a minimum of two (2) years of property level financial statements to the extent available, (d) the current financial statement of the Obligor on the Commercial Real Estate Loan, (e) the complete Mortgage Asset File, (f) any financial analysis, site inspection, market studies and any other diligence conducted by a Borrower, and (g) such further documents or information as the Administrative Agent may request. With respect to Bridge Loans and any other Mortgage Asset with construction, the Underwriting Package shall also include the Construction Draw Deliveries for each Extension of Credit.

"Voting Interests" shall mean, with respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wachovia" shall mean Wachovia Bank, National Association, a national banking association, together with its successors and/or assigns.

"Wachovia Assets" shall mean, any Mortgage Asset issued, extended or originated by Wachovia Corporation or an Affiliate of Wachovia Corporation.

"Wachovia Derivatives Contract" shall mean any Derivatives Contract between a Credit Party and a Derivatives Contract Provider, as amended, modified, extended, restated, replaced, or supplemented from time to time.

"Warrant Agreements" shall mean the three (3) separate Common Stock Purchase Warrants, issued on the Restatement Date, by ART for the benefit of Wachovia, as amended, restated, modified or supplemented from time to time.

"Warehouse Lender's Release Letter" shall mean a letter in the form of Exhibit 1.1(l) hereto, duly executed by the applicable warehouse lender, as such agreement is amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Whole Loan" shall mean a performing Commercial Real Estate whole loan secured by a first priority security interest in stabilized and non-transitional Underlying Mortgaged Property.

"Working Capital Facility" shall mean that certain facility entered into and evidenced by, among other agreements, the Working Capital Facility Loan Agreement, as such agreements are amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Working Capital Facility Loan Agreement" shall mean that certain First Amended and Restated Revolving Loan Agreement, dated as of June 8, 2009, among Wachovia, Arbor Realty Trust, Inc., Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc., Arbor Realty Collateral Management, LLC, each other party that becomes a party thereto, each of the guarantors that becomes a party thereto, and each other lender that becomes a party thereto, as such agreement is amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

Section 1.2 Other Definitional Provisions.

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time and (f) the word "asset" shall be construed to have the same meaning and effect as Property.

Section 1.3 Accounting Terms.

Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP applied on a basis consistent with the most recent audited Consolidated financial statements of the Borrowers and the Guarantors delivered to the Lenders; provided that, if the Borrowers or the Guarantors shall notify the Administrative Agent that they wish to amend any definitions or covenant incorporated in Section 5.9 to eliminate the effect of any change in GAAP on the operation of any such definition or provision and the Required Lenders consent to such amendment, then the Borrowers' and the Guarantors' compliance with such provisions shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such definition or provision is amended in a manner satisfactory to the Borrowers, the Guarantors, the Administrative Agent and the Required Lenders.

The Borrowers and the Guarantors shall deliver to the Administrative Agent and each Lender at the same time as the delivery of any annual or quarterly financial statements given in accordance with the provisions of Section 5.1, (a) a description in reasonable detail of any material change in the application of accounting principles employed in the preparation of such financial statements from those applied in the most recently preceding quarterly or annual financial statements as to which no objection shall have been made in accordance with the provisions above and (b) a reasonable estimate of the effect on the financial statements on account of such changes in application.

Section 1.4 Time References.

Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Reference to day or days without further qualification means calendar days. Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

Section 1.5 Execution of Documents.

Unless otherwise specified, all Credit Documents and all other certificates executed in connection therewith must be signed by a Responsible Officer. Unless otherwise expressly provided in this Agreement, reference to any notice, request, approval, consent or determination provided for, permitted or required under the terms of the Credit Documents with respect to the Credit Parties, the Administrative Agent and the Lenders means, in order for such notice, request, approval, consent or determination to be effective hereunder, such notice, request, approval or consent must be in writing.

Section 1.6 UCC Terms.

All terms used in Articles 8 and 9 of the UCC in the State of New York, and used but not specifically defined herein, are used herein as defined in such Article 8 and 9.

Section 1.7 References to Discretion.

Reference herein or in any Credit Document to the Administrative Agent's or a Lender's discretion shall mean, unless otherwise stated herein or therein, the Administrative Agent's or a Lender's (as the case may be) sole and absolute discretion, and the exercise of such discretion shall be final and conclusive. In addition, whenever the Administrative Agent or a Lender has a decision or right of determination or request, exercises any right given to it to agree, disagree, accept, consent, grant waivers, take action or no action or to approve or disapprove, or any arrangement or term is to be satisfactory or acceptable to or approved by (or any similar language or terms) the Administrative Agent or a Lender (as the case may be), the decision of the Administrative Agent or a Lender with respect thereto shall be in the sole and absolute discretion of the Administrative Agent or the Lender (as the case may be), and such decision shall be final and conclusive, except as may be otherwise specifically provided herein.

Section 1.8 References to Payment.

Unless otherwise specifically provided herein, all payments due by any Credit Party to the Administrative Agent or the Lenders shall be due by 3:00 p.m. on the date due.

## ARTICLE II

## THE LOANS; AMOUNT AND TERMS

Section 2.1 Future Funding Loans.

(a) Revolving Commitment. During the Commitment Period, subject to the terms and conditions hereof, each Revolving Lender severally, but not jointly, agrees to make credit loans in Dollars ("Revolving Loans") to the Borrowers from time to time in an aggregate principal amount of up to THIRTY FIVE MILLION TWO HUNDRED SEVENTY THOUSAND NINE HUNDRED NINETY FIVE DOLLARS ($35,270,995.00) (as such aggregate maximum amount may be reduced from time to time as provided in Section 2.4, the "Revolving Committed Amount"); provided, however, that (i) with regard to each Revolving Lender individually, the sum of such Revolving Lender's Revolving Commitment Percentage of the aggregate principal amount of outstanding Revolving Loans shall not exceed such Revolving Lender's Revolving Commitment and (ii) with regard to the Revolving Lenders collectively, the sum of the aggregate principal amount of outstanding Revolving Loans shall not exceed the Revolving Committed Amount then in effect. No Revolving Loan shall be made by any Revolving Lender if (i) such

Revolving Loan and the Revolving Loan Collateral therefor are not approved by the Administrative Agent in its discretion, (ii) before or after giving effect to such Revolving Loan, the Availability is or would be negative and (iii) the conditions to Extensions of Credit in Section 4.2 are not satisfied. Revolving Loans may consist of Alternate Base Rate Loans or LIBOR Rate Loans, or a combination thereof, as the Borrowers may request, and may be repaid in accordance with the provisions hereof; provided, however, the Revolving Loans made on the Restatement Date or any of the three (3) Business Days following the Restatement Date, may only consist of Alternate Base Rate Loans unless the Borrowers deliver a funding indemnity letter, substantially in the form of Exhibit 2.1(a), reasonably acceptable to the Administrative Agent not less than three (3) Business Days prior to the Restatement Date. LIBOR Rate Loans shall be made by each Revolving Lender at its LIBOR Lending Office and Alternate Base Rate Loans at its Domestic Lending Office.

(b) Revolving Loan Borrowings.

(i) Notice of Borrowing.

(1) The Borrowers may request Revolving Loans for the purpose of financing unfunded future funding obligations under Mixed Collateral set forth on Schedule 2.1(a) that are Eligible Assets and for no other purpose. The Borrowers shall request a Revolving Loan borrowing by delivering a written Notice of Borrowing (or telephone notice promptly confirmed in writing by delivery of a written Notice of Borrowing, which delivery may be by Electronic Transmission) to the Administrative Agent along with a Compliance Certificate, Borrower Asset Schedule and Underwriting Package for the related Eligible Asset(s) to be financed not later than (A) twelve (12) Business Days for Non-Wachovia Assets and (B) seven (7) Business Days for Wachovia Assets from the delivery of the applicable Notice of Borrowing. Each such Notice of Borrowing shall be irrevocable and shall specify (A) that a Revolving Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed, (D) whether the borrowing shall be comprised of Alternate Base Rate Loans, LIBOR Rate Loans or a combination thereof, and if LIBOR Rate Loans are requested, the Interest Period(s) therefor, (E) the applicable Borrower and the Eligible Asset to be financed and (F) a calculation of Availability. If the Borrowers shall fail to specify in any such Notice of Borrowing (1) an applicable Interest Period in the case of a LIBOR Rate Loan, then such notice shall be deemed to be a request for an Interest Period of one month, or (2) the Type of Revolving Loan requested, then such notice shall be deemed to be a request for a one-month LIBOR Rate Loan hereunder.

(2) The Administrative Agent shall notify the applicable Borrower in writing of the Administrative Agent's tentative approval (and the proposed Allocated Revolving Loan Amount for each Eligible Asset) or final disapproval of each proposed Eligible Asset within, (i) in the case of Non–Wachovia Assets, ten (10) Business Days (or such greater time as the Administrative Agent determines in its discretion for multiple assets or assets with multiple Mortgaged Properties) and, (ii) in the case of Wachovia Assets, five (5) Business Days (or such greater time as the Administrative Agent determines in its discretion for multiple assets or assets with multiple Mortgaged Properties) after its receipt of the Notice of Borrowing, the Borrower Asset Schedule, the Compliance Certificate, the complete Underwriting Package and any supplemental requests

(requested orally or in writing) relating to such proposed Eligible Asset. Unless the Administrative Agent notifies the Borrowers in writing of the Administrative Agent's approval of such proposed Eligible Asset within the applicable period, the Administrative Agent shall be deemed not to have approved such proposed Eligible Asset. The Administrative Agent in its discretion may waive, shorten or increase any of the applicable time periods for the review of proposed Eligible Assets or the delivery of documents.

(3) Provided that the Administrative Agent on behalf of the Secured Parties has tentatively agreed to finance the Eligible Asset described in the Notice of Borrowing and the proposed Allocated Revolving Loan Amount is acceptable to the applicable Borrower, the applicable Borrower shall forward to the Administrative Agent, via Electronic Transmission, at least two (2) Business Days prior to the requested Borrowing Date (which must be received by the Administrative Agent no later than 10:00 a.m. two (2) Business Days prior to the requested Borrowing Date) an executed confirmation for each Eligible Asset, substantially in the form of Exhibit 2.1(b) attached hereto (a "Confirmation"). The Confirmation shall specify the Allocated Revolving Loan Amount for the related Eligible Asset and any additional terms or conditions of the related Revolving Loan not inconsistent with this Agreement. The Confirmation shall be irrevocable. The delivery of the Confirmation to the Administrative Agent shall be deemed to be a certification by the applicable Borrower that, among other things, all conditions precedent to such Revolving Loan set forth in Articles II and IV have been satisfied (except the Administrative Agent's consent). Unless otherwise agreed in writing, upon receipt of the Confirmation, the Administrative Agent, on behalf of the Secured Parties, may, in the Administrative Agent's discretion, agree to enter into the requested Revolving Loan with respect to an Eligible Asset, and such agreement shall be evidenced by the Administrative Agent's signature on the Confirmation. Any Confirmation executed by the Administrative Agent shall be deemed to have been received by the applicable Borrower on the date actually received by the applicable Borrower.

(4) Upon receipt of the Confirmation executed by the Administrative Agent, (i) the applicable Borrower shall release or cause to be released to the Custodian in accordance with the Custodial Agreement (1) in the case of a Non–Table Funded Mortgage Asset, no later than 3:00 p.m. two (2) Business Days prior to the requested Borrowing Date, and (2) in the case of a Table Funded Mortgage Asset, no later than 1:00 p.m. three (3) Business Days following the applicable Borrowing Date, the Mortgage Asset File pertaining to each Eligible Asset to be financed by the Revolving Lenders, and (ii) the applicable Borrower shall deliver to the Custodian, in connection with the applicable delivery under clause (i) above, a Custodial Identification Certificate and a Mortgage Asset File Checklist required under Section 3.2 of the Custodial Agreement.

(5) Each Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between the Administrative Agent and the applicable Borrower with respect to the Revolving Loan to which the Confirmation relates, and the applicable Borrower's acceptance of the related proceeds shall constitute the applicable Borrower's agreement to the terms of such Confirmation. It is the intention of the parties that each Confirmation shall not be separate from this Agreement but shall be made a part of this Agreement.

To the extent of a conflict between this Agreement and the related Confirmation, the Confirmation shall control.

(6) Pursuant to the Custodial Agreement, the Custodian shall deliver to the Administrative Agent and the applicable Borrower by 11:00 a.m. on the Borrowing Date for each Non–Table Funded Mortgage Asset a Trust Receipt (along with a completed Mortgage Asset File Checklist attached thereto) and an Asset Schedule and Exception Report relating to the Basic Mortgage Asset Documents with respect to the Eligible Assets that the applicable Borrower has requested the Revolving Lenders to finance on such Borrowing Date. With respect to each Table Funded Mortgage Asset, the applicable Borrower shall cause the Bailee to deliver to the Custodian with a copy to the Administrative Agent no later than 10:00 a.m. on the Borrowing Date by facsimile the related Basic Mortgage Asset Documents, the insured closing letter (if any), the escrow instructions (if any), a fully executed Bailee Agreement, a Bailee's Trust Receipt issued by the Bailee thereunder and such other evidence satisfactory to the Administrative Agent in its discretion that all documents necessary to effect a pledge of the related Eligible Asset and the related Collateral to the Administrative Agent on behalf of the Secured Parties have been delivered to Bailee. With respect to each Table Funded Mortgage Asset, the Custodian shall deliver to the Administrative Agent a Table Funded Trust Receipt no later than 1:00 p.m. on the Borrowing Date, which documents shall be acceptable to the Administrative Agent in its discretion. In the case of a Table Funded Mortgage Asset, on the second (2nd) Business Day following the Custodian's receipt of the related Mortgage Loan Documents comprising the Mortgage Asset File, the Custodian shall deliver to the Administrative Agent a Trust Receipt (along with a completed Mortgage Asset File Checklist attached thereto) certifying its receipt of the documents required to be delivered pursuant to the Custodial Agreement, together with an Asset Schedule and Exception Report relating to the Basic Mortgage Asset Documents, with any Exceptions identified by the Custodian as of the date and time of delivery of such Asset Schedule and Exception Report. The Custodian shall deliver to the Administrative Agent an Asset Schedule and Exception Report relating to all of the Mortgage Loan Documents within five (5) Business Days of its receipt of the related Mortgage Asset Files.

(7) Once the Confirmation is executed by the Administrative Agent, the Administrative Agent shall give notice to each Revolving Lender at least one (1) Business Day prior to the Borrowing Date of each such Revolving Lender's share thereof.

(ii) Minimum Amounts. Each Revolving Loan that is made as an Alternate Base Rate Loan shall be in a minimum aggregate amount of $500,000 and in integral multiples of $10,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less). Each Revolving Loan that is made as a LIBOR Rate Loan shall be in a minimum aggregate amount of $500,000 and in integral multiples of $10,000 in excess thereof (or the remaining amount of the Revolving Committed Amount, if less).

(iii) Advances. Each Revolving Lender will make its Revolving Commitment Percentage of each Revolving Loan borrowing available to the Administrative Agent for the account of the applicable Borrower at the office of the Administrative Agent specified in Section 10.2, or at such other office as the

Administrative Agent may designate in writing, by 1:00 p.m. on the Borrowing Date, in Dollars and in funds immediately available to the Administrative Agent. The Administrative Agent shall use reasonable best efforts to make such borrowing available to the applicable Borrower by 3:30 p.m., but in any case, no later than 5:00 p.m. on the Borrowing Date by the Administrative Agent by crediting the account of the applicable Borrower on the books of such office (or such other account that the Borrowers may designate in writing to the Administrative Agent) with the aggregate of the amounts made available to the Administrative Agent by the Revolving Lenders and in like funds as received by the Administrative Agent.

(c) Repayment The credit facility evidenced by this Section 2.1 is solely for the purpose of funding future fundings under Mixed Collateral. Accordingly, notwithstanding anything contained in any of the Credit Documents to the contrary, the Borrowers will not have the right to reborrow any amounts repaid to the Lenders under this Agreement and the other Credit Documents. The principal amount of all Revolving Loans shall be due and payable in full on the Maturity Date, unless accelerated sooner pursuant to Section 7.2. The Borrowers shall have the right to repay Revolving Loans in whole or in part from time to time; provided, however; that each partial repayment of a Revolving Loan shall be in a minimum principal amount of $1,000,000 and integral multiples of $100,000 in excess thereof (or the remaining outstanding principal amount). Such repayment will be applied to the outstanding Revolving Loans and Revolving Loan Collateral in such manner as the Borrowers shall direct.

(d) Interest. Subject to the provisions of Section 2.6, Revolving Loans shall bear interest as follows:

(i) Alternate Base Rate Loans. During such periods as any Revolving Loans shall be comprised of Alternate Base Rate Loans, each such Alternate Base Rate Loan shall bear interest at a per annum rate equal to the sum of the Alternate Base Rate plus the Applicable Percentage; and

(ii) LIBOR Rate Loans. During such periods as Revolving Loans shall be comprised of LIBOR Rate Loans, each such LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate plus the Applicable Percentage.

Interest on Revolving Loans shall be payable in arrears on each Payment Date.

(e) [Reserved].

(f) Revolving Notes; Covenant to Pay. The Borrowers' obligation to pay each Revolving Lender shall be evidenced by this Agreement and, upon such Revolving Lender's request, by a duly executed promissory note of the Borrowers to such Revolving Lender in substantially the form of Exhibit 2.1(f). The Borrowers covenant and agree to pay the Revolving Loans in accordance with the terms of this Agreement.

(g) [Reserved].

(h) Confirmations. Notwithstanding anything to the contrary in this Section 2.1 and notwithstanding any oral or verbal approval of an Extension of Credit by the Administrative Agent, no Extension of Credit shall be deemed approved until a Confirmation or revised Confirmation, as applicable, has been executed by the Administrative Agent. Each pledge of a Mortgage Asset, regardless of whether a Loan is made to the Borrowers in connection therewith,

shall be evidenced by a Confirmation. Each Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between the Administrative Agent and the applicable Borrower with respect to the Revolving Loan to which the Confirmation relates, and the applicable Borrower's acceptance of the related proceeds shall constitute the applicable Borrower's agreement to the terms of such Confirmation. It is the intention of the parties that each Confirmation shall not be separate from this Agreement but shall be made a part of this Agreement. To the extent of a conflict between this Agreement and the related Confirmation, the Confirmation shall control.

Section 2.2 Term Loan.

(a) Term Loan. Subject to the terms and conditions hereof (including, without limitation, Sections 4.1 and 4.2 of this Agreement) and in reliance upon the representations and warranties set forth herein, each Term Loan Lender severally, but not jointly, agrees to make available to the Borrowers (through the Administrative Agent) on the Funding Date such Term Loan Lender's Term Loan Commitment Percentage of a term loan in Dollars (the "Term Loan") in the aggregate principal amount of THREE HUNDRED SIXTEEN MILLION SEVEN HUNDRED TWENTY NINE THOUSAND FIVE DOLLARS ($316,729,005.00), which amount shall equal the aggregate Allocated Term Loan Amounts approved by the Administrative Agent in its discretion for the Eligible Assets approved by the Administrative Agent in its discretion and included in the Term Loan Collateral (the "Term Loan Committed Amount") for the purposes hereinafter set forth. The Term Loan Collateral and the Allocated Term Loan Amount for each item of Term Loan Collateral shall be evidenced by Confirmations executed by the applicable Borrower and the Administrative Agent. Upon receipt by the Administrative Agent of the proceeds of the Term Loan, such proceeds will then be made available to the Borrowers by the Administrative Agent by crediting the account of the Borrowers on the books of the office of the Administrative Agent specified in Section 10.2, or at such other office as the Administrative Agent may designate in writing, with the aggregate of such proceeds made available to the Administrative Agent by the Term Loan Lenders and in like funds as received by the Administrative Agent (or by crediting such other account(s) as directed by the Borrowers). The Term Loan may consist of Alternate Base Rate Loans or LIBOR Rate Loans, or a combination thereof, as the Borrowers' may request; provided, however, that the Term Loan made on the Restatement Date or any of the three (3) Business Days following the Restatement Date may only consist of Alternate Base Rate Loans unless the Borrowers deliver a funding indemnity letter, substantially in the form of Exhibit 2.1(a), reasonably acceptable to the Administrative Agent not less than three (3) Business Days prior to the Restatement Date. LIBOR Rate Loans shall be made by each Term Loan Lender at its LIBOR Lending Office and Alternate Base Rate Loans at its Domestic Lending Office.

(b) Repayment of Term Loan. The terms and provisions governing repayment of the Term Loan are set forth in the Fee Letter and are hereby incorporated by reference. All outstandings under the Term Loan shall be due and payable in full on the Maturity Date unless accelerated sooner pursuant to Section 7.2. Amounts repaid or prepaid on the Term Loan may not be reborrowed. Any repayment hereunder will be applied to the outstanding Term Loans in accordance with Section 2.5(c)(i)(A) until the outstanding principal amount of the Term Loans has been paid in full.

(c) Interest on the Term Loan. Subject to the provisions of Section 2.6, the Term Loan shall bear interest as follows:

(i) Alternate Base Rate Loans. During such periods as the Term Loan shall be comprised of Alternate Base Rate Loans, each such Alternate Base Rate Loan shall bear interest at a per annum rate equal to the sum of the Alternate Base Rate plus the Applicable Percentage; and

(ii) LIBOR Rate Loans. During such periods as the Term Loan shall be comprised of LIBOR Rate Loans, each such LIBOR Rate Loan shall bear interest at a per annum rate equal to the sum of the LIBOR Rate plus the Applicable Percentage.

Interest on the Term Loan shall be payable in arrears on each Payment Date.

(d) Term Loan Notes; Covenant to Pay. The Borrowers' obligation to pay each Term Loan Lender shall be evidenced by this Agreement and, upon such Term Loan Lender's request, by a duly executed promissory note of the Borrowers to such Term Loan Lender in substantially the form of Exhibit 2.2(d). The Borrowers covenant and agree to pay the Term Loan in accordance with the terms of this Agreement.

(e) [Reserved].

(f) Confirmations. Notwithstanding anything to the contrary in this Section 2.2 and notwithstanding any oral or verbal approval of an Extension of Credit by the Administrative Agent, no Extension of Credit shall be deemed approved until a Confirmation or revised Confirmation, as applicable, has been executed by the Administrative Agent. Each pledge of a Mortgage Asset, regardless of whether a Loan is made to the Borrowers in connection therewith, shall be evidenced by a Confirmation. Each Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between the Administrative Agent and the applicable Borrower with respect to the Term Loan to which the Confirmation relates, and the applicable Borrower's acceptance of the related proceeds shall constitute the applicable Borrower's agreement to the terms of such Confirmation. It is the intention of the parties that each Confirmation shall not be separate from this Agreement but shall be made a part of this Agreement. To the extent of a conflict between this Agreement and the related Confirmation, the Confirmation shall control.

Section 2.3 Fees.

The Borrowers shall pay all fees provided for in the Fee Letter to the Administrative Agent for distribution to the Lenders and the Administrative Agent in accordance therewith.

Section 2.4 Commitment Reductions.

(a) Voluntary Reductions. The Borrowers shall have the right to terminate or permanently reduce the unused portion of the Revolving Committed Amount at any time or from time to time upon not less than five (5) Business Days' prior written notice to the Administrative Agent (which shall notify the Lenders thereof as soon as practicable) of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction which shall be in a minimum amount of $1,000,000 or a whole multiple of $1,000,000 in excess thereof and shall be irrevocable and effective upon receipt by the Administrative Agent; provided that no such reduction or termination shall be permitted if after giving effect thereto, and to any prepayments of the Revolving Loans made on the effective date thereof, (i) the sum of the aggregate principal amount of outstanding Revolving Loans would exceed the Revolving Committed Amount then in effect or (ii) the Availability would be negative.

(b) Maturity Date. The Commitments shall automatically terminate on the Maturity Date unless accelerated sooner pursuant to Section 7.2 hereof.

Section 2.5 Prepayments.

(a) Optional Prepayments. The Borrowers shall have the right to prepay the Term Loans and the Revolving Loans in whole or in part from time to time; provided, however, that each partial prepayment of a Term Loan shall be in a minimum principal amount of $500,000 (or the remaining outstanding principal amount). The Borrowers shall give three Business Days' irrevocable notice of prepayment in the case of LIBOR Rate Loans and same-day irrevocable notice on any Business Day in the case of Alternate Base Rate Loans, to the Administrative Agent (which shall notify the Lenders thereof as soon as practicable). To the extent that the Borrowers elect to prepay the Term Loans, amounts prepaid under this Section shall be applied (i) to the extent the outstanding principal amount under the Term Loans, both before and after giving effect to such optional prepayment, is greater than $150,000,000 and there are more than eight (8) Pledged Mortgage Assets, as the Borrowers may direct and (ii) to the extent the outstanding principal amount under the Term Loans, either before or after giving effect to such optional prepayment, is less than or equal to $150,000,000 or there are less than or equal to eight (8) Pledged Mortgage Assets, as the Administrative Agent may elect in its reasonable discretion. Within the foregoing parameters, prepayments under this Section shall be applied first to Alternate Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section shall be subject to Section 2.13, but otherwise without premium or penalty. Interest on the principal amount prepaid shall be payable on the next occurring Payment Date that would have occurred had such loan not been prepaid or, at the request of the Administrative Agent, interest on the principal amount prepaid shall be payable on any date that a prepayment is made hereunder through the date of prepayment. Revolving Loans may be prepaid in accordance with the terms of Section 2.1(c) of this Agreement. Prepayments of the Loans are subject to the requirements of Section 2.5(b)(vi) of this Agreement and the Fee Letter.

(b) Mandatory Prepayments.

(i) Availability and Revolving Committed Amount.

(A) Availability. The terms and provisions governing mandatory prepayments in connection with Availability are set forth in the Fee Letter and are hereby incorporated by reference.

(B) Revolving Loan Committed Amount. If at any time after the Restatement Date, the sum of the aggregate principal amount of outstanding Revolving Loans shall exceed the Revolving Committed Amount, the Borrowers shall immediately prepay the Revolving Loans in an amount sufficient to eliminate such excess.

(ii) Equity Issuance. The terms and provisions governing mandatory prepayments in connection with Equity Issuances are set forth in the Fee Letter and are hereby incorporated by reference.

(iii) Extraordinary Receipts. Immediately, and in any event, within one (1) Business Day upon receipt by any Credit Party or any of its Subsidiaries of proceeds

from any Extraordinary Receipt, the Borrowers shall prepay the Term Loans and/or the Revolving Loans, as applicable, in an aggregate principal amount equal to one hundred percent (100%) of such Extraordinary Receipt to be applied to the Term Loan and/or the Revolving Loans depending on whether the Extraordinary Receipt is from Term Loan Collateral or Revolving Loan Collateral, or both.

(iv) Reduction of Asset Value Prepayment. The terms and provisions governing mandatory prepayments in connection with a reduction of Asset Value are set forth in the Fee Letter and are hereby incorporated by reference.

(v) Defaulted Collateral Prepayment. The terms and provisions governing mandatory prepayments in connection with a Defaulted Collateral Prepayment are set forth in the Fee Letter and are hereby incorporated by reference.

(vi) Collateral Release Prepayment. The terms and provisions governing mandatory prepayments in connection with repayments, prepayments and/or reductions of the Loans and/or under the Collateral and the releases of Collateral are set forth in the Fee Letter and are hereby incorporated by reference.

(vii) Prime Distribution Prepayment. To the extent there are annual dividends or distributions in excess of $10,000,000 from the Prime Pledged Mortgage Asset, the Borrowers shall prepay the Term Loans in an aggregate principal amount equal to one hundred percent (100%) of all such excess dividends or distributions. Such amounts shall be applied first to the Working Capital Facility in accordance with Section 2.2(a)(viii) thereof and then to the Obligations under this Agreement in such manner as the Administrative Agent may determine in its discretion.

(viii) REO Property and Foreclosed Mortgage Asset Prepayments. The terms and provisions governing mandatory prepayments in connection with REO Property and Foreclosed Mortgage Assets are set forth in the Fee Letter and are hereby incorporated by reference.

(c) Application of Mandatory Prepayments.

(i) Unless otherwise set forth above or in the Fee Letter, all amounts required to be paid pursuant to this Section shall be applied as follows: (A) first, to the outstanding Term Loans and Term Loan Collateral, as the Administrative Agent may elect in its discretion, until the outstanding principal amount of the Term Loans has been paid and full; and (B) second, to the outstanding Revolving Loans and Revolving Loan Collateral in such manner as the Administrative Agent may elect in its discretion until the outstanding principal amount of the Revolving Loans has been paid in full. Within the parameters of the applications set forth above, prepayments shall be applied first to Alternate Base Rate Loans and then to LIBOR Rate Loans in direct order of Interest Period maturities. All prepayments under this Section shall be subject to Section 2.13 and be accompanied by interest on the principal amount prepaid through the date of prepayment, but otherwise without premium or penalty; and

(ii) All amounts required to be paid pursuant to this Section shall be deposited in the Collection Account and shall be accompanied by any applicable

costs incurred pursuant to Section 2.13 (if any) and any applicable interest payments.

(d) Junior/Senior Positions. Notwithstanding anything contained in this Agreement to the contrary, in the event the Borrowers pledge to the Administrative Agent (whether simultaneously or on separate occasions) the senior and junior positions with respect to certain Commercial Real Estate and the Loans with respect to the Eligible Asset(s) that are senior in priority have been repaid or prepaid by the Borrowers or the related Obligors, (i) the Asset Value of the junior–most Eligible Asset(s) shall be reduced to zero (0) and (ii) the Administrative Agent shall not release its Lien on the Eligible Asset(s) (including any Income related thereto) that are senior in priority to the junior–most Eligible Asset(s) that the Administrative Agent continues to have a Lien on (regardless of whether the outstanding Allocated Revolving Loan Amount or Allocated Term Loan Amount, as applicable, and related amounts due have been paid in full) until the junior–most Eligible Asset(s) is repaid or prepaid and the outstanding Allocated Revolving Loan Amount or Allocated Term Loan Amount, as applicable, for the junior-most Eligible Asset plus any accrued and unpaid interest and any related breakage costs under Section 2.3 are paid in full; provided, however, if (A) the Loans with respect to the senior position are repaid due to repayments or prepayments by the related Obligor, (B) the Administrative Agent has reevaluated the remaining junior–most Eligible Asset(s), including, without limitation, a reassessment and possible redetermination of the Asset Value of such Eligible Asset, and, based on the reevaluation, the Administrative Agent is satisfied in its discretion with continuing to hold the junior–most Eligible Asset(s) as Collateral as is or upon certain specified conditions, including, without limitation, assigning a new Asset Value to such Eligible Asset, which approval shall be in writing to be effective, and (C) there are no Events of Default or Defaults outstanding (each to be evidenced by an Officer's Certificate), then the Administrative Agent will consent in writing to and effect the release of the senior Eligible Asset from the Collateral.

Section 2.6 Default Rate and Payment Dates.

(a) If all or a portion of the principal amount of any Loan which is a LIBOR Rate Loan shall not be paid when due or continued as a LIBOR Rate Loan in accordance with the provisions of Section 2.7 (whether at the stated maturity, by acceleration or otherwise), such overdue principal amount of such Loan shall be converted to an Alternate Base Rate Loan at the end of the Interest Period applicable thereto.

(b) (i) If all or a portion of the principal amount of any LIBOR Rate Loan shall not be paid when due, such overdue amount shall bear interest at a rate per annum which is equal to the rate that would otherwise be applicable thereto plus 2%, until the end of the Interest Period applicable thereto, and thereafter at a rate per annum which is equal to the Alternate Base Rate plus the sum of the Applicable Percentage then in effect for Alternate Base Rate Loans and 2% (the "ABR Default Rate") or (ii) if any interest payable on the principal amount of any Loan or any fee or other amount, including the principal amount of any Alternate Base Rate Loan, payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is equal to the ABR Default Rate, in each case from the date of such non-payment until such amount is paid in full (after as well as before judgment). Upon the occurrence, and during the continuance, of any other Event of Default hereunder, at the option of the Required Lenders, the principal of and, to the extent permitted by Requirements of Law, interest on the Loans and any other amounts owing hereunder or under the other Credit Documents shall bear interest, payable on demand, at a per annum rate which is (A) in the case of principal, the rate that would otherwise be applicable

thereto plus 2% or (B) in the case of interest, fees or other amounts, the ABR Default Rate (after as well as before judgment).

(c) Interest on each Loan shall be payable in arrears on each Payment Date; provided that interest accruing pursuant to paragraph (b) of this Section shall be payable from time to time on demand.

Section 2.7 Conversion Options.

(a) The Borrowers may, in the case of Revolving Loans and the Term Loan, elect from time to time to convert Alternate Base Rate Loans to LIBOR Rate Loans or to continue LIBOR Rate Loans by delivering a Notice of Conversion/Extension to the Administrative Agent at least three Business Days prior to the proposed date of conversion or extension, as applicable. In addition, the Borrowers may elect from time to time to convert all or any portion of a LIBOR Rate Loan to an Alternate Base Rate Loan by giving the Administrative Agent irrevocable written notice thereof by 11:00 a.m. one (1) Business Day prior to the proposed date of conversion. If the date upon which an Alternate Base Rate Loan is to be converted to a LIBOR Rate Loan is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Loan shall bear interest as if it were an Alternate Base Rate Loan. LIBOR Rate Loans may only be converted to Alternate Base Rate Loans on the last day of the applicable Interest Period. If the date upon which a LIBOR Rate Loan is to be converted to an Alternate Base Rate Loan is not a Business Day, then such conversion shall be made on the next succeeding Business Day and during the period from such last day of an Interest Period to such succeeding Business Day such Loan shall bear interest as if it were an Alternate Base Rate Loan. All or any part of outstanding Alternate Base Rate Loans may be converted as provided herein; provided that (i) no Loan may be converted into a LIBOR Rate Loan when any Default or Event of Default has occurred and is continuing and (ii) partial conversions shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof. All or any part of outstanding LIBOR Rate Loans may be converted as provided herein; provided that partial conversions shall be in an aggregate principal amount of $1,000,000 or a whole multiple of $100,000 in excess thereof.

(b) Any LIBOR Rate Loans may be continued as such upon the expiration of an Interest Period with respect thereto by compliance by the Borrowers with the notice provisions contained in Section 2.7(a); provided, that no LIBOR Rate Loan may be continued as such when any Default or Event of Default has occurred and is continuing, in which case such Loan shall be automatically converted to an Alternate Base Rate Loan at the end of the applicable Interest Period with respect thereto. So long as no Default or Event of Default has occurred and is continuing and all conditions set forth in Section 4.2 have been satisfied and the Borrowers shall fail to give timely notice of an election to continue a LIBOR Rate Loan, such LIBOR Rate Loans shall be automatically converted to a one-month LIBOR Rate Loan at the end of the applicable Interest Period with respect thereto. To the extent a Default or Event of Default has occurred and is continuing and the Borrowers shall fail to give timely notice of an election to continue a LIBOR Rate Loan or the continuation of LIBOR Rate Loans is not permitted hereunder, such LIBOR Rate Loans shall automatically be converted to Alternate Base Rate Loans at the end of the applicable Interest Period with respect thereto.

Section 2.8 Computation of Interest and Fees; Usury.

(a) Interest payable hereunder with respect to any Alternate Base Rate Loan based on the Prime Rate shall be calculated on the basis of a year of 365 days (or 366 days, as

applicable) for the actual days elapsed. All other fees, interest and all other amounts payable hereunder shall be calculated on the basis of a 360-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrowers and the Lenders of each determination of a LIBOR Rate on the Business Day of the determination thereof. Any change in the interest rate on a Loan resulting from a change in the Alternate Base Rate shall become effective as of the opening of business on the day on which such change in the Alternate Base Rate shall become effective. The Administrative Agent shall as soon as practicable notify the Borrowers and the Lenders of the effective date and the amount of each such change.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrowers, deliver to the Borrowers a statement showing the computations used by the Administrative Agent in determining any interest rate.

(c) It is the intent of the Lenders and the Credit Parties to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between the Lenders and the Credit Parties are hereby limited by the provisions of this subsection which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including, but not limited to, prepayment or acceleration of the maturity of any Obligation), shall the interest taken, reserved, contracted for, charged, or received under this Agreement, under the Notes or otherwise, exceed the maximum nonusurious amount permissible under Requirements of Law. If, from any possible construction of any of the Credit Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this paragraph and such interest shall be automatically reduced to the maximum nonusurious amount permitted under Requirements of Law, without the necessity of execution of any amendment or new document. If any Lender shall ever receive anything of value which is characterized as interest on the Loans under Requirements of Law and which would, apart from this provision, be in excess of the maximum nonusurious amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Loans and not to the payment of interest, or refunded to the Borrowers or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Loans. The right to demand payment of the Loans or any other Indebtedness evidenced by any of the Credit Documents does not include the right to receive any interest that has not otherwise accrued on the date of such demand, and the Lenders do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lenders with respect to the Loans shall, to the extent permitted by Requirements of Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Loans so that the amount of interest on account of such Indebtedness does not exceed the maximum nonusurious amount permitted by Requirements of Law.

Section 2.9 Pro Rata Treatment and Payments.

(a) Allocation of Payments Prior to Exercise of Remedies.

(i) Each borrowing of Revolving Loans and any reduction of the Revolving Commitments shall be made pro rata according to the respective Revolving Commitment Percentages of the Revolving Lenders. Each payment on account of any fees pursuant to Section 2.3 shall be made pro rata in accordance with the respective amounts due and

owing. Each payment (other than prepayments) by the Borrowers on account of principal of and interest on the Revolving Loans and on the Term Loan, as applicable, shall be applied to such Loans, as applicable, on a pro rata basis in accordance with the terms of Section 2.5(a) hereof. Each optional prepayment on account of principal of the Loans shall be applied in accordance with Section 2.5(a). Each mandatory prepayment on account of principal of the Loans shall be applied in accordance with Sections 2.2(b) and 2.5(b). Unless payments are specifically payable to Revolving Loans or Term Loans, all payments are shared *pari passu* and pro rata (based on the amounts of such Loans) between Revolving Loans and Term Loans. All payments (including prepayments) to be made by the Borrowers on account of principal, interest and fees shall be made without defense, set-off or counterclaim and shall be made to the Administrative Agent for the account of the Lenders at the Administrative Agent's office specified on Section 10.2 in Dollars and in immediately available funds not later than 1:00 p.m. on the date when due. The Administrative Agent shall distribute such payments to the Lenders entitled thereto promptly upon receipt in like funds as received. If any payment hereunder (other than payments on the LIBOR Rate Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a LIBOR Rate Loan becomes due and payable on a day other than a Business Day, such payment date shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day.

(ii) The Administrative Agent as agent for the Secured Parties shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Collateral, which amount shall be deposited by the Borrowers, the Credit Parties and any Servicer or PSA Servicer under a Pooling and Servicing Agreement into the Collection Account. The Borrowers hereby agree to instruct each applicable Servicer to transfer within two (2) Business Days of receipt thereof, and each applicable PSA Servicer under a Pooling and Servicing Agreement to deposit within two (2) Business Days of the date on which such Person is obligated under the applicable Pooling and Servicing Agreement to disburse such funds, all Income with respect to the Collateral directly into the Collection Account. On each Payment Date, any Cash Collateral and any amounts on deposit in the Collection Account and amounts permitted to be withdrawn from the Homewood Interest Reserve shall be withdrawn by the Administrative Agent and shall be applied as follows:

*FIRST*, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the payment of all fees, expenses, and other obligations then due to the Administrative Agent and the Lenders pursuant to this Agreement and/or the Fee Letter, other than the interest and principal on the Loans;

*SECOND*, to the extent not paid by the Borrowers, to the payment of fees and expenses owed to the Custodian under the Custodial Agreement or Custodial Fee Letter;

*THIRD*, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the Lenders for the payment of accrued and unpaid interest on the Loans outstanding;

*FOURTH*, without limiting the Borrowers' obligations to make mandatory prepayments under Sections 2.2(b) and 2.5(b) in a timely manner as provided in this Article II, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) for the payment of the amounts and Loans provided for in Sections 2.2(b) and 2.5(b);

*FIFTH*, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the extent any Income or Cash Collateral includes payments or prepayments of principal on or from any Collateral (including, without limitation, insurance or condemnation proceeds or recoveries from any foreclosures not otherwise applied under Section 2.5(b) or clause FOURTH above), such payments shall be applied to reduce the Allocated Term Loan Amount and Allocated Revolving Loan Amount for the related Term Loan Collateral or Revolving Loan Collateral, as applicable;

*SIXTH*, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the extent not previously paid pursuant to Article II, to the Lenders to pay any other principal payments then due or required to be paid (including principal payments required with respect to the Homewood Mortgage Asset under the terms of the definition of Homewood Interest Reserve);

*SEVENTH*, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the payment of all other amounts then due and owing to the Administrative Agent, the Lenders or any other Person pursuant to this Agreement and the other Credit Documents; and

*EIGHTH*, to the Borrowers, for such purposes as the Borrowers shall determine in their sole discretion;

provided, however, that if a Default or Event of Default has occurred and is continuing or a mandatory prepayment under Section 2.5 is due but the applicable time period for payment of such amount has not expired, such amounts under clause "EIGHTH" shall not be transferred to the Borrowers but shall remain in the Collection Account and applied (i) in the case of a mandatory prepayment under Sections 2.2 or 2.5, in reduction of such mandatory prepayments when due and payable, with the balance being remitted to the Borrowers and (ii) in the case of a Default or Event of Default, in reduction of the Obligations in accordance with Section 2.9(b).

Notwithstanding anything to the contrary contained herein, in the event any Obligor Reserve Payments are deposited into the Collection Account, such Obligor Reserve Payments shall, upon written request of the Borrowers, be promptly transferred from the Collection Account to the Borrowers for the Borrowers to transfer into the appropriate escrow or reserve accounts.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application of the next succeeding category.

(b) Allocation of Payments After Exercise of Remedies. Notwithstanding any other provisions of this Agreement to the contrary, after the exercise of remedies (other than the invocation of default interest pursuant to Section 2.6) by the Administrative Agent or the Lenders pursuant to Section 7.2 (or after the Commitments shall automatically terminate and the Loans (with accrued interest thereon) and all other amounts under the Credit Documents shall automatically become due and payable in accordance with the terms of such Section), all amounts collected or received by the Administrative Agent or any Lender on account of the Obligations or

any other amounts outstanding under any of the Credit Documents or in respect of the Collateral and all amounts on deposit in the Collection Account and the Homewood Reserve Account shall be paid over or delivered to the Administrative Agent and applied as follows (irrespective of whether the following costs, expenses, fees, interest, premiums, scheduled periodic payments or Obligations are allowed, permitted or recognized as a claim in any proceeding resulting from the occurrence of a Bankruptcy Event):

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including without limitation reasonable attorneys' fees) of the Administrative Agent in connection with enforcing the rights of the Lenders under the Credit Documents and any protective advances made by the Administrative Agent with respect to the Collateral under or pursuant to the terms of the Security Documents;

SECOND, to the payment of any fees owed to the Administrative Agent;

THIRD, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the payment of all reasonable out-of-pocket costs and expenses (including without limitation, reasonable attorneys' fees) of each of the Lenders in connection with enforcing its rights under the Credit Documents or otherwise with respect to the Obligations owing to such Lender;

FOURTH, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the payment of all of the Obligations consisting of accrued fees and interest;

FIFTH, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the Lenders and the Administrative Agent for the payment of the outstanding principal amount of the Obligations;

SIXTH, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to all other Obligations and other obligations which shall have become due and payable under the Credit Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

SEVENTH, *pari passu* and pro rata (based on the amounts owed to such Persons under this clause) to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (a) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; and (b) each of the Lenders shall receive an amount equal to its pro rata share (based on the proportion of the then outstanding Loans held by such Lender) of amounts available to be applied pursuant to clauses "THIRD", "FOURTH", "FIFTH" and "SIXTH" above.

Section 2.10 Non-Receipt of Funds by the Administrative Agent.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received written notice from a Lender prior to the proposed date of any Extension of Credit that such Lender will not make available to the Administrative Agent such Lender's share of such Extension of Credit, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with this Agreement and may,

in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Extension of Credit available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrowers, the interest rate applicable to Alternate Base Rate Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Extension of Credit to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Extension of Credit. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the Borrowers with respect to any amount owing under subsections (a) and (b) of this Section shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Extension of Credit set forth in Article IV are not satisfied or waived in accordance with the terms thereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Loans, and to make payments pursuant to Section 10.5(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any such payment under Sections 8.7 and 10.5(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Sections 8.7 and 10.5(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.11 Inability to Determine Interest Rate.

Notwithstanding any other provision of this Agreement, if (a) the Administrative Agent shall reasonably determine (which determination shall be conclusive and binding absent manifest error) that, by reason of circumstances affecting the relevant market, reasonable and adequate means do not exist for ascertaining the LIBOR Rate for such Interest Period, or (b) the Required Lenders shall reasonably determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of funding LIBOR Rate Loans that the Borrowers have requested be outstanding as a LIBOR Tranche during such Interest Period, the Administrative Agent shall forthwith give telephone notice of such determination, confirmed in writing, to the Borrowers and the Lenders at least two (2) Business Days prior to the first day of such Interest Period. Unless the Borrowers shall have notified the Administrative Agent upon receipt of such telephone notice that it wishes to rescind or modify its request regarding such LIBOR Rate Loans, any Loans that were requested to be made as LIBOR Rate Loans shall be made as Alternate Base Rate Loans and any Loans that were requested to be converted into or continued as LIBOR Rate Loans shall remain as or be converted into Alternate Base Rate Loans. Until any such notice has been withdrawn by the Administrative Agent, no further Loans shall be made as, continued as, or converted into, LIBOR Rate Loans for the Interest Periods so affected.

Section 2.12 Yield Protection.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate);

(ii) subject any Lender to any tax of any kind whatsoever with respect to this Agreement or any LIBOR Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.14 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender); or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or LIBOR Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any LIBOR Rate Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lender, the Borrowers will pay to such Lender, such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrowers shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation.

The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 2.13 Indemnity; Eurocurrency Liabilities.

(a) The Credit Parties hereby agree to indemnify each Lender and to hold such Lender harmless from any funding loss or expense which each Lender may sustain or incur as a consequence of (a) the failure by the Borrowers to pay the principal amount of or interest on any Loan by any Lender in accordance with the terms hereof, (b) the failure by the Borrowers to accept a borrowing after the Borrowers have given a notice in accordance with the terms hereof, (c) default by the Borrowers in making any prepayment after the Borrowers have given a notice in accordance with the terms hereof, and/or (d) the making by the Borrowers of a prepayment of a Loan, or the conversion thereof, on a day which is not the last day of the Interest Period with respect thereto, in each case including, but not limited to, any such loss or expense arising from interest or fees payable by any Lender to lenders of funds obtained by it in order to maintain its Loans hereunder. A certificate setting forth in reasonable detail as to any additional amounts payable pursuant to this Section submitted by any Lender, through the Administrative Agent, to the Borrowers shall be conclusive in the absence of manifest error. The agreements in this Section shall survive termination of this Agreement and payment of the Obligations.

(b) The Borrowers shall pay to each Lender, as long as such Lender shall be required to maintain reserves under Regulation D with respect to "Eurocurrency liabilities" within the meaning of Regulation D, or under any similar or successor regulation with respect to Eurocurrency liabilities or Eurocurrency funding, additional interest on the unpaid principal amount of each LIBOR Loan equal to the actual costs of such reserves allocated to such LIBOR Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such LIBOR Loan, provided the Borrowers shall have received at least fifteen (15) days prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a

Lender fails to give notice fifteen (15) days prior to the relevant Payment Date, such additional interest shall be due and payable fifteen (15) days from receipt of such notice.

Section 2.14 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Credit Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if any Credit Party shall be required by Requirements of Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent or any Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Credit Party shall make such deductions and (iii) such Credit Party shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with Requirements of Law.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of paragraph (a) above, the Credit Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Requirements of Law.

(c) Indemnification by the Borrowers. The Credit Parties shall indemnify the Administrative Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Administrative Agent or such Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Credit Party to a Governmental Authority, the Borrowers shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which any Credit Party is a resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Credit Document shall deliver to the Borrowers (with a copy to the Administrative Agent), at the time or times prescribed by Requirements of Law or reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation prescribed by Requirements of Law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by Requirements of Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(f) Foreign Lenders. Without limiting the generality of the foregoing, in the event that any Credit Party is resident for tax purposes in the United States of America, any Foreign Lender shall deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrowers or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (i) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (ii) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by Requirements of Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by Requirements of Law to permit the Credit Parties to determine the withholding or deduction required to be made.

(g) Treatment of Certain Refunds. If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which the Credit Parties have paid additional amounts pursuant to this Section, it shall pay to the Credit Parties an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Credit Parties under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Credit Parties, upon the request of the Administrative Agent or such Lender agrees to repay the amount paid over to the Credit Parties (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender, in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Administrative Agent, or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Credit Parties or any other Person.

The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 2.15 Illegality.

Notwithstanding any other provision of this Credit Agreement, if any Change in Law shall make it unlawful for such Lender or its LIBOR Lending Office to make or maintain LIBOR Rate Loans as contemplated by this Credit Agreement or to obtain in the interbank eurodollar market through its LIBOR Lending Office the funds with which to make such Loans, (a) such Lender shall promptly notify the Administrative Agent and the Borrowers thereof, (b) the commitment of such Lender hereunder to make LIBOR Rate Loans or continue LIBOR Rate Loans as such shall forthwith be suspended until the Administrative Agent shall give notice that the condition or situation which gave rise to the suspension shall no longer exist, and (c) such Lender's Loans then outstanding as LIBOR Rate Loans, if any, shall be converted on the last day of the Interest Period for such Loans or within such earlier period as required by Requirements of Law as Alternate Base Rate Loans. The Borrowers hereby agree to promptly pay any Lender, upon its demand, any additional amounts necessary to compensate such Lender for actual and direct costs (but not including anticipated profits) reasonably incurred by such Lender in making any repayment in accordance with this Section including, but not limited to, any interest or fees payable by such Lender to lenders of funds obtained by it in order to make or maintain its LIBOR Rate Loans hereunder. A certificate (which certificate shall include a description of the basis for the computation) as to any additional amounts payable pursuant to this Section submitted by such Lender, through the Administrative Agent, to the Borrowers shall be conclusive in the absence of manifest error. Each Lender agrees to use reasonable efforts (including reasonable efforts to change its LIBOR Lending Office) to avoid or to minimize any amounts which may otherwise be payable pursuant to this Section; provided, however, that such efforts shall not cause the imposition on such Lender of any additional costs or legal or regulatory burdens deemed by such Lender in its sole discretion to be material.

Section 2.16 Obligations Absolute.

Except as set forth to the contrary in the Credit Documents, all sums payable by the Credit Parties hereunder or under the Credit Documents shall be paid without notice, demand, counterclaim, setoff, deduction or defense (as to any Person or any reason whatsoever) and without abatement, suspension, deferment, diminution or reduction (as to any Person or any reason whatsoever), and the obligations and liabilities of each Credit Party hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of any asset, any Property, any Collateral or any portion of the foregoing; (b) any restriction or prevention of or interference with any use of any asset, any Property, any Collateral or any portion of the foregoing; (c) any title defect or encumbrance or any eviction from any Property, by title paramount or otherwise; (d) any Insolvency Proceeding relating to any Credit Party, any Affiliate or Subsidiary of the foregoing or any Obligor, account debtor or indemnitor under the Collateral, or any action taken with respect to this Agreement or any other Credit Document by any trustee or receiver of any Credit Party, any Affiliate or Subsidiary of the foregoing or any Obligor, account debtor or indemnitor under the Collateral, or by any court, in any such proceeding; (e) any claim that any Credit Party has or might have against the Administrative Agent, any Lender and/or any Indemnitee; (f) any default or failure on the part of the Administrative Agent, any Lender and/or any Indemnitee to perform or comply with any of the terms hereof, the Credit Documents or of any other agreement with any Credit Party, any Subsidiary or Affiliate of the foregoing and/or any other Person; (g) the invalidity or unenforceability of any Collateral or Loan; (h) anything related to or arising out of any Credit-Party-Related Obligation; or (i) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not any Credit Party or any Affiliate or Subsidiary of the foregoing shall have notice or knowledge of any of the foregoing.

Section 2.17 Additional Collateral.

Notwithstanding anything contained in the Credit Documents to the contrary, to the extent a Pledged Mortgage Asset does not have an Allocated Revolving Loan Amount, Allocated Term Loan Amount, Release Amount and/or any particular Loan advanced against such Collateral (including,

without limitation, the Prime Pledged Mortgage Asset and the A-1 common units for the ESH Pledged Mortgage Asset), such Pledged Mortgage Assets shall not be released from the Administrative Agent's Lien unless (i) consented to in the Administrative Agent's discretion or (ii) this Agreement is no longer in effect, all Commitments have terminated, no Note remains outstanding and unpaid and the Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder have been paid in full; provided, however, if the Administrative Agent has consented, in its discretion, to the release of all or any portion of the Series A-1 Preferred Equity Interests for the ESH Pledged Mortgage Asset, the Administrative Agent will consent to the release of the corresponding amount of the A-1 common units for the ESH Pledged Mortgage Asset. Notwithstanding the foregoing, upon payment of the Total ESH Release Amount, and provided no Defaults or Events of Defaults have occurred and are continuing, and that payments have been made in reduction of the Working Capital Facility from and after the Restatement Date in the aggregate amount of $15,256,263, the ESH Pledged Mortgage Asset (including the A-1 common units) shall be released from the Administrative Agent's Lien.

## ARTICLE III

## REPRESENTATIONS AND WARRANTIES

To induce the Lenders to enter into this Agreement and to make the Extensions of Credit herein provided for, the Credit Parties hereby represent and warrant, as of the date of this Agreement and on any date a Loan is made hereunder and at all times while any Credit Document or any Loan is in full force and effect, to the Administrative Agent and to each Lender that:

Section 3.1 Financial Condition.

(a) The consolidated balance sheet of ART and its Consolidated Subsidiaries provided to the Administrative Agent and the related consolidated statements of income and retained earnings and of cash flows, copies of which have heretofore been furnished to the Administrative Agent, are complete and correct and present fairly the consolidated financial condition of ART and its Consolidated Subsidiaries as at such date, and the consolidated results of their operations and their consolidated cash flows as of the date of such financial statements and other information. All such financial statements, including the related schedules and notes thereto (if any), have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as disclosed therein). Except as disclosed in writing, neither ART nor any of its Consolidated Subsidiaries had, at the date of the most recent balance sheet referred to above, any material contingent liability or liability for taxes, or any long term lease or unusual forward or long term commitment, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other financial derivative, that is not reflected in the foregoing statements or in the notes thereto. During the period from the date of the financial statements and other financial information delivered to the Administrative Agent, to and including the date hereof, there has been no sale, transfer or other disposition by ART or any of its Consolidated Subsidiaries of any material part of its business or Property and no purchase or other acquisition of any business or Property (including any Equity Interests of any other Person) material in relation to the consolidated financial condition of ART and its Consolidated Subsidiaries on the date hereof.

(b) The operating forecast and cash flow projections of ART and its Consolidated Subsidiaries, copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith under the direction of a Responsible Officer of ART and in accordance with GAAP. ART has no reason to believe that as of the date of delivery thereof such

operating forecast and cash flow projections are materially incorrect or misleading in any material respect or omit to state any material fact which would render them misleading in any material respect. ART shall not be required to provide information in its projections if the disclosure of such information would violate any Requirement of Law relating to insider trading.

Section 3.2 No Material Adverse Effect; Internal Control Event.

Since December 31, 2006 (a) (and, in addition, after delivery of annual audited financial statements in accordance with Section 5.1(a), from the date of the most recently delivered annual audited financial statements), there has been no development or event which has had or could reasonably be expected to have a Material Adverse Effect and (b) no Internal Control Event has occurred.

Section 3.3 Corporate Existence; Compliance with Law.

Each of the Credit Parties (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation, (b) has the requisite power and authority and the legal right to own, operate and pledge all its Property, to lease the Property it operates as lessee and to conduct the business in which it is currently engaged and has taken all actions necessary to maintain all rights, privileges, licenses and franchises necessary or required in the normal conduct of its business, (c) is duly qualified to conduct business and in good standing under the laws of (i) the jurisdiction of its organization or formation and (ii) each other jurisdiction where its ownership, lease or operation of Property or the conduct of its business requires such qualification and (d) is in compliance with all Requirements of Law (including, without limitation, all government permit and licensing requirements), Authority Documents, government permits and government licenses. The jurisdictions in which the Credit Parties are organized and qualified to do business are described on Schedule 3.3. The Borrowers shall update Schedule 3.3 from time to time, in accordance with Section 5.2, to update information and to add Additional Credit Parties.

Section 3.4 Corporate Power; Authorization; Enforceable Obligations.

Each of the Credit Parties has full power and authority and the legal right to make, deliver and perform the Credit Documents to which it is party and has taken all necessary limited liability company, partnership or corporate action to authorize the execution, delivery and performance by it of the Credit Documents to which it is party. Each Credit Document to which it is a party has been duly executed and delivered on behalf of each Credit Party. Each Credit Document to which it is a party constitutes a legal, valid and binding obligation of each Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable Insolvency Laws and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

Section 3.5 No Legal Bar; No Default.

The execution, delivery and performance by each Credit Party of the Credit Documents to which such Credit Party is a party, the borrowing of Loans hereunder, pledge of Collateral under the Credit Documents and the use of the proceeds of the Loans (a) will not violate any Requirement of Law, (b) will not conflict with, result in a breach of or constitute a default under Authority Documents of the Credit Parties or any Contractual Obligation, Indebtedness or Guarantee Obligations of any Credit Party (except those as to which waivers or consents were obtained) or any material approval or material consent from any Governmental Authority relating to such Credit Party, and (c) will not result in, or require, the creation or imposition of any Lien on any Credit Party's Properties or revenues pursuant to any Requirement of Law, Contractual Obligations, Indebtedness or Guarantee Obligations other than the Liens arising under or contemplated in connection with the Credit Documents or Permitted Liens. No

Credit Party is in default under or with respect to any of its Contractual Obligation, Indebtedness or Guarantee Obligations in any material respect. No Default or Event of Default has occurred and is continuing.

Section 3.6 No Material Litigation.

No litigation, investigation, claim, criminal prosecution, civil investigative demand, imposition of criminal or civil fines and penalties, or any other proceeding of or before any arbitrator or Governmental Authority is pending or, to the best knowledge of the Credit Parties, threatened by or against any Credit Party or any of its Subsidiaries or Affiliates or against any of its or their respective Properties or revenues (a) with respect to the Credit Documents, any Extension of Credit, any Collateral or any of the transactions contemplated hereby, or (b) which could reasonably be expected to have a Material Adverse Effect. No permanent injunction, temporary restraining order or similar decree has been issued against any Credit Party or any of its Subsidiaries or Affiliates, which could reasonably be expected to have a Material Adverse Effect.

Section 3.7 Investment Company Act; Federal Power Act; Interstate Commerce Act; and Federal and State Statutes and Regulations.

No Credit Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the 40 Act. No Credit Party is subject to regulation under the Federal Power Act, the Interstate Commerce Act, or any federal or state statute or regulation limiting its ability to incur the Obligations.

Section 3.8 Margin Regulations.

No part of the proceeds of any Extension of Credit hereunder will be used directly or indirectly for any purpose that violates, or that would require any Lender to make any filings in accordance with, the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System as now and from time to time hereafter in effect. The Credit Parties and their Subsidiaries and Affiliates (a) are not engaged, principally or as one of their important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" "margin stock" within the respective meanings of each of such terms under Regulation U and (b) taken as a group do not own "margin stock". No Borrower is subject to any Requirement of Law that purports to restrict or regulate its ability to borrow money. No portion of the proceeds of any Extension of Credit will be used to repurchase any Equity Interests in, or to fund dividends or distributions by, any Credit Party or any Subsidiary or Affiliate.

Section 3.9 ERISA.

Neither a Reportable Event nor an "accumulated funding deficiency" (within the meaning of Section 412 of the Code or Section 302 of ERISA) has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. No termination of a Single Employer Plan has occurred resulting in any liability that has remained underfunded, and no Lien in favor of the PBGC or a Plan has arisen, during such five-year period. The present value of all accrued benefits under each Single Employer Plan (based on those assumptions used to fund such Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits. Neither any Credit Party nor any Commonly Controlled Entity is currently subject to any liability for a complete or partial withdrawal from a Multiemployer Plan.

Section 3.10 Environmental Matters.

Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:

(a) The Properties owned, leased or operated by the Credit Parties or any of their Subsidiaries do not contain any Materials of Environmental Concern in amounts or concentrations which (i) constitute a violation of, or (ii) could give rise to liability on behalf of any Credit Party under, any Environmental Law.

(b) The Properties and all operations of the Credit Parties and/or their Subsidiaries at the Properties are in compliance, and have in the last five years been in compliance, in all material respects with all applicable Environmental Laws, and there is no contamination at, under or about the Properties or violation of any Environmental Law with respect to the Properties.

(c) Neither the Credit Parties nor their Subsidiaries have received any written or actual notice of violation, alleged violation, non-compliance, liability or potential liability on behalf of any Credit Party with respect to environmental matters or Environmental Laws regarding any of the Properties, nor do the Credit Parties or their Subsidiaries have knowledge or reason to believe that any such notice will be received or is being threatened.

(d) Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location that could give rise to liability on behalf of any Credit Party under any Environmental Law, and no Materials of Environmental Concern have been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability on behalf of any Credit Party under, any applicable Environmental Law.

(e) No judicial proceeding or governmental or administrative action is pending or, to the knowledge of the Credit Parties and their Subsidiaries, threatened, under any Environmental Law to which any Credit Party or any Subsidiary is or will be named as a party with respect to the Properties, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Properties.

(f) There has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of any Credit Party or any Subsidiary in connection with the Properties, in violation of or in amounts or in a manner that could give rise to liability on behalf of any Credit Party under Environmental Laws.

Section 3.11 Use of Proceeds.

The proceeds of the Extensions of Credit shall be used by the Borrowers solely to acquire or finance Eligible Assets.

Section 3.12 Subsidiaries; Joint Ventures; Partnerships.

The organizational chart attached as Schedule 3.12 sets forth the name of each Consolidated Subsidiary of each Credit Party.

Section 3.13 Ownership.

Each of the Credit Parties and its Subsidiaries is the owner of, and has good and marketable title to or a valid leasehold interest in, all of its respective Properties, which, together with Properties leased or licensed by the Credit Parties and their Subsidiaries, represents all Properties in the aggregate material to the conduct of the business of the Credit Parties and their Subsidiaries and, after giving effect to the Transactions, none of such Properties included in the Collateral is subject to any Lien other than Permitted Liens. Each Credit Party and its Subsidiaries enjoys peaceful and undisturbed possession under all of its leases and all such leases are valid and subsisting and in full force and effect.

Section 3.14 Indebtedness.

Except as otherwise permitted under Section 6.1, the Borrowers (other than Arbor Realty and ARSR) have no Indebtedness or Guarantee Obligations. To each Credit Party's knowledge, no material defaults or events of default exist under the Indebtedness and Guarantee Obligations permitted under Section 6.1.

Section 3.15 Taxes.

Each of the Credit Parties and its Subsidiaries has filed, or caused to be filed, all income tax returns and all other material tax returns (federal, state, local and foreign) required to be filed and paid (a) all amounts of taxes shown thereon to be due (including interest and penalties) and (b) all other taxes, fees, assessments and other governmental charges (including mortgage recording taxes, documentary stamp taxes and intangibles taxes) owing by it, except for such taxes (i) that are not yet delinquent or (ii) that are being contested in good faith and by proper proceedings, and against which adequate reserves are being maintained in accordance with GAAP. None of the Credit Parties or their Subsidiaries is aware of any proposed tax assessments against it or any of its Subsidiaries.

Section 3.16 Solvency.

No Credit Party is the subject of any Insolvency Proceeding or Insolvency Event. The Loans under this Agreement and any other Credit Document do not and will not render any Credit Party not Solvent. The Credit Parties are not entering into the Credit Documents or any Extension of Credit with the intent to hinder, delay or defraud any creditor of the Credit Parties or any Subsidiary and the Credit Parties have received or will receive reasonably equivalent value for the Credit Documents and each Extension of Credit.

Section 3.17 Repurchase of Debt.

The Borrowers and the Guarantors are in full compliance with the covenants set forth in Subsections 5.26 and 6.5 of this Agreement.

Section 3.18 Location.

Each Credit Parties' location (within the meaning of Article 9 of the UCC) is set forth on Schedule 3.18. The office where each Credit Party keeps all the records (within the meaning of Article 9 of the UCC) is at the address set forth on Schedule 3.18 to this Agreement (or at such other locations as to which the notice and other requirements specified in Section 10.2 shall have been satisfied). Each Credit Party's organizational identification number and tax identification number is set forth in the Closing Officer's Certificate.

Section 3.19 No Burdensome Restrictions.

None of the Credit Parties or their Subsidiaries or Affiliates is a party to any agreement or instrument or subject to any other obligation or any charter or corporate restriction or any provision of any Requirement of Law, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 3.20 Brokers' Fees.

None of the Credit Parties or their Subsidiaries or Affiliates has any obligation to any Person in respect of any finder's, broker's, investment banking or other similar fee in connection with any of the transactions contemplated under the Credit Documents other than the closing and other fees payable pursuant to this Agreement and as set forth in the Fee Letter.

Section 3.21 Labor Matters.

There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Credit Parties or any of their Subsidiaries, other than as set forth in Schedule 3.21 hereto, and none of the Credit Parties or their Subsidiaries (a) has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years, other than as set forth in Schedule 3.21 hereto, or (b) has knowledge of any potential or pending strike, walkout or work stoppage. Other than as set forth on Schedule 3.21, no unfair labor practice complaint is pending against any Credit Party or any of its Subsidiaries. There are no strikes, walkouts, work stoppages or other material labor difficulty pending or threatened against any Credit Party or their Subsidiaries or Affiliates.

Section 3.22 Accuracy and Completeness of Information.

To each Credit Parties' actual knowledge, the information, reports, certificates, documents, financial statements, books, records, files, exhibits and schedules furnished in writing by or on behalf of each Credit Party to the Administrative Agent in connection with the negotiation, preparation or delivery of this Agreement and the other Credit Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of each Credit Party to the Administrative Agent and the Lenders in connection with this Agreement and the other Credit Documents and the transactions contemplated hereby and thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to a Responsible Officer of any Credit Party, after due inquiry, that could reasonably be expected to have a Material Adverse Effect that has not been disclosed to the Administrative Agent. All projections furnished on behalf of each Credit Party to the Administrative Agent were prepared and presented in good faith by or on behalf of each Credit Party.

Section 3.23 Material Contracts.

Schedule 3.23 sets forth a complete and accurate list of all Material Contracts of the Credit Parties and their Subsidiaries. Each Material Contract is, and after giving effect to the Transactions will be, in full force and effect in accordance with the terms thereof. To the extent requested by the Administrative Agent, the Credit Parties have delivered to the Administrative Agent a true and complete copy of each requested Material Contract. Schedule 3.23 shall be updated from time to time, in

accordance with Section 5.2 by the Borrowers to include new Material Contracts by giving written notice thereof to the Administrative Agent.

Section 3.24 Insurance.

Each Credit Party has and maintains, with respect to its Properties and business, insurance that meets the requirements of Section 5.5.

Section 3.25 Security Documents.

The Security Documents create valid security interests in, and Liens on, the Collateral purported to be covered thereby. Except as set forth in the Security Documents, such security interests and Liens are currently (or will be, upon (a) the filing of appropriate financing statements with the Secretary of State of the state of incorporation or organization for each Credit Party, in each case in favor of the Administrative Agent, on behalf of the Secured Parties, and (b) the Administrative Agent obtaining control or possession over those items of Collateral in which a security interest is perfected through control or possession) perfected security interests and Liens, prior to all other Liens other than Permitted Liens. None of the Collateral is subject to any Lien other than Permitted Liens. None of the Credit Parties nor any Person claiming through or under any Credit Party shall have any claim to or interest in the Collection Account or the Homewood Interest Reserve, except for the interest of the Borrowers in such property as a debtor for purposes of the UCC.

Section 3.26 Anti-Terrorism Laws.

Neither any Credit Party nor any of its Subsidiaries or Affiliates is an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act of the United States of America (50 U.S.C. App. §§ 1 *et seq*.), as amended. None of the Credit Parties nor any of their Subsidiaries or Affiliates is in violation of (a) the Trading with the Enemy Act, as amended, (b) any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto or (c) the Patriot Act. None of the Credit Parties nor any Subsidiary or Affiliate of any Credit Party (i) is a blocked person described in Section 1 of the Anti-Terrorism Order or (ii) to the best of its knowledge, engages in any dealings or transactions, or is otherwise associated, with any such blocked person.

Section 3.27 Compliance with OFAC Rules and Regulations.

(a) None of the Credit Parties or their Subsidiaries or their respective Affiliates is in violation of and shall not violate any of the country or list based economic and trade sanctions administered and enforced by OFAC that are described or referenced at http://www.ustreas.gov/offices/enforcement/ofac/ or as otherwise published from time to time.

(b) None of the Credit Parties or their Subsidiaries or their respective Affiliates (i) is a Sanctioned Person or a Sanctioned Entity, (ii) has a more than 10% of its assets located in Sanctioned Entities, or (iii) derives more than 10% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. The proceeds of any Loan will not be used and have not been used to fund any operations in, finance any investments or activities in or make any payments to, a Sanctioned Person or a Sanctioned Entity.

Section 3.28 Compliance with FCPA.

Each of the Credit Parties and their Subsidiaries and Affiliates is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq*., and any foreign counterpart thereto. None of the Credit Parties or their Subsidiaries or Affiliates has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Credit Party or its Subsidiary, its Affiliates or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, *et seq*.

Section 3.29 Consent; Governmental Authorizations.

No approval, consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person is required in connection with acceptance of Extensions of Credit by the Borrowers or the making of the Guaranty or with the execution, delivery or performance of any Credit Document by the Credit Parties (other than those which have been obtained) or with the validity or enforceability of any Credit Document against the Credit Parties (except such filings as are necessary in connection with the perfection of the Liens created by such Credit Documents).

Section 3.30 Bulk Sales.

The execution, delivery and performance of this Agreement, the Credit Documents and the transactions contemplated hereby do not require compliance with any "bulk sales" act or similar law by any Credit Party.

Section 3.31 Income and Required Payments.

Each Credit Party acknowledges that all Income and Required Payments received, after the Closing Date, by it or its Affiliates or its Subsidiaries or any Person acting on its behalf with respect to the Collateral shall be held for the benefit of the Administrative Agent until deposited into the Collection Account as required herein.

Section 3.32 Full Payment.

No Credit Party has any knowledge of any fact that should lead it to expect that each Loan will not be paid in full.

Section 3.33 Irrevocable Instructions.

The Borrowers have delivered each Irrevocable Instruction required to be delivered by the terms of this Agreement. The Credit Parties are not aware of any Required Payment that has been made after the date of this Agreement but has not been deposited into the Collection Account. No Irrevocable Instruction violates any Requirement of Law, any Contractual Obligation or other prohibition and such Irrevocable Instructions are the valid and binding obligations of the parties thereto.

Section 3.34 Compliance with Covenants.

ART and its Consolidated Subsidiaries are in full compliance with the Financial Covenants and all Credit Parties are in full compliance with all other applicable covenants, duties and agreements contained in the Credit Documents.

Section 3.35 Collateral Agreements.

The Credit Parties have delivered to the Administrative Agent or the Custodian all documents and agreements related to, governing or affecting the Collateral, including, without limitation, the Mortgage Loan Documents, the Servicer Agreements and the Pooling and Servicing Agreements, and, to the best of the Borrowers' knowledge, no material default or event of default exists thereunder.

Section 3.36 No Reliance.

Each Credit Party has made its own independent decisions to enter into the Credit Documents and each Loan and as to whether such Loan is appropriate and proper for it based upon its own judgment and upon advice from such advisors (including, without limitation, legal counsel and accountants) as it has deemed necessary. No Credit Party is relying upon any advice from the Administrative Agent or any Lender as to any aspect of the Loans, including, without limitation, the legal, accounting or tax treatment of such Loans.

Section 3.37 Collateral.

(a) There are no outstanding rights, options, warrants or agreements for the purchase, sale or issuance of the Collateral created by, through, or as a result of any Credit Party's actions or inactions; (b) there are no agreements on the part of any Credit Party to issue, sell or distribute the Collateral, other than this Agreement and the Credit Documents; and (c) no Credit Party has any obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any securities or any interest therein or to pay any dividend or make any distribution in respect of the Collateral, except, in the case of (a) and (b), for purchase rights that may be contained in any applicable intercreditor agreement included in the Mortgage Asset File.

Section 3.38 REIT Status.

ART is a REIT, a publicly traded company that is listed, quoted or traded on and is in good standing in respect of the New York Stock Exchange, NASDAQ or any other nationally recognized stock exchanges (each, a "Stock Exchange") and is not subject to any ratings downgrade by any Rating Agency. ARSR is a REIT. ART has not engaged in any material "prohibited transactions" as defined in Section 857(b)(6)(B)(iii) and (C) of the Code. ART for its current "tax year" (as defined in the Code) is and for all prior tax years subsequent to its election to be a REIT has been entitled to a dividends paid deduction under the requirements of Section 857 of the Code with respect to any dividends paid by it with respect to each such year for which it claims a deduction in its Form 1120-REIT filed with the United States Internal Revenue Service for such year.

Section 3.39 Insider.

No Credit Party is an "executive officer", "director", or "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10% of any class of voting securities" (as those terms are defined in 12 U.S.C. § 375(b) or in regulations

promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a Subsidiary, or of any Subsidiary, of a bank holding company of which any Lender is a Subsidiary, of any bank at which any Lender maintains a correspondent account or of any Lender which maintains a correspondent account with any Lender.

Section 3.40 No Defenses.

There are no defenses, offsets, counterclaims, abatements, rights of rescission or other claims, legal or equitable, available to any Credit Party with respect to this Agreement, the Credit Documents, the Collateral or any other instrument, document and/or agreement described herein or in the other Credit Documents, or with respect to the obligation of the Credit Parties to repay the Obligations or any other obligation under the Credit Documents.

Section 3.41 Eligible Subordinated Debt.

All of the Trust Preferred Debt (a) has subordination provisions substantially the same as those contained in the indentures for other transactions listed in clause (a) of the definition of "Eligible Subordinated Debt," (b) has enforceable subordination provisions, and (c) has a maturity no earlier than the date that is six (6) months following the Maturity Date. To the extent any Eligible Subordinated Debt was issued after the Closing Date, it has been specifically approved in writing by the Administrative Agent.

Section 3.42 Selection Procedures.

No procedures believed by any Credit Party to be adverse to the interests of the Administrative Agent or the Lenders were utilized by any Credit Party in identifying and/or selecting the Collateral. In addition, each Mortgage Asset shall have been underwritten in accordance with and satisfy any applicable standards that have been established by the Credit Parties and any of their Subsidiaries or Affiliates and are then in effect.

Section 3.43 Value Given.

To the extent a Borrower acquired Mortgage Assets, such Borrower shall have given reasonably equivalent value to each transferor in consideration for such transfer to such Borrower, no such transfer shall have been made for or on account of an antecedent debt owed by the transferor thereunder to such Borrower, and no such transfer is or may be voidable or subject to avoidance under any section of the Bankruptcy Code.

Section 3.44 Separateness.

Each Borrower (other than Arbor Realty and ARSR) is in compliance with the requirements of Section 5.24.

Section 3.45 Qualified Transferees.

With respect to each Mortgage Asset, each Borrower and the Administrative Agent are "qualified transferees", "qualified institutional lenders" or "qualified lenders" (however such terms are phrased or denominated) under the terms of the applicable Mortgage Loan Documents with respect to each party's ability to hold and/or to be a pledgee and/or transferee of each such Mortgage Asset. The Assignments and the pledge of the Mortgage Assets to the Administrative Agent, on behalf of the Secured Parties, do not violate any provisions of the underlying Mortgage Loan Documents.

Section 3.46 Eligibility of Mortgage Assets.

With respect to each Mortgage Asset, each representation and warranty set forth in Schedule 1.1(c) applicable thereto is true and correct. Each of the representations and warranties contained in the Mortgage Loan Documents and in any statement, affirmation or certification made or any information, document, report, notice or agreement provided to the Administrative Agent relating to any Mortgage Asset is true and correct in all material respects.

Section 3.47 Ability to Perform.

None of the Credit Parties believes, or has any reason or cause to believe, that it cannot perform each and every agreement, duty, obligation and covenant contained in the Credit Documents applicable to it and to which it is a party. None of the Credit Parties is subject to any restriction that would unduly burden its ability to timely and fully perform each and every applicable covenant, duty, obligation and agreement contained in the Credit Documents and/or the Mortgage Loan Documents. None of the Credit Parties is a party to any agreement or instrument or subject to any restriction, which could reasonably be expected to have a Material Adverse Effect.

Section 3.48 Certain Tax Matters.

Each Borrower represents and warrants, and acknowledges and agrees, that it does not intend to treat the Loans and the related transactions hereunder as being a "reportable transaction" (within the meaning of United States Treasury Department Regulation Section 1.60114). In the event a Borrower determines to take any action inconsistent with such intention, it will promptly notify the Administrative Agent and the Lenders. If a Borrower so notifies the Administrative Agent and the Lenders, the Borrowers acknowledge and agree that the Administrative Agent and the Lenders may treat the Loans as part of a transaction that is subject to United States Treasury Department Regulation Section 301.61121, and the Administrative Agent and the Lenders will maintain the lists and other records required by such Treasury Regulation.

Section 3.49 Set-Off, etc.

No Collateral has been compromised, adjusted, extended, satisfied, subordinated, rescinded, set-off or modified by the Credit Parties or any obligor thereof, and no Collateral is subject to compromise, adjustment, extension (except as set forth in the related documents provided to the Administrative Agent), satisfaction, subordination, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deduction, reduction, termination or modification, whether arising out of transactions concerning the Collateral or otherwise, by the Credit Parties or any obligor with respect thereto.

Section 3.50 Warrant Agreements, Etc.

ART hereby represents and warrants that (a) the issued and outstanding common equity securities of ART, as well as the total authorized options under ART's stock option plan and the issued and outstanding preferred equity securities are set forth on Schedule 3.50 to this Agreement; (b) except as set forth on Schedule 3.50, ART has not issued any other shares of its common stock and there are no further subscriptions, contracts or agreements for the issuance or purchase of any other or additional common equity securities in ART, either in the form of options, agreements, warrants, calls, convertible securities or other similar rights, other than the Warrant Agreements; (c) the Warrant Agreements and all of the outstanding shares of common stock under the Warrant Agreements, when issued and paid for upon exercise of the Warrant Agreements in accordance with the terms thereof, will have been duly and validly

authorized and issued and will be fully paid and nonassessable and will have been offered, issued, sold and delivered to the holder in compliance with applicable Securities Laws; (d) the number of shares of ART's common stock reserved for issuance as set forth on Schedule 3.50 is not subject to adjustment by reason of the issuance of the Warrant Agreements or the common stock issuable upon the exercise thereof; (e) the offer and sale of the Warrant Agreements and the common stock to be issued to the holder upon exercise of the Warrant Agreements in accordance with the terms thereof, are not required to be registered pursuant to Section 5 of the Securities Act or any other Securities Laws; (f) neither ART nor any agent on its behalf has solicited or will solicit any offers to sell or has offered to sell or will offer to sell all or any part of the Warrant Agreements (or the common stock to be issued upon exercise of the Warrant Agreements) so as to bring the issuance of the Warrant Agreements within the registration provisions of the Securities Act or any other Securities Laws; and (g) all prior offerings and sales of securities of ART were in compliance with all applicable Securities Laws.

Section 3.51 Representations and Warranties.

The representations and warranties contained herein, required by or identified in this Agreement and the other Credit Documents and the review and inquiries made on behalf of the Credit Parties in connection therewith have all been made by Persons having the requisite expertise, knowledge and background to provide such representations and warranties. On the Borrowing Date for each Extension of Credit and on each day that Collateral remains subject to this Agreement and the Credit Documents, the Credit Parties shall be deemed to restate and make each of the representations and warranties made by it in this Article III and in Schedule 1.1(c) of this Agreement.

## ARTICLE IV

## CONDITIONS PRECEDENT

Section 4.1 Conditions to Restatement Date.

This Agreement shall become effective upon, and the obligation of each Lender to make the Term Loans and the initial Revolving Loans (if any) on the Restatement Date, is subject to, the satisfaction of the following conditions precedent:

(a) Execution of Credit Agreement; Credit Documents and Lender Consents. The Administrative Agent shall have received (i) counterparts of this Agreement, executed by a duly authorized officer of each party hereto, (ii) for the account of each Revolving Lender requesting a promissory note, a Revolving Note, (iii) for the account of each Term Loan Lender requesting a promissory note, a Term Loan Note, (iv) counterparts of the Security Documents, in each case conforming to the requirements of this Agreement and executed by duly authorized officers of the Credit Parties or other Person, as applicable, (vi) counterparts of any other Credit Document, executed by the duly authorized officers of the parties thereto and (vii) executed consents, in the form of Exhibit 4.1(a), from each Lender authorizing the Administrative Agent to enter this Credit Agreement on their behalf.

(b) Authority Documents. The Administrative Agent shall have received the following:

(i) Authority Documents. Original certified Authority Documents of each Credit Party certified (A) by a Responsible Officer of such Credit Party (pursuant to the Closing Officer's Certificate) as of the Restatement Date to be true and correct and in

force and effect as of such date, and (B) in the case of the articles of incorporation, certificates of formation or other Authority Documents filed with a Governmental Authority, to be true and complete as of a recent date by the appropriate Governmental Authority of the state of its incorporation or organization, as applicable.

(ii) Resolutions. Copies of resolutions of the board of directors or comparable managing body of each Credit Party approving and adopting the Credit Documents, the transactions contemplated therein and authorizing execution and delivery thereof, certified by a Responsible Officer of such Credit Party (pursuant to the Closing Officer's Certificate) as of the Restatement Date to be true and correct and in force and effect as of such date.

(iii) Good Standing. Original certificates of good standing, existence or its equivalent with respect to each Credit Party certified as of a recent date by the appropriate Governmental Authorities of the state of incorporation or organization.

(iv) Incumbency. An incumbency certificate of each Credit Party certified by a Responsible Officer (pursuant to the Closing Officer's Certificate) to be true and correct as of the Restatement Date.

(c) Legal Opinion of Counsel. The Administrative Agent shall have received one (1) or more Opinions of Counsel (including, if requested by the Administrative Agent, local counsel opinions) of counsel for the Credit Parties, dated the Restatement Date and addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Administrative Agent (which shall include, without limitation, opinions with respect to the due organization and valid existence of each Credit Party, opinions as to perfection of the Liens granted to the Administrative Agent pursuant to the Security Documents and opinions as to the non-contravention of the Credit Parties' organizational documents and Material Contracts).

(d) Personal Property Collateral. The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent:

(i) (A) searches of UCC filings in the jurisdiction of incorporation or formation, as applicable, of each Credit Party, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist (or the same have been appropriately terminated) other than Permitted Liens and (B) tax lien, bankruptcy, judgment and pending litigation searches, the results of which shall be acceptable to the Administrative Agent in its discretion;

(ii) completed UCC financing statements for each appropriate jurisdiction as is necessary, in the Administrative Agent's discretion, to perfect the Administrative Agent's security interest in the Collateral;

(iii) stock or membership certificates, if any, evidencing the Equity Interests pledged to the Administrative Agent pursuant to the Pledge Agreements and duly executed in blank undated stock or transfer powers;

(iv) duly executed consents as are necessary, in the Administrative Agent's discretion, to perfect the Lenders' security interest in the Collateral;

(v) all Instruments and chattel paper in the possession of any of the Credit Parties, together with allonges or assignments as may be necessary or appropriate to perfect the Administrative Agent's and the Lenders' security interest in the Collateral;

(vi) the Account Control Agreement and the Homewood Account Control Agreement; and

(vii) if applicable, executed control agreements necessary to perfect any Collateral where the perfection thereof is by control.

(e) Liability, Casualty, Property and Business Interruption Insurance. The Administrative Agent shall have received, to the extent requested, copies of insurance policies or certificates and endorsements of insurance evidencing liability, casualty, property and business interruption insurance meeting the requirements set forth herein or in the Security Documents.

(f) Account Designation Notice. The Administrative Agent shall have received the executed Account Designation Notice in the form of Exhibit 1.1(a) hereto.

(g) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing with respect to the Loans to be made on the Restatement Date, together with all other documents, agreements or instruments required by Section 4.2.

(h) Consents. The Administrative Agent shall have received evidence that all boards of directors, governmental, shareholder and material third party consents and approvals necessary in connection with the Transactions have been obtained and all applicable waiting periods have expired without any action being taken by any authority that could restrain, prevent or impose any material adverse conditions on such transactions or that could seek or threaten any of the foregoing.

(i) Compliance with Laws. The financings and other Transactions contemplated hereby shall be in compliance with all Requirements of Law (including all applicable Securities Laws and banking laws, rules and regulations).

(j) Bankruptcy. There shall be no Insolvency Proceedings pending with respect to any Credit Party or any Affiliate or Subsidiary thereof.

(k) [Reserved].

(l) Financial Statements. The Administrative Agent and the Lenders shall have received copies of the financial statements referred to in Section 3.1, each in form and substance satisfactory to it.

(m) No Material Adverse Change. No Material Adverse Effect shall have occurred.

(n) Closing Officer's Certificate. The Administrative Agent shall have received a Closing Officer's Certificate executed by a Responsible Officer of each of the Credit Parties as of the Restatement Date, substantially in the form of Exhibit 4.1(n) stating, among other things, that (i) there does not exist any pending or ongoing, action, suit, investigation, litigation or proceeding in any court or before any other Governmental Authority (A) affecting this Agreement or the other Credit Documents, that has not been settled, dismissed, vacated, discharged or terminated prior to the Restatement Date or (B) that purports to affect any Credit Party or any of its

Subsidiaries or Affiliates, or any transaction contemplated by the Credit Documents, which action, suit, investigation, litigation or proceeding could reasonably be expected to have a Material Adverse Effect, that has not been settled, dismissed, vacated, discharged or terminated prior to the Restatement Date, (ii) immediately after giving effect to this Agreement, the other Credit Documents, and all the Transactions contemplated to occur on such date, (A) no Default or Event of Default exists, (B) all representations and warranties contained herein and in the other Credit Documents and in any other document, agreement, statement, affirmation, certificate, notice, report or financial or other statement delivered in connection therewith are true and correct, and (C) ART is in compliance with each of the Financial Covenants set forth in Section 5.9, (iii) each of the other conditions precedent in Sections 4.1 and 4.2 have been satisfied, except to the extent the satisfaction of any such condition is subject to the judgment or discretion of the Administrative Agent or any Lender and (iv) each of the Borrowers is Solvent before and after giving effect to the initial borrowings under the Credit Documents.

(o) Patriot Act Certificate. At least five (5) Business Days prior to the Restatement Date, the Administrative Agent shall have received a certificate satisfactory thereto, substantially in the form of Exhibit 4.1(o), for benefit of itself and the Lenders, provided by the Credit Parties that sets forth information required by the Patriot Act including, without limitation, the identity of the Credit Parties, the name and address of the Credit Parties and other information that will allow the Administrative Agent or any Lender, as applicable, to identify the Credit Parties in accordance with the Patriot Act.

(p) Material Contracts. To the extent requested by the Administrative Agent, the Administrative Agent shall have received true and complete copies, certified, in the Closing Officer's Certificate, as true and complete, of all requested Material Contracts, together with all exhibits and schedules.

(q) Power of Attorney. The Administrative Agent shall have received duly executed powers of attorney in the form attached as Exhibit 4.1(q)(i) and Exhibit 4.1(q)(ii), as applicable, from each Borrower and each pledgor under a Pledge Agreement.

(r) Fees and Expenses. The Administrative Agent and the Lenders shall have received all fees and expenses, if any, owing pursuant to the Fee Letter and Section 2.3.

(s) Additional Matters. All other documents and legal matters in connection with the transactions contemplated by this Agreement and the other Credit Documents shall be reasonably satisfactory in form and substance to the Administrative Agent and its counsel.

Section 4.2 Conditions to All Extensions of Credit.

The obligation of each Lender to make any Extension of Credit hereunder, including the obligation of each Lender to make the Term Loan on the Funding Date and the pledge by any Borrower of any Collateral, in each case is subject to the following conditions:

(a) Representations and Warranties. The representations and warranties made by the Credit Parties herein, in the Credit Documents, in any schedule to the Credit Documents, in the Mortgage Documents and which are contained in any certificate, document, report or notice furnished at any time under or in connection herewith or the other Credit Documents shall (i) with respect to representations and warranties that contain a materiality qualification, be true and correct and (ii) with respect to representations and warranties that do not contain a materiality

qualification, be true and correct in all material respects, in each case on and as of the date of such Extension of Credit as if made on and as of such date.

(b) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extension of Credit to be made on such date unless such Default or Event of Default shall have been waived in accordance with this Agreement.

(c) Compliance with Commitments. Before and immediately after giving effect to the making of any such Extension of Credit (and the application of the proceeds thereof), (i) the sum of the aggregate principal amount of outstanding Revolving Loans shall not exceed the Revolving Committed Amount then in effect and (ii) the Availability shall not be negative.

(d) Additional Conditions to Revolving Loans. If a Revolving Loan is requested, all requirements and conditions set forth in Section 2.1 or other applicable Sections of this Agreement shall have been satisfied.

(e) Requirement of Law. No Requirement of Law shall prohibit or render it unlawful, and no order, judgment or decree of Governmental Authority shall prohibit, enjoin or render it unlawful, to enter into such Extension of Credit in accordance with the provisions hereof or any other transaction contemplated herein.

(f) Confirmation. The Borrowers shall have delivered a Confirmation, via Electronic Transmission, in accordance with the procedures set forth in Sections 2.1 and 2.2, and the Administrative Agent shall have determined that the Mortgage Asset described in such Confirmation is an Eligible Asset, shall have approved in writing in its discretion the pledge of the related Eligible Asset and the related Loan, if applicable (which approvals shall be evidenced by the Administrative Agent's execution of the related Confirmation), and shall have obtained all necessary internal credit and other approvals for such Extension of Credit. With respect to requirements for additional Revolving Loans on existing Revolving Loan Collateral under Section 2.1(b)(iv), all requirements and conditions of such Section are satisfied.

(g) Compliance Certificate. The Administrative Agent shall have received a Compliance Certificate in the form of Exhibit 1.1(i) from a Responsible Officer of the Credit Parties.

(h) Due Diligence. Subject to the Administrative Agent's right to perform one or more Due Diligence Reviews pursuant to Section 10.27, the Administrative Agent shall have completed its due diligence review of the Mortgage Asset File and the Underwriting Package for each Mortgage Asset and such other documents, records, agreements, instruments, mortgaged properties or information relating to such Mortgage Asset as the Administrative Agent in its discretion deems appropriate to review and such review shall be satisfactory to the Administrative Agent in its discretion.

(i) Servicing Agreements. With respect to any Eligible Asset to be pledged hereunder on the related Borrowing Date that is not serviced by a Borrower, the applicable Borrower shall have provided to the Administrative Agent copies of the related Servicing Agreements and the Pooling and Servicing Agreements, certified as true, correct and complete copies of the originals, together with Servicer Redirection Notices fully executed by the applicable Borrower and the Servicer or PSA Servicer, as applicable, or such other evidence satisfactory to the Administrative Agent in its discretion that the applicable Servicer or PSA

Servicer has been instructed to deliver all Income with respect to the Collateral to the Collection Account, which instructions may not be modified without the Administrative Agent's prior written consent.

(j) Fees and Expenses. The Administrative Agent shall have received all fees and expenses of the Administrative Agent, the Lenders and counsel to the Administrative Agent due hereunder and under the Fee Letter and, to the extent the Borrowers are required hereunder to reimburse the Administrative Agent for such amounts, the Administrative Agent shall have received the reasonable costs and expenses incurred by them in connection with the entering into of any Extension of Credit hereunder, including, without limitation, costs associated with due diligence recording or other administrative expenses necessary or incidental to the execution of any transaction hereunder, which amounts, at the Administrative Agent's option, may be withheld from the sale proceeds of any Extension of Credit hereunder.

(k) Material Adverse Change. There shall not have occurred a material adverse change in the financial condition of the Administrative Agent or any Lender that affects (or can reasonably be expected to affect) materially and adversely the ability of the Administrative Agent or any Lender to fund its obligations under this Agreement and no Material Adverse Effect shall have occurred.

(l) Trust Receipt. For each Non–Table Funded Mortgage Asset, the Administrative Agent shall have received from the Custodian on or before each Borrowing Date a Trust Receipt (along with a completed Mortgage Asset File Checklist attached thereto) and an Asset Schedule and Exception Report with respect to the Basic Mortgage Asset Documents for each Eligible Asset, in each case dated the Borrowing Date, duly completed and, in the case of the Asset Schedule and Exception Report, with exceptions acceptable to the Administrative Agent in its discretion in respect of Eligible Assets to be pledged hereunder on such Business Day. In the case of a Table Funded Mortgage Asset, the Administrative Agent shall have received on the related Borrowing Date the Table Funded Trust Receipt and all other items described in the second (2nd) sentence of Subsection 2.1(b)(6), each in form and substance satisfactory to the Administrative Agent in its discretion, provided that the Administrative Agent subsequently receives the items described in Subsections 2.1(b)(4) and (6) and the other delivery requirements under the Custodial Agreement on or before the date and time specified herein and therein, which items shall be in form and substance satisfactory to the Administrative Agent in its discretion. In the case of Term Loans, the Custodian shall have possession of all Mortgage Loan Documents for the Term Loan Collateral and the Administrative Agent shall be in receipt of Trust Receipts for the Term Loan Collateral and all other conditions under the Custodial Agreement are satisfied with respect to such Term Loan Collateral.

(m) Release Letters. The Administrative Agent shall have received from the applicable Borrower a Warehouse Lender's Release Letter (or such other form acceptable to the Administrative Agent), if applicable, or a Borrower's Release Letter (or such other form acceptable to the Administrative Agent) covering each Eligible Asset to be pledged to the Administrative Agent.

(n) Covenants and Agreements. On and as of such day, the Credit Parties and the Custodian shall have performed all of the covenants and agreements and satisfied all other conditions contained in the Credit Documents to be performed or satisfied by such Person on or prior to such day.

(o) Irrevocable Instruction. The Administrative Agent shall have received evidence satisfactory to the Administrative Agent that, in connection with any Required Payment, the payor thereof has been instructed to deliver the Net Cash Proceeds to the Collection Account, which instructions may not be modified without the prior written consent of the Administrative Agent.

(p) Certificates of Good Standing. If applicable and to the extent required for the Administrative Agent or any Lender to assert its rights with respect to an Eligible Asset, a certification of good standing for the Borrowers in each jurisdiction where the Underlying Mortgaged Property is located.

(q) Power of Attorney. To the extent there are additional Borrowers other than the initial Borrowers, the additional Borrowers shall each deliver to the Administrative Agent a duly executed power of attorney in the form attached as Exhibit 4.1(q), a Joinder Agreement in form and substance satisfactory to the Administrative Agent in its discretion and all other agreements, documents, certifications, UCC financing statements and Opinions of Counsel required of the Borrowers hereunder at the Restatement Date or under the Joinder Agreement.

(r) Control Agreements. With respect to any Mortgage Asset or collateral for a Mortgage Asset that is an uncertificated security (as defined in the UCC), securities entitlement (as defined in the UCC) or is held in a securities account (as defined in the UCC), the Borrower shall provide to the Administrative Agent a control agreement, which shall be acceptable to the Administrative Agent in its discretion and shall be delivered to the Custodian under the Custodial Agreement, executed by the issuer of the Mortgage Asset or the collateral for the Mortgage Asset or the related securities intermediary (as defined in the UCC), as applicable, granting control (as defined in the UCC) of such Mortgage Asset or collateral for such Mortgage Asset to the Administrative Agent and providing that, after an Event of Default, the Administrative agent shall be entitled to notify the issuer or securities intermediary, as applicable, that such issuer or securities intermediary shall comply exclusively with the instructions or entitlement orders (as defined in the UCC), as applicable, of the Administrative Agent without the consent of the Borrower or any other Person and no longer follow the instructions or entitlement orders, as applicable, of the Borrower or any other Person (other than the Administrative Agent).

(s) Consents. Any and all consents, approvals and waivers applicable to the Collateral shall have been obtained.

(t) Custodial Agreement Insurance. The Administrative Agent shall be in receipt of the evidence of insurance (if any) required by Section 9.1 of the Custodial Agreement.

(u) Pledge Provisions. To the extent the Mortgage Loan Documents for the related Eligible Asset contain notice, cure and other provisions in favor of a pledgee of the Eligible Asset under a repurchase or warehouse facility, the applicable Borrower shall provide evidence to the Administrative Agent that the applicable Borrower has given notice to the applicable Persons of the Administrative Agent's interest in such Eligible Asset and otherwise satisfied any other applicable requirements under such pledgee provisions so that the Administrative Agent is entitled to receive the benefits and exercise the rights of a pledgee under the terms of such pledgee provisions contained in the related Mortgage Loan Documents.

(v) Existing Indebtedness of the Borrowers. All of the existing Indebtedness for borrowed money of the Borrowers (other than Arbor Realty and ARSR) (other than Indebtedness

permitted to exist pursuant to Section 6.1 and the Working Capital Facility) shall be repaid in full and all security interests related thereto shall be terminated on or prior to the Restatement Date.

(w) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing with respect to the Loans to be made on each Borrowing Date, together with all other documents, agreements or instruments required by this Section.

(x) Documents, Reports, Certifications, Etc. The Administrative Agent shall have received all such other and further documents, reports, certifications, approvals and opinions of Counsel as the Administrative Agent in its discretion shall reasonably require.

The failure of any Credit Party, as applicable, to satisfy any of the foregoing conditions precedent in respect of any Extension of Credit shall, unless such failure was expressly waived in writing by the Administrative Agent on or prior to the related Borrowing Date, give rise to a right of the Administrative Agent, which right may be exercised at any time on the demand of the Administrative Agent, to rescind the related Extension of Credit and direct the Borrowers to pay to the Administrative Agent as agent for the Secured Parties an amount equal to the outstanding principal amount of such Extension of Credit, accrued interest and other amounts due in connection therewith during any such time that any of the foregoing conditions precedent were not satisfied.

Each request for an Extension of Credit and each acceptance by the Borrowers of any such Extension of Credit shall be deemed to constitute representations and warranties by the Credit Parties as of the date of the request and as of the date of such Extension of Credit that the conditions set forth in Sections 4.1 and 4.2 have been satisfied.

## ARTICLE V

## AFFIRMATIVE COVENANTS

Each of the Credit Parties hereby covenants and agrees that on the Restatement Date, and thereafter (a) for so long as this Agreement is in effect, (b) until the Commitments have terminated, and (c) until no Note remains outstanding and unpaid and the Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder are paid in full, such Credit Party shall, and shall cause each of their Subsidiaries (other than in the case of Sections 5.1 or 5.2 hereof), to:

Section 5.1 Financial Statements.

Furnish to the Administrative Agent and each of the Lenders:

(a) Annual Financial Statements. As soon as available, and in any event within one hundred twenty (120) calendar days after the end of each fiscal year of ART, the audited consolidated balance sheets of ART and its Consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for ART and its Consolidated Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be qualified as to scope of audit or going concern and shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of ART and its Consolidated Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP;

(b) Quarterly Financial Statements. As soon as available, and in any event within forty-five (45) calendar days after the end of each fiscal quarter of ART, the unaudited consolidated and consolidating balance sheets of ART and its Consolidated Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for ART and its Consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, accompanied by a certificate of a Responsible Officer of ART, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition and results of operations of ART and its Consolidated Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end adjustments);

(c) Annual Operating Budget and Cash Flow. As soon as available, but in any event not later than one hundred twenty (120) calendar days after the end of each fiscal year of the Credit Parties, and provided that the disclosure does not violate any Requirement of Law relating to insider trading, a copy of the projections of the Credit Parties of the consolidated operating budget and cash flow budget of the Credit Parties, for the succeeding fiscal year, such projections to be accompanied by a certificate of a Responsible Officer certifying that such projections have been prepared in good faith based upon reasonable assumptions;

(d) Obligor Operating Statement and Rent Rolls. With respect to each Mortgage Asset, if provided to any Borrower or any Servicer or PSA Servicer by the Obligor under any Mortgage Asset, as soon as available, but in any event not later than forty-five (45) calendar days after the end of each fiscal quarter of the Borrowers, the operating statement and rent roll for each Underlying Mortgaged Property; provided, however, the Administrative Agent reserves the right in its reasonable discretion to request such information on a monthly basis (to be provided no later than thirty (30) calendar days after the end of each month);

(e) Obligor Balance Sheet. With respect to each Mortgage Asset, if provided to any Borrower, Servicer or PSA Servicer by the Obligor under any Mortgage Asset, as soon as available, but in any event not later than thirty (30) calendar days after receipt thereof, the annual balance sheet with respect to such Obligor; and

(f) Securitization Report. With respect to each Mortgage Asset, as soon as available but in any event not later than thirty (30) calendar days after receipt thereof, (A) the related monthly securitization report, if any, and any other reports delivered under any Servicing Agreement or any Pooling and Servicing Agreements to any Credit Party, if any, and, (B) within thirty (30) calendar days after the end of each quarter, a copy of the standard monthly exception report prepared by any Credit Party in the ordinary course of business in respect of the related Mortgage Assets or Underlying Mortgaged Property;

all such financial statements to be complete and correct in all material respects (subject, in the case of interim statements, to normal recurring year-end audit adjustments) and to be prepared in reasonable detail and, in the case of the annual and quarterly financial statements provided in accordance with subsections (a) and (b) above, in accordance with GAAP applied consistently throughout the periods reflected therein and further accompanied by a description of, and an estimation of the effect on the financial statements on account of, a change, if any, in the application of accounting principles as provided in Section 1.3, provided that any financial statements delivered with respect to an Obligor under any Mortgage Asset may be delivered to the Administrative Agent in the form received.

Notwithstanding the foregoing, financial statements and reports required to be delivered pursuant to the foregoing provisions of this Section may be delivered by Electronic Transmission and if so, shall be

deemed to have been delivered on the date on which the Administrative Agent receives such reports from the Borrowers through electronic mail; provided that, upon the Administrative Agent's request, the Borrowers shall provide paper copies of any documents required hereby to the Administrative Agent.

Section 5.2 Certificates; Other Information.

Furnish to the Administrative Agent and each of the Lenders:

(a) Accountants' Certificate. Concurrently with the delivery of the financial statements referred to in Section 5.1(a) above, a certificate of the independent certified public accountants reporting on such financial statements stating that in making the examination necessary therefor no knowledge was obtained of any Default or Event of Default, except as specified in such certificate.

(b) Compliance Certificate. Concurrently with the delivery of the financial statements referred to in Sections 5.1(a) and (b) and in connection with the delivery of each Notice of Borrowing and each Extension of Credit, a Compliance Certificate from a Responsible Officer of each Credit Party, which Compliance Certificate shall, among other things, on a quarterly basis describe in detail the calculations supporting the Responsible Officer's certification of ART's compliance with the Financial Covenants.

(c) Updated Schedules. Concurrently with or prior to the delivery of the financial statements referred to in Sections 5.1(a) and 5.1(b) above, (i) an updated copy of Schedule 3.3 and Schedule 3.12 if the Borrowers or any of their Subsidiaries have formed or acquired a new Subsidiary since the Restatement Date or since such Schedule was last updated, as applicable, (ii) an updated copy of Schedule 3.23 if any new Material Contract has been entered into since the Restatement Date or since Schedule 3.23 was last updated, as applicable, together with a copy of each new Material Contract to the extent as requested by the Administrative Agent.

(d) Calculations. (i) Within ninety (90) days after the end of each fiscal year of the Credit Parties, a certificate containing information including the amount of all dividends paid and Equity Issuances that were made or engaged in during the prior fiscal year and amounts received in connection with any Extraordinary Receipt during the prior fiscal year, (ii) at such time as the Administrative Agent shall request and, in any event, within five (5) Business Days of the end of each calendar month, a Compliance Certificate regarding compliance with the Availability and the calculation thereof and/or any update that the Administrative Agent may request with respect to the Compliance Certificate, and (iii) promptly upon entering into an engagement letter or commitment or otherwise documenting any proposed Equity Issuance, a notice containing information regarding any proposed Equity Issuance, including, without limitation, the parties involved, the expected closing date, the amount to be received in connection therewith and such other information as the Administrative Agent may request in its discretion.

(e) Proposed Transactions. (i) Upon request, any and all information, documents and reports regarding any proposed Trust Preferred Debt as the Administrative Agent may require in its reasonable discretion, and (ii) as soon as possible and in any event within thirty (30) days after the closing of any proposed Trust Preferred Debt, fully executed copies of all loan documentation for any such Permitted Repurchase Facility or proposed Trust Preferred Debt.

(f) Collateral. With respect to the Collateral, any future Collateral and the Required Payments, any and all material documents, certificates, agreements, instruments, reports or notices received by or available to any Credit Party or any Subsidiary or Affiliate within three (3)

Business Days of the receipt or availability thereof, and any information, documents and reports as the Administrative Agent may require in its discretion.

(g) Reports. (i) Within forty-five (45) days of the end of each calendar quarter, the Borrowers shall provide the Administrative Agent with a quarterly report, which report shall include, among other items, a summary of the Borrowers' delinquency and loss experience with respect to Mortgage Assets serviced by any Borrower or any Servicer or PSA Servicer or any designee of the foregoing, the Borrowers' internal risk rating, the borrower's, any Servicer's or any PSA Servicer's surveillance reports on the Mortgage Assets, and, to the extent provided to any Borrower or any Servicer or PSA Servicer by the Obligors under any Mortgage Assets, operating statements, the occupancy status of such Underlying Mortgaged Property and other property level information, and (ii) on a monthly basis, within ten (10) days of receipt or preparation thereof by any Borrower, any Servicer or PSA Servicer, any remittance, servicing and/or exception reports with respect to the servicing of any Mortgage Assets or the Underlying Mortgaged Properties and any other report delivered under any Servicing Agreement or Pooling and Servicing Agreement, plus any such additional reports as the Administrative Agent may reasonably request with respect to any Borrower or any Servicer or PSA Servicer servicing portfolio or pending originations of Mortgage Assets.

(h) Mortgage Asset Data Summary. No later than the fifteenth (15th) day of each month, with respect to each Mortgage Asset, a Mortgage Asset Data Summary, substantially in the form of Exhibit 5.2(h) ("Mortgage Asset Data Summary"), shall be properly completed by the Borrowers and delivered to the Administrative Agent.

(i) Mortgage Assets. The Borrowers shall promptly deliver or cause to be delivered to the Administrative Agent (i) any report or material notice received by any Borrower, any Servicer or any PSA Servicer from any Obligor under Collateral promptly following receipt thereof and (ii) any other such document or information relating to the Collateral as the Administrative Agent may reasonably request in writing from time to time.

(j) Underwriting Package. Promptly, any modifications or additions to the items contained in the Underwriting Package.

(k) Reports; SEC Filings; Regulatory Reports; Press Releases; Etc. Promptly upon their becoming available, (i) copies of all reports (other than those provided pursuant to Section 5.1 and those which are of a promotional nature) and other financial information which any Credit Party or any Subsidiary or Affiliate sends to its shareholders, (ii) copies of all reports and all registration statements and prospectuses, if any, which any Credit Party or any Subsidiary or Affiliate may make to, or file with, the SEC (or any successor or analogous Governmental Authority) or any securities exchange or other private regulatory authority, (iii) all material regulatory reports, (iv) all press releases and other statements made available by any of the Credit Parties or any Subsidiary or Affiliate to the public concerning material developments in the business of any of the Credit Parties, (v) to the extent not prohibited by Requirements of Law, copies of all documents that the Credit Parties or any Subsidiary or Affiliate thereof are required to file with any regulatory body in accordance with its regulations, and (vi) any non-routine correspondence or official notices received by any Credit Party or any Subsidiary or Affiliate of a Credit Party from any Governmental Authority which regulates the operations of any Credit Party or any Subsidiary or Affiliate of a Credit Party which is likely to have a Material Adverse Effect.

(l) Management Letters; Etc. Promptly upon receipt thereof, a copy or summary of any other report, "management letter" or similar report submitted by independent accountants to

any Credit Party or any of their Subsidiaries in connection with any annual, interim or special audit of the books of such Person.

(m) Pledged Mortgage Asset Certificate. Within ten (10) days of the end of each calendar month, the Borrowers shall provide the Administrative Agent with a monthly report, which report shall include, among other items, all proposed repayments, prepayments and sales of the Pledged Mortgage Assets, which schedule shall be acceptable to the Administrative Agent in its discretion.

(n) General Information. Promptly, such additional financial and other information as the Administrative Agent or any Lender may from time to time reasonably request.

Section 5.3 Payment of Taxes and Other Obligations.

Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, subject, where applicable, to specified grace periods, (a) all of its taxes (Federal, state, local and any other Taxes) and (b) all of its other obligations and liabilities of whatever nature in accordance with industry practice and (c) any additional costs that are imposed as a result of any failure to so pay, discharge or otherwise satisfy such Taxes, obligations and liabilities, except when the amount or validity of any such Taxes, obligations and liabilities is currently being contested in good faith by appropriate proceedings and reserves, if applicable, in conformity with GAAP with respect thereto have been provided on the books of the Credit Parties.

Section 5.4 Conduct of Business and Maintenance of Existence.

Continue to engage in business of the same general type as now conducted by it on the Closing Date and preserve, renew and keep in full force and effect its corporate or other formative existence and good standing, take all action to maintain all rights, privileges, licenses and franchises necessary, required or desirable in the normal conduct of its business and to maintain its goodwill and comply with all Contractual Obligations and Requirements of Law.

Section 5.5 Maintenance of Property; Insurance.

(a) Keep all material Property useful and necessary in its business in good working order and condition (ordinary wear and tear and obsolescence excepted).

(b) Maintain with financially sound and reputable insurance companies liability, casualty, property and business interruption in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business; and furnish to the Administrative Agent, upon the request of the Administrative Agent, full information as to the insurance carried.

Section 5.6 Inspection of Property; Books and Records; Discussions.

Keep proper books, records and accounts in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its businesses and activities; and permit, during regular business hours and upon reasonable notice by the Administrative Agent or any Lender, the Administrative Agent or any Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired, and to discuss the business, operations, properties, financial conditions and other conditions of the Credit Parties and their Subsidiaries and Affiliates with officers and

employees of the Credit Parties and their Subsidiaries and Affiliates and with its independent certified public accountants.

Section 5.7 Notices.

Give notice in writing to the Administrative Agent (which shall promptly transmit such notice to each Lender):

(a) promptly, but in any event within two (2) Business Days after any Credit Party knows thereof, the occurrence of any Default or Event of Default;

(b) promptly, (i) any default or event of default under any Contractual Obligation, Indebtedness or Guarantee Obligation of any Credit Party or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of $5,000,000, (ii) any material default or event of default (beyond any applicable notice and cure period) related to any Collateral or Required Payment or (iii) any default or event of default under any Credit Party-Related Obligations.

(c) promptly, any litigation, or any investigation or proceeding known or threatened to any Credit Party (i) affecting any Credit Party or any of its Subsidiaries which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or involve a monetary claim in excess of $750,000 or involving injunctions or requesting injunctive relief by or against any Credit Party or any Subsidiary of any Credit Party, (ii) affecting or with respect to this Agreement, any other Credit Document, any security interest or Lien created under any Security Document, any Collateral or any Required Payment, (iii) involving an environmental claim or potential liability under Environmental Laws which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iv) by any Governmental Authority relating to the Credit Parties or any Subsidiary thereof and alleging fraud, deception or willful misconduct by such Person;

(d) of any labor controversy that has resulted in, or threatens to result in, a strike or other work action against any Credit Party that could reasonably be expected to have a Material Adverse Effect;

(e) of any attachment, judgment, levy or order exceeding $750,000 that may be assessed against or threatened against any Credit Party, or of any Lien or claim asserted against any Collateral, other than Permitted Liens;

(f) as soon as possible and in any event within thirty (30) days after any Credit Party knows or has reason to know thereof: (i) the occurrence or expected occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC (other than a Permitted Lien) or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or any Credit Party, any Commonly Controlled Entity or any Multiemployer Plan, with respect to the withdrawal from, or the terminating, Reorganization or Insolvency of, any Plan;

(g) promptly after becoming aware of the occurrence of any Internal Control Event;

(h) promptly, any notice of any violation received by any Credit Party from any Governmental Authority including, without limitation, any notice of violation of Environmental Laws; and

(i) promptly upon notice or knowledge thereof, notice of any change in ART's or ARSR's status as a REIT or ART's membership or good standing on any recognized securities exchange;

(j) promptly upon notice or knowledge thereof, notice of the conveyance, sale, lease, assignment, transfer or other disposition (any such transaction, or related series of transactions, a "Sale") of any Property, business or assets of any Credit Party or any Subsidiary whether now owned or hereafter acquired, with the exception of (A) this Agreement, (B) any Sale of Property by any Credit Party or any Subsidiary that is not material to the conduct of its business and is effected in the ordinary course of business, (C) any sale to a Consolidated Subsidiary, and (D) sales by ARSR or any special purpose entity Subsidiary of ARSR of loans, participations and/or preferred or common equity interests (including, without limitation, any sale under any other repurchase facility or pledge or collateral assignment under any warehouse facility);

(k) promptly upon notice or knowledge thereof, notice of the establishment of a rating assigned to the long-term unsecured debt issued by any Credit Party by Moody's or S&P (or other rating agency acceptable to the Administrative Agent) and of any downgrade in such rating once established;

(l) with respect to any Collateral hereunder, promptly upon receipt of notice or knowledge that the Underlying Mortgaged Property has been damaged by waste, fire, earthquake or earth movement, flood, tornado or other casualty, or otherwise damaged so as to affect adversely the Asset Value of such Collateral;

(m) promptly upon notice or knowledge thereof, provide written notice to the Administrative Agent of any loss, expected loss or material change in the value of any Collateral, any Required Payment, any Property or asset of any Credit Party or a Subsidiary (to the extent that such loss with respect to any such Property or asset could reasonably be expected to have a Material Adverse Effect), or any other event or change in circumstances or expected event or change in circumstances that could reasonably be expected to result (A) in a default with respect to any Mortgage Asset included in the Collateral, or (B) in a material decline in value or cash flow of any Collateral, any Underlying Mortgaged Property for any Collateral, any Required Payment or any Property or asset of a Credit Party or a Subsidiary (to the extent that such event or change with respect to any such Property or asset could reasonably be expected to have a Material Adverse Effect);

(n) the Borrowers shall provide written notice to the Administrative Agent at least ten (10) days prior to any Credit Party or any Affiliate or Subsidiary thereof acquiring any interest that would be senior in priority to any existing Mortgage Asset that is included in the Collateral; and

(o) promptly, any other development or event which could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer setting forth details of the occurrence referred to therein and stating what action the Credit Parties propose to take

with respect thereto. In the case of any notice of a Default or Event of Default, the Borrowers shall specify that such notice is a Default or Event of Default notice on the face thereof.

Section 5.8 Environmental Laws.

(a) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, comply with, and ensure compliance in all material respects by all tenants and subtenants, if any, with, all applicable Environmental Laws and obtain and comply with and maintain, and ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws;

(b) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws except to the extent that the same are being contested in good faith by appropriate proceedings; and

(c) Defend, indemnify and hold harmless the Administrative Agent and the Lenders, and their respective employees, agents, officers and directors and affiliates, from and against any and all claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Credit Parties or any of their Subsidiaries or the Properties, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing arise out of the gross negligence or willful misconduct of the party seeking indemnification therefor. The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 5.9 Financial Covenants.

ART shall comply with the following Financial Covenants:

(a) Maintenance of Liquidity. ART shall not permit, for any calendar quarter, Liquidity for such Test Period to be less than $7,500,000, all of which shall consist of cash or Cash Equivalents; provided, however, that such $7,500,000 shall be reduced for each dollar of cash collateral in excess of $25,000,000 posted as collateral for a Wachovia Derivatives Contract.

(b) Maintenance of Tangible Net Worth. ART shall not permit, for any Test Period, Tangible Net Worth at any time to be less than $150,000,000.

(c) Maintenance of Ratio of Net Total Liabilities to Adjusted Tangible Net Worth. ART shall not permit, for any Test Period, the ratio of its Net Total Liabilities to Adjusted Tangible Net Worth at any time to be greater than 4:5 to 1:0.

(d) Payout Restrictions. For any calendar year, ART shall not make dividend or distribution payments in excess of 100% of taxable income; provided, that, except as set forth in clause (o) of the Fee Letter with respect to any New Stock Class, for so long as (x) the

Obligations outstanding under this Agreement exceed $210,000,000, (y) the Obligations outstanding under the Working Capital Facility exceed $30,000,000 and (y) the Liquidity of ART is less than $35,000,000, all dividend or distribution payments shall be paid as Equity Interests up to the highest percentage permitted by the Code to be paid in Equity Interests; provided, however, nothing in this Section 5.9(d) shall prohibit ART from declaring and paying dividends in an amount necessary to maintain its status as a REIT. Notwithstanding the foregoing, in the event that ART mistakenly makes distributions in excess of 100% of taxable income during any calendar year, then, so long as such distributions did not exceed 110% of taxable income, such excess distributions shall not constitute a Default or Event of Default hereunder but shall be deemed distributions related to the following calendar year.

Section 5.10 Additional Credit Parties.

(a) Additional Borrowers. To the extent any new Borrower is approved by the Administrative Agent, in its discretion, the Credit Parties shall deliver to the Administrative Agent, with respect to each new Borrower to the extent applicable, substantially the same documentation required pursuant to Sections 4.1 and 5.12 and such other documents or agreements as the Administrative Agent may reasonably request, including without limitation a Borrower Joinder Agreement.

(b) Additional Guarantors. To the extent any new Guarantor is approved by the Administrative Agent, in its discretion, the Credit Parties shall deliver to the Administrative Agent, with respect to each new Guarantor to the extent applicable, substantially the same documentation required pursuant to Sections 4.1 and 5.12 and such other documents or agreements as the Administrative Agent may reasonably request, including without limitation a Guarantor Joinder Agreement.

Section 5.11 Compliance with Law.

(a) Comply with all Requirements of Law (including Environmental Laws and Securities Laws) and all applicable restrictions imposed by all Governmental Authorities, applicable to it and the Collateral.

(b) Comply in all material respects with all Contractual Obligations, all Indebtedness and all Guarantee Obligations.

Section 5.12 Pledged Assets.

With respect to the Collateral, the Credit Parties shall (a) take all action necessary to perfect, protect and more fully evidence the Administrative Agent's first priority perfected security interest in the Collateral, including, without limitation, (i) filing and maintaining effective financing statements against the Borrowers and other Credit Parties, as applicable in all necessary or appropriate filing offices, and filing continuation statements, amendments or assignments with respect thereto in such filing offices, (ii) executing or causing to be executed such other instruments, notices or control agreements as may be necessary or appropriate, and (iii) to the extent that anyone other than Wachovia is the Administrative Agent, entering into a new Account Control Agreement and Homewood Account Control Agreement, and (b) taking all additional action that the Administrative Agent may reasonably request to perfect, protect and more fully evidence the respective interests of the parties to this Agreement and the Credit Documents in such Collateral. To the extent any Collateral is created or comes into existence after the Closing Date, the Credit Parties shall take such actions as the Administrative Agent shall require to obtain a first priority perfected security interest in such Collateral.

Section 5.13 Interest Rate Protection Agreements.

Each Credit Party shall perform its duties and obligations under and shall otherwise maintain any existing Interest Rate Protection Agreements to which it is a party.

Section 5.14 Account Control Agreement.

The Borrowers shall maintain the Account Control Agreement and the Homewood Interest Reserve in full force and effect and shall not amend or modify the Account Control Agreement or the Homewood Interest Reserve or waive compliance with any provisions thereunder without the prior written consent of the Administrative Agent.

Section 5.15 Further Assurances.

(a) Public/Private Designation. The Credit Parties will cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Credit Parties to the Administrative Agent and Lenders (collectively, "Information Materials") pursuant to this Article V or the other Credit Documents and will designate Information Materials (i) that are either available to the public or not material with respect to the Credit Parties and their Subsidiaries or any of their respective securities for purposes of applicable Securities Laws as "Public Information" and (ii) that are not Public Information as "Private Information".

(b) Additional Information. The Credit Parties shall provide such information regarding the operations, business affairs and financial condition of the Credit Parties or any of their Subsidiaries or Affiliates as the Administrative Agent or any Lender may reasonably request.

(c) Visits and Inspections. The Credit Parties shall permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, to visit and inspect its Properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at any time without advance notice.

(d) Intercreditor Agreement. The Credit Parties shall acknowledge and agree to the Intercreditor Agreement to the extent the Administrative Agent deems that such Intercreditor Agreement is necessary.

Section 5.16 Performance and Compliance with Collateral.

The Credit Parties shall, at their expense, timely and fully perform and comply (and shall cause their Consolidated Subsidiaries, the Servicers and the PSA Servicers to timely and fully perform and comply) with all provisions, covenants and other promises required to be observed by them under the Collateral and all other agreements related to such Collateral.

Section 5.17 Delivery of Income and Required Payments.

The Credit Parties shall deposit, and shall cause the other Credit Parties, each of their Subsidiaries and all other Persons to deposit, all Income, Required Payments and other amounts payable to the Borrowers in respect of the Collateral or payable to any Credit Party or Subsidiary or Affiliate in respect of any Required Payment into the Collection Account within two (2) Business Days of such Person's receipt thereof. The Borrowers shall deposit, or cause to be deposited, into the Collection Account, on or before the date required by the Credit Documents, all other amounts required by the terms of the Credit Documents. The Credit Parties shall provide the Administrative Agent with fully executed copies of all Irrevocable Instructions required by this Agreement. The Credit Parties shall take steps necessary to enforce such Irrevocable Instructions and shall immediately inform the Administrative Agent of, and rectify any default, breach, failure or unwillingness to perform thereunder, any dispute or controversy in connection therewith or any other matter that may, could or will result in payments not being made as contemplated under the terms of such Irrevocable Instructions. The Credit Parties shall not, and shall not permit any Credit Party or any Subsidiary or Affiliate to, modify or revoke or permit any modifications or revocations of the Irrevocable Instructions without the Administrative Agent's prior written consent in its discretion. The Borrowers shall deliver such other Irrevocable Instructions as the Administrative Agent may require in its discretion. All distributions from the Collection Account and the Homewood Interest Reserve shall be made solely in accordance with the terms, provisions and conditions of this Agreement, the Account Control Agreement and the Homewood Account Control Agreement.

Section 5.18 Exceptions.

The Borrowers shall promptly correct any and all Exceptions set forth on any Asset Schedule and Exception Report.

Section 5.19 Distributions in Respect of Collateral.

If the Credit Parties or any Subsidiary or Affiliate shall receive any rights, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, or otherwise in respect thereof, the Credit Parties shall accept the same as the Administrative Agent's agent, hold the same in trust for the Administrative Agent and deliver the same forthwith to the Administrative Agent (or its designee) in the exact form received, together with duly executed instruments of transfer, assignments in blank, executed and undated stock powers in blank and such other documentation as the Administrative Agent shall reasonably request. If any sums of money or property are paid or distributed in respect of the Collateral (other than the Obligor Reserve Payments) and received by any Credit Party or any Subsidiary or Affiliate, the Credit Parties shall promptly pay or deliver, or caused to be paid or delivered, such money or property to the Administrative Agent and, until such money or property is so paid or delivered to the Administrative Agent, hold such money or property in trust for the Administrative Agent, segregated from other funds of the Credit Parties, their Subsidiaries and Affiliates and other Persons.

Section 5.20 REIT Status.

(a) ART shall at all times continue to be (i) qualified as a REIT as defined in Section 856 of the Code without giving any effect to any cure or corrective periods or allowances, (ii) entitled to a dividends paid deduction under Section 857 of the Code with respect to dividends paid by it with respect to each taxable year for which it claims a deduction on its Form 1120-REIT filed with the United States Internal Revenue Service for such year, or the entering into by it of any material "prohibited transactions" as defined in Sections 857(b) and 856(c) of the Code, and (iii) a publicly traded company listed, quoted or traded on and in good standing in respect of any Stock Exchange and (b) ARSR shall at all times continue

to be qualified as a REIT, in each case without giving any effect to any cure or corrective periods or allowances.

Section 5.21 Equity Issuances.

The terms and provisions governing Equity Issuances are set forth in the Fee Letter and are hereby incorporated by reference.

Section 5.22 Remittance of Prepayments.

The Borrowers shall remit or cause to be remitted to the Administrative Agent, with sufficient detail, via Electronic Transmission, to enable the Administrative Agent to appropriately identify the Collateral to which any amount remitted applies, all full or partial principal prepayments (regardless of the source of repayment) on any Collateral that a Borrower, a Servicer or a PSA Servicer has received or that have been deposited into the Collection Account no later than two (2) Business Days following the date such prepayment was received or deposited.

Section 5.23 Escrow Imbalance.

The Borrowers shall (to the extent it is acting as a servicer) or shall cause the Servicer to, no later than five (5) Business Days after learning (from any source) of any material imbalance in any reserve or escrow account related to any Collateral, fully and completely correct and eliminate such imbalance, including, without limitation, depositing its own funds into such account to eliminate any overdraw or deficit, to the extent required by the applicable Servicing Agreement (in the case of a Servicer).

Section 5.24 Separateness.

Notwithstanding any term contained in this Agreement or the other Credit Documents to the contrary, each Borrower (other than Arbor Realty and ARSR) shall (a) own no assets, and shall not engage in any business, other than the assets and transactions specifically contemplated by this Agreement and the Credit Documents; (b) not incur any Indebtedness or obligation, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) pursuant hereto and under the agreements and documents evidencing, securing or in any other way related to the Mortgage Assets and the related Collateral, (ii) customary representations, warranties, indemnities and other agreements in connection with the origination, acquisition, servicing, collection, enforcement, financing, participation, securitization, sale or other disposition of the Mortgage Assets, and (iii) obligations under zoning and other governmental regulations, rules, prohibitions and ordinances and proposed restrictions, covenants, conditions, limitations, easements, rights–of–way and other matters existing of public record or proposed to be recorded or filed in the future governing or affecting mortgaged real Property or that may otherwise require the consent of or joinder by a mortgagee; (c) not make any loans or advances to any Affiliate other than loans to a Guarantor which are disclosed in writing to and approved in writing by the Administrative Agent, and shall not acquire obligations or securities of its Affiliates; (iv) pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) only from its own assets; (d) comply with the provisions of its Authority Documents; (vi) do all things necessary to observe organizational formalities and to preserve its existence, and will not amend, modify or otherwise change its Authority Documents without the consent of the Administrative Agent; (e) maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates (except that such financial statements may be consolidated to the extent consolidation is required under the GAAP consistently applied or as a matter of the Requirements of Law) and file its own tax returns (except to the extent consolidation is required or permitted under Requirements of Law); (f) be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other

entity (including any Affiliate), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, and shall not identify itself or any of its Affiliates as a division of the other; (g) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; (h) not engage in or suffer any change of ownership, dissolution, winding up, liquidation, consolidation or merger in whole or in part; (i) not commingle its funds or other assets with those of any Affiliate or any other Person; (j) maintain its accounts separate from those of any Affiliate or any other Person; (k) shall not hold itself out to be responsible for the debts or obligations of any other Person; (l) shall not, without the vote of its Independent Director, (i) file or consent to the filing of any Insolvency Proceeding with respect to itself, institute any proceedings under any applicable Insolvency Law or otherwise seek any relief under any Requirements of Law relating to the relief from debts or the protection of debtors generally with respect to itself, (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for itself or a substantial portion of its properties, or (iii) make any assignment for the benefit of it's creditors; (m) shall have at all times at least one (1) Independent Director (or such greater number as required by the Administrative Agent or the Rating Agencies); (n) shall maintain an arm's length relationship with its Affiliates; (o) maintain a sufficient number of employees in light of contemplated business operations; (p) use separate stationary, invoices and checks; and (q) allocate fairly and reasonably any overhead for shared office space.

Section 5.25 Preferred Equity Interests and Equity Assets.

The Borrowers shall or shall cause each Preferred Equity Grantor and Equity Asset Grantor to preserve and maintain its legal and valid existence, rights, franchises, privileges and good standing in the jurisdiction of its formation and will qualify and remain qualified in good standing in each other jurisdiction where, due to the nature of its business or Property, such qualification is necessary. The Borrowers shall provide evidence to the Administrative Agent, upon request, of the Preferred Equity Grantor's and Equity Asset Grantor's compliance with the requirements of this subsection.

Section 5.26 Pledge of Repurchased Debt.

To the extent that any Credit Party or any Affiliate of a Credit Party repurchases any Indebtedness of any Credit Party or an Affiliate of any Credit Party using Liquidity or other cash, Cash Equivalents or other funds of any Credit Party or an Affiliate of any Credit Party (other than proceeds of an Equity Issuance), the Borrowers shall notify the Administrative Agent at least fifteen (15) Business Days in advance thereof, pledge such repurchased Indebtedness to the Administrative Agent on behalf of the Secured Parties and, to the extent necessary, execute and deliver any documentation (including, without limitation, amendments to the Credit Documents and opinions of counsel) as the Administrative Agent may reasonably request in order to perfect the Administrative Agent's interest in such additional collateral. Amounts payable under such pledged repurchased debt shall constitute Income hereunder and shall be applied in accordance with Section 2.9 hereof. The Administrative Agent and the Lenders acknowledge that the Borrowers intend to modify (or replace) the Original Kodiak Indentures and, in connection therewith, exchange the debt securities issued thereunder for new debt securities of ARSR. The Administrative Agent and the Lenders agree that such exchange shall not constitute a repurchase of Indebtedness by ARSR.

Section 5.27 REO Property.

The terms and provisions governing REO Property are set forth in the Fee Letter and are hereby incorporated by reference.

Section 5.28 Warrant Opinion.

No later than August 7, 2009, the Borrowers shall deliver an Opinion of Counsel, addressed to the Administrative Agent and the Lenders, in form and substance acceptable to the Administrative Agent, which includes opinions addressing the Warrants and the Warrant Shares (each as defined in the Warrant Agreements) and which shall be substantially of the substance set forth in the e-mail received from Paul Elenio on July 23, 2009 at 4:32 p.m., with no additional material assumptions or qualifications.

Section 5.29 Independence of Covenants.

All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Default or Event of Default if such action is taken or condition exists.

## ARTICLE VI

## NEGATIVE COVENANTS

Each of the Credit Parties hereby covenants and agrees that on the Restatement Date, and thereafter (a) for so long as this Agreement is in effect, (b) until the Commitments have terminated, (c) until no Note remains outstanding and unpaid and the Obligations and all other amounts owing to the Administrative Agent or any Lender hereunder are paid in full, that:

Section 6.1 Indebtedness.

No Borrower (other than Arbor Realty and ARSR) will, nor will it permit any Subsidiary to, contract, create, incur, assume or permit to exist any Indebtedness or Guarantee Obligations, except:

(a) Indebtedness arising or existing under this Agreement and the other Credit Documents;

(b) Indebtedness of the Borrowers (other than Arbor Realty and ARSR) existing as of the Restatement Date as referenced in the financial statements referenced in Section 3.1 (and set out more specifically in Schedule 6.1(b) hereto) and any renewals, refinancings or extensions thereof in a principal amount not in excess of that outstanding as of the date of such renewal, refinancing or extension; and

(c) Indebtedness and obligations owing under Interest Rate Protection Agreements or Derivatives Contract entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks related to the Mortgage Assets and not for speculative purposes.

Section 6.2 Liens.

The Credit Parties and the Subsidiaries and Affiliates shall not sell, pledge, assign or transfer to any other Person, or grant, create, incur, assume, suffer or permit to exist any Lien on all or any portion of the Collateral or the Required Payments, other than Permitted Liens, whether now existing or hereafter transferred hereunder, or any interest therein, and the Credit Parties and the Subsidiaries and Affiliates shall not sell, pledge, assign or suffer to exist any Lien, or any circumstance which, if adversely

determined, would be reasonably likely to give rise to a Lien, on its interest, if any, hereunder or under the other Credit Documents. Immediately upon notice to any Credit Party of a Lien or any circumstance which, if adversely determined would be reasonably likely to give rise to a Lien (other than in favor of the Administrative Agent or created by or through the Administrative Agent), on all or any portion of the Collateral or the Required Payments, the Borrowers shall notify the Administrative Agent and the Borrowers shall further defend the Collateral and the Required Payments against, and will take such other action as is necessary to remove, any Lien or claim on or to the Collateral or the Required Payments (other than any Permitted Liens created under this Agreement and the Credit Documents), and the Borrowers shall defend the right, title and interest of the Credit Parties and their Subsidiaries and Affiliates in and to any of the Collateral and the Required Payments against the claims and demands of all Persons whomsoever. Notwithstanding the foregoing, if a Credit Party or any Subsidiary or Affiliate shall grant a Lien on any of the Collateral or Required Payments in violation of this Section, then it shall be deemed to have simultaneously granted an equal and ratable Lien on any such Collateral or Required Payments in favor of the Administrative Agent for the ratable benefit of the Secured Parties to the extent such Lien has not already been granted to the Administrative Agent.

Section 6.3 Nature of Business.

No Credit Party will, nor will it permit any Subsidiary to, alter the character of its business in any material respect from that conducted as of the Closing Date. The Borrowers shall not engage in any activity other than activities specifically permitted by this Agreement, including, but not limited to, investment in mortgage loans, mezzanine loans, participations, preferred equity and other real estate related assets and the purchasing, financing and holding of commercial mortgage-backed securities and activities incident thereto.

Section 6.4 Consolidation, Merger, Sale or Purchase of Assets, etc.

No Credit Party shall enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all or substantially all of its assets (other than in connection with a CDO Issuance); provided, however, that any Credit Party may merge or consolidate with (i) any wholly owned Subsidiary of such Credit Party, or (ii) any other Person if a Credit Party is the surviving entity; and provided, further, that, if after giving effect thereto, no Default or Event of Default would exist hereunder.

Section 6.5 Repurchase of Debt.

For any given calendar quarter, no Credit Party and no Affiliate of a Credit Party shall use any Liquidity, cash, Cash Equivalents or other funds to repurchase any outstanding Indebtedness of any Credit Party or any Affiliate of a Credit Party (other than proceeds of an Equity Issuance) in an amount greater than the lesser of (a) $7,500,000 in the aggregate for such calendar quarter and (b) 50% of the CDO Equity Distributions (as defined in the Working Capital Facility Loan Agreement) received by the Credit Parties or their Affiliates in connection with any CDO Issuance for the previous calendar quarter.

Section 6.6 Transactions with Affiliates.

The Credit Parties will not, nor will they permit any Subsidiary to, enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any officer, director, shareholder or Affiliate other than on terms and conditions substantially as favorable as would be obtainable in a comparable arm's-length transaction with a Person that is not an officer, director, shareholder or Affiliate.

Section 6.7 Ownership of Subsidiaries; Restrictions.

The Borrowers (other than Arbor Realty and ARSR) shall not create or own Subsidiaries without the Administrative Agent's consent in its discretion. The Borrowers (other than Arbor Realty and ARSR) will not sell, transfer, pledge or otherwise dispose of any Equity Interest or other equity interests in any of their Subsidiaries, nor will they permit any of their Subsidiaries to issue, sell, transfer, pledge or otherwise dispose of any of their Equity Interest or other equity interests, except in a transaction permitted by Section 6.4.

Section 6.8 Corporate Changes; Material Contracts.

No Credit Party will, nor will it permit any of its Subsidiaries to, (a) change its fiscal year, (b) amend, modify or change its Authority Documents in any respect that would impact, impair or affect the Collateral or any Required Payment or is otherwise adverse to the interests of the Lenders without the prior written consent of the Administrative Agent; provided that no Credit Party shall (i) to the extent permitted under this Agreement, alter its legal existence or, in one transaction or a series of transactions, merge into or consolidate with any other entity, or sell all or substantially all of its assets, (ii) change its state of incorporation or organization, or (iii) change its registered legal name, without providing thirty (30) days prior written notice to the Administrative Agent and without filing (or confirming that the Administrative Agent has filed) such financing statements and amendments to any previously filed financing statements as the Administrative Agent may require, (c) except as provided in Section 6.15, amend, modify, cancel or terminate or fail to renew or extend or permit the amendment, modification, cancellation or termination of any of its Material Contracts in any respect adverse to the interests of the Lenders without the prior written consent of the Required Lenders, (d) change its state of incorporation, organization or formation without the consent of the Administrative Agent or have more than one state of incorporation, organization or formation or (e) change its accounting method (except in accordance with GAAP) in any manner adverse to the interests of the Lenders without the prior written consent of the Required Lenders.

Section 6.9 Limitation on Restricted Actions.

The Borrowers (other than Arbor Realty and ARSR) will not, nor will they permit any Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any Lien or restriction on the ability of any such Person to (a) pay dividends or make any other distributions to any Credit Party on its Equity Interest or with respect to any other interest or participation in, or measured by, its profits, (b) pay any Indebtedness or other obligation owed to any Credit Party, (c) make loans or advances to any Credit Party, (d) sell, lease or transfer any of its Properties to any Credit Party, or (e) act as a Borrower or Guarantor, to obtain loans or to pledge its assets pursuant to the Credit Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except (in respect of any of the matters referred to in clauses (a)-(d) above) for such Liens or restrictions existing under or by reason of (i) this Agreement and the other Credit Documents, (ii) Requirements of Law, or (iii) the Working Capital Facility.

Section 6.10 Restricted Payments.

Except as otherwise required or permitted by the Credit Documents, no Credit Party shall declare or make any payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any Equity Interest of any Credit Party whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or Property or in obligations of any Credit Party, except that a Credit Party may (i) declare and pay dividends in an amount necessary to maintain its status as a REIT

and, (ii) so long as no Default or Event of Default shall have occurred and the Financial Covenants are satisfied, (a) in the case of ART only, ART may declare and pay dividends in the amounts permitted by but subject to the terms and conditions of Section 5.9(d), (b) the Credit Parties may distribute funds among the Credit Parties and their Consolidated Subsidiaries, (c) in the case of Arbor Realty only, Arbor Realty may make distributions, in the ordinary course of business, to Arbor Commercial Mortgage, LLC in respect of the limited partnership interest of Arbor Realty which Arbor Commercial Mortgage, LLC holds, and (d) ART may redeem Equity Interests held by Arbor Commercial Mortgage, LLC for stock in ART (but not for cash), and (e) the Credit Parties may declare and pay dividends with respect to Equity Issuances as permitted in the Fee Letter.

Section 6.11 [Reserved].

Section 6.12 No Further Negative Pledges.

None of the Borrowers (other than Arbor Realty and ARSR) or any of their Subsidiaries shall grant, allow or enter into any agreement or arrangement with any Person that prohibits or restricts, or purports to prohibit or restrict, the granting of any Lien or other encumbrance on any of the assets or Properties of the Borrowers (other than Arbor Realty and ARSR) or their Consolidated Subsidiaries; provided, however, that the foregoing shall not apply to (i) the negative pledge contained in Section 6.18, (ii) Indebtedness identified on Schedule 6.1(b) or (iii) any other negative pledge or grant of any Lien or other encumbrance approved by the Administrative Agent in its discretion.

Section 6.13 Collateral Not to be Evidenced by Instruments.

No Credit Party shall take any action to cause all or any portion of the Collateral that is not, as of the applicable Borrowing Date, evidenced by an Instrument to be so evidenced except, with the Administrative Agent's consent, in connection with the enforcement or collection of such Collateral.

Section 6.14 Deposits.

The Credit Parties will not deposit or otherwise credit, or cause or permit to be so deposited or credited, to the Collection Account or Homewood Interest Reserve cash or cash proceeds other than (i) in the case of the Collection Account, Income in respect of Collateral, Cash Collateral and other payments required to be deposited therein under the Credit Documents, and (ii) in the case of the Homewood Interest Reserve, the interest reserve amounts for the Homewood Mortgage Asset.

Section 6.15 Servicing Agreements.

The Credit Parties will not materially amend, modify, waive or terminate any provision of any Servicing Agreement or Pooling and Servicing Agreement without the prior written consent of the Administrative Agent. Notwithstanding the foregoing, but subject to the Administrative Agent's rights under Article IX, the Borrowers shall have the right to terminate any of the foregoing upon the occurrence of a material default (beyond any applicable notice and cure period) of the other party thereto.

Section 6.16 Extension or Amendment of Collateral.

Except as provided in Section 9.7, the Borrowers will not extend, amend, waive or otherwise modify, or permit any Servicer or PSA Servicer (except as provided in a Pooling and Servicing Agreement) to extend, amend, waive or otherwise modify the material terms of any Collateral or the Mortgage Loan Documents related thereto or to exercise the material rights of a holder of said Collateral, provided that the foregoing shall not prohibit the Borrowers, a Servicer or a PSA Servicer from

permitting, prior to a default thereunder, any Obligor to exercise an extension option contained in any Mortgage Loan Documents. Unless otherwise agreed to by the Administrative Agent in its discretion, the Borrowers, the Servicers and the PSA Servicers (except as provided in a Pooling and Servicing Agreement) shall have no right to waive, amend, modify or alter the material terms of any Collateral or the related Mortgage Loan Documents thereto or otherwise exercise any material right of the holder of any Collateral.

Section 6.17 Stock Repurchase.

Except as set forth in the Fee Letter, no Credit Party shall repurchase any outstanding common stock or operating partnership units of any Credit Party prior to the later of (a) the Maturity Date and (b) the payment in full of the Obligations.

Section 6.18 No Future Liens.

No Borrower shall grant or permit, or suffer to be granted or permitted, any Lien on, or any encumbrances upon, any of the assets or Properties of any Borrower, whether owned now or hereafter acquired, which shall include, without limitation, but, in the case of Arbor Realty, shall be limited to, any Collateral and any Required Payment, in favor of any Person, other than Liens in favor of the Administrative Agent as agent for the Secured Parties.

Section 6.19 Eligible Subordinated Debt.

The Credit Parties shall not, nor shall they permit any Subsidiary to, issue any Trust Preferred Debt that (a) does not have subordination provisions substantially the same as those in the indentures for the transactions listed in clause (a) of the definition of "Eligible Subordinated Debt," (b) does not have enforceable subordination provisions, (c) has a maturity date earlier than the date that is six (6) months following the Maturity Date or (d) that is not approved by the Administrative Agent in its discretion. The Credit Parties shall deliver an Opinion of Counsel from the counsel to the applicable Credit Party or the applicable Subsidiary of a Credit Party in connection with the creation of such Eligible Subordinated Debt as to the enforceability of the subordination provisions contained in all Eligible Subordinated Debt, each in form and substance satisfactory to the Administrative Agent in its discretion.

Section 6.20 Senior and *Pari Passu* Interests.

No Credit Party shall acquire or maintain any right or interest in any Mortgage Asset (or, directly or indirectly, the Underlying Mortgaged Property with respect thereto) that is senior to or *pari passu* with the rights and interests of the Administrative Agent therein under this Agreement and the Credit Documents unless such interest is also part of the Collateral.

Section 6.21 [Reserved].

Section 6.22 Inconsistent Agreements.

The Credit Parties shall not directly or indirectly, enter into any agreement containing any provision that would be violated or breached by any transaction, Loan or pledge of Collateral under the Credit Documents or by the performance by any Credit Party of its duties, covenants or obligations under any Credit Document.

Section 6.23 Margin Regulations.

No part of the proceeds of any Loan shall be used for any purpose that violates or would be inconsistent with the provisions of Regulation T, U or X.

## ARTICLE VII

## EVENTS OF DEFAULT

Section 7.1 Events of Default.

An Event of Default shall exist upon the occurrence of any of the following specified events (each an "Event of Default"):

(a) Payment. (i) The Borrowers shall fail to pay any principal or interest on any Loan or Note when due (whether at maturity, by reason of mandatory or optional prepayment, by reason of acceleration or otherwise) in accordance with the terms hereof or thereof; or (ii) the Borrowers shall fail to pay any fee or other amount payable hereunder or under the Credit Documents when due (whether at maturity, by reason of mandatory or optional prepayment, by reason of acceleration or otherwise) in accordance with the terms hereof and such failure shall continue unremedied for two (2) Business Days after written notice from the Administrative Agent; or (iii) or any Guarantor shall fail to pay on the Guaranty in respect of any of the foregoing or in respect of any other Obligations under the Credit Documents (after giving effect to the grace period in clause (ii) above; or (iv) any other Credit Party shall fail to pay any amounts owed by it under the Credit Documents to which it is a party (after giving effect to the grace period in clause (ii) above); or

(b) Misrepresentation. Any representation or warranty made or deemed made herein, in the Security Documents or in any of the other Credit Documents or which is contained in any certificate, document or financial or other statement furnished at any time under or in connection with this Agreement or the Credit Documents (in each case other than the representations and warranties contained in Schedule 1.1(c) to this Agreement unless any Borrower shall have affirmed or confirmed any such eligibility criteria with actual knowledge that it was not satisfied in any material respect) shall prove to have been incorrect, false or misleading on or as of the date made or deemed made and continues to be unremedied for a period of twenty (20) Business Days after the earlier to occur of (i) the date on which written notice of such incorrectness requiring the same to be remedied shall have been given to the Credit Parties by the Administrative Agent, and (ii) the date on which the Credit Parties become aware thereof; or

(c) Covenant Default. (i) Any Credit Party shall fail to perform, comply with or observe any term, covenant or agreement applicable to it contained in Section 5.9 hereof; or (ii) any Credit Party shall fail to comply with any other covenant contained in this Agreement or the other Credit Documents or any other agreement, document or instrument among any Credit Party, the Administrative Agent and the Lenders or executed by any Credit Party in favor of the Administrative Agent or the Lenders (other than as described in Sections 7.1(a) or 7.1(b) above), and such breach or failure to comply is not cured within twenty (20) days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Credit Parties by the Administrative Agent, and (ii) the date on which the Credit Parties become aware thereof (provided, however, in the case of a failure which is capable

of cure but cannot reasonably be cured within such twenty (20) day period (other than the payment of money), and provided the Credit Parties shall have timely commenced to cure such failure within such twenty (20) day period (with evidence of same delivered to the Administrative Agent) and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for an additional twenty (20) day period); or

(d) Indebtedness Cross-Default. (i) Any Credit Party or any Affiliate or Subsidiary of a Credit Party shall default in any payment of principal of or interest on any Indebtedness (other than the Loans and the Guaranty) in a principal amount outstanding of at least $5,000,000 in the aggregate beyond any applicable grace period (not to exceed thirty (30) days), if any, provided in the instrument or agreement under which such Indebtedness was created, in each case regardless of whether the default has been or is waived; or (ii) any Credit Party or any Affiliate or Subsidiary of a Credit Party shall default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans and the Guaranty) in a principal amount outstanding of at least $5,000,000 in the aggregate or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or to be repurchased, prepaid, deferred or redeemed (automatically or otherwise), in each case regardless of whether such default has been or is waived; or (iii) shall fail to make a payment due with respect to, be in default under or an event or condition that exists or has occurred that would permit the acceleration of (regardless of whether any of the foregoing have been or are waived) any Credit Party-Related Obligation; or

(e) Other Cross-Defaults. Other than as described in Section 7.1(d), the Credit Parties or any of their Subsidiaries or Affiliate shall default in (i) the payment when due under any Material Contract or (ii) the performance or observance, of any obligation or condition of any Material Contract and such failure to perform or observe such other obligation or condition continues unremedied for a period of thirty (30) days after notice of the occurrence of such default unless, but only as long as, the existence of any such default is being contested by the Credit Parties in good faith by appropriate proceedings and adequate reserves in respect thereof have been established on the books of the Credit Parties to the extent required by GAAP; or

(f) Bankruptcy Default. (i) A Credit Party or any of its Subsidiaries or Affiliates shall commence any case, proceeding or other action (A) under any existing or future Requirements of Law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or a Credit Party or any of its Subsidiaries or Affiliates shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against a Credit Party or any of its Subsidiaries or Affiliates any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against a Credit Party or any of its Subsidiaries or Affiliates any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of their assets which results in the entry of an order for any such relief which

shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) a Credit Party or any of its Subsidiaries or Affiliates shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) a Credit Party or any of its Subsidiaries or Affiliates shall generally not, or shall be unable to, or shall admit in writing their inability to, pay its debts as they become due; or

(g) Judgment Default. One or more final judgments or decrees shall be entered against a Credit Party or any of its Subsidiaries or Affiliates involving in the aggregate a liability (to the extent not covered by insurance) of $1,000,000 or more and all such judgments or decrees shall not have been paid and satisfied, vacated, discharged, stayed or bonded pending appeal within ten (10) Business Days from the entry thereof or any injunction, temporary restraining order or similar decree shall be issued against a Credit Party or any of its Subsidiaries or Affiliates that, individually or in the aggregate, could result in a Material Adverse Effect; or

(h) ERISA Default. (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan (other than a Permitted Lien) shall arise on the assets of the Credit Parties or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Administrative Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) a Credit Party, any of its Subsidiaries or any Commonly Controlled Entity shall, or in the reasonable opinion of the Administrative Agent is likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, any Multiemployer Plan or (vi) any other similar event or condition shall occur or exist with respect to a Plan; or

(i) Change of Control. There shall occur a Change of Control, unless waived by the Administrative Agent in its discretion; or

(j) Invalidity of Credit Documents. (i) Any Credit Document, or any Lien or security interest granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective, be declared null and void, cease to be in full force and effect or cease to be the legally valid, binding and/or enforceable obligation of any Credit Party, as applicable, (ii) any Credit Party or any other Person shall, directly or indirectly, contest in any manner the effectiveness, validity, binding nature or enforceability of any Credit Document or any Lien or security interest thereunder or deny or disaffirm such Person's obligations under any Credit Document, (iii) the Liens contemplated under the Credit Documents shall cease or fail to be first priority perfected Liens on any Collateral in favor of the Administrative Agent or shall be Liens in favor of any Person other than the Administrative Agent, (iv) any Credit Party shall grant, or permit or suffer to exist, any Lien on any Collateral except Permitted Liens, or (v) any Credit Party or any Subsidiary or Affiliate of the foregoing shall grant, or permit or suffer to exist, any Lien on any Required Payment; or

(k) Key Manager. Ivan Kaufman resigns, is removed or otherwise no longer serves as an officer or director of ART; or

(l) Equity Ownership. (i) ARSR shall cease to own 100% of the issued and outstanding Equity Interests of Arbor Realty Funding, (ii) ART shall cease to indirectly own not less than 80% of the issued and outstanding Equity Interests of Arbor Realty, (iii) ARSR TRS Holding LLC shall cease to own 100% of the Class A membership interest in ARSR Tahoe, LLC, (iv) Arbor Realty and/or ARSR shall cease to own 100% of the issued and outstanding Capital Stock of ART 450, (v) Arbor Realty shall cease to own 99% of the issued and outstanding Equity Interests of ARSR, and/or (vi) Arbor ESH Holdings LLC shall cease to own 100% of the membership interests in Arbor ESH; or

(m) 40 Act. Any Credit Party shall become required to register as an "investment company" within the meaning of the 40 Act or the arrangements contemplated by the Credit Documents shall require registration as an "investment company" within the meaning of the 40 Act; or

(n) Material Adverse Effect. There shall exist any event or occurrence that has caused a Material Adverse Effect; or

(o) IRS Lien. The Internal Revenue Service shall file notice of a Lien pursuant to Section 6323 of the Code with regard to any assets or Property of any Credit Party, and such Lien shall not have been released within five (5) Business Days; or

(p) Cooperation. Any Credit Party fails, within three (3) Business Days, to pledge Collateral required to be pledged under this Agreement or the other Credit Documents or fails, within three (3) Business Days, to cooperate with the Administrative Agent as required by this Agreement or the other Credit Documents to ensure that the Administrative Agent has or obtains a perfected first priority security interest in all existing and future Collateral; or

(q) Irrevocable Instructions. Any Credit Party's failure to deliver any Irrevocable Instruction required under this Agreement or any Person's attempt to disavow, revoke or act contrary to, the failure of any Person to abide by or perform, or any Credit Party's failure to enforce, the terms of any Irrevocable Instruction; or

(r) Solvency. Any Credit Party is not Solvent or shall admit its inability to, or its intentions not to, perform its obligations, covenants, duties or agreements under any Credit Document, any Obligation or any Credit Party-Related Document; or

(s) REIT. Unless waived by the Administrative Agent in its discretion, ART ceases to qualify as a REIT (without giving any effect to any cure or corrective periods or allowances), is subject to a ratings downgrade by any Rating Agency or ceases to be a publicly traded company listed, quoted or traded on or in good standing in respect of any Stock Exchange, or ARSR fails to qualify as a REIT (without giving any effect to any cure or corrective periods or allowances); or

(t) Commitment. The aggregate principal amount of all Revolving Loans outstanding on any day exceeds the Revolving Commitment and the same continues unremedied for two (2) Business Days after notice from the Administrative Agent; provided, however, during the period of time that such event remains unremedied, no additional Revolving Loans will be made under this Agreement; or

(u) Servicer Default. A Servicer Default occurs and is continuing; or

(v) Income. Any Credit Party's, any Subsidiary or Affiliate thereof, any Servicer's or any PSA Servicer's failure to deposit to the Collection Account all Income and other Cash Collateral as required by this Agreement; or

(w) Working Capital Facility. The discovery by the Administrative Agent of a breach of any representation made in any Officer's Certificate delivered pursuant to Section 8.2(a)(i) of the Working Capital Facility Loan Agreement; or

(x) Consent. Any Credit Party engages in any conduct or action where the Administrative Agent's and/or any Lender's prior written consent is required by the terms of this Agreement or the other Credit Documents and any Credit Party fails to obtain such consent; or

(y) Merger. Unless waived by the Administrative Agent, to the extent merger or consolidation is permitted under the Credit Documents, any Credit Party shall merge or consolidate into any entity and such entity is, in the Administrative Agent's determination in its discretion, materially weaker in its financial condition (in the aggregate) than such Person pre-merger or consolidation; or

(z) Other Defaults. Any event or occurrence under this Agreement or any of the other Credit Documents that, by the express terms of this Agreement or the other Credit Documents, is deemed to constitute an Event of Default; or

(aa) Instructions; Notices. Any Credit Party shall have failed to give instructions (including, without limitation, Irrevocable Instructions) or any notice to the Administrative Agent or any Lender as required by this Agreement or the other Credit Documents, or to deliver any required reports hereunder, on or before the date such instruction, notice or report is required to be made or given, as the case may be, under the terms of this Agreement or the other Credit Documents and any such failure continues unremedied for a period of two (2) Business Days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to any Credit Party by the Administrative Agent and (ii) the date on which any Credit Party becomes aware thereof.

In making a determination as to whether an Event of Default has occurred, the Administrative Agent and the Lenders shall be entitled to rely on reports published or broadcast by media sources believed by the Administrative Agent and/or any Lender to be generally reliable and on information provided to it by any other sources believed by it to be generally reliable, provided that the Administrative Agent and/or the Lender reasonably and in good faith believes such information to be accurate and has taken such steps as may be reasonable in the circumstances to attempt to verify such information. Notwithstanding anything contained in the Credit Documents to the contrary, unless waived by the Administrative Agent in its discretion, neither the Credit Parties nor any other Person shall be permitted to cure an Event of Default after the acceleration of any of the Obligations.

Section 7.2 Acceleration; Remedies.

Upon the occurrence and during the continuance of an Event of Default, then, and in any such event, (a) if such event is a Bankruptcy Event of Default, automatically the Commitments shall immediately terminate and the Loans (with accrued interest thereon), and all Obligations and other amounts under the Credit Documents shall immediately become due and payable, and (b) if such event is any other Event of Default, any or all of the following actions may be taken: (i) with the written consent of the Required Lenders, the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, declare the Commitments to be terminated forthwith, whereupon

the Commitments shall immediately terminate; (ii) the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, declare the Loans (with accrued interest thereon) and all Obligations and other amounts owing under this the Credit Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable; and/or (iii) with the written consent of the Required Lenders, the Administrative Agent may, or upon the written request of the Required Lenders, the Administrative Agent shall, exercise such other rights and remedies as provided under the Credit Documents and under Requirements of Law.

## ARTICLE VIII

## THE ADMINISTRATIVE AGENT

Section 8.1 Appointment and Authority.

Each of the Lenders hereby irrevocably appoints Wachovia to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrowers nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions.

Section 8.2 Nature of Duties.

Anything herein to the contrary notwithstanding, none of the bookrunners, Arrangers or other agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the other Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 8.3 Exculpatory Provisions.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or Requirements of Law; and

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrowers or any of their Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.1 and 7.2) or (ii) in the absence of its own gross negligence or willful misconduct.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 8.4 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, which by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 8.5 Notice of Default.

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received written notice from a Lender or one of the Borrowers referring to this Agreement, describing such Default or Event of

Default and stating that such notice is a "notice of default". In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders; provided, however, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not taken, only with the consent or upon the authorization of the Required Lenders, or all of the Lenders, as the case may be.

Section 8.6 Non-Reliance on Administrative Agent and Other Lenders.

Each Lender expressly acknowledges that neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact or affiliates has made any representation or warranty to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of any Credit Party, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any other Lender or any of the Related Parties of the foregoing and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or any of the Related Parties of the foregoing and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 8.7 Indemnification.

The Lenders agree to indemnify the Administrative Agent in its capacity hereunder and its Affiliates and its respective officers, directors, agents and employees (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), pro rata based on the portion of the Obligations owed to each Lender on the date on which indemnification is sought under this Section, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Obligations) be imposed on, incurred by or asserted against any such indemnitee in any way relating to or arising out of any Credit Document or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by any such indemnitee under or in connection with any of the foregoing; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting from such indemnitee's gross negligence or willful misconduct, as determined by a court of competent jurisdiction. The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 8.8 Administrative Agent in Its Individual Capacity.

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" and "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the

Borrowers or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 8.9 Successor Administrative Agent.

The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, or an Affiliate of any such bank. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Secured Parties, appoint a successor Administrative Agent meeting the qualifications set forth above provided that if the Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Secured Parties under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Credit Documents, the provisions of this Article and Section 10.5 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 8.10 Collateral and Guaranty Matters.

(a) The Lenders irrevocably authorize and direct the Administrative Agent:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent under any Credit Document (A) upon termination of the Revolving Commitments and payment in full of all Obligations (other than contingent indemnification obligations for which no claim has been made or cannot be reasonably identified by an Indemnitee based on the then-known facts and circumstances), (B) subject to Section 10.1, if approved, authorized or ratified in writing by the Required Lenders or (C) subject to Sections 2.5(b), 2.5(d) and 2.17, and other restrictions on releases of Collateral, upon a prepayment in full of all amounts owed under the Credit Documents with respect to a Pledged Mortgage Asset by the Borrowers pursuant to Section 2.5(b); provided there is no Default, no Event of Default and no mandatory prepayment is due or will become due upon such release or upon the expiration of the applicable time period under Section 2.5.

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such Collateral that is permitted by Section 6.2; and

(iii) to release any Guarantor from its obligations under the applicable Guaranty if such Person ceases to be a Guarantor because of a transaction permitted hereunder.

(d) In connection with a termination or release pursuant to this Section, the Administrative Agent shall promptly execute and deliver to the applicable Credit Party, at the Borrowers' expense, all documents that the applicable Credit Party shall reasonably request to evidence such termination or release. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of Collateral, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section.

## ARTICLE IX

## ADMINISTRATION AND SERVICING

Section 9.1 Servicing.

(a) The Administrative Agent hereby appoints each of the Borrowers as its agent to service the Collateral and enforce its rights in and under such Collateral. The Borrowers hereby accept such appointment and agree to perform the duties and obligations with respect thereto as set forth herein.

(b) The Borrowers covenants to maintain or cause the servicing of the Collateral to be maintained in conformity with Accepted Servicing Practices and in a manner at least equal in quality to the servicing Borrowers provides for Mortgage Assets that it owns. In the event that the preceding language is interpreted as constituting one or more servicing contracts, each such servicing contract shall terminate automatically upon the earliest of (i) an Event of Default, (ii) the date on which this Agreement terminates or the Administrative Agent releases its Lien with respect to the related item of Collateral or (iii) the transfer of servicing approved in writing by the Administrative Agent.

Section 9.2 Borrowers as Servicer.

If the Collateral is serviced by the Borrowers, the Borrowers agree that, until the item of Collateral is released from the Administrative Agent's Lien, the Administrative Agent is the owner of all servicing records for the period that the Administrative Agent has a Lien on the Collateral, including, but not limited to, any and all servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, computer programs, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of such Collateral (the "Servicing Records"). The Borrowers covenant to safeguard such Servicing Records and to deliver them promptly to Administrative Agent or its designee (including the Custodian) at the Administrative Agent's request.

Section 9.3 Third Party Servicer.

The Borrowers shall not cause the Collateral to be serviced by a third party other than pursuant to the Servicing Agreements or the Pooling and Servicing Agreements or, if not serviced thereunder, by any Servicer other than a Servicer expressly approved in writing by the Administrative Agent, which approval shall be deemed granted by the Administrative Agent with respect to each Servicer listed on Schedule 9.3 attached hereto, as such schedule may be amended or supplemented from time to time, after the execution of this Agreement. If the Collateral is serviced by a Servicer or a PSA Servicer pursuant to a Servicing Agreement or Pooling and Servicing Agreement, as applicable, the Borrowers (i) shall, in accordance with Section 4.2, provide to the Administrative Agent (subject to the last sentence of this Section) a copy of each Servicing Agreement and Pooling and Servicing Agreement, which agreements shall be in form and substance acceptable to the Administrative Agent, and a Servicer Redirection Notice, fully executed by the Borrowers and the related Servicer or PSA Servicer, and (ii) hereby irrevocably assigns to the Administrative Agent and the Administrative Agent's successors and assigns all right, title and interest of the Borrowers in, to and under, and the benefits of (but not the obligations of), each Servicing Agreement and each Pooling and Servicing Agreement with respect to the Collateral. Notwithstanding the fact that the Borrowers have contracted with the Servicers or PSA Servicers to service the Collateral, the Borrowers shall remain liable to the Administrative Agent for the acts of the Servicers and PSA Servicers and for the performance of the duties and obligations set forth herein. The Borrowers agree that no Person shall assume the servicing obligations with respect to the Collateral as successor to a Servicer or PSA Servicer unless such successor is approved in writing by the Administrative Agent prior to such assumption of servicing obligations. The Administrative Agent hereby approves Arbor Commercial Mortgage LLC as a Servicer. Unless otherwise approved in writing by the Administrative Agent, if the Collateral is serviced by a Servicer or PSA Servicer, such servicing shall be performed pursuant to a written Servicing Agreement or Pooling and Servicing Agreement approved by the Administrative Agent.

Section 9.4 Duties of the Borrowers.

(a) Duties. The Borrowers shall take or cause to be taken all such actions as may be necessary or advisable to collect all Income and other amounts due or recoverable with respect to the Collateral from time to time, all in accordance with Requirements of Laws, with reasonable care and diligence, and in accordance with the standard set forth in Section 9.1(b).

(b) Administrative Agent's Rights. Notwithstanding anything to the contrary contained herein, the exercise by the Administrative Agent of its rights hereunder shall not release the Borrowers from any of its duties or responsibilities with respect to the Collateral. The Administrative Agent shall not have any obligation or liability with respect to any Collateral, nor shall any of them be obligated to perform any of the obligations of the Borrowers hereunder.

(c) Servicing Programs. In the event that the Borrowers or the Servicers use any software program in servicing the Collateral that is licensed from a third party, the Borrowers shall use their best reasonable efforts to obtain, either before the Restatement Date or as soon as possible thereafter, whatever licenses or approvals are necessary to allow the Administrative Agent to use such programs.

Section 9.5 Authorization of the Borrowers.

(a) The Administrative Agent hereby authorizes the Borrowers (including any successor thereto) to take any and all reasonable steps in its name and on its behalf necessary or desirable and not inconsistent with the pledge of the Collateral to the Administrative Agent to collect all amounts due under any and all Collateral, including, without limitation, endorsing any

checks and other instruments representing Income, executing and delivering any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Collateral and, after the delinquency of any Collateral and to the extent permitted under and in compliance with Requirements of Law, to commence proceedings with respect to enforcing payment thereof, to the same extent as the Borrowers could have done if it had continued to own such Collateral free of the Lien of the Administrative Agent. The Administrative Agent shall furnish the Borrowers (and any successors thereto) with any powers of attorney and other documents necessary or appropriate to enable the Borrowers to carry out their servicing and administrative duties hereunder and shall cooperate with the Borrowers to the fullest extent in order to ensure the collectability of the Collateral. In no event shall the Borrowers be entitled to make the Administrative Agent a party to any litigation without the Administrative Agent's express prior written consent.

(b) Subject to all other rights of the Administrative Agent contained herein, after an Event of Default has occurred and is continuing, at the direction of the Administrative Agent, the Borrowers shall take such action as the Administrative Agent may deem necessary or advisable to enforce collection of the Collateral; provided, however, subject to all other rights of the Administrative Agent contained herein, the Administrative Agent may, at any time that an Event of Default or Default has occurred and is continuing, notify any Obligor with respect to any Collateral of the assignment of such Collateral to the Administrative Agent and direct that payments of all amounts due or to become due be made directly to the Administrative Agent or any servicer, collection agent or lock–box or other account designated by the Administrative Agent and, upon such notification and at the expense of the Borrowers, the Administrative Agent may enforce collection of any such Collateral and adjust, settle or compromise the amount or payment thereof.

Section 9.6 Event of Default.

If the servicer of the Collateral is any Borrower, upon the occurrence of an Event of Default, the Administrative Agent shall have the right to terminate the Borrowers as the servicer of the Collateral and transfer servicing to its designee, at no cost or expense to the Administrative Agent, at any time thereafter. If the servicer of the Collateral is not any of the Borrowers, the Administrative Agent shall have the right, as contemplated in the applicable Servicer Redirection Notice, upon the occurrence of an Event of Default, to terminate any Servicer and any applicable Servicing Agreement and any PSA Servicer and any applicable Pooling and Servicing Agreement to the extent a PSA Servicer signed a Servicer Redirection Notice and, in each case, to transfer servicing to its designee, at no cost or expense to the Administrative Agent, it being agreed that the Borrowers will pay any and all fees required to terminate each such Servicer, PSA Servicer, Servicing Agreement and Pooling and Servicing Agreement and to effectuate the transfer of servicing to the designee of the Administrative Agent. The Borrowers shall cooperate fully and shall cause all Servicers and applicable PSA Servicers to cooperate fully with the Administrative Agent in transferring the servicing of the Collateral to the Administrative Agent's designee.

Section 9.7 Modification.

Unless otherwise agreed to by the Administrative Agent in its discretion until the Administrative Agent releases its Lien on any item of Collateral, neither the Borrowers, the Servicers, PSA Servicer (unless otherwise provided in a Pooling and Servicing Agreement) nor any other Person acting on behalf of the foregoing shall have any right without the Administrative Agent's prior written consent in its discretion to (i) waive, amend, modify or alter the material terms of any item or Collateral (including, without limitation, the related Mortgage Loan Documents), the Servicing Agreements or the Pooling and

Servicing Agreements or (ii) exercise any material rights of a holder of any item of Collateral under any document or agreement governing or relating to such Collateral.

Section 9.8 Inspection.

In the event the Borrowers or their Affiliates are servicing the Collateral, the Borrowers shall permit the Administrative Agent to inspect the Borrowers' and any of their Affiliates' servicing facilities, books and records and related documents and information, as the case may be, for the purpose of satisfying the Administrative Agent that that Borrowers or their Affiliates, as the case may be, have the ability to service and are servicing the Collateral as provided in this Agreement. If a Servicer or PSA Servicer is servicing any Collateral, the Borrowers shall cooperate with the Administrative Agent in causing each Servicer and PSA Servicer to permit inspections of the Servicer's and PSA Servicer's facilities, books and records and related documents and information relating to the Collateral.

Section 9.9 Servicing Compensation.

As compensation for their servicing activities hereunder and reimbursement for its expenses, the Borrowers shall be entitled to receive a servicing fee to the extent of funds available therefor in the aggregate amount of 25 basis points per annum calculated on the outstanding principal amount of the Loans (the "Servicing Fee"), which, prior to an Event of Default, may be netted from the Income prior to the same being deposited into the Collection Account.

Section 9.10 Payment of Certain Expenses by Servicer.

The Borrowers and any Servicer will be required to pay all expenses incurred by them in connection with their activities under this Agreement and the other Credit Documents, including fees and disbursements of independent accountants, Taxes imposed on the Borrowers or the Servicers, expenses incurred in connection with payments and reports pursuant to this Agreement and the other Credit Documents, and all other fees and expenses under this Agreement and the other Credit Documents for the account of the Borrowers. The Borrowers shall be required to pay all reasonable fees and expenses owing to any bank or trust company in connection with the maintenance of the Collection Account and all other collection, reserve or lock–box accounts related to the Collateral. The Borrowers shall be required to pay such expenses for their own account and shall not be entitled to any payment therefor other than the Servicing Fee.

Section 9.11 Pooling and Servicing Agreements.

Notwithstanding the provisions of this Article IX, to the extent the Collateral (or portions thereof) are serviced by a PSA Servicer (other than the Borrowers or any Servicer) under a Pooling and Servicing Agreement, (a) the standards for servicing such items of Collateral shall be those set forth in the applicable Pooling and Servicing Agreement, to the extent of the items covered therein, and otherwise as provided in this Agreement, (b) the Borrowers shall enforce its rights and interests under such agreements for and on behalf of the Administrative Agent, (c) the Borrowers shall instruct the applicable PSA Servicer to deposit all Income received in respect of the Collateral into the Collection Account in accordance with Section 5.17 of this Agreement, (d) the Borrowers shall not take any action or fail to take any action or consent to any action or inaction under any Pooling and Servicing Agreement where the effect of such action or inaction would prejudice or adversely affect the interests of the Administrative Agent, (e) the Administrative Agent shall be entitled to exercise any and all rights of the Borrowers or the holder of any such item of Collateral under such Pooling and Servicing Agreements as such rights relate to the Collateral, and (f) the Borrowers shall not consent to any amendment or modification to any

Pooling and Servicing Agreement without the prior written consent of the Administrative Agent in its discretion.

Section 9.12 Servicer Default.

Any material breach by the Borrowers, any of their Servicers or any of the PSA Servicers of the obligations contained in this Article IX or in Sections 2.9(a) and 5.17 shall constitute a "Servicer Default".

## ARTICLE X

## MISCELLANEOUS

Section 10.1 Amendments, Waivers and Release of Collateral.

Neither this Agreement nor any of the other Credit Documents, nor any terms hereof or thereof may be amended, modified, waived, extended, restated, replaced, or supplemented (by amendment, waiver, consent or otherwise) except in accordance with the provisions of this Section nor may Collateral be released except as specifically provided herein or in the Security Documents or in accordance with the provisions of this Section. The Required Lenders may or, with the written consent of the Required Lenders, the Administrative Agent may, from time to time, (a) enter into with the Borrowers written amendments, supplements or modifications hereto and to the other Credit Documents for the purpose of adding any provisions to this Agreement or the other Credit Documents or changing in any manner the rights of the Lenders or of the Borrowers hereunder or thereunder or (b) waive or consent to the departure from, on such terms and conditions as the Required Lenders may specify in such instrument, any of the requirements of this Agreement or the other Credit Documents or any Default or Event of Default and its consequences; provided, however, that no such amendment, supplement, modification, release, waiver or consent shall:

(i) reduce the amount or extend the scheduled date of maturity of any Loan or Note or any installment thereon (except in accordance with Section 2.1(g) or Section 2.2(e)), or reduce the stated rate of any interest or fee payable hereunder (except in connection with a waiver of interest at the increased post-default rate set forth in Section 2.6 which shall be determined by a vote of the Required Lenders) or extend the scheduled date of any payment thereof or increase the amount or extend the expiration date of any Lender's Commitment, in each case without the written consent of each Lender directly affected thereby; provided that, it is understood and agreed that (A) no waiver, reduction or deferral of a mandatory prepayment required pursuant to Section 2.5(b), nor any amendment of Section 2.5(b) or the definitions of Asset Value or Extraordinary Receipt, shall constitute a reduction of the amount of, or an extension of the scheduled date of, the scheduled date of maturity of, or any installment of, any Loan or Note, (B) any reduction in the stated rate of interest on Revolving Loans shall only require the written consent of each Lender holding a Revolving Commitment and (C) any reduction in the stated rate of interest on the Term Loan shall only require the written consent of each Lender holding a portion of the outstanding Term Loan; or

(ii) amend, modify or waive any provision of this Section or reduce the percentage specified in the definition of Required Lenders, without the written consent of all the Lenders; or

(iii) release any Borrower or all or substantially all of the Guarantors from obligations under the Guaranty, without the written consent of all of the Lenders; or

(iv) release all or substantially all of the Collateral without the written consent of all of the Lenders; or

(v) subordinate the Loans to any other Indebtedness without the written consent of all of the Lenders; or

(vi) permit any Borrower to assign or transfer any of its rights or obligations under this Agreement or other Credit Documents without the written consent of all of the Lenders; or

(vii) amend, modify or waive any provision of the Credit Documents requiring consent, approval or request of the Required Lenders or all Lenders without the written consent of the Required Lenders or all the Lenders as appropriate; or

(viii) without the consent of Revolving Lenders holding in the aggregate more than 50% of the outstanding Revolving Commitments (or if the Revolving Commitments have been terminated, the aggregate principal amount of outstanding Revolving Loans), amend, modify or waive any provision in Section 4.2 or waive any Default or Event of Default (or amend any Credit Document to effectively waive any Default or Event of Default) if the effect of such amendment, modification or waiver is that the Revolving Lenders shall be required to fund Revolving Loans when such Lenders would otherwise not be required to do so; or

(ix) amend, modify or waive the order in which Obligations are paid or in a manner that would alter the pro rata sharing of payments by and among the Lenders in Section 2.9 without the written consent of each Lender directly affected thereby; or

(x) amend, modify or waive any provision of Article VIII without the written consent of the then Administrative Agent; or

(xi) amend, modify or waive any provision in Sections 3.3 through 3.6 without the written consent of the Custodian; or

(xii) amend or modify the definition of Obligations to delete or exclude any obligation or liability described therein without the written consent of each Lender directly affected thereby;

provided, further, that no amendment, waiver or consent affecting the rights or duties of the Administrative Agent under any Credit Document shall in any event be effective, unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action. Unless otherwise expressly provided herein, waivers shall be effective only in the specific instance and for the specific purpose for which given.

Any such waiver, any such amendment, supplement or modification and any such release shall apply equally to each of the Lenders and shall be binding upon the Borrowers, the other Credit Parties, the Lenders, the Administrative Agent and all future holders of the Notes. In the case of any waiver, the Borrowers, the other Credit Parties, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the outstanding Loans and Notes and other Credit

Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

Notwithstanding any of the foregoing to the contrary, the consent of the Borrowers and the other Credit Parties shall not be required for any amendment, modification or waiver of the provisions of Article VIII (other than the provisions of Section 8.9).

Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (a) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersedes the unanimous consent provisions set forth herein and (b) the Required Lenders may consent to allow a Credit Party to use cash collateral in the context of a bankruptcy or insolvency proceeding.

For the avoidance of doubt and notwithstanding any provision to the contrary contained in this Section 10.1, this Agreement may be amended (or amended and restated) with the written consent of the Credit Parties and the Required Lenders (i) to increase the aggregate Commitments of the Lenders (provided that no Lender shall be required to increase its commitment without its consent), (ii) to add one or more additional borrowing Tranches to this Agreement and to provide for the ratable sharing of the benefits of this Agreement and the other Credit Documents with the other then outstanding Obligations in respect of the extensions of credit from time to time outstanding under such additional borrowing Tranche(s) and the accrued interest and fees in respect thereof and (iii) to include appropriately the lenders under such additional borrowing Tranches in any determination of the Required Lenders and/or to provide consent rights to such lenders under subsections (ix) and/or (x) of Section 10.1 corresponding to the consent rights of the other Lenders thereunder.

Section 10.2 Notices.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) If to the Borrowers or any other Credit Party:

c/o Arbor Commercial Mortgage LLC
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attention: Guy Milone, Esq.
Phone No.: (516) 832–7431
Facsimile No.: (516) 832–6431

With a copy to:

Arbor Commercial Mortgage LLC
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attention: John Natalone
Phone No.: (516) 832–7409

Facsimile No.: (516) 832-6409

(ii) If to the Administrative Agent:

Wachovia Bank, National Association
One Wachovia Center, NC0166
301 South College Street
Charlotte, North Carolina 28288
Attention: John Nelson
Phone No.: (704) 383–8238
Facsimile No.: (704) 715–0066

(iii) if to a Lender, to it at its address (or telecopier number) set forth in its Administrative Questionnaire.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, Etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

Section 10.3 No Waiver; Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies,

powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Requirements of Law.

Section 10.4 Survival of Representations and Warranties.

All representations and warranties made hereunder and in any document, certificate or statement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the Notes and the making of the Loans; provided that all such representations and warranties shall terminate on the date upon which the Commitments have been terminated and all Obligations owing under any Notes or the other Credit Documents have been paid in full.

Section 10.5 Payment of Expenses and Taxes; Indemnity.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent) in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Credit Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent or any Lender, (including the fees, charges and disbursements of any counsel for the Administrative Agent or any Lender) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Credit Documents, including its rights under this Section, or (B) in connection with the Loans made, including all such reasonable out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans, (iii) the Borrowers shall pay on demand any and all stamp, sales, excise and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, the Credit Documents or the other documents to be delivered hereunder or thereunder or the funding or maintenance of Loans hereunder and (iv) all reasonable due diligence, inspection, audit, testing, review, recording, travel, lodging or other administrative expenses and costs incurred by the Administrative Agent or any Lender in connection with the review, consideration, pledge or proposed pledge of any Mortgage Asset or other Collateral or proposed Collateral (including any costs necessary or incidental to the pledge of the Mortgage Assets or other Collateral or the making of any Loan in connection therewith). The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

(b) Indemnification by the Borrowers.

(i) The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, penalties, fines, damages, liabilities and related reasonable expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrowers or any other Credit Party (collectively, the "Indemnified Amounts") arising out of, in connection with, or as a result of (A) this Agreement, the Credit Documents, any Loan, any Collateral, the Mortgage Loan Documents, any transaction or Extension of Credit contemplated hereby or thereby, or any amendment, supplement, extension or modification of, or any waiver or consent under or in respect of this Agreement, the Credit Documents, any Loan, any Collateral,

the Mortgage Loan Documents or any transaction or Extension of Credit contemplated hereby or thereby, (B) any Mortgage Asset or any other Collateral under the Credit Documents, (C) any violation or alleged violation of, non–compliance with or liability under any Requirement of Law (including, without limitation, violation of Securities Laws and Environmental Laws), (D) ownership of, Liens on, security interests in or the exercise of rights and/or remedies under the Credit Documents, the Mortgage Loan Documents, the Collateral, any other collateral under the Credit Documents, the Underlying Mortgaged Property, any other related Property or collateral or any part thereof or any interest therein or receipt of any Income or rents, (E) any accident, injury to or death of any person or loss of or damage to Property occurring in, on or about any Underlying Mortgaged Property, any other related Property or collateral or any part thereof, the related Collateral or on the adjoining sidewalks, curbs, parking areas, streets or ways, (F) any use, nonuse or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, any Underlying Mortgaged Property, any other related Property or collateral or any part thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways, (G) any failure on the part of the Credit Parties to perform or comply with any of the terms of the Mortgage Loan Documents, the Credit Documents, the Collateral or any other collateral under the Credit Documents, (H) performance of any labor or services or the furnishing of any materials or other Property in respect of the Underlying Mortgaged Property, any other related Property or collateral, the Collateral or any part thereof, (I) any claim by brokers, finders or similar Persons claiming to be entitled to a commission in connection with any lease or other transaction involving any Underlying Mortgaged Property, any other related Property or collateral, the Collateral or any part thereof or the Credit Documents, (J) any Taxes including, without limitation, any Taxes attributable to the execution, delivery, filing or recording of any Credit Document, any Mortgage Loan Document or any memorandum of any of the foregoing, (K) any Lien or claim arising on or against the Underlying Mortgaged Property, any other related Property or collateral, the Collateral or any part thereof under any Requirement of Law or any liability asserted against the Administrative Agent or any Lender with respect thereto, (L) the claims of any lessee or any Person acting through or under any lessee or otherwise arising under or as a consequence of any leases with respect to any Underlying Mortgaged Property, related Property or collateral, or any claims of an Obligor, (M) any civil penalty or fine assessed by OFAC against, and all reasonable costs and expenses (including counsel fees and disbursements) incurred in connection with the defense thereof, by any Indemnitee as a result of conduct of any Credit Party that violates any sanction enforced by OFAC, (N) any and all Indemnified Amounts arising out of, attributable or relating to, accruing out of, or resulting from (1) a past, present or future violation or alleged violation of any Environmental Laws in connection with any Property or Underlying Mortgaged Property by any Person or other source, whether related or unrelated to any other Credit Party or any Obligor, (2) any presence of any Materials of Environmental Concern in, on, within, above, under, near, affecting or emanating from any Property or Underlying Mortgaged Property, (3) the failure to timely perform any Remedial Work, (4) any past, present or future activity by any Person or other source, whether related or unrelated to any Credit Party or any Obligor in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from any Property or Underlying Mortgaged Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting any Property or Underlying Mortgaged Property, (5) any past, present or future actual Release (whether intentional or unintentional, direct or indirect, foreseeable or

unforeseeable) to, from, on, within, in, under, near or affecting any Property or Underlying Mortgaged Property by any Person or other source, whether related or unrelated to any Credit Party or any Obligor, (6) the imposition, recording or filing or the threatened imposition, recording or filing of any Lien on any Property or Underlying Mortgaged Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any Environmental Law, or (7) any misrepresentation or inaccuracy in any representation or warranty in any material respect or material breach or failure to perform any covenants or other obligations pursuant to this Agreement, the other Credit Documents or any of the Mortgage Loan Documents or relating to environmental matters in any way including, without limitation, under any of the Mortgage Loan Documents or (O) any Credit Party's conduct, activities, actions and/or inactions in connection with, relating to or arising out of any of the foregoing clauses of this Section that, in each case, results from anything other than any Indemnitee's gross negligence or willful misconduct. In any suit, proceeding or action brought by an Indemnitee in connection with any Collateral or any other collateral under the Credit Documents for any sum owing thereunder, or to enforce any provisions of any Collateral or any other collateral under the Credit Documents, the Credit Parties shall save, indemnify and hold such Indemnitee harmless from and against all expense, loss or damage suffered by reason of any defense, set–off, counterclaim, recoupment or reduction of liability whatsoever of the account debtor, obligor or Obligor thereunder arising out of a breach by any Credit Party of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor, obligor or Obligor or its successors from any Credit Party. Each of the Credit Parties also agrees to reimburse an Indemnitee as and when billed by such Indemnitee for all such Indemnitee's costs, expenses and fees incurred in connection with the enforcement or the preservation of such Indemnitee's rights under this Agreement, the Credit Documents, the Mortgage Loan Documents and any transaction or Extension of Credit contemplated hereby or thereby, including, without limitation, the reasonable fees and disbursements of its counsel. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Credit Party and/or any of their officers, directors, shareholders, employees or creditors, an Indemnitee or any other Person or any Indemnitee is otherwise a party thereto and whether or not any transaction contemplated hereby is consummated.

(ii) Any amounts subject to the indemnification provisions of this Section shall be paid by the Credit Parties to the Indemnitee within five (5) Business Days following such Person's demand therefor. For the avoidance of doubt, an Indemnitee may seek payment of any Indemnified Amount at any time and regardless of whether a Default or an Event of Default then exists or is continuing.

(iii) If for any reason the indemnification provided in this Section is unavailable to the Indemnitee or is insufficient to hold an Indemnitee harmless, then the Credit Parties shall contribute to the amount paid or payable by such Indemnitee as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by such Indemnitee on the one hand and the Credit Parties on the other hand but also the relative fault of such Indemnitee as well as any other relevant equitable considerations.

(iv) The obligations of the Credit Parties under this Article X are joint and several and shall survive the termination of this Agreement.

(v) Indemnification under this Section shall be in an amount necessary to make the Indemnitee whole after taking into account any tax consequences to the Indemnitee of the receipt of the indemnity provided hereunder, including the effect of such tax or refund on the amount of tax measured by net income or profits that is or was payable by the Indemnitee.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), or such Related Party, as the case may be, such Lender's Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Requirements of Law, the Credit Parties shall not assert, and hereby waive, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby. The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 10.6 Successors and Assigns; Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrowers nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate principal amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $1,000,000, in the case of any assignment in respect of a revolving facility, or $1,000,000, in the case of any assignment in respect of a term facility (provided, however, that simultaneous assignments shall be aggregated in respect of a Lender and its Approved Funds) unless the Administrative Agent consents.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Tranches on a non-pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably conditioned, withheld or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to an Eligible Assignee; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) shall be required for assignments in respect of (i) a Revolving Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of such facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) a Term Loan Commitment to a Person who is not an Eligible Assignee.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 and the assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Credit Parties. No such assignment shall be made to any Credit Party or any of the Credit Parties' Affiliates or Subsidiaries of a Credit Party.

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.12 and 10.5 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at one of its offices in Charlotte, North Carolina a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. With the consent of the Administrative Agent, any Lender may at any time, without the consent of, or notice to, the Borrowers, sell participations to any Person (other than a natural person or the Credit Parties or any of the Credit Parties' Affiliates or Subsidiaries of a Credit Party) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the Lenders, shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that affects such Participant. Subject to paragraph (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.12 and 2.13 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by Requirements of Law, each Participant also shall be entitled to the benefits of

Section 10.7 as though it were a Lender, provided such Participant agrees to be subject to Section 2.9 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.12 and 2.14 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.14 unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 2.14 as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 10.7 Right of Set-off; Sharing of Payments.

(a) If an Event of Default shall have occurred and be continuing, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any other Credit Party against any and all of the obligations of the Borrowers or such Credit Party now or hereafter existing under this Agreement or any other Credit Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Credit Document and although such obligations of the Borrowers or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The foregoing right shall not apply to Excluded Accounts. The rights of each Lender and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its respective Affiliates may have. Each Lender agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate principal amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Credit Parties or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply).

(c) Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Requirements of Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

Section 10.8 Table of Contents and Section Headings.

The table of contents and the Section and subsection headings herein are intended for convenience only and shall be ignored in construing this Agreement.

Section 10.9 Counterparts; Integration; Effectiveness; Electronic Execution.

(a) Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Credit Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or email shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.10 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without

invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.11 Integration.

This Agreement and the other Credit Documents represent the agreement of the Borrowers, the other Credit Parties, the Administrative Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, the Borrowers, the other Credit Parties, or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or therein.

Section 10.12 Governing Law.

This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

Section 10.13 Consent to Jurisdiction; Service of Process and Venue.

(a) Consent to Jurisdiction. Each of the Borrowers and each other Credit Party irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Credit Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York sitting State court or, to the fullest extent permitted by Requirements of Law, in such Federal court. Each of the parties hereto 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 Requirements of Law. Nothing in this Agreement or in any other Credit Document shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document against the Borrowers or any other Credit Party or its properties in the courts of any jurisdiction.

(b) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10.2. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Requirements of Law.

(c) Venue. The Borrowers and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by Requirements of Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Credit Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Requirements of Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 10.14 Confidentiality.

Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by Requirements of Law or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder, under any other Credit Document or any action or proceeding relating to this Agreement, any other Credit Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement and/or the other Credit Documents, (g) (i) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Credit Parties and their obligations, (ii) an investor or prospective investor in securities issued by an Approved Fund that also agrees that Information shall be used solely for the purpose of evaluating an investment in such securities issued by the Approved Fund, (iii) a trustee, collateral manager, custodian, servicer, backup servicer, noteholder or secured party in connection with the administration, servicing and reporting on the assets serving as collateral for securities issued by an Approved Fund, or (iv) a nationally recognized rating agency that requires access to information regarding the Credit Parties, the Loans and Credit Documents in connection with ratings issued in respect of securities issued by an Approved Fund (in each case, it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (h) with the consent of the applicable Credit Parties or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Credit Parties.

For purposes of this Section, "Information" means all information received from the Credit Parties or any of their Subsidiaries relating to the Credit Parties or any of their Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Credit Parties or any of their Subsidiaries, provided that, in the case of information received from the Credit Parties or any of their Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 10.15 Acknowledgments.

The Borrowers and the other Credit Parties each hereby acknowledge that:

(a) it has been advised by counsel in the negotiation, execution and delivery of each Credit Document;

(b) neither the Administrative Agent nor any Lender has any fiduciary relationship with or duty to the Borrowers or any other Credit Party arising out of or in connection with this Agreement and the relationship between the Administrative Agent and the Lenders, on one hand, and the Borrowers and the other Credit Parties, on the other hand, in connection herewith is solely that of debtor and creditor; and

(c) no joint venture exists among the Lenders or among the Borrowers or the other Credit Parties, the Lenders and the Administrative Agent.

Section 10.16 Waivers of Jury Trial.

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY REQUIREMENTS OF LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 10.17 Patriot Act Notice.

Each Lender and the Administrative Agent (for itself and not on behalf of any other party) hereby notifies the Borrowers that, pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrowers and the other Credit Parties, which information includes the name and address of the Borrowers and the other Credit Parties and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers and the other Credit Parties in accordance with the Patriot Act.

Section 10.18 Resolution of Drafting Ambiguities.

Each Credit Party acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of this Agreement and the other Credit Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

Section 10.19 Continuing Agreement.

This Credit Agreement shall be a continuing agreement and shall remain in full force and effect until all Loans, interest, fees and other Obligations (other than those obligations that expressly survive the termination of this Credit Agreement) have been paid in full and all Commitments have been terminated. Upon termination, the Credit Parties shall have no further obligations (other than those obligations that expressly survive the termination of this Credit Agreement) under the Credit Documents and the

Administrative Agent shall, at the request and expense of the Borrowers, deliver all the Collateral in its possession to the Borrowers and release all Liens on the Collateral; provided that should any payment, in whole or in part, of the Obligations be rescinded or otherwise required to be restored or returned by the Administrative Agent or any Lender, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, then the Credit Documents shall automatically be reinstated and all Liens of the Administrative Agent shall reattach to the Collateral and all amounts required to be restored or returned and all costs and expenses incurred by the Administrative Agent or any Lender in connection therewith shall be deemed included as part of the Obligations.

Section 10.20 Lender Consent.

Each Person signing a Lender Consent (a) approves of this Agreement and the other Credit Documents, (b) authorizes and appoints the Administrative Agent as its agent in accordance with the terms of Article VIII, (c) authorizes the Administrative Agent to execute and deliver this Agreement on its behalf, and (d) is a Lender hereunder and therefore shall have all the rights and obligations of a Lender under this Agreement as if such Person had directly executed and delivered a signature page to this Agreement.

Section 10.21 Appointment of the Administrative Borrower.

Each of the Borrowers hereby appoint the Administrative Borrower to act as its agent for all purposes under this Agreement (including, without limitation, with respect to all matters related to the borrowing and repayment of Loans) and agree that (a) the Administrative Borrower may execute such documents on behalf of such Borrower as the Administrative Borrower deems appropriate in its sole discretion and each Borrower shall be obligated by all of the terms of any such document executed on its behalf, (b) any notice or communication delivered by the Administrative Agent or the Lender to the Administrative Borrower shall be deemed delivered to each Borrower and (c) the Administrative Agent or the Lenders may accept, and be permitted to rely on, any document, instrument or agreement executed by the Administrative Borrower on behalf of each Borrower.

Section 10.22 Counterclaims.

The Credit Parties each hereby knowingly, voluntarily and intentionally waives any right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Administrative Agent, the Lenders or any of the Affiliates or agents of the foregoing. The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 10.23 Legal Matters.

In the event of any conflict between the terms of this Agreement, any other Credit Document or any Confirmation with respect to any Collateral, the documents shall control in the following order of priority: first, the terms of the related Confirmation shall prevail, then the terms of this Agreement shall prevail, and then the terms of the other Credit Documents shall prevail.

Section 10.24 Recourse Against Certain Parties.

No recourse under or with respect to any obligation, covenant or agreement (including, without limitation, the payment of any fees or any other obligations) of the Administrative Agent, the Lenders, or the Credit Parties, as contained in this Agreement, the Credit Documents or any other agreement, instrument or document entered into by the Administrative Agent, the Lenders, the Credit Parties or any such party pursuant hereto or thereto or in connection herewith or therewith shall be had against any

administrator of the Administrative Agent, the Lenders, or the Credit Parties or any incorporator, Affiliate (direct or indirect), owner, member, partner, stockholder, officer, director, employee, agent or attorney of the Administrative Agent, the Lenders, or the Credit Parties or of any such administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that the agreements of the Administrative Agent, the Lenders or the Credit Parties contained in this Agreement, the Credit Documents and all of the other agreements, instruments and documents entered into by it pursuant hereto or thereto or in connection herewith or therewith are, in each case, solely the corporate obligations of the Administrative Agent, the Lenders or the Credit Parties and that no personal liability whatsoever shall attach to or be incurred by any administrator of the Administrative Agent, the Lenders or the Credit Parties or any incorporator, owner, member, partner, stockholder, Affiliate (direct or indirect), officer, director, employee, agent or attorney of the Administrative Agent, the Lenders or the Credit Parties or of any such administrator, as such, or any other of them, under or by reason of any of the obligations, covenants or agreements of the Administrative Agent, the Lenders or the Credit Parties contained in this Agreement, the Credit Documents or in any other such instruments, documents or agreements, or that are implied therefrom, and that any and all personal liability of every such administrator of the Administrative Agent, the Lenders or the Credit Parties and each incorporator, owner, member, partner, stockholder, Affiliate (direct or indirect), officer, director, employee, agent or attorney of the Administrative Agent, the Lenders, the Credit Parties or of any such administrator, or any of them, for breaches by the Administrative Agent, the Lenders, or the Credit Parties of any such obligations, covenants or agreements, which liability may arise either at common law or at equity, by statute or constitution, or otherwise, is hereby expressly waived as a condition of and in consideration for the execution of this Agreement. The provisions of this Section shall survive the termination of this Agreement and the payment in full of the Obligations.

Section 10.25 Protection of Right, Title and Interest in the Collateral; Further Action Evidencing Loans.

(a) The Credit Parties shall cause all financing statements and continuation statements and any other necessary documents covering the right, title and interest of the Administrative Agent to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by Requirements of Law fully to preserve and protect the right, title and interest of the Administrative Agent (on behalf of the Secured Parties) hereunder to all Property comprising the Collateral. The Credit Parties shall deliver to the Administrative Agent file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Credit Parties shall execute any and all documents reasonably required to fulfill the intent of this Section.

(b) The Credit Parties agree that from time to time, at their expense, they will promptly execute and deliver all instruments and documents, and take all actions, that the Administrative Agent or any Lender may reasonably request in order to perfect, protect or more fully evidence the Loans hereunder and the security interest granted in the Collateral, or to enable the Administrative Agent to exercise and enforce their rights and remedies hereunder or under any Credit Document.

(c) If the Credit Parties fail to perform any of their obligations hereunder, the Administrative Agent may (but shall not be required to) perform, or cause performance of, such obligation; and the Administrative Agent's costs and expenses incurred in connection therewith shall be payable by the Borrowers. The Credit Parties irrevocably appoint the Administrative Agent as their attorney-in-fact and authorize the Administrative Agent to act on behalf of the Credit Parties (i) to execute on behalf of the Credit Parties as debtor and to file financing

statements necessary or desirable in the Administrative Agent's discretion to perfect and to maintain the perfection and priority of the interest in the Collateral, and (ii) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Collateral as a financing statement in such offices as the Administrative Agent in its discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the interests in the Collateral. This appointment is coupled with an interest and is irrevocable.

(d) Without limiting the generality of the foregoing, the Credit Parties will not earlier than six (6) months and not later than three (3) months prior to the fifth anniversary of the date of filing of the financing statement referred to in Section 4.1(d) or any other financing statement filed pursuant to this Agreement, the Credit Documents or in connection with any Loan hereunder, unless this Agreement has terminated in accordance with the provisions hereof:

(i) execute and deliver and file or cause to be filed an appropriate continuation statement with respect to such financing statement; and

(ii) deliver or cause to be delivered to the Administrative Agent an Opinion of Counsel for the Credit Parties, confirming and updating the opinion delivered pursuant to Section 4.1(c) with respect to perfection and otherwise to the effect that the security interest hereunder continues to be an enforceable and perfected security interest, subject to no other Liens of record except as provided herein or otherwise permitted hereunder, which opinion may contain usual and customary assumptions, limitations and exceptions.

Section 10.26 Credit Parties' Waiver of Setoff.

Each Credit Party hereby waives any right of setoff it may have or to which it may be entitled under this Agreement, the other Credit Documents or otherwise from time to time against the Administrative Agent, any Lender, or any Property or assets, or any of the foregoing.

Section 10.27 Periodic Due Diligence Review.

Each Credit Party acknowledges that the Administrative Agent and each Lender has the right to perform continuing due diligence reviews with respect to the Collateral (including, but not limited to, appraisals of the Underlying Mortgaged Property) and the Credit Parties and Consolidated Subsidiaries of the foregoing for purposes of verifying compliance with the representations, warranties, covenants, agreements and specifications made hereunder, or otherwise, and each Credit Party agrees that upon reasonable (but no less than three (3) Business Day) prior notice, unless an Event of Default shall have occurred, in which case no notice is required, to the Credit Parties, as applicable, the Administrative Agent, the Lenders or their authorized representatives shall be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Collateral and any and all documents, records, agreements, instruments or information relating to such Collateral, the Credit Parties and the Consolidated Subsidiaries of the foregoing in the possession or under the control of any Credit Party. Each Credit Party also shall make available to the Administrative Agent a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Collateral, the Credit Parties and the Consolidated Subsidiaries of the foregoing. Each Credit Party shall also make available to the Administrative Agent and the Lenders any accountants or auditors of any Credit Party to answer any questions or provide any documents as the Administrative Agent or the Lenders may require. The Borrowers shall pay all reasonable out-of-pocket costs and expenses incurred by the Administrative Agent and/or the Lenders in connection with the Administrative Agent's and the Lenders' activities pursuant to this Section ("Due Diligence Costs"); provided however, that the Borrowers' obligations to pay for any appraisals of the Underlying Mortgaged Property shall be limited to the cost of two appraisals per Underlying Property in

any three year period. The Credit Parties acknowledge that the Administrative Agent has the right at any time to review all aspects of the Collateral and the Asset Value thereof, which review shall occur no less than quarterly and such reviews may result in mandatory prepayments under Section 2.5.

Section 10.28 Character of Loans for Income Tax Purposes.

The Lenders and the Borrowers shall treat all Loans hereunder as indebtedness of the Borrowers for United States federal income tax purposes.

Section 10.29 Joint and Several Liability; Full Recourse Obligations.

(a) At all times during which there is more than one (1) Borrower under this Agreement, each Borrower hereby acknowledges and agrees that (i) such Borrower shall be jointly and severally liable to the Administrative Agent and the Lenders to the maximum extent permitted by the Requirements of Law for all representations, warranties, covenants, duties and indemnities of the Borrowers, arising under this Agreement and the other Credit Documents, as applicable, and the Obligations, (ii) such Borrower has consented to the Administrative Borrower delivering all Notices of Borrowing on behalf of all Borrowers and any such Notice of Borrowing delivered by the Administrative Borrower on behalf of the Borrowers is binding upon and enforceable against each Borrower, (iii) the liability of each Borrower (A) shall be absolute and unconditional and shall remain in full force and effect (or be reinstated) until all the Obligations shall have been paid in full and the expiration of any applicable preference or similar period pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, or at law or in equity, without any claim having been made before the expiration of such period asserting an interest in all or any part of any payment(s) received by the Administrative Agent, and (B) until such payment has been made, shall not be discharged, affected, modified or impaired on the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Credit Parties or any other Person, (1) the waiver, compromise, settlement, release, termination or amendment (including, without limitation, any extension or postponement of the time for payment or performance or renewal or refinancing) of any or all of the obligations or agreements of any Credit Party under this Agreement or any Credit Document, (2) the failure to give notice to the Credit Parties of the occurrence of an Event of Default under any of the Credit Documents, (3) the release, substitution or exchange by the Administrative Agent of any or all of the Collateral (whether with or without consideration) or the acceptance by the Administrative Agent of any additional collateral or the availability or claimed availability of any other collateral or source of repayment or any nonperfection or other impairment of collateral, (4) the release of any Person primarily or secondarily liable for all or any part of the Obligations, whether by the Administrative Agent or in connection with any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or similar event or proceeding affecting any or all of the Credit Parties or any other Person who, or any of whose Property, shall at the time in question be obligated in respect of the Obligations or any part thereof, or (5) to the extent permitted by Requirements of Law, any other event, occurrence, action or circumstance that would, in the absence of this Section, result in the release or discharge of any or all of the Borrowers from the performance or observance of any obligation, covenant or agreement contained in this Agreement or the Credit Documents, (iv) the Administrative Agent shall not be required first to initiate any suit or to exhaust its remedies against the Credit Parties or any other Person to become liable, or against any of the Collateral, in order to enforce this Agreement or the Credit Documents and the Credit Parties expressly agree that, notwithstanding the occurrence of any of the foregoing, each Borrower shall be and remain directly and primarily liable for all sums due under this Agreement or any of the other Credit Documents, (v) when making any demand hereunder against any Borrower, the Administrative Agent or the Lenders may, but shall be under no obligation to, make a similar

demand on the other Borrowers, and any failure by the Administrative Agent or Lenders to make any such demand or to collect any payments from the other Borrowers, or any release of such other Borrowers, shall not relieve any Borrower in respect of which a demand or collection is not made or the Borrowers not so released of their obligations or liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of the Administrative Agent or the Lenders against the Borrowers and (vi) on disposition by the Administrative Agent of any Property encumbered by any Collateral, each Borrower shall be and shall remain jointly and severally liable for any deficiency.

(b) Each Borrower hereby agrees that, to the extent another Borrower shall have paid more than its proportionate share of any payment made hereunder, the Borrowers shall be entitled to seek and receive contribution from and against any other Borrowers which have not paid their proportionate share of such payment; provided however, that the provisions of this Section shall in no respect limit the obligations and liabilities of each Borrower to the Administrative Agent and the Lenders and, notwithstanding any payment or payments made by a Borrower (the "paying Borrower") hereunder or any set-off or application of funds of the paying Borrower by the Administrative Agent or the Lenders, the paying Borrower shall not be entitled to be subrogated to any of the rights of the Administrative Agent or the Lenders against any other Borrowers or any collateral security or guarantee or right of offset held by the Administrative Agent or the Lenders, nor shall the paying Borrower seek or be entitled to seek any contribution or reimbursement from the other Borrowers in respect of payments made by the paying Borrower hereunder, until all amounts owing to the Administrative Agent and the Lenders by the Borrowers under the Credit Documents and the Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) are paid in full. If any amount shall be paid to the paying Borrower on account of such subrogation rights at any time when all such amounts shall not have been paid in full, such amount shall be held by the paying Borrower in trust for the Administrative Agent, segregated from other funds of the paying Borrower, and shall, forthwith upon receipt by the paying Borrower, be turned over to the Administrative Agent in the exact form received by the paying Borrower (duly indorsed by the paying Borrower to the Administrative Agent, if required), to be applied against amounts owing to the Administrative Agent and the Lenders by the Borrowers under the Credit Documents and the Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) in such order as the Administrative Agent may determine in its discretion.

(c) The obligations of the Borrowers and the Guarantors under the Credit Documents are full recourse obligations to each Borrower and each Guarantor and the Borrowers and the Guarantors hereby forever waive, demise, acquit and discharge any and all defenses, and shall at no time assert or allege any defense, to the contrary.

Section 10.30 Amendment and Restatement.

This Agreement amends, restates and supersedes in its entirety the Existing Agreement. Notwithstanding the amendment and restatement of the Existing Agreement by this Agreement: (a) unless modified by the express terms of this Agreement, the other Credit Documents or the Confirmations delivered in connection with this Agreement, each Loan outstanding on the date hereof under the Existing Agreement shall continue in effect as a Loan hereunder, without any transfer, conveyance, diminution, forbearance, forgiveness or other modification thereto or effect thereon occurring or being deemed to occur by reason of the amendment and restatement of the Existing Agreement hereby and (b) the Existing Borrower shall continue to be liable to the Lenders for (i) all

"Obligations" (under and as defined in the Existing Agreement) accrued to the date hereof under the Existing Agreement and (ii) all agreements on the part of the Existing Borrower under the Existing Agreement to indemnify the Lenders or any Secured Party in connection with events or conditions arising or existing prior to the effective date of this Agreement, including, but not limited to, those events and conditions set forth in Section 10.5 thereof. This Agreement is given in substitution for the Existing Agreement and not as payment of any of the obligations of the Existing Borrower thereunder, and is in no way intended to constitute a novation of the Existing Agreement. Nothing contained herein is intended to amend, modify or otherwise affect any obligation of the Existing Borrower, the Guarantor or the Pledgor existing prior to the date hereof. Upon the effectiveness of this Agreement, each reference to the Existing Agreement in any other Credit Document, or document, instrument or agreement executed and/or delivered in connection therewith, shall mean and be a reference to this Agreement unless the context otherwise requires. Upon the effectiveness of this Agreement, the terms of this Agreement shall govern all aspects of the facility represented by the Existing Agreement, including, without limitation, the eligibility of Collateral financed under the Existing Agreement and any settlements to be made with respect thereto.

Section 10.31 Modification of Other Credit Documents.

The amendments and modifications to this Agreement shall amend and modify the other Credit Documents to the extent such other Credit Documents are not separately amended or modified on the Restatement Date. The Credit Parties agree that all other Credit Documents that are not separately amended or modified on the Restatement Date are binding and enforceable obligations and are in full force and effect, as modified and amended by this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by its proper and duly authorized officers as of the day and year first above written.

**BORROWERS:**

ARBOR REALTY FUNDING, LLC, a Delaware limited liability company

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ARSR TAHOE, LLC, a Delaware limited liability company

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ARBOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ART 450 LLC, a Delaware limited liability company

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ARBOR REALTY SR, INC., a Maryland corporation

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ARBOR ESH II LLC, a Delaware limited liability company

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

[Signatures Continued on the Following Page]

**GUARANTORS:**

ARBOR REALTY TRUST, INC,
a Maryland corporation

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ARBOR REALTY LIMITED PARTNERSHIP,
a Delaware limited partnership

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

ARBOR REALTY SR, INC.,
a Maryland corporation

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

[Signatures Continued on the Following Page]

**ADMINISTRATIVE AGENT:**

**WACHOVIA BANK, NATIONAL ASSOCIATION**, as Administrative Agent on behalf of the Secured Parties

By: /s/ John Nelson, Managing Director
Name: John Nelson
Title: Managing Director

[Signatures Continued on the Following Page]

**LENDER:**

**WACHOVIA BANK, NATIONAL ASSOCIATION**, as Lender

By: /s/ John Nelson, Managing Director
Name: John Nelson
Title: Managing Director

**U.S. $57,164,228.00**

**FIRST AMENDED AND RESTATED REVOLVING LOAN AGREEMENT**

by and among

**ARBOR REALTY TRUST, INC.**,
as a Borrower

**ARBOR REALTY GPOP, INC.**,
as a Borrower

**ARBOR REALTY LPOP, INC.**,
as a Borrower

**ARBOR REALTY LIMITED PARTNERSHIP**,
as a Borrower

**ARBOR REALTY SR, INC.**,
as a Borrower

**ARBOR REALTY COLLATERAL MANAGEMENT, LLC**,
as a Borrower

**EACH OTHER BORROWER THAT BECOMES A PARTY HERETO**,
each as a Borrower

**EACH OF THE GUARANTORS THAT BECOMES A PARTY HERETO**,
each as a Guarantor

**WACHOVIA BANK, NATIONAL ASSOCIATION**,
in its capacity as Initial Lender and in its capacity as Administrative Agent

and

**EACH OF THE OTHER LENDERS THAT BECOMES A PARTY HERETO**,
each as a Lender

Dated as of July 23, 2009

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**SCHEDULES**



**EXHIBITS**

**FIRST AMENDED AND RESTATED REVOLVING LOAN AGREEMENT**

**THIS FIRST AMENDED AND RESTATED REVOLVING LOAN AGREEMENT** (as amended, modified, waived, supplemented, extended, restated or replaced from time to time, this "Agreement") is made as of this 23rd day of July, 2009, by and among:

(1) **ARBOR REALTY TRUST, INC.**, a Maryland corporation, as a borrower (together with its successors and permitted assigns, "ART");

(2) **ARBOR REALTY GPOP, INC.**, a Delaware corporation, as a borrower (together with its successors and permitted assigns, "GPOP");

(3) **ARBOR REALTY LPOP, INC.**, a Delaware corporation, as a borrower (together with its successors and permitted assigns, "LPOP");

(4) **ARBOR REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership, as a borrower (together with its successors and permitted assigns, "ARLP");

(5) **ARBOR REALTY SR, INC.**, a Maryland corporation, as a borrower (together with its successors and permitted assigns, "ARSR");

(6) **ARBOR REALTY COLLATERAL MANAGEMENT, LLC**, a Delaware limited liability company, as a borrower (together with its successors and permitted assigns, "ARCM");

(7) **EACH OTHER BORROWER THAT BECOMES A PARTY HERETO**, each as a Borrower;

(8) **EACH OF THE GUARANTORS THAT BECOMES A PARTY HERETO**, each as a guarantor (in such capacity, together with its successors and permitted assigns, each a "Guarantor");

(9) **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association (together with its successors and assigns, "Wachovia"), in its capacity as initial lender (together with its successors and assigns in such capacity, the "Initial Lender"), and in its capacity as administrative agent (together with its successors and assigns in such capacity, the "Administrative Agent"); and

(10) **EACH OF THE LENDERS THAT BECOMES A PARTY HERETO**, each as a lender (together with their successors and assigns, each a "Lender" and collectively with the Initial Lender, the "Lenders").

**R E C I T A L S**

**WHEREAS**, the Borrowers, the Lender, the Administrative Agent and the Guarantors that become a party thereto are parties to that certain Revolving Loan Agreement, dated as of June 11, 2007, as amended by the First Amendment to the Revolving Loan Agreement, dated as of November 6, 2007, the Second Amendment to the Revolving Loan Agreement, dated as of June 9, 2008, the Third Amendment to the Revolving Loan Agreement, dated as of June 26, 2008, the Fourth Amendment to the Revolving Loan Agreement, dated as of July 9, 2008, the Fifth Amendment to the Revolving Loan Agreement, dated as of September 30, 2008, the Sixth Amendment to the Revolving Loan Agreement,

dated as of December 31, 2008, the Seventh Amendment to the Revolving Loan Agreement, dated as of December 31, 2008 and the Eighth Amendment to the Revolving Loan Agreement, dated as of June 8, 2009 (the "Original Agreement");

**WHEREAS**, the Borrowers, the Guarantors, the Lenders and the Administrative Agent desire to amend and restate the Original Agreement in several respects.

**NOW, THEREFORE**, based upon the foregoing Recitals, the mutual premises and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE I

## DEFINITIONS

**Section 1.1 Certain Defined Terms.**

(a) Certain capitalized terms used throughout this Agreement are defined above or in this Article I.

(b) As used in this Agreement and the schedules, exhibits and other attachments hereto, unless the context requires a different meaning, the following terms shall have the following meanings:

"40 Act": The Investment Company Act of 1940, as amended from time to time.

"450 Transaction": The Preferred Equity Interests of ART and/or one or more of its Consolidated Subsidiaries in AT 450 I LLC and AT 450 II LLC.

"Account Beneficiaries": The Lenders and the Borrowers (but, in the case of the Borrowers, solely to the extent any such Borrower shall have a right to receive amounts from the Collection Account in accordance with Subsection 2.7(b) hereof).

"Account Control Agreement": An amended and restated letter agreement, dated as of the Restatement Date, among the Borrowers, the Administrative Agent and Wachovia, substantially in the form of Exhibit XI attached hereto, regarding the Administrative Agent's control over the Collection Account and the CDO Management Fee Account.

"Accrual Period": With respect to the first Payment Date, the period from and including the applicable Borrowing Date to but excluding such first Payment Date, and, with respect to any subsequent Payment Date, the period from and including the previous Payment Date to but excluding such subsequent Payment Date.

"ACM": Arbor Commercial Mortgage, LLC, a New York limited liability company.

"Additional Amount": Defined in Subsection 2.12(a) of this Agreement.

"Additional Collateral": Eligible Assets that are from time to time pledged to the Administrative Agent, on behalf of the Lenders, as Collateral for the Loans and the other Obligations (in each case excluding any Retained Interests).

"Additional Term Loan Collateral" Has the meaning set forth in the Arbor Credit Agreement.

"Adjusted Eurodollar Rate": For any Eurodollar Period, a rate per annum equal to a fraction, expressed as a percentage and rounded upwards (if necessary) to the nearest 1/100 of 1%, (i) the numerator of which is equal to the Eurodollar Rate for such Eurodollar Period and (ii) the denominator of which is equal to 100% minus the Eurodollar Reserve Percentage for such Eurodollar Period.

"Adjusted Tangible Net Worth": Tangible Net Worth plus the aggregate principal amount outstanding under the Eligible Subordinated Debt plus deferred revenues relating to the 450 Transaction to the extent classified as a liability according to GAAP.

"Administrative Agent": Defined in the Preamble to this Agreement.

"Administrative Agent's Account": An account of the Administrative Agent disclosed to the Borrower from time to time.

"Advance Rate": The applicable advance rate set forth in Schedule 1-B to the Fee Letter or such other advance rate set forth in the related Confirmation, provided that any advance rate set forth in the Confirmation shall control over any applicable advance rate set forth in the Fee Letter.

"Affected Party": The Administrative Agent, each Lender, each Indemnified Party and the transferees, pledgees, participants, successors and assigns of each of the foregoing, as applicable.

"Affiliate": With respect to a Person, means any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person, or is a director of such Person. For purposes of this definition, "control" (including the terms "controlling", "controlled by" and "under common control with") when used with respect to any specified Person means the possession, direct or indirect, of the power to vote 20% or more of the voting securities of such Person or to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Aggregate Outstanding Principal": As of any day, the aggregate principal amount then outstanding under the Revolving Notes.

"Aggregate Unpaids": At any time, an amount equal to the sum of the Aggregate Outstanding Principal, the aggregate unpaid and accrued Interest, Breakage Costs, Due Diligence Costs, Increased Costs, Other Costs, Taxes, Additional Amounts, Late Payment Fees, Upfront Fee, Unused Fees, Extension Fees and all other fees and other amounts owed by the Borrowers or the Guarantors to the Administrative Agent, the Lenders or the Affected Parties under this Agreement, the Loan Documents and any other document or agreement delivered in connection with the transactions contemplated by this Agreement or the other Loan Documents and all interest and/or fees that accrue after the commencement by or against any Borrower, any Guarantor or any Affiliate of the foregoing of any proceeding under any Insolvency Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding (whether due or accrued).

"Agreement": Defined in the Preamble.

"Alpine Asset": Defined in the Arbor Credit Agreement.

"Alpine ESH Release Amount": Defined in the Arbor Credit Agreement.

"Anti-Terrorism Laws": Any Applicable Law relating to money laundering or terrorism, including, but not limited to, Executive Order 13224, the OFAC Regulations and the USA Patriot Act.

"Applicable Law": For any Person or Property of such Person, all existing and future applicable laws, rules, regulations (including temporary and final income tax regulations), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by any Governmental Authority (including, without limitation, usury laws, the Federal Truth in Lending Act, and Regulation Z and Regulation B of the Board of Governors of the Federal Reserve System), applicable judgments, decrees, injunctions, writs, awards or orders of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction and, as applicable, all Authority Documents applicable to such Person.

"Approved Fund": With respect to any Lender that is a fund that invests in bank loans, any other fund that invests in bank loans and is managed by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Arbor Credit Agreement": That certain First Amended and Restated Credit Agreement, dated as of July 23, 2009, among Arbor Realty Funding, LLC, a Delaware limited liability company, as a borrower, ARSR Tahoe, LLC, a Delaware limited liability company, as a borrower, Arbor ESH II LLC, a Delaware limited liability company, as a borrower, ARLP, as a borrower and a guarantor, ART 450 LLC, a Delaware limited liability company, as a borrower, ART, as a guarantor, ARSR, as a borrower and a guarantor, the lenders from time to time party thereto and Wachovia, as administrative agent, as such agreement is amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Arbor Credit Documents": Has the meaning given to the term "Credit Documents" in the Arbor Credit Agreement.

"Arbor Credit Facility": That certain facility evidenced by the Arbor Credit Agreement and the other Arbor Credit Documents, as such agreements are amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Arbor Credit Facility Fee Letter": Has the meaning given to the term "Fee Letter" in the Arbor Credit Agreement, as such agreement is amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Arbor Entity": Each of the Borrowers and any Affiliate or Subsidiary of the Borrowers.

"ARCM": Defined in the Preamble to this Agreement.

"ARLP": Defined in the Preamble to this Agreement.

"ARSR": Defined in the Preamble to this Agreement.

"ART": Defined in the Preamble to this Agreement.

"Asset Valuation Period": Has the meaning set forth in the Arbor Credit Facility Fee Letter.

"Asset Value": As of any date of determination for any Mortgage Asset included or to be included as a part of the Additional Collateral, the lesser of (a) the product of the Advance Rate times the Book Value

of the such Mortgage Asset, as determined by the Administrative Agent in its discretion and (b) the product of the Advance Rate times the Market Value of such Mortgage Asset, as determined by the Administrative Agent in its discretion; provided, however, the Asset Value of any Mortgage Asset shall not at any time exceed a last Dollar LTV of 85%, as determined by the Administrative Agent in its discretion; provided, further, however, the Asset Value of any Mortgage Asset may be reduced in the Administrative Agent's discretion for any reason by an amount determined by the Administrative Agent in its discretion (which amount may, in the Administrative Agent's discretion, be reduced to zero) with respect to any Mortgage Asset, including, without limitation, (i) with respect to which the Administrative Agent does not have a perfected, first priority security interest in such Mortgage Asset and the related Collateral at any time and for any reason, (ii) in respect of which there is a breach of a representation or warranty set forth in Article III of the Arbor Credit Agreement (to the extent such representation or warranty relates to Mortgage Assets or the Administrative Agent's rights or remedies with respect thereto), Schedule 1.1(c) to the Arbor Credit Agreement or the Mortgage Loan Documents (in each case, assuming each representation and warranty is made as of the date the Asset Value is determined) without regard to (A) knowledge or lack of knowledge of a breach, (B) any qualifications (if any) to such representations and warranties based on knowledge (regardless of how such knowledge is qualified or phrased) and (C) representations or warranties with respect to knowledge or lack of knowledge thereof, (iii) in respect of which any statement, affirmation or certification made or information, document, agreement, report or notice provided by any Borrower or the Guarantor to the Administrative Agent with respect to the related Mortgage Asset is untrue in any material respect, (iv) in respect of which the complete Mortgage Asset File has not been delivered to the Custodian within the time periods required by the Custodial Agreement, the Custodial Agreement for the Arbor Credit Facility, (v) except as approved by the Administrative Agent in writing, that is not or is no longer in any respect an Eligible Asset, (vi) with respect to which any Retained Interest, funding commitment, funding obligation or any other obligation of any kind shall have been transferred to the Administrative Agent, (vii) for which a Mortgage Loan Document or Mortgage Asset File (y) has been released from the possession of the Custodian under the Custodial Agreement to a Borrower or its designee and the same has not been returned to the Custodian for a period in excess of twenty (20) calendar days or (z) is the subject of Section 4.3 of the Custodial Agreement, (viii) any portion of which (including any interest that is senior or *pari passu* to the Mortgage Asset) has been downgraded by any Rating Agency, (ix) with respect to which there has occurred any Insolvency Proceeding with respect to any Obligor or any co-participant or any Person having an interest in the Mortgage Asset or any related Underlying Mortgaged Property which is *pari passu* with, in right of payment or priority, the rights of the Administrative Agent in such Mortgage Asset, (x) in respect of which any Borrower fails to comply with any covenant, duty, obligation or agreement set forth in the Arbor Credit Documents as it relates to such Mortgage Asset or the Administrative Agent's rights or remedies with respect thereto, (xi) to the extent described in Subsection 2.5(c) to the Arbor Credit Agreement, (xii) with respect to which any Preferred Equity Grantor or Equity Asset Grantor (or the Borrowers on its behalf) fails to satisfy the requirements of Section 5.25 to the Arbor Credit Agreement, (xiii) with respect to which any Borrower fails to deliver any reports, documents or other information regarding any Mortgage Asset or Underlying Mortgaged Property and such failure affects, impairs or interferes with the Administrative Agent's rights or remedies with respect to or the ability to determine the Asset Value of any Mortgage Asset and/or (xiv) with respect to any Mortgage Asset (including the Underlying Mortgaged Property with respect thereto), the Underlying Mortgaged Property has deteriorated materially in value or the Underlying Mortgaged Property and/or any applicable asset or development plan are not performing as expected (whether related to construction progress, re-leasing, zoning, reserve balances, servicing and any other similar situations), including, without limitation, (A) the lease-up plan or lot or condo sales differ from the original asset business plan, (B) the debt service reserve runs out with no replenishment feature or guaranty of interest, (C) any construction timeline greater than six (6) months is off the initial schedule, (D) cost overruns are greater than 15% to 20% or (E) required principal pay downs are not met.

"Authority Documents": As to any Person, the articles or certificate of incorporation or formation, by-laws, limited liability company agreement, general partnership agreement, limited partnership agreement, trust agreement, joint venture agreement or other applicable organizational or governing documents and the applicable resolutions of such Person.

"Availability": At any time, an amount equal to the positive excess (if any) of (i) the least of (a) the Maximum Amount, (b) four (4) times the Collateral Cash Flow for the immediately preceding calendar quarter plus the Asset Value of all Additional Collateral, (c) four (4) times the Projected Collateral Cash Flow for the immediately following calendar quarter plus the Asset Value of all Additional Collateral, and (d) one (1) times the Projected Collateral Cash Flow for the next four (4) quarters plus the Asset Value of all Additional Collateral, minus (ii) the Aggregate Outstanding Principal for all Loans on such day; provided, however, for so long as and to the extent that either (i) the Administrative Agent does not have a first priority perfected security interest in any item of Collateral or (ii) any Required Payment is not subject to an Irrevocable Instruction that is in full force and effect, then such Collateral or Required Payment shall be disregarded for the purposes of calculating Availability; provided, further, however, on and after the occurrence of the Facility Maturity Date or an Event of Default, the Availability shall be zero (0).

"Availability Correction Deadline": Defined in Subsection 2.2(a)(i) of this Agreement.

"Bankruptcy Code": The United States Bankruptcy Reform Act of 1978 (11 U.S.C. § 101, *et seq*.), as amended from time to time.

"Base Rate": On any date, a fluctuating rate per annum equal to the lower of (a) the Prime Rate or (b) the Federal Funds Rate plus 0.5%.

"Benefit Plan": Any employee benefit plan as defined in Section 3(3) of ERISA in respect of which any Borrower, any Guarantor or any ERISA Affiliate of any Borrower or any Guarantor is, or at any time during the immediately preceding six (6) years was, an "employer" as defined in Section 3(5) of ERISA.

"Benefited Lender": Defined in Section 13.21 of this Agreement.

"Book Value": With respect to any Mortgage Asset at any time, an amount equal to the lesser of (a) face or par value and (b) the price that the applicable Borrower initially paid or advanced for or in respect of such Mortgage Asset, as such Book Value may be marked down by the Borrowers from time to time, including, as applicable, any loss/loss reserve/price adjustments, less an amount equal to the sum of all principal payments or paydowns paid and realized losses recognized relating to such Mortgage Asset.

"Borrower-Related Obligations": Any obligations, liabilities and/or indebtedness of the Borrowers and/or the Guarantors under the Loan Documents and under any other arrangement between any Borrower, any Guarantor or any Consolidated Subsidiary of any Borrower or any Guarantor (including, without limitation, Arbor Realty Funding LLC) on the one hand and the Administrative Agent, the Initial Lender, an Affiliate of the Administrative Agent or the Initial Lender or any commercial paper conduit for which the Administrative Agent, the Initial Lender or an Affiliate of the Administrative Agent or Initial Lender acts as a liquidity provider on the other hand, including, without limitation, such obligations, liabilities and/or indebtedness under the Wachovia Indebtedness.

"Borrowers": Individually or collectively, as the context requires, ART, GPOP, LPOP, ARCM, ARLP, ARSR and each other Arbor Entity that becomes a borrower hereunder by execution of a joinder agreement in form and substance satisfactory to the Administrative Agent. Each Borrower is jointly and severally liable as a Borrower under this Agreement and other Loan Documents.

"Borrowing Date": In respect of any Loan, the date on which such Loan is made under this Agreement.

"Breakage Costs": Defined in Subsection 2.5(b) of this Agreement.

"Business Day": Any day other than a Saturday or a Sunday on which (a) banks are not required or authorized to be closed in Minneapolis, Minnesota, New York, New York, Charlotte, North Carolina or any other state in which the Administrative Agent or a Lender is located, and (b) if the term "Business Day" is used in connection with the determination of the Eurodollar Rate, dealings in United States dollar deposits are carried on in the London interbank market.

"Capital Lease Obligations": For any Person and its Consolidated Subsidiaries, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Cash Equivalents": Any of the following: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one (1) year from the date of acquisition, (ii) time deposits or certificates of deposit of any commercial bank incorporated under the laws of the United States or any state thereof, of recognized standing having capital and unimpaired surplus in excess of $1,000,000,000 and whose short-term commercial paper rating at the time of acquisition is at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's (any such bank, an "Approved Bank"), with such deposits or certificates having maturities of not more than one (1) year from the date of acquisition, (iii) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (i) and (ii) above entered into with any Approved Bank, (iv) commercial paper or finance company paper issued by any Person incorporated under the laws of the United States or any state thereof and rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's, and in each case maturing not more than one (1) year after the date of acquisition, and (v) investments in money market funds that are registered under the 40 Act, which have net assets of at least $1,000,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (i) through (iv) above. All such Cash Equivalents must be denominated solely for payment in Dollars.

"CDO Collateral Manager Distributions": All dividends, distributions and other amounts payable to ARSR as the holder of 100% of the Equity Interests in ARCM.

"CDO Equity Distributions": All dividends, distributions and other amounts payable to ARSR as holder of 100% of the Equity Interests in each Pledged CDO Subsidiary.

"CDO Issuance": Any securitization transaction involving the issuance of collateralized debt obligations.

"CDO Issuer": The issuer of securities in a CDO Issuance.

"CDO Management Fee Account": Defined in Subsection 2.7(a).

"CDO Management Fees": Any and all fees and other amounts paid or to be paid to ARCM as Collateral Manager under each Collateral Management Agreement.

"CDO Payment Trigger": Any calendar quarter in which ART satisfies the CDO Payment Liquidity Threshold as of the last day of such quarter; provided, however, if (a) ART does not satisfy the CDO Payment Liquidity Threshold for a calendar quarter but would have met the CDO Payment Liquidity Threshold but for the fact that a Credit Party or an Affiliate of a Credit Party repurchased debt securities during such calendar quarter and (b) ART does not satisfy the CDO Payment Liquidity Threshold for the next calendar quarter but would have met the CDO Payment Liquidity Threshold but for the fact that a Credit Party or an Affiliate of a Credit Party repurchased debt securities during the immediately preceding calendar quarter and the current calendar quarter, then ART will be deemed to have satisfied the CDO Payment Liquidity Threshold for such second calendar quarter.

"CDO Payment Liquidity Threshold": For any calendar quarter, ART has Liquidity in an amount greater than or equal to TWENTY SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS ($27,500,000).

"CDO Subsidiary": Each of ARMS 2006-1 Equity Holdings LLC, ARMS 2005-1 Equity Holdings LLC, ARMS 2004-1 Equity Holdings LLC and, after the Restatement Date, any other Subsidiary of ARSR that holds Equity Interests in a CDO Issuer in connection with a CDO Issuance and is otherwise approved by the Administrative Agent in its discretion, provided that each such CDO Subsidiary is or will be a Subsidiary of ARSR that holds Equity Interests in a CDO Issuer in connection with a CDO Issuance and has a right to receive dividends, distributions and payments on or with respect to such Equity Interests or from any notes, bonds or certificates or other Property or assets owned or held by such CDO Subsidiary.

"Change of Control": With respect to any Borrower or Guarantor, a change of control shall be deemed to have occurred upon the occurrence of any of the following: (a) a Person or two or more Persons acting in concert shall have acquired "beneficial ownership", directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of, or control over, Voting Interests of such Borrower or such Guarantor (or other securities convertible into such Voting Interests) representing more than 50% of the combined voting power of all Voting Interests of any Borrower or any Guarantor, (b) Continuing Directors shall cease for any reason to constitute a majority of the members of the board of directors of any Borrower or any Guarantor then in office, (c) the sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the assets of any Borrower (together with its Subsidiaries), or any Guarantor (together with its Subsidiaries) taken as a whole to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) or (d) the adoption by the equity holders of any Borrower or any Guarantor of a plan or proposal for the liquidation or dissolution of any Borrower or any Guarantor. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 and 13d-5 of the Exchange Act. Notwithstanding the foregoing, neither the Administrative Agent nor any Lender shall be deemed to approve or have approved any internalization of management as a result of this definition or any other provision.

"Closing Certificate": A Closing Certificate, substantially in the form attached hereto as Exhibit IV, including all attachments and exhibits thereto.

"Closing Date": June 11, 2007.

"Code": The Internal Revenue Code of 1986, as amended from time to time.

"Collateral": Defined in Subsection 8.1(a) of this Agreement.

"Collateral Cash Flow": The aggregate Income from all CDO Management Fees and CDO Equity Distributions deposited into the Collection Account or CDO Management Fee Account, as applicable.

"Collateral Management Agreements": Any and all existing and future agreements entered into by ARCM, in its capacity as Collateral Manager, for the management of all or any portion of the collateral in a CDO Issuance involving any Borrower, Guarantor or any Consolidated Subsidiary of the Borrower or Guarantor.

"Collateral Manager": Any Person that manages all or a portion of the collateral for a CDO Issuance, in its capacity as collateral manager (or any equivalent term).

"Collection Account": Defined in Subsection 2.7(a) of this Agreement.

"Commitment Fee": Defined in the Fee Letter.

"Commitment Period": The period from and including the Closing Date to but excluding June 9, 2009. For the avoidance of doubt, as of the Restatement Date, the Commitment Period has expired and no further borrowings shall be permitted hereunder.

"Commitment Transfer Supplement": A Commitment Transfer Supplement, substantially in the form of Exhibit IX.

"Commonly Controlled Entity": An entity, whether or not incorporated, that is under common control with any Borrower or any Guarantor within the meaning of Section 4001 of ERISA or is part of a group which includes any Borrower or any Guarantor and that is treated as a single employer under Section 414 of the Code.

"Compliance Certificate": A Compliance Certificate, substantially in the form of Exhibit V, demonstrating as of the date thereof compliance by ART with the Financial Covenants and such other matters as are required to be set forth therein, in each case for the periods specified therein.

"Confirmation": An executed confirmation with respect to each pledge of Additional Collateral, substantially in the form of Exhibit III attached hereto.

"Consolidated Subsidiaries": As of any date and any Person, any Subsidiaries or other entities that are consolidated with such Person in accordance with GAAP.

"Contingent Liabilities": Means, with respect to any Person and its Consolidated Subsidiaries (without duplication): (i) liabilities and obligations (including any Guarantee Obligations) of such Person or any Consolidated Subsidiary of such Person in respect of "off-balance sheet arrangements" (as defined in the SEC Off-Balance Sheet Rules), (ii) any obligation, including, without limitation, any Guarantee Obligation, whether or not required to be disclosed in the footnotes to such Person's financial statements, guaranteeing partially or in whole any Non-Recourse Indebtedness, lease, dividend or other obligation, exclusive of (A) contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets) and (B) guarantees of non-monetary obligations (other than guarantees of completion, environmental indemnities and guarantees of customary carve-out matters made in connection with Non-Recourse Indebtedness, such as (but not limited to) fraud, misappropriation, bankruptcy and misapplication) which have not yet been called on or quantified, of such Person or of any other Person, and (iii) any forward commitment or obligation to fund or provide proceeds with respect to any loan or other financing which is obligatory and non-discretionary on the part of the lender. The amount of any Contingent Liabilities described in clause (ii) shall be deemed to be, (a) with respect to a guarantee of interest or interest and principal, or operating income guarantee, the sum of all payments required to be made thereunder (which, in the case of an operating income guarantee,

shall be deemed to be equal to the debt service for the note secured thereby), through, (x) in the case of an interest or interest and principal guarantee, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (y) in the case of an operating income guarantee, the date through which such guarantee will remain in effect, and (b) with respect to all guarantees not covered by the preceding clause (a), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of such Person. As used in this definition, the term "SEC Off-Balance Sheet Rules" means the Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations, Securities Act Release No. 33-8182, 34-47264; FR-67 International Series Release No. 1266 File No. S7-42-02, 68 Fed. Reg. 5982 (Feb. 5, 2003) (codified at 17 CFR pts. 228, 229 and 249).

"Continuing Director": Means (i) an individual who is a member of any Person's board of directors (or the equivalent thereof) on the date hereof or (ii) any new director (or the equivalent thereof) whose appointment was approved by a majority of the individuals who were already Continuing Directors at the time of such appointment, election or approval.

"Contractual Obligation": With respect to any Person, any provision of any securities issued by such Person or any indenture, mortgage, deed of trust, contract, undertaking, agreement, instrument or other document to which such Person is a party or by which it or any of its Property is bound or is subject.

"Correction Amount": Defined in Subsection 2.2(a)(i) of this Agreement.

"Credit Party": Any of the Borrowers, the Guarantors or the Pledgor.

"Credit Risk Security": Has the meaning given to such term in the related CDO Issuance.

"Custodial Agreement": The First Amended and Restated Custodial Agreement, dated as of the Restatement Date, by and among the Borrowers, the Administrative Agent and the Custodian, as the same shall be amended, modified, waived, supplemented, extended, replaced or restated from time to time.

"Custodial Fee Letter": The Custodial Fee Letter between the Borrowers and the Custodian, as such letter may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Custodian": Wells Fargo Bank, National Association, and its successor in interest as the custodian under the Custodial Agreement, and any successor Custodian under the Custodial Agreement.

"Debt Issuance": Means the issuance of any indebtedness for borrowed money by any Borrower or any Consolidated Subsidiary of ART, including, without limitation, (i) Preferred Securities to the extent such Preferred Securities constitute Indebtedness and (ii) any such issuance in accordance with Applicable Law relating to Taxes; provided, however, "Debt Issuance" shall not include any CDO Issuance, the Arbor Credit Facility or any indebtedness under any repurchase facility or any warehouse facility.

"Default": Any event that, with the giving of notice or the lapse of time, or both, would become an Event of Default.

"Defaulted Mortgage Asset": Any Mortgage Asset (a) that is ninety (90) days or more delinquent, (b) for which there is a breach of any of the representations and warranties set forth on Schedule 1.1(c) to the Arbor Credit Facility (or, if not set forth therein, the related Confirmation), or (c) for which there is a

non-monetary default (beyond any applicable notice and cure period) under the related Mortgage Loan Documents, including, without limitation, any Preferred Equity Interest that has not been paid current during such period.

"Defaulted Security": Has the meaning given to such term in the related CDO Issuance.

"Delinquent Mortgage Asset": A Mortgage Asset that is thirty (30) or more days, but less than ninety (90) days, delinquent under the related Mortgage Loan Documents, including, without limitation, any Preferred Equity Interest that has not been paid current during such period.

"Derivatives Contract": Any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement. Not in limitation of the foregoing, the term "Derivatives Contract" includes any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement, including any such obligations or liabilities under any such master agreement.

"Derivatives Termination Value": Means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Derivatives Contracts, (a) for any date on or after the date such Derivatives Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Derivatives Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Derivatives Contracts (which may include the Administrative Agent).

"Dollars" and "$": Lawful money of the United States of America.

"Due Diligence Costs": Defined in Section 13.19 of this Agreement.

"Due Diligence Review": The performance by the Administrative Agent or any of the Lenders of any or all of the reviews permitted under Section 13.19 with respect to any or all of the Collateral, the Borrowers or the Guarantors, as desired by the Administrative Agent from time to time.

"Eligible Asset": Any loan that satisfies the definition of Mortgage Asset (as defined in the Arbor Credit Facility) (i) that is not a Defaulted Mortgage Asset, (ii) that is not a Delinquent Mortgage Asset, (iii) with respect to which the funding obligations thereunder have been satisfied in full and there is no unfunded commitment outstanding, (iv) that is owned by ARSR or any other Borrower and (v) that has been approved in advance by the Administrative Agent in its discretion for inclusion as Additional Collateral.

"Eligible Subordinated Debt": Means (a) the debt securities of ARSR issued under (i) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, and The Bank of New York Mellon Trust Company, National Association ("BONY"), as trustee, pursuant to which ARSR issued $29,400,000 in original aggregate principal amount of Junior Subordinated Notes, (ii) the Junior

Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, and BONY, as trustee, pursuant to which ARSR issued $168,000,000 in original aggregate principal amount of Junior Subordinated Notes, (iii) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, pursuant to which ARSR issued $21,224,000 in original aggregate principal amount of Junior Subordinated Notes, (iv) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, pursuant to which ARSR issued $2,632,000 in original aggregate principal amount of Junior Subordinated Notes, (v) the Junior Subordinated Indenture, dated as of May 6, 2009, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, pursuant to which ARSR issued $47,180,000 in original aggregate principal amount of Junior Subordinated Notes, (vi) Junior Subordinated Indenture, dated April 6, 2005 (as amended), between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee, and (vii) Junior Subordinated Indenture, dated June 2, 2006, between ARSR, as issuer, ART, as guarantor, and Wilmington Trust Company, as trustee (the indentures described in (vi) and (vii), collectively, the "Original Kodiak Indentures"), (b) any future debt securities of ARSR issued in exchange for the securities held under the Original Kodiak Indentures that (i) have express subordination provisions substantially the same as those contained in the indentures for the transactions listed in clause (a) of this definition of Eligible Subordinated Debt, (ii) has enforceable subordination provisions, (iii) has a maturity date no earlier than the date that is six (6) months following the Facility Maturity Date, (iv) the Administrative Agent is in receipt of an Opinion of Counsel acceptable to the Administrative Agent in its discretion addressing the enforceability of the subordination provisions contained in the documents governing the proposed Eligible Subordinated Debt, and (c) any future debt securities of ART and its Consolidated Subsidiaries that (i) has express subordination provisions substantially the same as those contained in the indentures for the transactions listed in clause (i) of this definition of Eligible Subordinated Debt, (ii) has enforceable subordination provisions, (iii) has a maturity date no earlier than the date that is six (6) months following the Facility Maturity Date, (iv) the Administrative Agent is in receipt of an Opinion of Counsel acceptable to the Administrative Agent in its discretion addressing the enforceability of the subordination provisions contained in the documents governing the proposed Eligible Subordinated Debt and (v) has been specifically approved in writing by the Administrative Agent in its discretion.

"Encumbrance": Any Lien or any rights, options, warrants, conversion rights or similar agreements or understandings.

"Environmental Laws": Any and all Applicable Laws and all other foreign, federal, state and local laws, statutes, ordinances, rules, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities, relating to the protection of human health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of hazardous materials. Environmental Laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §9601 et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §6901 et seq., the Hazardous Material Transportation Act, as amended, 49 U.S.C. § 1501 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. §1251 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. §2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §1101 et seq., the Clean Air Act of 1966, as amended, 42 U. S. C. §7401 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. §4321, the River and Harbor Act of 1899, 33 U.S.C. §401 et seq., the Endangered Species Act of 1973, as amended, 16 U.S.C. §1531 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §651 et seq., the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §201 et seq., and the Environmental Protection Agency's regulations relating to underground storage

tanks, 40 C.F.R. Parts 280 and 281, and the rules and regulations under each of the foregoing, each as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Equity Interests": With respect to any Person, any share, interest, participation and other equivalent (however denominated) of capital stock of (or other ownership, equity or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership, equity or profit interests in) such Person, any security convertible into or exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

"Equity Issuance": Any issuance by any Borrower or any Consolidated Subsidiary of ART to any Person that is not a Borrower, Guarantor or Consolidated Subsidiary of a Borrower or Guarantor of (a) shares or interests of its Equity Interests, (b) any shares or interests of its Equity Interests pursuant to the exercise of options, warrants or similar rights (other than shares issued upon the exercise of options or warrants that were issued to officers, directors or employees of a Borrower), (c) any shares or interests of its Equity Interests pursuant to the conversion of any debt securities to equity or (d) (other than warrants issued by any Borrower or any Consolidated Subsidiary of ART for which no cash is paid to the applicable Borrower or Consolidated Subsidiary or options or warrants issued to officers, directors or employees of a Borrower) warrants, options or similar rights that are exercisable or convertible into shares or interests of its Equity Interests; provided, however, "Equity Issuance" shall not include an Equity Issuance in connection with a CDO Issuance engaged in by a Consolidated Subsidiary of ARSR or an issuance of shares in ART to ACM as compensation for acting as servicer.

"ERISA": The Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder, as the same are amended from time to time.

"ERISA Affiliate": (a) Any corporation that is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as any Borrower or any Guarantor, (b) a trade or business (whether or not incorporated) under common control (within the meaning of Section 414(c) of the Code) with any Borrower or any Guarantor, or (c) a member of the same affiliated service group (within the meaning of Section 414(m) of the Code) as any Borrower or any Guarantor, any corporation described in clause (a) above or any trade or business described in clause (b) above.

"ESH Allocated Assets": The Pledged Mortgage Assets (as defined in the Arbor Credit Agreement) to which allocated loan amounts relating to the ESH Pledged Mortgage Assets were allocated on the Restatement Date.

"Eurocurrency Liabilities": Defined in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Eurodollar Disruption Event": The occurrence of any of the following: (a) the Administrative Agent, any Lender or any Affected Party has determined that it would be contrary to law or to the directive of any central bank or other Governmental Authority (whether or not having the force of law) to obtain United States dollars in the London interbank market to fund any Loan, (b) the inability, for any reason, of the Administrative Agent, any Lender or any Affected Party to determine the Adjusted Eurodollar Rate, (c) the Administrative Agent, any Lender or any Affected Party have determined that the rate at which deposits of United States dollars are being offered to the Administrative Agent, any Lender or any

Affected Party in the London interbank market does not accurately reflect the cost to the Administrative Agent, any Lender or any Affected Party of making, funding or maintaining any Loan, or (d) the inability of the Administrative Agent, any Lender or any Affected Party to obtain United States dollars in the London interbank market to make, fund or maintain any Loan.

"Eurodollar Period": With respect to any Loan, (i) initially, the period commencing on the Borrowing Date with respect to such Loan and ending on the earlier of (x) the Facility Maturity Date and (y) the first Payment Date following the Borrowing Date, and (ii) thereafter, each period commencing on the day following the last day of the preceding Eurodollar Period applicable to such Loan and ending on the earlier of (x) the date that is one-month thereafter or (y) the Facility Maturity Date.

"Eurodollar Rate": With respect to each Eurodollar Period, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the rate appearing at Reuters Screen LIBOR01 Page (or any successor page) as the London interbank offered rate for deposits in Dollars, at or about 9:00 a.m., Charlotte, North Carolina time, three (3) Business Days prior to the beginning of such Eurodollar Period for a term comparable to such Eurodollar Period, or, if no such rate appears on Reuters Screen LIBOR01 Page (or any successors page) at such time and day, then the Eurodollar Rate shall be determined by the Administrative Agent at its principal office (so long as the Initial Lender is the Administrative Agent, in Charlotte, North Carolina) as its rate (each such determination, absent manifest error, to be conclusive and binding on all parties hereto and their assignees) at which thirty (30) day deposits in United States Dollars are being, have been, or would be offered or quoted by the Administrative Agent to major banks in the applicable interbank market for Eurodollar deposits at or about 11:00 a.m. on such day. The Administrative Agent's determination of Eurodollar Rate shall be conclusive and binding upon the parties absent manifest error on the part of the Administrative Agent.

"Eurodollar Reserve Percentage": For any period means the percentage, if any, applicable during such period (or, if more than one such percentage shall be so applicable, the daily average of such percentages for those days in such period during which any such percentage shall be so applicable) under regulations issued from time to time by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, emergency, supplemental, marginal or other reserve requirements) with respect to liabilities or assets consisting of or including Eurocurrency Liabilities having a term equal to the applicable Eurodollar Period.

"Event of Default": Defined in Section 10.1 of this Agreement.

"Excepted Persons": Defined in Subsection 13.13(a) of this Agreement.

"Exchange Act": The Securities Exchange Act of 1934, as amended from time to time.

"Excluded Accounts": All accounts established to hold Obligor Reserve Payments, all accounts holding funds that are required to be disbursed to an Obligor under the terms of the related Mortgage Loan Documents.

"Existing Borrower": Collectively, the Credit Parties who were Borrowers under the Original Agreement.

"Existing Financing Facilities": The financing facilities identified on Schedule 4.1(ff) hereto, as the same may be modified, amended, extended or renewed, together with any additional facility entered into with the approval of the Administrative Agent in its discretion. For the avoidance of doubt, Existing Financing Facilities shall not include any Debt Issuance or any replacement of an Existing Financing Facility or any modification to an Existing Financing Facility that is not in accordance with substantially the same terms (or terms more favorable to Borrowers) unless approved by the Administrative Agent in its discretion,

provided that the amount of an Existing Financing Facility may be decreased or increased without the approval of the Administrative Agent so long as such modification shall not result in a Default or an Event of Default hereunder.

"Facility Maturity Date": Subject to Article X, the earliest of (a) June 8, 2012, (b) the termination of the Arbor Credit Facility, (c) the date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of Applicable Law and (d) one hundred twenty (120) calendar days after the enactment date of a Tax Law Change. For the avoidance of doubt, the Borrowers may not extend the Facility Maturity Date without the Lenders' and the Administrative Agent's consent in their discretion.

"Fair Market Value": With respect to (a) a security listed on a national securities exchange or recognized automated quotation system, the price of such security as reported on such exchange by any widely recognized reporting method customarily relied upon by financial institutions, and (b) with respect to any other assets or Property, including realty, the price which could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction.

"Federal Funds Rate": For any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the overnight federal funds rates as in H.15 or any successor or substitute publication selected by the Administrative Agent (or, if such day is not a Business Day, for the next succeeding Business Day), or, if, for any reason, such rate is not available on any day, the rate determined, in the sole opinion of the Administrative Agent, to be the rate at which overnight federal funds are being offered in the national federal funds market at 9:00 a.m.

"Fee Letter": The First Amended and Restated Fee Letter, dated as of the Restatement Date, between the Borrowers and the Administrative Agent, as amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"Final Termination": With respect to any Loan Document, the termination of this Agreement in accordance with Subsection 13.6(a).

"Financial Covenants": The covenants set forth in Subsection 5.1(w) of this Agreement.

"Financing Spread": The applicable spread set forth in Schedule 1 to the Fee Letter or, with respect to Additional Collateral only, to the extent the Administrative Agent requires a different applicable spread than is set forth in the Fee Letter or if the Fee Letter does not address the applicable spread, the applicable spread set forth in the related Confirmation.

"Foreclosed Loans": A loan the security for which has been foreclosed upon by a Borrower.

"GAAP": Generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

"Governmental Authority": Any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any body or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its Properties, and any accounting board or authority (whether or not a part of government) that is responsible for the establishment or interpretation of national or international accounting principles, in each case whether foreign or domestic.

"GPOP": Defined in the Preamble of this Agreement.

"Guarantee Obligation": Means, as to any Person (the "guaranteeing person"), without duplication, any obligation of (a) the guaranteeing person or (b) another Person (including, without limitation, any bank under any letter of credit) to induce the creation of the obligations for which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends, Contractual Obligation, Derivatives Contract or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the maximum stated amount of the primary obligation relating to such Guarantee Obligation (or, if less, the maximum stated liability set forth in the instrument embodying such Guarantee Obligation); provided, however, that in the absence of any such stated amount or stated liability, the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as reasonably determined by such Person in good faith.

"Guarantor": Each Arbor Entity that becomes a Guarantor hereunder.

"Guaranty": Each Guaranty entered into by a Guarantor for the benefit of the Administrative Agent, the Lenders and the other Affected Parties.

"H.15": Federal Reserve Statistical Release H.15(519).

"Initial Lender": Defined in the Preamble to this Agreement.

"Income": With respect to the Collateral, all payments, collections, prepayments, recoveries, insurance and condemnation proceeds (with respect to the Additional Collateral, other than to the extent that an Obligor is or may be entitled to the same under the related Mortgage Loan Documents), distributions, principal, interest, fees, dividends, gains, receipts, allocations, profits, payments in kind, returns or repayment of contributions, Proceeds and all other amounts payable to a Borrower on or with respect to the foregoing, less the Servicing Fee in the case of Additional Collateral. Income shall not include any Obligor Reserve Payments.

"Increased Costs": Any amounts required to be paid by the Borrowers to the Administrative Agent, the Lenders and the other Affected Parties pursuant to Section 2.11 of this Agreement.

"Indebtedness": Means, with respect to any Person (in reference to ART and its Subsidiaries, Person shall mean ART and its Consolidated Subsidiaries determined on a consolidated basis), at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed (including, without limitation, principal, interest, assumption fees (to the extent they are due during the period in question), prepayment fees (to the extent they are due during the period in question), contingent interest (to the extent it is due during the period in question), and other

monetary obligations whether choate or inchoate); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, letters of credit, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or services rendered; (c) Capital Lease Obligations of such Person; (d) all reimbursement obligations of such Person under any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatory Redeemable Stock issued by such Person or any other Person (inclusive of forward equity contracts), valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) as applicable, all obligations of such Person (but not the obligation of others) in respect of any keep well arrangements, credit enhancements, contingent or future funding obligations, unfunded interest reserve amounts, purchase obligations, repurchase obligations, takeout commitments or forward equity commitments, in each case evidenced by a binding agreement (excluding any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatory Redeemable Stock)); (h) net obligations under any Derivative Contract not entered into as a hedge against existing Indebtedness, in an amount equal to the Derivatives Termination Value thereof; (i) all Indebtedness of other Persons which such Person has guaranteed or is otherwise recourse to such Person (except for guaranties of customary exceptions for fraud, misapplication of funds, environmental indemnities and other similar exceptions to recourse liability (but not exceptions relating to bankruptcy, insolvency, receivership or other similar events)); (j) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien (other than certain Permitted Liens) on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation; provided, however, if such Person has not assumed or become liable for the payment of such Indebtedness, then for the purposes of this definition the amount of such Indebtedness shall not exceed the market value of the property subject to such Lien and (k) Contingent Liabilities.

"Indemnified Amounts": Defined in Subsection 11.1(a) of this Agreement.

"Indemnified Parties": Defined in Subsection 11.1(a) of this Agreement.

"Insolvency Event": With respect to a specified Person, (a) the filing of a decree or order for relief by a court having jurisdiction in the premises in respect of such Person or any substantial part of its Property in an involuntary case under any applicable Insolvency Law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its Property, or ordering the winding-up or liquidation of such Person's affairs, and such decree or order shall remain unstayed and in effect for a period of ninety (90) consecutive days; or (b) the commencement by such Person of a voluntary case under any applicable Insolvency Law now or hereafter in effect, or the consent by such Person to the entry of an order for relief in an involuntary case under any such law, or the consent by such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official for such Person or for any substantial part of its Property, or the making by such Person of any general assignment for the benefit of creditors, or the failure by such Person generally to pay its debts as such debts become due, or the taking of action by such Person in furtherance of any of the foregoing.

"Insolvency Laws": The Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, suspension of payments or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

"Insolvency Proceeding": Any case, action or proceeding before any court or other Governmental Authority relating to any Insolvency Event.

"Instrument": Any "instrument" (as defined in Article 9 of the UCC), other than an instrument that constitutes part of chattel paper.

"Intercreditor Agreement": That certain Intercreditor Agreement to be entered into by and among the Administrative Agent and Wachovia, as administrative agent under the Arbor Credit Facility, as amended, restated, modified or supplemented from time to time.

"Interest": For each Accrual Period and all Loans outstanding, the sum of the products (for each day during such Accrual Period) of:

$$R \times AOP \times \frac{1}{D}$$

where:

R = the Rate applicable on such day;

AOP = the Aggregate Outstanding Principal on such day; and

D = 360;

provided, however, that (i) no provision of this Agreement shall require the payment or permit the collection of any Interest in excess of the maximum permitted by Applicable Law and (ii) the Interest shall not be considered paid by any distribution if at any time such distribution is rescinded or must otherwise be returned for any reason.

"Interest Expense": For ART and its Consolidated Subsidiaries, the total interest expense incurred (in accordance with GAAP), including capitalized or accruing interest (but excluding interest funded under a construction loan), by ART and its Consolidated Subsidiaries, without duplication for the most recent period.

"Interest Rate Protection Agreement": (i) Any Derivatives Contract required under the terms of the related Mortgage Loan Documents providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, and acceptable to the Administrative Agent in its discretion and (ii) any Derivatives Contract put in place by any Borrower or any Consolidated Subsidiary of a Borrower with respect to any Collateral or any assets or other Property of such Person.

"Investment": Means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, whether by means of (a) the purchase or other acquisition of any Equity Interests in another Person, (b) a loan, advance or extension of credit to, capital contribution to, guaranty or credit enhancement of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. Any binding commitment or option to make an Investment in any other Person shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in the Loan Documents, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

"Irrevocable Instruction": (a) An instruction letter in the form of Exhibit VI, which (i) shall be executed by (A) (1) ARCM, with respect to the CDO Management Fees, (2) ARSR, with respect to the CDO Equity Distributions and the CDO Collateral Manager Distributions and (3) such other Persons as the Administrative Agent may require in its discretion with respect to the Collateral, the Required Payments or any other payments required under the Loan Documents, and (B) each Person obligated to pay or disburse any payments described above in clauses (A)(1)-(3), respectively, (ii) shall provide that it is irrevocable, and (iii) shall provide that such Irrevocable Instruction shall not be modified without the prior written consent of the Administrative Agent and (b) any Servicer Redirection Notice required in connection with the pledge of Additional Collateral.

"Junior Interest": (a) A senior, *pari passu* or junior participation interest in a performing Commercial Real Estate Loan or (b) a senior, *pari passu* or junior note or certificate in an "A/B" or similar structure in a performing Commercial Real Estate Loan.

"Late Payment Fee": Defined in Subsection 2.5(a) of this Agreement.

"Lead Based Paint": Paint containing more than 0.5% lead by dry weight.

"Lender": Defined in the Preamble to this Agreement.

"Lien": Any mortgage, lien, pledge, charge, right, claim, security interest or encumbrance of any kind of or on any Person's assets or Properties in favor of any other Person.

"Liquidity": An amount equal to the (a) sum of (without duplication) (i) the amount of unrestricted cash and unrestricted Cash Equivalents, plus (ii) the borrowing availability (if any) under the Arbor Credit Facility, in each case in clauses (i) and (ii), solely to the extent that such amounts exceed the amounts necessary to satisfy at such time all of the Financial Covenants (other than Subsection 5.1(w)(i) hereunder and all financial covenants (other than any liquidity covenants) under the Arbor Credit Facility and, in each case, to the extent ART continues to be in compliance thereof, less, (b) amounts necessary to satisfy margin deficits or other prepayment obligations under the Arbor Credit Facility.

"Loan": Defined in Subsection 2.1(a) of this Agreement.

"Loan Documents": This Agreement, the Revolving Notes, the Account Control Agreement, the Fee Letter, the Custodial Agreement, the Pledge and Security Agreement, the Preferred Equity Pledge Agreement, the Guaranties, the Irrevocable Instructions, any UCC financing statements (and amendments thereto) filed pursuant to the terms of this Agreement or any other Loan Document, and any additional document the execution of which is necessary or incidental to carrying out the terms of the foregoing documents, as each of the foregoing is amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"LPOP": Defined in the Preamble of this Agreement.

"Mandatory Redeemable Stock": Means, with respect to any Person and any Subsidiary thereof, any Equity Interests of such Person which by the terms of such Equity Interests (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (a) matures or is required to be redeemed, pursuant to a sinking fund obligation or otherwise (other than an Equity Interest to the extent redeemable in exchange for common stock or other equivalent common Equity Interests), (b) is convertible into or exchangeable or exercisable for Indebtedness or Mandatory Redeemable Stock, or (c) is redeemable at the option of the holder thereof, in whole or in part (other than an Equity Interest which is redeemable solely in exchange for common stock

or other equivalent common Equity Interests); in the case of each clause (a) through (e), on or prior to the Facility Maturity Date.

"Market Value": As of any date in respect of any Mortgage Asset, the price at which such Mortgage Asset could readily be sold, as determined by the Administrative Agent in its discretion (which price may be determined to be zero).

"Material Adverse Effect": Any material adverse effect on (a) the Properties, assets, business, operations, financial condition, credit quality or prospects of any Borrower or any Guarantor, (b) the ability of any Borrower or any Guarantor to perform its obligations under any of the Loan Documents to which it is a party, (c) the validity or enforceability of any of the Loan Documents, (d) the rights and remedies of the Administrative Agent or any Lender under any of the Loan Documents, (e) the timely payment of any amounts payable under the Loan Documents, or (f) any Collateral or the value of any Collateral.

"Materials of Environmental Concern": Any mold, petroleum (including, without limitation, crude oil or any fraction thereof), petroleum products or by-products (including, without limitation, gasoline), or any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants, defined as such in or regulated under any Environmental Law, including, without limitation, asbestos, asbestos containing materials, polychlorinated biphenyls, urea-formaldehyde insulation, radioactive materials, Lead Based Paint, Toxic Mold, flammable explosives and radon.

"Maximum Amount": As of the Restatement Date, $57,164,228.00; at any time following the Restatement Date, the Aggregate Outstanding Principal.

"Moody's": Moody's Investors Service, Inc., and any successor thereto.

"Multiemployer Plan": A "multiemployer plan" as defined in Section 4001(a)(3) of ERISA that is or was at any time during the current year or the immediately preceding five (5) years contributed to by any Borrower, a Guarantor or any ERISA Affiliate on behalf of its employees.

"Net Income": With respect to ART and its Consolidated Subsidiaries for any period, the net income of ART and its Consolidated Subsidiaries for such period as determined in accordance with GAAP.

"Net Proceeds": With respect to any Equity Issuance or Debt Issuance by a Person, the aggregate amount of all cash, Cash Equivalents and the Fair Market Value of all other assets or Property received by or payable to such Person in respect of such Equity Issuance or Debt Issuance net of investment banking fees, legal fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred by such Person in connection with such Equity Issuance or Debt Issuance. With respect to any Securitization, Net Proceeds shall mean the proceeds received by a Person in connection with such Securitization after the payment of all amounts required to be paid in order to obtain a release of all Liens related to the assets contributed in such Securitization and the payment of all investment banking fees, legal fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred by such Person in connection with each such Securitization.

"Net Total Liabilities": Total Liabilities minus the sum of (a) aggregate principal amount outstanding under the Eligible Subordinated Debt and (b) deferred revenues relating to the 450 Transaction to the extent classified as a liability according to GAAP.

"New Stock Class": Defined in the Fee Letter.

"Non-Recourse Indebtedness": Means, with respect to any Person, Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, and other similar exceptions to non-recourse provisions (but not exceptions relating to bankruptcy, insolvency, receivership or other similar events)) is contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness.

"Notice of Borrowing": A request for a Loan in the form of Exhibit II, attached hereto.

"Obligations": Without duplication, (i) the Aggregate Unpaids, and (ii) all Borrower-Related Obligations.

"Obligor": Individually and collectively, as the context may require, the obligor or obligors under a Mortgage Asset, including, but not limited to, any guarantor thereof and any Person that has not signed the related Mortgage Note, Junior Interest Note, a Mezzanine Note or any other note, instrument or certificate, but owns an interest in the related Underlying Mortgaged Property, which interest has been encumbered to secure such Mortgage Asset.

"Obligor Reserve Payments": Any payments made by an Obligor under the applicable Mortgage Loan Documents which, pursuant to the terms of such Mortgage Loan Documents, are required to be deposited into escrow or into a reserve to be used for a specific purpose (e.g., tax and insurance escrows), but not including such amounts that are entitled or permitted to be disbursed to the holder of the Mortgage Asset.

"OFAC": The U.S. Department of the Treasury's Office of Foreign Assets Control or any successor thereto.

"OFAC Regulations": The regulations promulgated by OFAC, as amended from time to time.

"Off-Balance Sheet Obligations": With respect to any Person (in reference to ART and its Subsidiaries, Person shall mean ART and its Consolidated Subsidiaries ) as of any date of determination thereof, without duplication and to the extent not included as a liability on the consolidated balance sheet of ART and its Consolidated Subsidiaries in accordance with GAAP: (a) the monetary obligations under any financing lease or so-called "synthetic", tax retention or off-balance sheet lease transaction which, upon the application of any Insolvency Laws to such Person or any of its Consolidated Subsidiaries, would be characterized as indebtedness; (b) the monetary obligations under any sale and leaseback transaction which does not create a liability on the consolidated balance sheet of such Person and its Consolidated Subsidiaries; or (c) any other monetary obligation arising with respect to any other transaction which (i) is characterized as indebtedness for tax purposes but not for accounting purposes in accordance with GAAP or (ii) is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the consolidated balance sheet of such Person and its Consolidated Subsidiaries (for purposes of this clause (c), any transaction structured to provide tax deductibility as interest expense of any dividend, coupon or other periodic payment will be deemed to be the functional equivalent of a borrowing).

"Officer's Certificate": A certificate signed by a Responsible Officer of a Borrower.

"Operating Account": The account designated by the Borrowers set forth on Schedule 1 hereto.

"Opinion of Counsel": A written opinion of counsel, which opinion and counsel are acceptable to the Administrative Agent in its discretion.

"Original Agreement": Defined in the Recitals of this Agreement.

"Original Kodiak Indenture": Defined in the definition of "Eligible Subordinated Debt."

"Other Costs": Defined in Subsection 13.9(d) of this Agreement.

"Payment Date": The second to last Business Day of each calendar month.

"PBGC": The Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Plans": Defined in Subsection 4.1(r) of this Agreement.

"Permitted Investments": Investments of any one or more of the following types:

(a) marketable obligations of the United States, the full and timely payment of which are backed by the full faith and credit of the United States of America and that have a maturity of not more than 270 days from the date of acquisition;

(b) marketable obligations, the full and timely payment of which are directly and fully guaranteed by the full faith and credit of the United States and that have a maturity of not more than 270 days from the date of acquisition;

(c) bankers' acceptances and certificates of deposit and other interest-bearing obligations (in each case having a maturity of not more than 270 days from the date of acquisition) denominated in dollars and issued by any bank with capital, surplus and undivided profits aggregating at least $100,000,000, the short-term obligations of which are rated of least A-1 by S&P and P-1 by Moody's;

(d) repurchase obligations with a term of not more than ten (10) days for underlying securities of the types described in clauses (a), (b) and (c) above entered into with any bank of the type described in clause (c) above;

(e) commercial paper rated at least A-1 by S&P and P-1 by Moody's;

(f) demand deposits, time deposits or certificates of deposit (having original maturities of no more than 365 days) of depository institutions or trust companies incorporated under the laws of the United States of America or any state thereof (or domestic branches of any foreign bank) and subject to supervision and examination by federal or state banking or depository institution authorities; provided, however, that at the time such investment, or the commitment to make such investment, is entered into, the short-term debt rating of such depository institution or trust company shall be at least A-1 by S&P and P-1 by Moody's; and

(g) money market mutual funds possessing the highest available rating from S&P and Moody's.

"Permitted Liens": Any of the following as to which no enforcement, collection, execution, levy or foreclosure proceeding shall have been commenced: (a) Liens for state, municipal or other local taxes if such taxes shall not at the time be due and payable, (b) Liens imposed by Applicable Law, such as materialmen's, mechanics', carriers', workmen's and repairmen's Liens and other similar Liens, arising in the ordinary course of business securing obligations that are not overdue for a period of more than thirty (30) days, (c) Liens granted pursuant to or by the Loan Documents, and (d) in the case of Additional Collateral only and not any Borrower's interest therein, with respect to the Underlying

Mortgaged Property applicable thereto, Liens which are permitted pursuant to the terms of the related Mortgage Loan Documents.

"Permitted Credit Facility": Any credit facility of ARSR or its Consolidated Subsidiaries of which the Borrowers have given the Administrative Agent at least thirty (30) days advance notice and that (a) has terms and conditions substantially the same as those in the Arbor Credit Facility, (b) has financial covenants no more restrictive than those in the Arbor Credit Facility, (c) does not permit collateral other than Whole Loans, Junior Interests, Mezzanine Loans, Preferred Equity Interests, Condominium Loans, Land Loans and/or Bridge Loans and/or any equity interests in an entity that acts as a borrower of such credit facility and (d) is otherwise acceptable to the Administrative Agent in its reasonable discretion.

"Person": An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, sole proprietorship, joint venture, government (or any agency or political subdivision thereof) or other entity.

"Plan": An employee benefit or other plan established or maintained by any Borrower, any Guarantor or any ERISA Affiliate and covered by Title IV of ERISA, other than a Multiemployer Plan.

"Plan Party": Defined in Subsection 13.20(a) of this Agreement.

"Pledge and Security Agreement": That certain First Amended and Restated Pledge and Security Agreement, dated as of the Restatement Date, by ARSR, in its capacity as pledgor of Equity Interests in the Pledged CDO Subsidiaries, for the benefit of the Administrative Agent, as amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Pledge Date": Defined in Subsection 2.1(f)(i) of this Agreement.

"Pledged CDO Subsidiary": (i) Each CDO Subsidiary existing on the Closing Date and (ii) each additional CDO Subsidiary created after the Closing Date with respect to which the Equity Interests are pledged, at the option of ARSR, to the Administrative Agent as Collateral.

"Pledged Collateral": Defined in the Pledge and Security Agreement.

"Pledged Preferred Equity Collateral": Defined in the Preferred Equity Pledge Agreement.

"Pledgor" Arbor Realty SR, Inc., a Maryland corporation, together with its successors and assigns.

"Post-Default Rate": In respect of any day a Loan is outstanding or any other amount under this Agreement or any other Loan Document is not paid when due to the Administrative Agent, the Lenders or the Affected Parties at the stated repayment date or otherwise when due (a "Post-Default Day"), a rate per annum determined on a 360 day per year basis during the period from and including the due date to but excluding the date on which such amount is paid in full equal to the applicable Rate plus 500 basis points.

"Pre-Approved Lender": A bank, financial institution, insurance company, Approved Fund, any Person similar to any of the foregoing or any special purpose vehicle.

"Preferred Equity Pledge Agreement": The First Amended and Restated Preferred Equity Interests Pledge and Security Agreement, dated as of the Restatement Date, by the Borrowers, in their capacity as pledgors, for the benefit of the Administrative Agent, as amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time.

"Preferred Securities": Means, with respect to any Person, Equity Interests in such Person that are entitled to preference or priority over any other Equity Interests in such Person in respect of the payment (or accrual) of dividends or distribution of assets upon liquidation, or both.

"Prime Rate": The rate announced by Wachovia from time to time as its prime rate in the United States, such rate to change as and when such designated rate changes. The Prime Rate is not intended to be the lowest rate of interest charged by Wachovia in connection with extensions of credit to debtors.

"Prohibited Person": Means (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (iii) a Person with whom any Borrower or any Guarantor is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (iv) a Person who commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, (v) an agency of the government of, an organization directly or indirectly controlled by, or a Person resident in, a country that is subject to a sanctions program identified on the list maintained by OFAC and available at http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html, or as otherwise published from time to time, as such program may be applicable to such agency, organization or Person, (vi) a Person that is named as a "specially designated national or blocked person" on the most current list maintained or published by OFAC and available at http://www.treas.gov/offices/eotffc/ofac/sdn.index.html or at any replacement website or in any other official publication of such list, and (vii) a Person who is affiliated with a Person described in clauses (i)-(vi) above.

"Projected Collateral Cash Flow": For any calendar quarter, future projections of Collateral Cash Flow for the immediately following calendar quarter or for the immediately following four (4) calendar quarters, as applicable, determined in reliance on an Officer's Certificate signed by a Responsible Officer of a Borrower after due inquiry, which Officer's Certificate shall provide future projections of Collateral Cash Flow, together with the relevant facts supporting such projections, which Projected Collateral Cash Flow may be adjusted by the Administrative Agent in its discretion.

"Property": Any right or interest in or to property of any kind whatsoever, whether real, personal or mixed, and whether tangible or intangible.

"QRS": Means a qualified REIT subsidiary within the meaning of Section 856(i)(2) of the Code.

"Rate": For any Accrual Period and for all Loans outstanding and for each day during such Accrual Period, the rate per annum equal to the Adjusted Eurodollar Rate plus the applicable Financing Spread; provided, however, the Rate for any Accrual Period shall be the Base Rate (plus the applicable Financing Spread) if a Eurodollar Disruption Event has occurred and is continuing.

"Rating Agency": Each of S&P, Moody's and any other statistical rating agency that has been requested to issue a rating in connection with the matter at issue.

"Real Property Assets": Means, as of any time, the real Property assets (including interests in preferred equity and participating mortgages in which the lender's interest therein is characterized as equity according to GAAP) owned directly or indirectly by ART or a Consolidated Subsidiary of ART at such time.

"Register": Defined in Subsection 13.16(f).

"Registration Rights Agreement": Defined in the Arbor Credit Agreement.

"Regulations T, U and X": Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be amended from time to time.

"REIT": A "real estate investment trust" within the meaning of the Code.

"Related Party Loan": Any loan, Indebtedness or preferred equity investment identified or presented as a related party loan in ART's consolidated financial statements or in the notes to the consolidated financial statements, in accordance with GAAP; provided, however, Related Party Loan shall not include any loan or preferred equity investment (i) which is held as collateral in a CDO Issuance involving ART or any Consolidated Subsidiary of ART or (ii) to which the Administrative Agent in its discretion has consented in writing to its exclusion from the definition of Related Party Loan.

"Release": Any generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of any Property or Underlying Mortgaged Property.

"Remedial Work": Any investigation, inspection, site monitoring, containment, clean-up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of any Property or Underlying Mortgaged Property of any Materials of Environmental Concern, including any action to comply with any applicable Environmental Laws or directives of any Governmental Authority with regard to any Environmental Laws.

"REO Property": Real property acquired by any Person by foreclosure or by deed in lieu of such foreclosure.

"Reportable Event": Any of the events set forth in Section 4043(c) of ERISA or a successor provision thereof, other than those events as to which the notice requirement has been waived by regulation.

"Requested Borrowing Date": The date specified in Subsection 2.1(b)(i) of this Agreement.

"Required Payments": All payments required under Section 2.2 of this Agreement or subject to or required to be subject to an Irrevocable Instruction, which amounts shall be free of any deductions for or on account of any set-off, counterclaim or defense and shall be deposited into the Collection Account for application in accordance with the terms of this Agreement.

"Requisite Lenders": As of any date, Lenders holding Revolving Commitment Percentages totaling at least 66-2/3%; provided, however, that any Lender that is in default hereunder shall not be included in calculating such Revolving Commitment Percentages.

"Responsible Officer": With respect to any Person, any duly authorized Senior Vice President (or equivalent or higher office) of such Person with direct responsibility for the administration of the Loan Documents and also, with respect to a particular matter, any other duly authorized Senior Vice President (or equivalent or higher office) to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Restatement Date": The date of this Agreement.

"Restricted Payment": Means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of ART or any Consolidated Subsidiary now or hereafter outstanding, except a dividend payable solely in Equity Interests of identical class to the holders of that class; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of ART or any Consolidated Subsidiary now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of ART or any Consolidated Subsidiary now or hereafter outstanding.

"Retained Interest": (a) With respect to any Mortgage Asset with an unfunded commitment on the part of a Borrower, all of the obligations, if any, to provide additional funding or contributions with respect to such Mortgage Asset, and, (b) with respect to any Mortgage Asset that is pledged by a Borrower to the Administrative Agent, (i) all of the obligations, if any, of the agent(s) under the documentation evidencing such Mortgage Asset and (ii) the applicable portion of the interests, rights and obligations under the documentation evidencing such Mortgage Asset that relate to such portion(s) of the Indebtedness that is owned by another lender or is being retained by a Borrower pursuant to clause (a) of this definition.

"Revolving Commitment": With respect to each Lender, the commitment of such Lender to make Loans in an aggregate principal amount at any time outstanding up to such Lender's Revolving Commitment as specified in Schedule 2 of this Agreement, as such amount may be reduced or increased from time to time in accordance with the provisions hereof. For the avoidance of doubt, the Revolving Commitment shall terminate upon the expiration of the Commitment Period or upon the request of the Borrower.

"Revolving Commitment Percentage": For each Lender, the percentage identified as its Revolving Commitment Percentage on Schedule 2 of this Agreement, as such percentage may be modified in connection with any assignment made in accordance with the provisions of Section 13.16 of this Agreement.

"Revolving Notes": The Amended and Restated Revolving Notes, in the form attached hereto as Exhibit I, issued in favor of the Lenders under this Agreement, as the same may be amended, modified, waived, supplemented, extended, restated or replaced from time to time.

"S&P": Standard & Poor's, a division of The McGraw Hill Companies, Inc., and any successor thereto.

"Securitization": Defined in Subsection 2.2(a)(iv) of this Agreement.

"Servicer Redirection Notice": An executed Servicer Redirection Notice with respect to each pledge of Additional Collateral, substantially in the form of Exhibit VII attached hereto.

"Solvent": As to any Person at any time, having a state of affairs such that all of the following conditions are met: (a) the fair value of the Property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent and unliquidated liabilities) as such value is established and liabilities evaluated for purposes of Section 101(32) of the Bankruptcy Code; (b) the present fair salable value of the Property of such Person in an orderly liquidation of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to realize upon its Property and pay its debts and other liabilities (including disputed, contingent and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in a business or a transaction, and is not about to engage in a business or a transaction, for which such Person's Property would constitute unreasonably small capital.

"Stock Exchange": Defined in Subsection 4.1(nn) of this Agreement.

"Subsidiary": With respect to any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, partnership, limited liability company or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person.

"Tangible Net Worth": Net worth as determined in accordance with GAAP.

"Tax Law Change": A change in the Applicable Law relating to Taxes that would cause a transfer of the entire membership interests in a CDO Subsidiary to a REIT, a QRS or a disregarded entity (for federal income tax purposes) that is wholly owned by a REIT to result in a loss of the QRS status of the CDO Issuer owned by that CDO Subsidiary.

"Taxes": Any present or future taxes, levies, imposts, duties, charges, assessments or fees of any nature (including interest, penalties, and additions thereto) that are imposed by any Governmental Authority.

"Test Period": The immediately preceding calendar quarter.

"Total Assets": Total assets of ART and its Consolidated Subsidiaries, determined in accordance with GAAP.

"Total ESH Release Amount": Defined in the Arbor Credit Agreement.

"Total Liabilities": Means all Indebtedness of any Person (without duplication) and all of such Person's Consolidated Subsidiaries determined on a consolidated basis.

"Toxic Mold": Any mold or fungus at any Property which is a type that (i) might pose a significant risk to human health or the environment or (ii) that would negatively impact any Property.

"Transfer Effective Date": The meaning set forth in each Commitment Transfer Supplement.

"Transferee": Defined in Subsection 13.16(b) of this Agreement.

"Trust Preferred Debt": Means (a) the existing indebtedness of ART and its Consolidated Subsidiaries under any securities and guarantees issued by them in any debt securities transaction related to any of the indentures identified in clause (a) of the definition of "Eligible Subordinated Debt" and (b) any future indebtedness of ART and its Consolidated Subsidiaries in connection with any debt securities transaction for which the related indenture (i) has subordination provisions substantially the same as those in the indentures identified in clause (a) of the definition of "Eligible Subordinated Debt" and (ii) has enforceable subordination provisions, and (c) has a maturity date no earlier than the date that is six (6) months following the Facility Maturity Date.

"Uniform Commercial Code" or "UCC": The Uniform Commercial Code as in effect on the date hereof in the State of New York; provided, that if by reason of mandatory provisions of Applicable Law, the perfection, priority or the effect of perfection or non-perfection or priority or lack of priority of the

security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or priority or lack of priority.

"United States": The United States of America.

"Unused Fee": The "Unused Fee" defined in and payable under the Fee Letter.

"Upfront Fee": The "Upfront Fee" defined in and payable under the Fee Letter.

"USA Patriot Act": The "United and Strengthening America by providing Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56), as amended from time to time.

"Voting Interests": With respect to any Person, Equity Interests issued by such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even though the right so to vote has been suspended by the happening of such a contingency.

"Wachovia": Defined in the Preamble of this Agreement.

"Wachovia Indebtedness": All indebtedness, obligations or liabilities of any Borrower, any Guarantor or any Consolidated Subsidiary of any Borrower or any Guarantor to Wachovia or any of its Affiliates, and shall include, without limitation, indebtedness, obligations and liabilities arising under the Arbor Credit Facility and any Wachovia Interest Rate Protection Agreements.

"Wachovia Interest Rate Protection Agreements": Any and all of a Borrower's, a Guarantor's or any of their Consolidated Subsidiary's obligations, liabilities and indebtedness arising under, or in connection with, any Interest Rate Protection Agreements to which the Initial Lender or any of its Affiliates is a counterparty thereto.

"Warrant Agreements": Defined in the Arbor Credit Agreement.

"WFS": Wells Fargo Securities, LLC (formerly known as Wachovia Capital Markets, LLC), a Delaware limited liability company.

**Section 1.2 Other Terms.**

(a) All accounting terms used but not specifically defined herein shall be construed in accordance with GAAP. All terms used in Article 9 of the UCC in the State of New York, and used but not specifically defined herein, are used herein as defined in such Article 9.

(b) Capitalized terms used with respect to the Additional Collateral but not defined in this Agreement shall have the meanings given to such terms in the Arbor Credit Documents, mutatis mutandis.

**Section 1.3 Computation of Time Periods.**

Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."

**Section 1.4 Interpretation.**

In each Loan Document, unless a contrary intention appears:

(i) the singular number includes the plural number and *vice versa*;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by the Loan Documents;

(iii) reference to any gender includes each other gender;

(iv) reference to day or days without further qualification means calendar days;

(v) reference to any time means Charlotte, North Carolina time;

(vi) the term "including" means "including without limitation;"

(vii) the term "through" means "to and including;"

(viii) unless the context clearly requires or the language provides otherwise, reference to a section, subsection, paragraph, subparagraph, clause, exhibit, schedule, annex, appendix, attachment, rider or other attachment means a section, subsection, paragraph, subparagraph, clause, exhibit, schedule, annex, appendix, attachment, rider or other attachment of or to this Agreement;

(ix) to the extent this Agreement uses or requires different limitations, tests or measurements to regulate the same or similar matters, all such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms;

(x) unless the context clearly requires or the language provides otherwise, the words "herein," "hereof," "hereunder" or similar words refer to this Agreement as a whole and not to any particular provision of this Agreement;

(xi) reference to any agreement (including any Loan Document), document or instrument means such agreement, document or instrument as amended, modified, restated, replaced, waived, substituted, supplemented or extended from time to time in accordance with the terms thereof and, if applicable, the terms of the other Loan Documents, and reference to any promissory note, certificate, instrument or trust receipt includes any promissory note, certificate, instrument or trust receipt that is an extension or renewal thereof or a substitute or replacement therefor;

(xii) reference to any Applicable Law, including any reference to any specific provision of Applicable Law, means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder and reference to any Section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such Section or other provision;

(xiii) unless otherwise expressly provided in this Agreement, reference to any notice, request, approval, consent or determination provided for, permitted or required under the terms of this Agreement with respect to a Borrower, a Guarantor, the Administrative Agent or a Lender means, in order for such notice, request, approval, consent or determination to be effective hereunder, such notice, request, approval or consent must be in writing; and

(xiv) reference herein or in any Loan Documents to the Administrative Agent's or any Lender's discretion shall mean, unless otherwise stated herein or therein, the Administrative Agent's or Lender's sole and absolute discretion, and the exercise of such discretion shall be final and conclusive. In addition, whenever the Administrative Agent or a Lender has a decision or right of determination or request, exercises any right given to it to agree, disagree, accept, consent, grant waivers, take action or no action or to approve or disapprove, or any arrangement or term is to be satisfactory or acceptable (or any similar language or terms) to the Administrative Agent or a Lender, the decision of the Administrative Agent or a Lender with respect thereto shall be in the sole and absolute discretion of the Administrative Agent or the Lender, and such decision shall be final and conclusive, except as may be otherwise specifically provided herein.

## ARTICLE II

## THE LOANS

**Section 2.1 Loans.**

(a) Revolving Commitment. During the Commitment Period, and subject to the terms and conditions of this Agreement, the Initial Lender agrees initially and, upon an assignment of any portion of the Revolving Commitment to one or more Lenders, all Lenders, including, without limitation, the Initial Lender, severally, agree to make revolving loans (each a "Loan" and collectively the "Loans") to the Borrowers from time to time for the purposes hereinafter set forth; provided, however, (i) no Loans shall be made (A) when a Default or any Event of Default has occurred and is continuing, (B) if, before or after giving effect to the requested Loan, the Availability is or would be negative, and (C) after the Commitment Period, and (ii) in the event of an assignment of any portion of the Maximum Amount to one or more Lenders, with regard to each Lender individually, the sum of such Lender's share of the outstanding Loans shall not exceed such Lender's Revolving Commitment Percentage of the Maximum Amount.

(b) Revolving Loan Borrowings.

(i) Notice of Borrowing. ARSR, on behalf of the Borrowers, shall request a Loan by giving written notice (or telephonic notice promptly confirmed in writing which confirmation may be by fax) to the Administrative Agent in the form of a duly completed and executed Notice of Borrowing, together with a duly completed and executed Compliance Certificate, not later than 11:00 a.m. on or before two (2) Business Days prior to the date of the requested borrowing (unless a shorter notice period is approved by the Administrative Agent) (the "Requested Borrowing Date"). Each Notice of Borrowing shall be irrevocable and shall specify (A) that a Loan is requested, (B) the date of the requested borrowing (which shall be a Business Day), (C) the aggregate principal amount to be borrowed, (D) the purpose for the Loan, which purpose must be approved by the Administrative Agent in its discretion, (E) the proposed source of repayment of the Loan, (F) the Borrower's calculation of the Availability and the Borrower's compliance therewith after giving effect to the requested borrowing, and (G) such other information as the Administrative Agent may require in its discretion. The Administrative Agent

shall give notice to each Lender promptly upon receipt of each Notice of Borrowing and Compliance Certificate, the contents thereof and each such Lender's share thereof.

(ii) Loan Approval. The Administrative Agent shall notify the Borrowers on or prior to the Requested Borrowing Date whether the Administrative Agent on behalf of the Lenders has (A) rejected the proposed Loan based on the Administrative Agent's review of the Notice of Borrowing and/or the Compliance Certificate, (B) has agreed to the proposed Loan or (C) has agreed to make the requested Loan subject to certain terms, conditions or modifications. The Administrative Agent's failure to timely respond to a Notice of Borrowing shall be deemed to be a rejection of the proposed Loan. If the Administrative Agent rejects the proposed Loan as provided in clause (A) above or the Borrowers reject the terms, conditions or modifications required by the Administrative Agent under clause (C) above, the Lenders shall not be obligated to make the proposed Loan requested in the Notice of Borrowing, and the submitted Notice of Borrowing shall thereafter become void automatically without further action by any party.

(iii) Minimum Amounts. Subject to the other provisions of this Article II, each Loan shall be in a minimum aggregate amount of $1,000,000.

(iv) Advances. Provided that each condition precedent set forth in Articles II and III of this Agreement and all other terms and conditions are satisfied, as determined by the Administrative Agent in its discretion, each Lender will make its Revolving Commitment Percentage of each approved Loan available to the Administrative Agent for the account of the Borrowers at the office of the Administrative Agent identified on Schedule 3, or at such other office as the Administrative Agent may designate in writing, upon reasonable advance notice by 1:00 p.m. on the Requested Borrowing Date specified in the applicable Notice of Borrowing, in Dollars and in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the Borrowers by the Administrative Agent by crediting the Operating Account with the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent. The obligations of the Lenders hereunder are several and not joint or joint and several. The failure of any Lender to fulfill its obligations hereunder shall not result in any other Lender becoming obligated to advance more than its Revolving Commitment Percentage of any Loan, nor shall such failure release or diminish the obligations of any other Lender to fund its Revolving Commitment Percentage provided for in this Agreement.

(v) Borrower's Use of Proceeds. The proceeds of all Loans shall be used solely for the purpose requested and approved by the Administrative Agent. Neither the Lenders nor the Administrative Agent shall have any liability, obligation or responsibility whatsoever with respect to a Borrower's use of the proceeds of the Loans, and neither the Lenders nor the Administrative Agent shall be obligated to determine whether or not a Borrower's use of the proceeds of the Loans are for purposes permitted under a Borrower's Authority Documents, Applicable Law, under any other applicable document or agreement or otherwise. Nothing, including, without limitation, any borrowing or any acceptance of any other document or instrument, shall be construed as a representation or warranty, express or implied, to any party by the Lenders or the Administrative Agent as to whether any investment by a Borrower qualifies under this Agreement or is otherwise permitted by the terms of the Borrower's Authority Documents, Applicable Law, under any other applicable document or agreement or otherwise.

(c) Revolving Loans. Loans may be repaid subject to and in accordance with the terms, provisions and conditions of this Agreement and the other Loan Documents. Notwithstanding any contained in the Loan Documents to the contrary, Loans may not be repaid and reborrowed.

(d) Revolving Notes. The Borrowers' obligation to pay each Lender's Loans shall be evidenced by a Revolving Note made payable to each such Lender, if requested by such Lender.

(e) Repayment of Loans. Borrowers covenant and agree to repay the Loans in accordance with the terms and conditions of this Agreement and the Revolving Notes. Subject to earlier repayment under Article X and Subsection 2.1(g), the Aggregate Outstanding Principal, accrued and unpaid Interest and all other Aggregate Unpaids shall be paid in full on or before the Facility Maturity Date.

(f) Additional Collateral.

(i) In order to increase the Availability under this Agreement, the Administrative Agent may, subject to the terms of this Subsection 2.1(f), approve certain Eligible Assets to be included in the Additional Collateral included in the Collateral hereunder (the date of any such approval and pledge hereunder, the "Pledge Date"). The addition of any Additional Collateral to the Collateral pool shall be permitted in the Administrative Agent's discretion, in accordance with the terms of this Subsection 2.1(f).

(ii) Unless otherwise expressly provided herein and without duplication, all of the terms, provisions, requirements, deliveries, representations, warranties, covenants, duties, liabilities, defaults, rights, remedies and agreements that are contained in or required by the Arbor Credit Documents and apply in any way to the Mortgage Assets and related Purchased Items under the Arbor Credit Facility (as opposed to the Arbor Credit Facility generally) shall, unless waived in writing by the Administrative Agent pursuant to a written request of the Borrowers, be equally applicable to the Mortgage Assets and the related Collateral under this Agreement, with all of the necessary changes having been or deemed to have been made to such terms, provisions, requirements, deliveries, representations, warranties, covenants, duties, liabilities, defaults, rights, remedies and agreements as necessary. Notwithstanding the foregoing, however, (A) the terms Deficit, Notice of Borrowing, Table Funded Mortgaged Asset and Table Funded Trust Receipt contained in the Arbor Credit Facility, (B) the provisions of Sections 2.5 and 2.9 of the Arbor Credit Agreement and Schedule 1-A to the Arbor Credit Facility Fee Letter shall be inapplicable to this Agreement and the other Loan Documents. For the avoidance of doubt, the terms Asset Value, Confirmation, Custodian, Custodial Agreement, Custodial Fee Letter, Junior Interest and Servicer Redirection Notice shall have the meaning set forth in this Agreement or the other Loan Documents and not as defined in the Arbor Credit Facility. With respect to the Additional Collateral, the applicable Advance Rates, the Maximum LTV (or Maximum LTC), Minimum DSCR and financing spreads shall be contained in the related Confirmation. To the extent there is any question or dispute as to the applicability, interpretation, implication, impact, effect or scope of any term, provision, requirement, delivery, representation, warranty, covenant, duty, liability, default, right, remedy or agreement from the Arbor Credit Facility, the Administrative Agent shall resolve all such questions and disputes in its reasonable and good faith discretion. Notwithstanding anything contained herein to the contrary, the terms of the financing of any Additional Collateral may be set forth in the related Confirmation and such terms shall be controlling over any contrary terms in this Agreement, the Fee Letter or any other Loan Document.

(iii) To the extent the Borrowers desire to include any Mortgage Asset as a part of the Additional Collateral under this Agreement and the other Loan Documents, the Borrowers shall make a written request to the Administrative Agent and, in connection therewith, provide the Administrative Agent with the Underwriting Package and Seller-Asset Schedule for such Mortgage Asset and such other information as the Administrative Agent may require in its

discretion. Provided a Mortgage Asset is an Eligible Asset and the Administrative Agent in its discretion approves of the inclusion of such Mortgage Asset as a part of the Additional Collateral, the Administrative Agent shall provide written notice thereof to the Borrowers and the Borrowers shall, with respect to the Mortgage Assets and related Collateral under this Agreement, (A) take all actions and provide all deliveries to the same extent as required for the transfer and pledge of Mortgage Assets under the Arbor Credit Facility, (B) take all actions and provide all deliveries required for the grant to the Administrative Agent of a first priority perfected security interest in the Mortgage Assets and the related Collateral, (C) take all such other actions as the Administrative Agent may require in its discretion, and (D) take all actions required with respect to such Additional Collateral as set forth in Subsection 2.1(f)(ii). The Borrowers acknowledge and agree that the Administrative Agent in its discretion may reject any Mortgage Asset for inclusion as a part of the Additional Collateral for any reason or no reason whatsoever. The Administrative Agent's failure to respond to a request to include a Mortgage Asset as a part of the Additional Collateral shall be deemed to be a denial of such a request and the rejection of such Mortgage Asset. Upon the issuance of a Trust Receipt by the Custodian under the Custodial Agreement with respect to a Mortgage Asset that is an Eligible Asset and approved by the Administrative Agent in its discretion, a Mortgage Asset shall be deemed to be included as a part of the Additional Collateral under this Agreement and the other Loan Documents. With respect to any proposed Additional Collateral that is a Preferred Equity Interest, the Administrative Agent may, as a condition to the pledge of such Additional Collateral, require that such Additional Collateral be held and pledged by a special purpose entity acceptable to the Administrative Agent and that such entity become a Borrower under the Loan Documents.

(g) Tax Law Change. Notwithstanding anything to the contrary contained in this Agreement or the other Loan Documents, if there is a Tax Law Change, the Commitment Period shall automatically terminate, no further Loans shall be made, the Facility Maturity Date will be deemed to occur one hundred twenty (120) calendar days from the enactment date of such Tax Law Change and the Borrowers shall pay to the Administrative Agent on behalf of the Lenders all Aggregate Unpaids and all other amounts owed hereunder or under the other Loan Documents within one hundred twenty (120) calendar days of the enactment date of such Tax Law Change; provided, however, the foregoing shall not affect or impair the Administrative Agent's rights to accelerate the Obligations and to exercise its rights and remedies under the Loan Documents (other than with respect to a foreclosure on the impacted Pledged Collateral) upon the occurrence of an Event of Default.

(h) Expiration of Commitment Period. Notwithstanding anything contained in the Loan Documents to the contrary, the Commitment Period has expired on or prior to the Restatement Date. As such, no additional Loans may be made to the Borrowers after the Restatement Date. Notwithstanding the foregoing, each Loan made on or prior to the Restatement Date shall be a "Loan" hereunder.

**Section 2.2 Mandatory Prepayments.**

(a) The Borrowers shall pay the following amounts upon the occurrence of any of the following events:

(i) Availability. The Administrative Agent may calculate Availability on any day during an Asset Valuation Period. If the Availability, as determined by the Administrative Agent in its discretion, is negative on any day during an Asset Valuation Period the Borrowers shall, immediately upon notice from the Administrative Agent and, in any event, within two (2) Business Days (the "Availability Correction Deadline"), prepay the Loans in cash in an amount determined by the Administrative Agent so that, after giving effect to such payment, the Availability will not be negative (each such amount, a "Correction Amount"); provided, however,

to the extent the Administrative Agent has calculated the Availability based on either clause (i)(b), (i)(c) or (i)(d) of the definition of Availability and provided no Event of Default has occurred and the Facility Maturity Date has not occurred, the Borrowers may, subject to the Administrative Agent's right of approval pursuant to Subsection 2.1(f), pledge Additional Collateral to the Administrative Agent on or before the Availability Correction Deadline, provided that such Additional Collateral is acceptable to the Administrative Agent in its discretion, and the Asset Value of such Additional Collateral is equal to or greater than the Correction Amount.

(ii) Debt Issuances. The terms and provisions governing mandatory prepayments in connection with Debt Issuances are set forth in the Fee Letter and are hereby incorporated by reference.

(iii) Equity Issuances. The terms and provisions governing mandatory prepayments in connection with Equity Issuances are set forth in the Fee Letter and are hereby incorporated by reference.

(iv) Securitizations. The terms and provisions governing mandatory prepayments in connection with the closing of any securitization of any assets ("Securitization") are set forth in the Fee Letter and are hereby incorporated by reference.

(v) Tax Law Change. In the event of a Tax Law Change, the Borrowers shall pay all Aggregate Unpaids and all other amounts owed hereunder and under the other Loan Documents within one hundred twenty (120) calendar days of the enactment date of the Tax Law Change.

(vi) Principal Payments. For each calendar quarter in which the CDO Payment Trigger is satisfied (or deemed to be satisfied), the Borrowers shall repay the outstanding principal balance of the Loans in an aggregate amount equal to ONE MILLION DOLLARS ($1,000,000) for each CDO Issuance that makes CDO Equity Distributions in such calendar quarter, which amounts will be applied to the outstanding principal amounts of the Loans; provided that the principal payment required pursuant to this clause (vi) shall be reduced by any amounts previously received pursuant to clauses (vii) and (viii). Each such repayment, to the extent required, shall be made on the first Business Day of the month following the end of the applicable calendar quarter.

(vii) Additional Term Loan Collateral. The terms and provisions governing mandatory prepayments in connection with repayments, prepayments and/or reductions of the Loans with respect to Additional Term Loan Collateral are set forth in the Fee Letter and are hereby incorporated by reference.

(viii) Prime Distribution Prepayment. To the extent there are annual dividends or distributions in excess of $10,000,000 from the Prime Pledged Mortgage Asset, the Borrowers shall prepay the Loans in an aggregate principal amount equal to one hundred percent (100%) of all such excess dividends or distributions. Such amounts shall be applied in such manner as the Administrative Agent may determine in its discretion.

(b) Application of Mandatory Prepayments. All amounts required to be paid pursuant to this Section 2.2 shall be deposited into the Collection Account and shall be accompanied by Breakage Costs (if any). All such amounts shall be applied in accordance with the payment priorities set forth in Subsection 2.7(b) (i) on the Business Day received if received prior to 3:00 pm or (ii) on the next Business Day if received after 3:00 pm.

**Section 2.3 Optional Prepayments.**

(a) [Reserved].

(b) The Borrowers shall have the right to make optional prepayments hereunder from time to time upon the delivery of one (1) Business Day prior written notice, which notice shall be irrevocable; provided, however, each optional prepayment of Loans (other than an optional prepayment resulting from the prepayment of any Eligible Asset included in Additional Collateral by the Obligor under the related Mortgage Loan Documents) shall be in a minimum principal amount of $1,000,000 and in integral multiples of $500,000. Amounts prepaid under this Subsection 2.3(b) shall be accompanied by Breakage Costs (if any). All such prepayment amounts shall be deposited into the Collection Account and shall be applied in accordance with the payment priorities set forth in Subsection 2.7(b) (i) on the Business Day received if received prior to 3:00 pm or (ii) on the next Business Day if received after 3:00 pm. For the avoidance of doubt, all prepayments are subject to Section 8.2.

**Section 2.4 [Reserved].**

**Section 2.5 Payment of Interest.**

(a) The Borrowers shall pay to the Administrative Agent for the benefit of the Lenders the accrued Interest on each Loan on each Payment Date. The Administrative Agent shall deliver to the Borrowers notice of the amount of Interest due (along with the calculation of the Unused Fee, if any, and other amounts owed and to be paid on the Payment Date) on or prior to the second (2nd) Business Day preceding each Payment Date; provided, however, the Administrative Agent's failure to give notice to the Borrowers of any amount due shall not waive such amount or relieve the Borrowers of their obligation to pay such amount but such failure shall extend the due date of such amount until the Business Day after such notice is received by the Borrowers. If the Borrowers fail to pay the Interest and the other amounts due by 3:00 p.m. on the Payment Date, the Borrowers shall be obligated to pay to the Administrative Agent on behalf of the Lenders (in addition to, and together with, the Interest and the other amounts due) interest on the unpaid amounts at a rate per annum equal to the Post-Default Rate (the "Late Payment Fee") until the unpaid amounts are received in full by the Administrative Agent. If the Interest includes any estimated Interest, the Administrative Agent shall recalculate such Interest after the Payment Date and, if necessary, make adjustments to the Interest amount due on the following Payment Date.

(b) If the Borrowers pay or prepay any principal on any day that is not either the last day of the Eurodollar Period or the maturity date for such Loan, the Borrowers shall indemnify the Administrative Agent, the Lenders and the other Affected Parties and hold the Administrative Agent, the Lenders and the other Affected Parties harmless from any losses, costs and/or expenses that the Administrative Agent, the Lenders and the other Affected Parties may sustain or incur arising from the reemployment of funds obtained by the Administrative Agent, the Lenders and the other Affected Parties hereunder or from fees payable to terminate the deposits from which such funds were obtained ("Breakage Costs"), in each case for the remainder of the Eurodollar Period. The Administrative Agent shall deliver to the Borrowers a statement setting forth the amount and basis of determination of any Breakage Costs in such detail as determined in good faith by the Administrative Agent, the Lenders and the other Affected Parties to be adequate, it being agreed that such statement and the method of its calculation shall be conclusive and binding upon the Borrowers, absent manifest error. This Subsection 2.5(b) shall survive termination of this Agreement and the payment in full of the Obligations.

**Section 2.6 Pro Rata Treatment and Payments.**

Each borrowing of Loans shall be made *pro rata* by the Lenders according to the respective Revolving Commitment Percentages of the Lenders. Each payment to the Lenders under this Agreement or any Revolving Note shall be applied *pro rata* among the Lenders entitled thereto (based on the respective Revolving Commitment Percentages).

**Section 2.7 Accounts; Payments.**

(a) On or before the Closing Date, the Borrowers shall establish and maintain with Wachovia an account (as more specifically identified on Schedule 1 hereto, the "Collection Account") into which all Income, CDO Equity Distributions and other amounts required to be paid pursuant to this Agreement shall be deposited and ARCM shall establish and maintain with Wachovia an account into which all CDO Management Fees shall be deposited (as more specifically identified on Schedule 1 hereto, the "CDO Management Fee Account"). The Collection Account and the CDO Management Fee Account shall be established at Wachovia's Charlotte, North Carolina location. The Collection Account shall be in the name of one (1) or more Borrowers and the CDO Management Fee Account shall be established in the name of ARCM. The Collection Account shall be for the benefit of each beneficiary of the security interest in favor of the Administrative Agent and for the benefit of each Borrower (but only to the extent any such Borrower is entitled to any cash flow in accordance with Subsection 2.7(b) hereof). The Administrative Agent shall invest any cash deposited in the Collection Account in such Permitted Investments as a Borrower shall direct the Administrative Agent in writing. The CDO Management Fee Account shall be for the benefit of each beneficiary of the security interest in favor of the Administrative Agent and for the benefit of ARCM (but only to the extent ARCM is entitled to any cash flow in accordance with Subsection 2.7(b) hereof).

(b) The Administrative Agent shall be entitled to receive on behalf of the Lenders and the other Affected Parties an amount equal to all Income paid or distributed on or in respect of the Collateral, the Required Payments and all other payments and amounts required or permitted hereunder or under the other Loan Documents, which amounts shall be deposited by the Borrowers and all other applicable Persons into the Collection Account or the CDO Management Fee Account, as applicable. On or before each Payment Date and on such other dates as the Administrative Agent may determine in its discretion, the Administrative Agent shall transfer all amounts on deposit in the CDO Management Fee Account to the Collection Account. On each Payment Date, any amounts on deposit in the Collection Account shall be withdrawn by the Administrative Agent and shall be applied as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees) of the Administrative Agent in connection with enforcing the rights of the Lenders under the Loan Documents and any protective advances made by the Administrative Agent with respect to the Collateral under or pursuant to the terms of the Loan Documents;

SECOND, *pro rata* to the Lenders to the payment of any expenses, costs, advances and other obligations then due and owing by the Borrowers to the Lenders under the Loan Documents (including, without limitation, reasonable attorneys' fees and costs), other than amounts described in any subsequent clause of this Section 2.7;

THIRD, *pro rata* to the Lenders to the payment of any fees then due and owing by the Borrowers to the Lenders under the Loan Documents (including, without limitation, the Unused Fee and any Extension Fee);

FOURTH, *pro rata* to the Lenders to the payment of Late Payment Fees outstanding and any other Interest at the Post-Default Rate;

FIFTH, *pro rata* to the Lenders to the payment of accrued and unpaid Interest then due;

SIXTH, *pro rata* to the Lenders to the payment of the Aggregate Outstanding Principal of the Loans to the extent of any mandatory prepayment pursuant to Section 2.2 of this Agreement;

SEVENTH, *pro rata* to the Lenders to the payment of the Aggregate Outstanding Principal of the Loans to the extent of any voluntary prepayment pursuant to Section 2.3 of this Agreement;

EIGHTH, on and after the Facility Maturity Date, *pro rata* to the Lenders to the payment of the Aggregate Outstanding Principal of the Loans;

NINTH, *pro rata* to the Administrative Agent, the Lenders, the other Affected Parties and the Indemnified Parties, to the payment of Breakage Costs, Indemnified Amounts, Increased Costs, Additional Amounts, Due Diligence Costs and all other Aggregate Unpaids and other amounts then due and owing to the Administrative Agent, the Lenders, the other Affected Parties and the Indemnified Parties pursuant to this Agreement and the other Loan Documents;

TENTH, to the extent any mandatory or voluntary prepayments were made under Sections 2.2 or 2.3 of this Agreement, to the extent of funds available therefor, and to the extent the parties under the Arbor Credit Facility subsequently agree that any excess proceeds under this clause TENTH shall be applied under either or both such facilities, to Wachovia for application to such facilities in accordance with the terms of such facilities; and

ELEVENTH, to the extent of funds available therefor, to the Operating Account, for such purposes as the Borrowers shall determine in their sole discretion;

provided, however, if a Default or Event of Default has occurred and is continuing or a Tax Law Change has occurred, such amounts shall not be transferred to the Operating Account but shall remain in the Collection Account and, (i) in the case of a Tax Law Change and no Default or Event of Default has occurred, the Administrative Agent shall apply such amounts in reduction of all Aggregate Unpaids or, upon request of the Borrowers, the Administrative Agent may in its discretion determine whether and in what amounts it will release such funds, or (ii) in the case of a Default or Event of Default, the Administrative Agent shall apply such amounts in reduction of all Obligations.

Notwithstanding anything to the contrary contained herein, in the event any Obligor Reserve Payments are deposited into the Collection Account, such Obligor Reserve Payments shall, upon written request of a Borrower, be promptly transferred from the Collection Account to the Operating Account for such Borrower to transfer into the appropriate escrow or reserve accounts.

**Section 2.8 Non-Receipt of Funds by the Administrative Agent.**

(a) Unless the Administrative Agent shall have been notified in writing by a Lender prior to the date a Loan is to be made by such Lender (which notice shall be effective upon receipt) that such Lender does not intend to make the proceeds of such Loan available to the Administrative Agent, the Administrative Agent may assume that such Lender has made such proceeds available to the Administrative Agent on such date, and the Administrative Agent may, in reliance upon such assumption, make available to (but shall not be required to) make available to) the Borrowers a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent, the

Administrative Agent shall be able to recover such corresponding amount from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent will promptly notify the Borrowers, and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent shall also be entitled to recover from the Lender or the Borrowers, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrowers to the date such corresponding amount is recovered by the Administrative Agent at a per annum rate equal to, (i) if payable by the Borrowers, the Rate, and (ii) if payable by a Lender, the Federal Funds Rate.

(b) Unless the Administrative Agent shall have been notified in writing by the Borrowers, prior to the date on which any payment is due hereunder (which notice shall be effective upon receipt) that the Borrowers do not intend to make such payment, the Administrative Agent may assume that such Borrowers have made such payment when due, and the Administrative Agent may in reliance upon such assumption (but shall not be required to) make available to each Lender on such payment date an amount equal to the portion of such assumed payment to which such Lender is entitled hereunder, and if the Borrowers have not in fact made such payment to the Administrative Agent, such Lender shall, on demand, repay to the Administrative Agent the amount made available to such Lender. If such amount is repaid to the Administrative Agent on a date after the date such amount was made available to such Lender, such Lender shall pay to the Administrative Agent on demand interest on such amount in respect of each day from the date such amount was made available by the Administrative Agent to such Lender to the date such amount is recovered by the Administrative Agent at a per annum rate equal to the Rate.

(c) A certificate of the Administrative Agent submitted to the Borrowers or any Lender with respect to any amount owing under this Section 2.8 shall be conclusive in the absence of manifest error.

**Section 2.9 Payments by Borrowers.**

(a) Unless otherwise expressly provided herein, all amounts to be paid or deposited by the Borrowers hereunder shall be paid or deposited in accordance with the terms hereof no later than 3:00 p.m. on the day when due in lawful money of the United States, in immediately available funds to the Administrative Agent's Account and, if not received before such time, shall be deemed to be received on the next Business Day. The Borrowers shall, to the extent permitted by Applicable Law, pay to the Administrative Agent interest on any amounts not paid when due hereunder or under the Loan Documents at the Post-Default Rate, payable on demand; provided, however, that such interest rate shall not at any time exceed the maximum rate permitted by Applicable Law. Such interest shall be for the account of, and distributed to, the Lenders. All computations of Interest and all computation of other interest and fees hereunder shall be made on the basis of a year consisting of 360 days for the actual number of days (including the first but excluding the last day) elapsed. The Borrowers acknowledge that they have no rights of withdrawal from the Collection Account, the CDO Management Fee Account or from the Administrative Agent's Account; provided, however, the Borrowers may have a right to distributions from the Collection Account in accordance with Subsection 2.7(b).

(b) Whenever any payment hereunder shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of the payment of the Interest, other interest or any fee payable hereunder, as the case may be.

(c) If (i) any Loan requested by the Borrowers and approved in writing by the Administrative Agent is not, for any reason, made or effectuated, as the case may be, on the date specified therefor, (ii) the Borrowers fail to pay the principal amount of or any Interest on any Loan in accordance with the

terms hereof or (iii) the Borrowers fail to make any prepayment after receiving or giving notice thereof, the Borrowers shall indemnify the Administrative Agent against any reasonable loss, cost or expense incurred by the Administrative Agent and the Lenders, including, without limitation, any loss (including loss of anticipated profits, net of anticipated profits, if any, in the reemployment of any funds in the manner determined by the Administrative Agent or Lenders in their discretion), any reasonable cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by the Administrative Agent or the Lenders to fund or maintain such Loan and any Interest, other interest or fees payable by the Administrative Agent or any Lender to lenders of funds obtained by it in order to maintain any Loan hereunder. A certificate as to any such amounts payable under this Subsection 2.9(c) submitted by the Administrative Agent to the Borrowers shall be conclusive absent manifest errors.

(d) Except as set forth to the contrary in the Loan Documents, all sums payable by the Borrowers and the Guarantors hereunder or under the Loan Documents shall be paid without notice, demand, counterclaim, setoff, deduction or defense (as to any Person or any reason whatsoever) and without abatement, suspension, deferment, diminution or reduction (as to any Person or any reason whatsoever), and the obligations and liabilities of each Borrower and each Guarantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of or any taking of any asset, any Property, any Collateral or any portion of the foregoing; (b) any restriction or prevention of or interference with any use of any asset, any Property, any Collateral or any portion of the foregoing; (c) any title defect or encumbrance or any eviction from any Property, by title paramount or otherwise; (d) any Insolvency Proceeding relating to any Borrower, any Guarantor, any Affiliate or Subsidiary of the foregoing or any obligor, account debtor or indemnitor under the Collateral, or any action taken with respect to this Agreement or any other Loan Document by any trustee or receiver of any Borrower, any Guarantor, any Affiliate or Subsidiary of the foregoing or any obligor, account debtor or indemnitor under the Collateral, or by any court, in any such proceeding; (e) any claim that any Borrower or any Guarantor has or might have against the Administrative Agent, any Lender, any Affected Party and/or any Indemnified Party; (f) any default or failure on the part of the Administrative Agent, any Lender, any Affected Party and/or any Indemnified Party to perform or comply with any of the terms hereof, the Loan Documents or of any other agreement with any Borrower, any Guarantor, any Consolidated Subsidiary of the foregoing and/or any other Person; (g) the invalidity or unenforceability of any Collateral or Loan; (h) anything related to or arising out of any Borrower-Related Obligation; or (i) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not any Borrower, any Guarantor or any Affiliate or Subsidiary of the foregoing shall have notice or knowledge of any of the foregoing.

(e) This Section 2.9 shall survive the termination of this Agreement and the payment in full of the Obligations.

**Section 2.10 Fees.**

(a) On or prior to the Restatement Date, the Borrowers shall pay to the Administrative Agent the fees then due and payable, as agreed to by the Borrowers and the Administrative Agent in the Fee Letter.

(b) To the extent not separately paid by the Borrowers under the Fee Letter or this Agreement, and without waiving the Borrowers' obligations to pay such amounts, the unpaid Interest, the Commitment Fee and all other fees shall be paid to the Administrative Agent from the Collection Account to the extent funds are available on each Payment Date pursuant to Section 2.7.

(c) The Borrowers shall pay to Moore & Van Allen PLLC, as counsel to the Administrative Agent, on the Restatement Date, its reasonable estimated fees and out-of-pocket expenses in immediately

available funds and shall pay all additional reasonable fees and out-of-pocket expenses of Moore & Van Allen PLLC within ten (10) days after receiving an invoice for such amounts.

**Section 2.11 Increased Costs; Capital Adequacy; Illegality.**

(a) If either (i) the introduction of or any change (including, without limitation, any change by way of imposition or increase of reserve requirements) in or in the interpretation of any law or regulation, or (ii) the compliance by the Administrative Agent, any Lender or any Affected Party with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) shall (A) subject the Administrative Agent, any Lender or any Affected Party to any Tax (except for Taxes on, or Taxes one or more of the alternative bases for which are, the overall net income of the Administrative Agent, any Lender or any Affected Party, and except for franchise taxes imposed in lieu thereof), duty or other charge with respect to any ownership interest in the Collateral, or any right to enter into Loans hereunder, or on any payment made hereunder, (B) impose, modify or deem applicable any reserve requirement (including, without limitation, any reserve requirement imposed by the Board of Governors of the Federal Reserve System, but excluding any reserve requirement, if any, included in the determination of Interest), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, the Administrative Agent, any Lender or any Affected Party or (C) impose any other condition affecting the ownership interest in the Collateral conveyed to the Administrative Agent hereunder or the Administrative Agent's or any Lender's or Affected Party's rights hereunder, the result of which is to increase the cost to the Administrative Agent, any Lender or any Affected Party or to reduce the amount of any sum received or receivable by the Administrative Agent, any Lender or any Affected Party under this Agreement or the other Loan Documents, then within ten (10) days after demand by the Administrative Agent (which demand shall be accompanied by a statement setting forth the basis for such demand), the Borrowers shall pay directly to the Administrative Agent such additional amount or amounts as will compensate the Administrative Agent, any Lender or any Affected Party for such additional or increased cost incurred or such reduction suffered.

(b) If either (i) the introduction of or any change in or in the interpretation of any law, guideline, rule, regulation, directive or request or (ii) compliance by the Administrative Agent, any Lender or any Affected Party with any law, guideline, rule, regulation, directive or request from any central bank or other Governmental Authority or agency (whether or not having the force of law), including, without limitation, compliance by the Administrative Agent, any Lender or any Affected Party with any request or directive regarding capital adequacy, has or would have the effect of reducing the rate of return on the capital of the Administrative Agent, any Lender or any Affected Party as a consequence of its obligations hereunder or arising in connection herewith to a level below that which the Administrative Agent, any Lender or any Affected Party could have achieved but for such introduction, change or compliance (taking into consideration the policies of the Administrative Agent, any Lender or any Affected Party with respect to capital adequacy) by an amount deemed by the Administrative Agent, any Lender or any Affected Party to be material, then from time to time, within ten (10) days after demand by the Administrative Agent (which demand shall be accompanied by a statement setting forth the basis for such demand), the Borrowers shall pay directly to the Administrative Agent such additional amount or amounts as will compensate the Administrative Agent, any Lender and any Affected Party for such reduction. For the avoidance of doubt, any interpretation of Accounting Research Bulletin No. 51 by the Financial Accounting Standards Board shall constitute an adaptation, change, request or directive subject to this Subsection 2.11(b).

(c) If as a result of any event or circumstance similar to those described in clause (a) or (b) of this Section 2.11, the Administrative Agent, any Lender or any Affected Party is required to compensate a bank or other financial institution providing liquidity support, credit enhancement or other similar support to the Administrative Agent, any Lender or any Affected Party in connection with this Agreement, the

other Loan Documents or the funding or maintenance of any Loan hereunder, then within ten (10) days after demand by the Administrative Agent, the Borrowers shall pay to the Administrative Agent such additional amount or amounts as may be necessary to reimburse the Administrative Agent, any Lender or any Affected Party for any amounts payable or paid by it.

(d) In determining any amount provided for in this Section 2.11, the Administrative Agent, any Lender or any Affected Party may use any reasonable averaging and attribution methods. The Administrative Agent, any Lender or any Affected Party making a claim under this Section 2.11 shall submit to the Borrowers a written description as to such additional or increased cost or reduction and the calculation thereof, which written description shall be conclusive absent demonstrable error.

(e) If any Lender shall notify the Administrative Agent that a Eurodollar Disruption Event as described in clause (a) of the definition of "Eurodollar Disruption Event" has occurred, the Administrative Agent shall in turn so notify the Borrowers, whereupon all Loans in respect of which the Interest accrues at the Adjusted Eurodollar Rate shall immediately be converted into Loans in respect of which the Interest accrues at the Base Rate.

(f) If, as a result of any event or circumstance described in clause (a), (b) or (c) of this Section 2.11, the Borrowers are required to make payments to the Administrative Agent, any Lender or any Affected Party, the Borrowers shall have the right to elect, by written notice to the Administrative Agent, to convert the Rate at which the Interest accrues to the Base Rate.

(g) Without prejudice to the survival of any other agreement of the Borrowers and the Guarantors hereunder, the agreements and obligations of the Borrowers and the Guarantors contained in this Section 2.11 shall survive the termination of this Agreement and the payment in full of the Obligations.

**Section 2.12 Taxes.**

(a) All payments made by the Borrowers and the Guarantors under this Agreement and/or the other Loan Documents will be made free and clear of and without deduction or withholding for or on account of any Taxes. If any Taxes are required to be withheld from any amounts payable to the Administrative Agent, the Lenders or any other Affected Party then the amount payable to such Person will be increased (such increase, the "Additional Amount") such that every net payment made under this Agreement and/or the other Loan Documents after withholding for or on account of any Taxes (including, without limitation, any Taxes on such increase) is not less than the amount that would have been paid had no such deduction or withholding been deducted or withheld. The foregoing obligation to pay Additional Amounts, however, will not apply with respect to net income or franchise taxes imposed on the Administrative Agent, any Lender or any other Affected Party, with respect to payments required to be made by the Borrowers and the Guarantors under this Agreement and/or the other Loan Documents, by a taxing jurisdiction in which the Administrative Agent, any Lender or any other Affected Party is organized, conducts business or is paying taxes (as the case may be).

(b) The Borrowers and the Guarantors will indemnify the Administrative Agent, any Lender or any other Affected Party for the full amount of Taxes payable by such Person in respect of Additional Amounts and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. All payments in respect of this indemnification shall be made within ten (10) days from the date a written invoice therefor is delivered to the Borrowers or the Guarantors.

(c) Within thirty (30) days after the date of any payment by the Borrowers or the Guarantor of any Taxes, the Borrowers and the Guarantors will furnish to the Administrative Agent, at its address set forth under its name on Schedule 3, appropriate evidence of payment thereof.

(d) If the Administrative Agent, any Lender or any other Affected Party is created or organized under the laws of the United States or a political subdivision thereof, the Administrative Agent, any Lender or any other Affected Party shall deliver to the Borrowers, within fifteen (15) days after the date hereof (or the date on which a Lender or Affected Party becomes a party hereto), two (or such other number as may from time to time be prescribed by Applicable Laws) duly completed copies of IRS Form W-9 (or any successor forms or other certificates or statements that may be required from time to time by the relevant United States taxing authorities or Applicable Laws). If the Administrative Agent, any Lender or any other Affected Party is not created or organized under the laws of the United States or a political subdivision thereof, the Administrative Agent, the Lenders or any other Affected Party shall deliver to the Borrowers, (i) within fifteen (15) days after the date hereof (or the date on which a Lender or Affected Party becomes a party hereto), two (or such other number as may from time to time be prescribed by Applicable Laws) duly completed copies of IRS Form W-8BEN or Form W-8ECI (or any successor forms or other certificates or statements that may be required from time to time by the relevant United States taxing authorities or Applicable Laws), as appropriate, to permit the Borrowers and Guarantors to make payments hereunder for the account of the Administrative Agent, the Lenders and the Affected Parties without deduction or withholding of United States federal income or similar Taxes, and (ii) upon the obsolescence of, or after the occurrence of any event requiring a change in, any form or certificate previously delivered pursuant to this Section 2.12, copies (in such numbers as may from time to time be prescribed by Applicable Laws or regulations) of such additional, amended or successor forms, certificates or statements as may be required under Applicable Laws or regulations to permit the Borrowers and Guarantor to make payments hereunder and under the Loan Documents for the account of the Administrative Agent, the Lenders and the Affected Parties without deduction or withholding of United States federal income or similar Taxes.

(e) Without prejudice to the survival of any other agreement of the Borrowers and the Guarantors hereunder, the agreements and obligations of the Borrowers and the Guarantors contained in this Section 2.12 shall survive the termination of this Agreement and the payment in full of the Obligations.

**Section 2.13 Designation of a Different Lending Office.**

If any Lender requests compensation under Section 2.11, or requires any Borrower to pay any additional amount to any Lender or any governmental authority for the account of any Lender pursuant to Section 2.12, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 2.11 or 2.12, as the case may be, in the future and (b) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender.

**Section 2.14 Usury.**

It is the intent of the Lenders and the Borrowers to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between the Lenders and the Borrowers are hereby limited by the provisions of this Section 2.14, which shall override and control all such agreements, whether now existing or hereafter arising and whether written or oral. In no way, nor in any event or contingency (including, but not limited to, prepayment or acceleration of the maturity of any

Obligation), shall the interest taken, reserved, contracted for, charged, or received under this Agreement, under the Revolving Notes or otherwise, exceed the maximum nonusurious amount permissible under Applicable Law. If, from any possible construction of any of the Loan Documents or any other document, interest would otherwise be payable in excess of the maximum nonusurious amount, any such construction shall be subject to the provisions of this Section 2.14 and such interest shall be automatically reduced to the maximum nonusurious amount permitted under Applicable Law, without the necessity of execution of any amendment or new document. If any Lender shall ever receive anything of value which is characterized as interest on the Loans under Applicable law and which would, apart from this provision, be in excess of the maximum nonusurious amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Loans and not to the payment of interest, or refunded to the Borrowers or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal amount of the Loans. The right to demand payment of the Loans or any other Obligations does not include the right to receive any interest which has not otherwise accrued on the date of such demand, and the Lenders do not intend to charge or receive any unearned interest in the event of such demand. All interest paid or agreed to be paid to the Lenders with respect to the Loans shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of the Loans so that the amount of interest on account of such indebtedness does not exceed the maximum nonusurious amount permitted by Applicable Law.

**Section 2.15 No Additional Collateral**. Notwithstanding anything contained in the Agreement to the contrary (including, without limitation, Subsections 2.1(f) and 2.2(a)(i)), Additional Collateral (i) will not be considered by the Administrative Agent for inclusion in the Collateral under Subsection 2.1(f) of the Agreement or any other provision of the Agreement or the other Loan Documents, (ii) is not (as of the Restatement Date) and may not be pledged as Collateral for the Loans, (iii) will not be included in the calculation of Availability and (iv) may not be pledged to cure any negative Availability under Subsection 2.2(a)(i).

## ARTICLE III

## CONDITIONS TO TRANSACTIONS

**Section 3.1 Conditions to Restatement Date.**

This Agreement shall become effective upon, and the obligation of the Lender to make the Loans on the Restatement Date, is subject to, the satisfaction of the following conditions precedent:

(a) Each Loan Document shall have been duly executed by, and delivered to, the parties thereto, and the Administrative Agent shall have received such other documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the Loans contemplated by this Agreement, each in form and substance satisfactory to the Administrative Agent;

(b) Each Borrower and each Guarantor has obtained all required consents and approvals of all Persons, including, but not limited to, all requisite Governmental Authorities, to the execution, delivery and performance of this Agreement and the other Loan Documents to which each is a party and the consummation of the transactions contemplated hereby or thereby;

(c) The Borrowers and the Guarantors shall each be in compliance in all material respects with all Applicable Laws, Contractual Obligations, all Indebtedness and all Guarantee Obligations;

(d) The Borrowers and the Guarantors shall each have delivered to the Administrative Agent a power of attorney in the form of Exhibit VIII;

(e) **[Reserved]**;

(f) Any and all consents and waivers applicable to the Collateral shall have been obtained;

(g) The Administrative Agent shall be in receipt of (i) such Opinions of Counsel from the counsel to each Borrower and each Guarantor as the Administrative Agent may require in its discretion, each in form and substance satisfactory to the Administrative Agent in its discretion, including, without limitation, corporate opinions and perfection opinions, (ii) an Opinion of Counsel from a nationally recognized tax counsel experienced in such matters opining that, under current Tax law, (x) the pledge of the Pledged Collateral under the Pledge and Security Agreement will not cause each CDO Issuer owned by any Pledged CDO Subsidiary, solely as a result of such transfer, to cease to be treated as a QRS and (y) a transfer of ownership (as determined by U.S. federal income tax principles) of all of the Equity Interests in each Pledged CDO Subsidiary directly to a REIT, a QRS or a disregarded entity (as determined by U.S. federal income tax principles) that is wholly owned by a REIT will not cause any CDO Issuer owned by any Pledged CDO Subsidiary to cease to be treated as a QRS or, after such transfer, the CDO Issuer will be treated as a foreign corporation that is not engaged in a trade or business in the United States for United States federal income tax purposes, and (iii) Opinions of Counsel from counsel to the applicable Borrower or the applicable Consolidated Subsidiary of a Borrower opining as to the enforceability of the subordination provisions contained in all Eligible Subordinated Debt, each in form and substance satisfactory to the Administrative Agent in its discretion;

(h) The Administrative Agent shall be in receipt of good standing certificates with respect to each Credit Party certified as of a recent date by the appropriate Governmental Authorities of the state of incorporation or organization, a secretary's certificate (or the equivalent), certified copies of the Authority Documents and certified copies of the applicable resolutions of each Borrower and each Guarantor evidencing the corporate or other authority for each Borrower and each Guarantor with respect to the execution, delivery and performance of the Loan Documents and each of the other documents to be delivered by each Borrower and each Guarantor from time to time in connection herewith;

(i) The Administrative Agent is in receipt of certified copies of the Authority Documents of each Pledged CDO Subsidiary and such other Affiliates and Subsidiaries of the Borrowers and the Guarantors as the Administrative Agent may request in its discretion and the Authority Documents for each such Pledged CDO Subsidiary shall permit the pledge of Equity Interests in such entity as contemplated by the Pledge and Security Agreement;

(j) The Administrative Agent shall have received fully executed Irrevocable Instructions satisfactory to the Administrative Agent in its discretion;

(k) The Administrative Agent shall be in receipt of an Officer's Certificate certifying that there has been no change in the following since the date of delivery of the copies thereof in connection with the Original Agreement: Collateral Management Agreements to which ARCM is a party, all documents related to or governing the payment or the right to receive payment of the CDO Management Fees, all documents relating to or governing the right of ARSR to receive payments, dividends and distributions from ARCM, all documents relating to or governing the right of any Pledged CDO Subsidiary to receive payments, dividends or distributions from a CDO Issuer in any CDO Issuance, all documents relating to any CDO Equity Distributions and Authority Documents of any CDO Issuer;

(l) The Administrative Agent shall have received payment from the Borrowers of the fees payable under the Fee Letter and the amount of actual costs and expenses, including, without limitation, the fees and expenses of counsel to the Administrative Agent as contemplated by this Agreement and the Fee Letter, incurred by the Administrative Agent in connection with the development, preparation and execution of this Agreement, the other Loan Documents and any other documents prepared in connection herewith or therewith;

(m) The Administrative Agent shall have received, in form and substance satisfactory to the Administrative Agent:

(i) searches of Uniform Commercial Code filings in the jurisdiction of the state of incorporation or formation of each Borrower, in and each jurisdiction where any Collateral is located or where a filing would need to be made in order to perfect the Administrative Agent's security interest in the Collateral, copies of the financing statements on file in such jurisdictions and evidence that no Liens exist on the Collateral other than Permitted Liens;

(ii) UCC financing statements against each Borrower for each appropriate jurisdiction as is necessary, in the Administrative Agent's discretion, to perfect the Administrative Agent's security interest in the Collateral; and

(iii) duly executed consents as are necessary, in the Administrative Agent's discretion, to perfect the Lenders' security interest in the Collateral;

(n) There shall not exist any pending or threatened litigation, investigation, injunction, order or claim affecting or relating to any Borrower, any Guarantor or any of their Consolidated Subsidiaries, this Agreement, the other Loan Documents or the Collateral that has not been settled, dismissed, vacated, discharged or terminated prior to the Restatement Date which could reasonably be expected to result in a Material Adverse Effect;

(o) The corporate capital and ownership structure of the Borrowers, the Guarantor and their Consolidated Subsidiaries as of the Restatement Date shall be as reflected on Schedule 4.1(ll);

(p) There shall be no Insolvency Proceedings commenced or threatened to be commenced against any Borrower or any Guarantor, and, to the best knowledge of each Borrower and each Guarantor, there shall be no Insolvency Proceedings commenced or threatened to be commenced against any Affiliate or Subsidiary (other than a Consolidated Subsidiary) of a Borrower or a Guarantor;

(q) The Administrative Agent shall have received copies of such financial statements as the Administrative Agent may require in its discretion;

(r) Since the date of the most recent financial information provided to the Administrative Agent, there has been no material adverse change in the business, properties, prospects, operations or condition (financial or otherwise) of the Borrowers, the Guarantors and their Consolidated Subsidiaries taken as a whole;

(s) The Administrative Agent shall have received a Closing Certificate executed by a Responsible Officer of each Borrower and each Guarantor as of the Restatement Date;

(t) The Borrowers and the Guarantors shall have provided to the Administrative Agent, for benefit of the Administrative Agent and the Initial Lender, the necessary information required by the Anti-Terrorism Laws, including, without limitation, the identity of the Borrowers, the Guarantors and

their Consolidated Subsidiaries, the name and address of the Borrowers, the Guarantors and their Consolidated Subsidiaries and other information that will allow the Administrative Agent or the Initial Lender, as applicable, to identify the Borrowers, the Guarantors and their Consolidated Subsidiaries in accordance with the Anti-Terrorism Laws, together with such other information with respect to any Arbor Entity that may be required in accordance with the Anti-Terrorism Laws;

(u) No Default, Event of Default or Material Adverse Effect shall exist;

(v) The Administrative Agent shall have completed to its satisfaction such due diligence as it may require in its discretion; and

(w) The Administrative Agent shall have received all such other and further documents, certifications, reports, approvals and legal opinions as the Administrative Agent may reasonably require.

**Section 3.2 Conditions Precedent to all Loans.**

The obligation of the Initial Lender and any other Lenders to make any Loan hereunder is subject to the satisfaction of the following further conditions precedent on the date of making such Loan, both immediately prior to making the Loan and also after giving effect to the consummation thereof and the intended use of the proceeds of the Loan:

(a) No Applicable Law shall prohibit or render it unlawful, and no order, judgment or decree of Governmental Authority shall prohibit, enjoin or render it unlawful, to enter into such Loan by the Lenders in accordance with the provisions hereof or any other transaction contemplated herein;

(b) Each Borrower, each Guarantor and all other applicable Persons shall have delivered to the Administrative Agent all documents, agreements, certificates, reports and other information required to be delivered as of the date of such Loan;

(c) The Borrowers shall have delivered a Notice of Borrowing and such other information and documents requested by the Administrative Agent in connection therewith, all conditions precedent and other requirements set forth in Article II of this Agreement shall have been satisfied, and the Administrative Agent shall have approved the Loan;

(d) No Default, Event of Default or Material Adverse Effect shall have occurred and be continuing;

(e) The Administrative Agent shall have received a Compliance Certificate from a Responsible Officer of ART and ARSR that, among other things: (i) shows in detail the calculations demonstrating that, before and after giving effect to the requested Loan, the Availability shall not be negative, (ii) states that each Borrower and each Guarantor has observed or performed all of their covenants and other agreements, and satisfied every condition, contained in this Agreement, the Loan Documents and the related documents to be observed, performed or satisfied by them, (iii) states that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate, (iv) states that all representations and warranties contained in this Agreement, the other Loan Documents and all other documents delivered to the Administrative Agent are true and correct on and as of such day as though made on and as of such day and shall be deemed to be made on such day, and (v) states that ART is in compliance with the Financial Covenants;

(f) Before and after giving effect to the requested Loan, the Availability shall not be negative;

(g) The Borrowers shall have delivered to the Administrative Agent any and all documents and agreements relating to the Collateral or the Required Payments entered into since the Restatement Date, including, without limitation, Collateral Management Agreements, all documents and agreements related to or governing the payment or the right to receive payment of the CDO Management Fees, all documents relating to or governing ARSR's right to receive payments, dividends, or distributions from ARCM, all documents relating to or governing any proposed CDO Issuance, all documents relating to any CDO Equity Distributions, and all documents and agreements related to or governing the right of a CDO Subsidiary to receive payments, dividends or distributions from a CDO Issuer in a CDO Issuance;

(h) The Administrative Agent shall have received all fees and expenses of the Administrative Agent and the Lenders and counsel to the Administrative Agent and the Lenders as contemplated by this Agreement and the Fee Letter, and the Administrative Agent and the Lenders shall have received the reasonable costs and expenses incurred by them in connection with the entering into of any Loan hereunder, including, without limitation, costs associated with due diligence recording or other administrative expenses necessary or incidental to any Loan hereunder, which amounts, at the Administrative Agent's option, may be withheld from proceeds of any Loan hereunder;

(i) None of the following shall have occurred and/or be continuing:

(i) an event or events shall have occurred in the good faith determination of the Administrative Agent resulting in the effective absence of a "repo market" or related "lending market" for purchasing (subject to repurchase) or financing debt obligations secured by commercial mortgage loans or securities, or an event or events shall have occurred resulting in the Administrative Agent not being able to finance mortgage assets through the "repo market" or "lending market" with traditional counterparties at rates that would have been reasonable prior to the occurrence of such event or events;

(ii) an event or events shall have occurred resulting in the effective absence of a "securities market" for securities backed by mortgage assets, or an event or events shall have occurred resulting in the Administrative Agent not being able to sell securities backed by mortgage assets at prices that would have been reasonable prior to such event or events; or

(iii) there shall have occurred a material adverse change in the financial condition of the Administrative Agent or any Lender that affects (or can reasonably be expected to affect) materially and adversely the ability of the Administrative Agent or any Lender to fund its obligations under this Agreement.

(j) To the extent the same were not delivered or the Collateral did not exist on the Restatement Date, the Administrative Agent shall have received with respect thereto fully executed Irrevocable Instructions satisfactory to the Administrative Agent in its discretion;

(k) Both immediately prior to the requested Loan and also after giving effect thereto and to the intended use thereof, the representations and warranties made by each Borrower and each Guarantor shall be true, correct and complete on and as of such Borrowing Date in all material respects with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made only as of a specific date, as of such specific date);

(l) The Borrowers and Guarantors shall have delivered any other opinion or closing item that was, with the written consent of the Administrative Agent, not delivered on the Restatement Date;

(m) Other conditions to such Loan set forth in this Agreement or the other Loan Documents are satisfied;

(n) **[Reserved]**;

(o) The Borrowers shall have satisfied, in all respects, all of the conditions precedent set forth in the Arbor Credit Documents that are applicable to the Additional Collateral and the related Collateral by virtue of Subsection 2.1(f) of this Agreement;

(p) To the extent the Equity Interests in any other CDO Subsidiary (other than the Pledged CDO Subsidiaries) are pledged to the Administrative Agent after the Restatement Date, in addition to all requirements of the Administrative Agent, including such requirements as are necessary for the Administrative Agent to perfect its security interest in the Equity Interests in such CDO Subsidiary, the Borrowers shall provide to the Administrative Agent prior to such pledge an Opinion of Counsel in substantially the form of the Opinion of Counsel provided pursuant to Subsection 3.1(g)(ii) of this Agreement.

(q) The Administrative Agent shall have received all such other and further documents, reports, certifications, approvals and legal opinions as the Administrative Agent in its discretion shall reasonably require.

Each request for a Loan and each acceptance by the Borrowers of any such Loan shall be deemed to constitute a representation and warranty by the Borrowers as of the date of such Loan that the applicable conditions contained in Sections 3.1 and 3.2 have been satisfied (as of the date of the request for a Loan and the Borrowing Date).

The failure of any Borrower or any Guarantor, as applicable, to satisfy any of the foregoing conditions precedent contained in Article III of this Agreement shall, unless such failure was expressly waived in writing by the Administrative Agent on or prior to the related Borrowing Date, give rise to a right of the Lenders, which right may be exercised at any time on the demand of the Administrative Agent, to rescind the related Loan and direct the Borrowers to pay to the Administrative Agent for the benefit of the Lenders an amount equal to the principal amount of the Loan outstanding, the accrued Interest thereon, Breakage Costs and other amounts due in connection therewith during any such time that any of the foregoing conditions precedent were not satisfied.

## ARTICLE IV

## REPRESENTATIONS AND WARRANTIES

**Section 4.1 Representations and Warranties.**

Each Borrower and each Guarantor represents and warrants, as of the date of this Agreement and any Loan hereunder and until the occurrence of a Final Termination, as follows:

(a) Organization and Good Standing. Each Borrower's and each Guarantor's exact legal name is set forth on Schedule 3. Each Borrower and each Guarantor has been duly organized, and is validly existing as a corporation, partnership or limited liability company, as applicable, in good standing, under the laws of the state of its corporation or formation, with all requisite, corporate, partnership or limited liability company, as applicable, power and authority to own or lease its Properties and conduct its

business as such business is presently conducted, and had, at all relevant times, and now has, all necessary power, authority and legal right to acquire, own and pledge the Collateral.

(b) Due Qualification. Each Borrower and each Guarantor is duly qualified to do business and is in good standing as a corporation, limited partnership or limited liability company, as applicable, and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of Property or the conduct of its business requires such qualification, licenses or approvals.

(c) Power and Authority; Due Authorization; Execution and Delivery. Each Borrower and each Guarantor (i) has all necessary power, authority and legal right (A) to execute and deliver the Loan Documents to which it is a party, (B) to carry out the terms of the Loan Documents to which it is a party, and (C) to pledge the Collateral on the terms and conditions provided herein, (ii) has duly authorized by all necessary corporate, partnership or limited liability company, as applicable, action (A) the execution, delivery and performance of the Loan Documents to which it is a party, and (B) the pledge of the Collateral on the terms and conditions herein provided, and (iii) has duly executed and delivered each Loan Document to which it is a party.

(d) Binding Obligation. Each of the Loan Documents to which the Borrowers and the Guarantors are a party constitutes the legal, valid and binding obligation of each Borrower and each Guarantor enforceable against each Borrower and each Guarantor in accordance with its respective terms, except as such enforceability may be limited by Insolvency Laws and by general principles of equity (whether considered in a suit at law or in equity).

(e) No Violation. The consummation of the transactions contemplated by the Loan Documents to which the Borrowers and the Guarantors are a party and the fulfillment of the terms hereof and thereof will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, any Borrower's or any Guarantor's Authority Documents or any material Indebtedness, Guarantee Obligation or Contractual Obligation of any Borrower or any Guarantor, (ii) result in the creation or imposition of any Lien (other than Permitted Liens) upon any Borrower's or any Guarantor's Properties pursuant to the terms of any such Indebtedness, Guarantee Obligation or Contractual Obligation, other than this Agreement, or (iii) violate any Applicable Law.

(f) No Proceedings. There is no material litigation, proceeding or investigation pending or, to the best knowledge of each Borrower and each Guarantor, threatened against any Borrower or any Guarantor, before any Governmental Authority (i) asserting the invalidity or unenforceability of any of the Loan Documents to which any of the Borrowers or the Guarantors are a party, (ii) seeking to prevent the consummation of any of the transactions contemplated by any Loan Documents to which the Borrowers or the Guarantors are a party, or (iii) seeking any determination or ruling that could reasonably be expected to have Material Adverse Effect.

(g) All Consents Required. All approvals, authorizations, consents, orders or other actions of any Person or of any Governmental Authority (if any) required for the due execution, delivery and performance by each Borrower and each Guarantor of the Loan Documents to which the Borrowers and the Guarantors are a party (including the grant of a security interest in the Collateral) have been obtained, effected or given and are in full force and effect.

(h) Bulk Sales. The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not require compliance with any "bulk sales" act or similar law by any Borrower.

(i) Solvency. None of the Borrowers or the Guarantors is the subject of any Insolvency Proceedings or Insolvency Event. The Loans under this Agreement and any other Loan Document do not and will not render any Borrower or any Guarantor not Solvent.

(j) Taxes. Each Borrower and each Guarantor has filed or caused to be filed all tax returns that are required to be filed by it. Each Borrower and each Guarantor has paid or made adequate provisions for the payment of all Taxes and all assessments made against it or any of its Property (other than any amount of Tax the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with GAAP have been provided on the books of a Borrower or a Guarantor), and no tax Lien has been filed and, to each Borrower's and each Guarantor's knowledge, no claim is being asserted, with respect to any such Tax, fee or other charge.

(k) Exchange Act Compliance; Regulations T, U and X. None of the transactions contemplated herein will violate or result in a violation of Section 7 of the Exchange Act, or any regulations issued pursuant thereto, including, without limitation, Regulations T, U and X. No Borrower owns or intends to carry or purchase, and no proceeds from the Loans will be used to carry or purchase, any "margin stock" within the meaning of Regulation U or to extend "purpose credit" within the meaning of Regulation U.

(l) Environmental Matters.

(i) No Properties owned or leased by any Borrower or any Consolidated Subsidiary thereof and, to the knowledge of each Borrower, no Properties formerly owned or leased by any Borrower or any Consolidated Subsidiary thereof, contain, or have previously contained, any Materials of Environmental Concern in amounts or concentrations that constitute or constituted a violation of, or reasonably could be expected to give rise to liability under, Environmental Laws;

(ii) Each Borrower is in compliance, and has in the last five (5) years (or such shorter period as each Borrower shall have been in existence) been in compliance, with all applicable Environmental Laws, and, to the knowledge of each Borrower, there is no violation of any Environmental Laws that reasonably could be expected to interfere with the continued operations of each Borrower;

(iii) No Borrower has received any notice of violation, alleged violation, non-compliance, liability or potential liability under any Environmental Law, nor does any Borrower have any knowledge that any such notice will be received or is being threatened;

(iv) Materials of Environmental Concern have not been transported or disposed of by any Borrower in violation of, or in a manner or to a location that reasonably could be expected to give rise to liability under, any applicable Environmental Law, nor has any of them generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that reasonably could be expected to give rise to liability under, any applicable Environmental Law;

(v) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of each Borrower, threatened, under any Environmental Law to which any Borrower is or will be named as a party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements arising out of judicial proceedings or governmental or administrative actions, outstanding under any Environmental Law to which any Borrower is a party;

(vi) There has been no release or, to the best knowledge of each of the Borrowers, threat of release of Materials of Environmental Concern in violation of or in amounts or in a manner that reasonably could be expected to give rise to liability under any Environmental Law for which any Borrower may become liable; and

(vii) To the best knowledge of each of the Borrowers, each of the representations and warranties set forth in the preceding clauses (i) through (vi) is true and correct with respect to each parcel of real property owned or operated by each Borrower.

(m) Security Interest.

(i) This Agreement and the other Loan Documents constitute a grant of a security interest in all Collateral to the Administrative Agent, that, upon delivery to the Administrative Agent of any Collateral that requires possession to perfect (if any) and the filing of the financing statements described in this Subsection 3.1(m)(ii) in the jurisdictions and recording offices listed on the Closing Certificate delivered with respect to the applicable Borrower, shall be a first priority perfected security interest in all Collateral to the extent such Collateral can be perfected by possession or by filing, subject only to Permitted Liens;

(ii) Neither the Borrowers nor any Person claiming through or under the Borrowers shall have any claim to or interest in the Collection Account or the CDO Management Fee Account, except for the interest of the Borrowers in such Property under this Agreement or as a debtor for purposes of the UCC;

(iii) The Collateral constitute either a "general intangible," an "instrument," an "account," "investment property," a "security," a "deposit account," a "financial asset," an "uncertificated security," a "securities account," a "securities entitlement" and/or "chattel paper" within the meaning of the applicable UCC;

(iv) Other than Permitted Liens, neither the Borrowers nor the Guarantors have sold, assigned, pledged, encumbered or otherwise conveyed any of the Collateral or any Required Payment to any Person, and, immediately prior to the pledge to the Administrative Agent, the Borrowers, as applicable, were the sole owners of such Collateral, and the Borrowers directly own and have good and marketable title to the Collateral free and clear of any Lien (other than Permitted Liens);

(v) The Borrowers have received all consents and approvals, if any, required by the terms of any Collateral to the granting of a security interest in the Collateral hereunder to the Administrative Agent;

(vi) The Administrative Agent (on behalf of the Account Beneficiaries) shall have exclusive control of, and the sole right of withdrawal from, the Collection Account, the CDO Management Fee Account and the deposits and investment property in the foregoing accounts;

(vii) None of the Borrowers have authorized the filing of and none is aware of any financing statements against any Borrower that includes a description of collateral covering the Collateral or the Required Payments other than any financing statement (A) that has been terminated, or (B) filed or to be filed pursuant to the Loan Documents.

(viii) The Borrowers and Guarantors are not aware of the filing of any judgment or tax Lien filings against any Borrower or any Guarantor; and

(ix) None of the Collateral has any marks or notations indicating that it has been pledged, assigned or otherwise conveyed to any Person other than the Administrative Agent.

(n) Location of Offices. Each Borrower's location (within the meaning of Article 9 of the UCC) is set forth on Schedule 3. The office where each Borrower keep all the records (within the meaning of Article 9 of the UCC) is at the address set forth on Schedule 3 to this Agreement (or at such other locations as to which the notice and other requirements specified in Subsection 5.1(l) shall have been satisfied). Each Borrower's organizational identification number is set forth in the Closing Certificate.

(o) Tradenames. The Borrowers have no trade names, fictitious names, assumed names or "doing business as" names or other names under which it has done or is doing business.

(p) Compliance with Anti-Terrorism Laws. No Borrower nor any Guarantor (i) is or will be in violation of any Anti-Terrorism Law, (ii) is or will be a Prohibited Person, (iii) conducts any business or engages in any transaction or dealing with any Prohibited Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Prohibited Person, (iv) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, (v) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, (vi) has more than 10% of its assets in a Prohibited Person or derives more than 10% of its operating income from direct or indirect investments in, or transactions with, any Prohibited Person, and (vii) engages in or will engage in any of the foregoing activities in the future. To the extent applicable, each Borrower and each Guarantor has established an adequate anti-money laundering compliance program as required by the Anti-Terrorism Laws, has conducted the requisite due diligence in connection with the Collateral and the Loans for purposes of the Anti-Terrorism Laws, and maintains, and will maintain, sufficient information to identify the applicable obligors for purposes of the Anti-Terrorism Laws. No Collateral is subject to nullification pursuant to any Anti-Terrorism Law, and no Collateral is in violation of any Anti-Terrorism Law. The proceeds of any Loan have not been used and shall not be used to fund any operations in, finance any investments or activities in or make any payments to a Prohibited Person.

(q) Investment Company Act. None of the Borrowers nor the Guarantors is, and none is controlled by, an "investment company" within the meaning of the 40 Act, as amended, or the Borrowers and the Guarantors are exempt from the provisions of the 40 Act.

(r) ERISA. The Borrowers, the Guarantors and each ERISA Affiliate have made all required contributions to each Benefit Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Benefit Plan. Neither the Borrowers, the Guarantors nor any ERISA Affiliate have incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan, nor has there been a complete or partial withdrawal by the Borrowers, the Guarantors or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization. The present value of all benefits vested under all "employee pension benefit plans", as such term is defined in Section 3(2) of ERISA, maintained by each Borrower and each Guarantor, or in which employees of any Borrower or any Guarantor are entitled to participate, as from time to time in effect (herein called the "Pension Plans"), does not exceed the value of the assets of the Pension Plan allocable to such vested benefits (based on the value of such assets as of the last annual valuation date). No prohibited transactions, accumulated funding deficiencies, withdrawals or reportable

events have occurred with respect to any Pension Plans that, in the aggregate, could subject any Borrower or any Guarantor to any material tax, penalty or other liability. No Lien in favor of the PBGC or a Pension Plan has arisen or is likely to arise on account of any Pension Plan. No notice of intent to terminate a Pension Plan under Section 4041(b) of ERISA has been filed, nor has any Pension Plan been terminated under Section 4041(c) of ERISA, nor has the PBGC instituted proceedings to terminate or appoint a trustee to administer a Pension Plan, and no event has occurred or condition exists that might constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan.

(s) PUHCA. No Borrower and no Guarantor is a "holding company" or a "subsidiary holding company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or any successor statute.

(t) Compliance with Law. Each Borrower and Guarantor has complied in all respects with all Applicable Laws to which it may be subject, and no Collateral or Loan contravenes any Applicable Laws (including, without limitation, laws, rules and regulations relating to licensing, usury, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy).

(u) Income and Required Payments. Each Borrower and Guarantor acknowledges that all Income and Required Payments received, after the Restatement Date, by its Affiliates or its Consolidated Subsidiaries and any Person acting on its behalf with respect to the Collateral shall be held for the benefit of the Administrative Agent until deposited into the Collection Account as required herein.

(v) Set-Off, etc. No Collateral has been compromised, adjusted, extended, satisfied, subordinated, rescinded, set-off or modified by the Borrowers, the Guarantors or any obligor thereof, and no Collateral is subject to compromise, adjustment, extension (except as set forth in the related documents provided to the Administrative Agent), satisfaction, subordination, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deduction, reduction, termination or modification, whether arising out of transactions concerning the Collateral or otherwise, by the Borrowers, the Guarantors or any obligor with respect thereto.

(w) Full Payment. No Borrower has any knowledge of any fact that should lead it to expect that each Loan will not be paid in full.

(x) Collateral. (i) The security interests granted under the Loan Documents do not violate any provision of the Collateral, (ii) other than the Governing Documents for ARMS 2004-1 Equity Holdings LLC, ARMS 2005-1 Equity Holdings LLC and ARMS 2006-1 Equity Holdings LLC, the agreements governing the Collateral do not contain any express or implied prohibitions on pledges of the Collateral, (iii) the only express or implied prohibitions on pledges of the Collateral contained in the Governing Documents for ARMS 2004-1 Equity Holdings LLC, ARMS 2005-1 Equity Holdings LLC and ARMS 2006-1 Equity Holdings LLC are the requirement that the transferor obtain an Opinion of Counsel opining (x) that the pledge or transfer of the Pledged Collateral will not cause the CDO Issuer owned by the related CDO Subsidiary to cease to be treated as a QRS or (y) that, after such transfer, the CDO Issuer will be treated as a foreign corporation that is not engaged in a trade or business in the United States for United State federal income tax purposes, and (iv) the agreements governing the Collateral are valid, binding and enforceable against the Borrowers, as applicable. No Irrevocable Instruction violates any Applicable Law, any Contractual Obligation or other prohibition and such Irrevocable Instructions are the valid and binding obligations of the parties thereto.

(y) Irrevocable Instructions. The Borrowers have delivered each Irrevocable Instruction required to be delivered by the terms of this Agreement. The Borrowers are not aware of any Required Payment that has been made after the date of this Agreement but has not been deposited into the Collection Account.

(z) No Broker. No Borrower or any Guarantor has dealt with any broker, investment banker, agent or other Person, except for the Administrative Agent (or an Affiliate of the Administrative Agent), who may be entitled to any commission or compensation in connection with this Agreement.

(aa) Ability to Perform. No Borrower or Guarantor believes, nor does any Borrower or any Guarantor have any reason or cause to believe, that it cannot perform each and every agreement and covenant contained in the Loan Documents applicable to it to which it is a party.

(bb) No Default. No Default or Event of Default or any Material Adverse Effect has occurred and is continuing hereunder.

(cc) Financial Condition.

(i) The consolidated balance sheet of ART and its Consolidated Subsidiaries provided to the Administrative Agent and the related consolidated statements of income and retained earnings and of cash flows, copies of which have heretofore been furnished to the Administrative Agent, are complete and correct and present fairly the consolidated financial condition of ART and its Consolidated Subsidiaries as at such date, and the consolidated results of their operations and their consolidated cash flows as of the date of such financial statements and other information. All such financial statements, including the related schedules and notes thereto (if any), have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as disclosed therein). Except as set forth on Schedule 4.1(cc) attached hereto, neither ART nor any of its Consolidated Subsidiaries had, at the date of the most recent balance sheet referred to above, any material contingent liability or liability for taxes, or any long term lease or unusual forward or long term commitment, including, without limitation, any interest rate or foreign currency swap or exchange transaction or other financial derivative, that is not reflected in the foregoing statements or in the notes thereto. During the period from the date of the financial statements and other financial information delivered to the Administrative Agent, to and including the date hereof, there has been no sale, transfer or other disposition by ART or any of its Consolidated Subsidiaries of any material part of its business or property and no purchase or other acquisition of any business or property (including any Equity Interests of any other Person) material in relation to the consolidated financial condition of ART and its Consolidated Subsidiaries on the date hereof.

(ii) The operating forecast and cash flow projections of ART and its Consolidated Subsidiaries, copies of which have heretofore been furnished to the Administrative Agent, have been prepared in good faith under the direction of a Responsible Officer of ART and in accordance with GAAP. ART has no reason to believe that as of the date of delivery thereof such operating forecast and cash flow projections are materially incorrect or misleading in any material respect or omit to state any material fact which would render them misleading in any material respect. ART shall not be required to provide information in its projections if the disclosure of such information would violate Applicable Laws relating to insider trading.

(dd) Compliance with Covenants. ART is in full compliance with the Financial Covenants and all other Borrowers and Guarantors are in full compliance with all other applicable covenants, duties and agreements contained in the Loan Documents.

(ee) Collateral Agreements. The Borrowers have delivered to the Administrative Agent all documents and agreements related to, governing or affecting the Collateral, including, without limitation, Collateral Management Agreements, all documents related to or governing the payment or the right to receive payment of the CDO Management Fees, all documents relating to any CDO Issuance or proposed CDO Issuance, all Authority Documents of any CDO Subsidiary, all documents and agreements relating to any CDO Equity Distributions and all documents relating to a CDO Subsidiary's right to receive payments or distributions from a CDO Issuer in any CDO Issuance, and, to the best of the Borrowers' knowledge, no material default or event of default exists thereunder.

(ff) Existing Financing Facilities. All credit facilities, repurchase facilities or substantially similar facilities of each Borrower that are presently in effect are listed under the definition of "Existing Financing Facilities" or are Trust Preferred Debt. To each Borrower's knowledge, no material defaults or events of default exist thereunder. Other than the Wachovia Indebtedness, other Indebtedness not prohibited under Section 5.1, Indebtedness under Existing Financing Facilities, any Trust Preferred Debt and any other recourse Indebtedness approved by the Administrative Agent after the Restatement Date (including, without limitation, any Permitted Credit Facility), no Borrower has any Indebtedness that is recourse Indebtedness.

(gg) True and Complete Disclosure. To each Borrower's and each Guarantor's actual knowledge, the information, reports, certificates, documents, financial statements, books, records, files, exhibits and schedules furnished in writing by or on behalf of each Borrower and each Guarantor to the Administrative Agent in connection with the negotiation, preparation or delivery of this Agreement and the other Loan Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of each Borrower and each Guarantor to the Administrative Agent and the Lender in connection with this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to a Responsible Officer of any Borrower or any Guarantor, after due inquiry, that could reasonably be expected to have a Material Adverse Effect that has not been disclosed to the Administrative Agent. All projections furnished on behalf of each Borrower and each Guarantor to the Administrative Agent were prepared and presented in good faith by or on behalf of each Borrower and each Guarantor.

(hh) No Reliance. Each Borrower has made its own independent decisions to enter into the Loan Documents and each Loan and as to whether such Loan is appropriate and proper for it based upon its own judgment and upon advice from such advisors (including, without limitation, legal counsel and accountants) as it has deemed necessary. No Borrower is relying upon any advice from the Administrative Agent or any Lender as to any aspect of the Loans, including, without limitation, the legal, accounting or tax treatment of such Loans.

(ii) Insurance. Each Borrower has and maintains, with respect to its Properties and business, insurance which meets the requirements of Subsection 5.1(bb).

(jj) Collateral. (i) There are no outstanding rights, options, warrants or agreements for the purchase, sale or issuance of the Collateral created by, through, or as a result of any Borrower's or Guarantor's actions or inactions; and (ii) there are no agreements on the part of any Borrower or any Guarantor to issue, sell or distribute the Collateral, other than this Agreement.

(kk) No Change. Since December 31, 2006, there has been no development or event, nor any prospective development or event, which has had or could reasonably be expected to have a Material Adverse Effect.

(ll) Subsidiaries. The organizational chart attached as Schedule 4.1(ll) sets forth the name of each Consolidated Subsidiary of each Borrower.

(mm) Labor Relations. No Borrower is engaged in any unfair labor practice which could reasonably be expected to have a Material Adverse Effect. There is (i) no unfair labor practice complaint pending or, to the best knowledge of each of the Borrowers, threatened against any Borrower before the National Labor Relations Board which could reasonably be expected to have a Material Adverse Effect and no grievance or arbitration proceeding arising out of or under a collective bargaining agreement is so pending or, to the knowledge of any Borrower, threatened, (ii) no strike, labor dispute, slowdown or stoppage pending or, to the best knowledge of each Borrower, threatened against any Borrower, and (iii) no union representation question existing with respect to the employees of a Borrower and to the knowledge of each Borrower, no union organizing activities are taking place with respect to any thereof.

(nn) REIT Status. ART is a REIT, a publicly traded company that is listed, quoted or traded on and is in good standing in respect of the New York Stock Exchange, NASDAQ or any other nationally recognized stock exchanges (each, a "Stock Exchange") and is not subject to any ratings downgrade by any Rating Agency. ARSR is a REIT. ART has not engaged in any material "prohibited transactions" as defined in Section 857(b)(6)(B)(iii) and (C) of the Code. ART for its current "tax year" (as defined in the Code) is and for all prior tax years subsequent to its election to be a REIT has been entitled to a dividends paid deduction under the requirements of Section 857 of the Code with respect to any dividends paid by it with respect to each such year for which it claims a deduction in its Form 1120-REIT filed with the United States Internal Revenue Service for such year.

(oo) Certain Tax Matters. Each Borrower represents and warrants, and acknowledges and agrees, that it does not intend to treat the Loans and the related transactions hereunder as being a "reportable transaction" (within the meaning of United States Treasury Department Regulation Section 1.6011-4). In the event a Borrower determines to take any action inconsistent with such intention, it will promptly notify the Administrative Agent and the Lenders. If a Borrower so notifies the Administrative Agent and the Lenders, the Borrower acknowledges and agrees that the Administrative Agent and the Lenders may treat the Loans as part of a transaction that is subject to United States Treasury Department Regulation Section 301.6112-1, and the Administrative Agent and the Lenders will maintain the lists and other records required by such Treasury Regulation.

(pp) Insider. No Borrower is an "executive officer", "director", or "person who directly or indirectly or acting through or in concert with one or more persons owns, controls, or has the power to vote more than 10% of any class of voting securities" (as those terms are defined in 12 U.S.C. § 375(b) or in regulations promulgated pursuant thereto) of any Lender, of a bank holding company of which any Lender is a subsidiary, or of any subsidiary, of a bank holding company of which any Lender is a subsidiary, of any bank at which any Lender maintains a correspondent account or of any Lender which maintains a correspondent account with any Lender.

(qq) No Defenses. There are no defenses, offsets, counterclaims, abatements, rights of rescission or other claims, legal or equitable, available to any Borrower or any Guarantor with respect to this Agreement, the Loan Documents, the Collateral or any other instrument, document and/or agreement described herein or in the other Loan Documents, or with respect to the obligation of the Borrowers to repay the Aggregate Unpaids or any other obligation under the Loan Documents.

(rr) Use of Proceeds. The proceeds of the Loans shall be used by the Borrowers solely for the purpose requested and for no other purpose.

(ss) Compliance with FCPA. Each of the Borrowers and their Subsidiaries is in compliance with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and any foreign counterpart thereto. None of the Borrowers or their Subsidiaries has made a payment, offering, or promise to pay, or authorized the payment of, money or anything of value (a) in order to assist in obtaining or retaining business for or with, or directing business to, any foreign official, foreign political party, party official or candidate for foreign political office, (b) to a foreign official, foreign political party or party official or any candidate for foreign political office, and (c) with the intent to induce the recipient to misuse his or her official position to direct business wrongfully to such Borrower or its Subsidiary or to any other Person, in violation of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq.

(tt) Additional Collateral. All of the representations and warranties under the Arbor Credit Facility that are applicable to the Additional Collateral and the related Collateral by virtue of Subsection 2.1(f) of this Agreement, including, without limitation, the representations and warranties in Article III and Schedule 1.1(c) to the Arbor Credit Agreement, in any Security Document (as defined in the Arbor Credit Agreement) or in any Confirmation for any Additional Collateral, are true and correct in all respects, except as may be specified in the applicable Confirmation.

(uu) Eligible Subordinated Debt. All of the Trust Preferred Debt (i) has subordination provisions substantially the same as those in the indentures for other transactions listed in clause (i) of the definition of "Eligible Subordinated Debt," (ii) has enforceable subordination provisions, and (iii) has a maturity no earlier than the date that is six (6) months following the Facility Maturity Date. To the extent any Eligible Subordinated Debt was issued after the Closing Date, it has been specifically approved in writing by the Administrative Agent.

(vv) [Reserved].

(ww) Repurchase of Debt. The Borrowers and the Guarantors are in full compliance with the covenants set forth in Subsection 5.1(uu) of this Agreement.

## ARTICLE V

## COVENANTS

**Section 5.1 Covenants.**

Each Borrower and each Guarantor hereby covenants and agrees that on the Restatement Date and thereafter until the occurrence of a Final Termination, to the extent applicable:

(a) Compliance with Laws and Contracts. Each Borrower and each Guarantor shall comply in all material respects with all Applicable Laws (including Environmental Laws), including, without limitation, those with respect to the Collateral or any part thereof, and comply with and perform in all material respects all of their Contractual Obligations, all Indebtedness, all Guarantee Obligations and all Borrower-Related Obligations.

(b) Preservation of Company Existence. Each Borrower and each Guarantor shall preserve and maintain its corporate, partnership or limited liability company, as applicable, existence, rights, franchises and privileges in the jurisdiction of its formation and will qualify and remain qualified in good

standing as a corporation, limited partnership or limited liability company, as applicable, in each jurisdiction where the failure to preserve and maintain such existence, rights, franchises, privileges and qualification has had, or could reasonably be expected to have, a Material Adverse Effect.

(c) Performance and Compliance with Collateral. The Borrowers and the Guarantors shall, at their expense, timely and fully perform and comply (and shall cause their Consolidated Subsidiaries to timely and fully perform and comply) with all provisions, covenants and other promises required to be observed by them under the Collateral and all other agreements related to such Collateral.

(d) Keeping of Records and Books of Account. Each Borrower and Guarantor shall maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing the Collateral in the event of the destruction of the originals thereof) and will keep and maintain all documents, books, records and other information reasonably necessary or advisable in which complete entries are made in accordance with GAAP and Applicable Laws.

(e) Delivery of Income and Required Payments. The Borrowers and the Guarantors shall deposit, and shall cause each of their Consolidated Subsidiaries and all other Persons to deposit, all Income, Required Payments and other amounts payable to the Borrowers in respect of the Collateral into the Collection Account within two (2) Business Days of such Person's receipt thereof; provided, however, the CDO Management Fees shall first be deposited into the CDO Management Fee Account and then swept to the Collection Account. The Borrowers shall deposit, or cause to be deposited, into the Collection Account, on or before the date required by the Loan Documents, all other amounts required by the terms of the Loan Documents. The Borrowers and Guarantors shall provide the Administrative Agent with fully executed copies of all Irrevocable Instructions required by this Agreement. The Borrowers and the Guarantors shall take steps necessary to enforce such Irrevocable Instructions and shall immediately inform the Administrative Agent of, and rectify any default, breach, failure or unwillingness to perform thereunder, any dispute or controversy in connection therewith or any other matter that may, could or will result in payments not being made as contemplated under the terms of such Irrevocable Instructions. The Borrowers and the Guarantors shall not, and shall not permit any Consolidated Subsidiary to, modify or revoke or permit any modifications or revocations of the Irrevocable Instructions without the Administrative Agent's prior written consent in its discretion. The Borrowers shall deliver such other Irrevocable Instructions as the Administrative Agent may require in its discretion. All distributions from the Collection Account and the CDO Management Fee Account shall be made solely in accordance with the terms, provisions and conditions of this Agreement and the Account Control Agreement, if any.

(f) Events of Default. Each Borrower and each Guarantor shall provide the Administrative Agent with immediate written notice of the occurrence of each Event of Default and each Default of which any Borrower or any Guarantor has knowledge or have received notice. In addition, no later than two (2) Business Days following any Borrower's or Guarantor's knowledge or notice of the occurrence of any Event of Default or Default, the Borrowers shall provide to the Administrative Agent a written statement of a Responsible Officer of the Borrowers setting forth the details of such event and the action that the Borrowers or Guarantors, as applicable, propose to take with respect thereto.

(g) Perfection. With respect to the Collateral, the Borrowers shall (i) take all action necessary to perfect, protect and more fully evidence the Administrative Agent's first priority perfected security interest in the Collateral, including, without limitation, (A) filing and maintaining effective financing statements against the Borrowers in all necessary or appropriate filing offices, and filing continuation statements, amendments or assignments with respect thereto in such filing offices, (B) executing or causing to be executed such other instruments, notices or control agreements as may be necessary or appropriate, and (C) to the extent that anyone other than Wachovia Bank, National Association is the Administrative Agent, entering into an Account Control Agreement, and (ii) taking all

additional action that the Administrative Agent may reasonably request to perfect, protect and more fully evidence the respective interests of the parties to this Agreement and the Loan Documents in such Collateral. To the extent any Collateral is created or comes into existence after the Restatement Date (including, without limitation, any CDO Issuance by a Consolidated Subsidiary of a Borrower), the Borrowers shall take such actions as the Administrative Agent shall require to obtain a first priority perfected security interest in such Collateral.

(h) Security Interests. The Borrowers and Guarantors shall not sell, pledge, assign or transfer to any other Person, or grant, create, incur, assume, suffer or permit to exist any Lien on all or any portion of the Collateral or the Required Payments, other than Permitted Liens, whether now existing or hereafter transferred hereunder, or any interest therein, and the Borrowers and Guarantors shall not sell, pledge, assign or suffer to exist any Lien, or any circumstance which, if adversely determined, would be reasonably likely to give rise to a Lien, on its interest, if any, hereunder or under the other Loan Documents. Immediately upon notice to any Borrower of a Lien or any circumstance which, if adversely determined would be reasonably likely to give rise to a Lien (other than in favor of the Administrative Agent or created by or through the Administrative Agent), on all or any portion of the Collateral or the Required Payments, the Borrowers shall notify the Administrative Agent and the Borrowers shall further defend the Collateral and the Required Payments against, and will take such other action as is necessary to remove, any Lien or claim on or to the Collateral or the Required Payments (other than any Permitted Liens created under this Agreement), and the Borrowers shall defend the right, title and interest of such Borrower in and to any of the Collateral and the Required Payments against the claims and demands of all Persons whomsoever.

(i) Collateral Not to be Evidenced by Instruments. No Borrower nor any Guarantor shall take any action to cause all or any portion of the Collateral that is not, as of the applicable Borrowing Date, evidenced by an Instrument to be so evidenced except, with the Administrative Agent's consent, in connection with the enforcement or collection of such Collateral.

(j) Notices. Each of the Borrowers shall furnish notice to the Administrative Agent with respect to the following:

(i) Representations. Immediately upon notice or knowledge thereof, each Borrower shall notify the Administrative Agent if any representation or warranty set forth in Section 4.1 of this Agreement, any Loan Document or in any other document or certificate delivered to the Administrative Agent or any asset level representation or warranty with respect to the Additional Collateral was incorrect at the time it was given or deemed to have been given;

(ii) Proceedings. As soon as possible and in any event within three (3) Business Days after notice or knowledge thereof, notice of any settlement of, material judgment (including a material judgment with respect to the liability phase of a bifurcated trial) in or commencement of any labor controversy (of a material nature), litigation, action, suit, arbitration or proceeding before any court or governmental department, commission, board, bureau, agency, arbitrator, investigation or instrumentality, domestic or foreign, affecting (A) the Collateral or any Required Payment, (B) the Loan Documents, (C) the Administrative Agent's interest in the Collateral or any Required Payment, or (D) any Borrower, any Guarantor or any of their Consolidated Subsidiaries and, with respect to this clause (D) only, the amount in controversy exceeds $250,000;

(iii) REIT Status. Promptly upon notice or knowledge thereof, notice of any change in ART's, ARSR's, or any CDO Issuer's status as a REIT, private REIT, QRS or taxable REIT subsidiary, as applicable, or ART's membership or good standing on any Stock Exchange;

(iv) Liens. Promptly upon receipt of notice or knowledge of any Lien on, or claim asserted against, any Collateral or any Required Payments other than Permitted Liens;

(v) CDO Issuance. Promptly upon notice or knowledge thereof, notice of any downgrade, or potential downgrade (including any placement on a watch list) by Moody's or S&P of any CDO Issuance involving the Pledged Collateral.

(vi) Defaults. Promptly upon notice or knowledge thereof, notice of (A) any material default (beyond any applicable notice and cure period) related to all or any portion of the Collateral, (B) any default (beyond any applicable notice and cure period) under any Contractual Obligation, Indebtedness or Guarantee Obligation of any Borrower, any Guarantor or any of their Consolidated Subsidiaries, which, if not cured, could reasonably be expected to have a Material Adverse Effect and (C) any default or event of default under any Borrower-Related Obligation;

(vii) Collateral Managers. Immediately upon notice or knowledge thereof, notice of the change in status, removal, resignation, termination or replacement of ARCM as Collateral Manager under a Collateral Management Agreement or to the extent any Person other than ARCM executes or is appointed as Collateral Manager under any Collateral Management Agreement;

(viii) Sales. Promptly upon notice or knowledge thereof, notice of the conveyance, sale, lease, assignment, transfer or other disposition (any such transaction, or related series of transactions, a "Sale") of any Property, business or assets of any Borrower or any Guarantor whether now owned or hereafter acquired, with the exception of (A) this Agreement, (B) any Sale of Property by any Borrower or any Guarantor that is not material to the conduct of its business and is effected in the ordinary course of business, (C) any sale to a Consolidated Subsidiary, and (D) sales by ARSR or any special purpose entity Subsidiary of ARSR of loans, participations and/or preferred equity interests (including, without limitation, any sale under any repurchase facility or pledge or collateral assignment under any warehouse facility);

(ix) Ratings. Promptly upon notice or knowledge thereof, notice of the establishment of a rating assigned to the long-term unsecured debt issued by any Borrower or any Guarantor by Moody's or S&P (or other rating agency acceptable to the Administrative Agent) and of any downgrade in such rating once established;

(x) Covenants. Promptly upon notice or knowledge thereof, notice of any violation or breach of any covenant, duty or agreement contained in any Loan Document;

(xi) Losses. Promptly upon notice or knowledge thereof, notice of any loss, expected loss or material change in the value of any Collateral, any Required Payment, any Property or asset of any Borrower, any Guarantor or any Consolidated Subsidiary of a Borrower (to the extent that such loss with respect to any such Property or asset could reasonably be expected to have a Material Adverse Effect), any determination by the Collateral Manager that any asset in a CDO Issuance related to the Collateral is a Defaulted Security or a Credit Risk Security, or any other event or change in circumstances or expected event or change in circumstances that could reasonably be expected to result (A) in a default with respect to any underlying asset relating to the Collateral (other than any asset in a CDO Issuance related to the Collateral), or (B) in a material decline in value or cash flow of any Collateral (other than any asset in a CDO Issuance related to the Collateral), any Required Payment, Property or asset (to the extent that such event

or change with respect to any such Property or asset could reasonably be expected to have a Material Adverse Effect); and

(xii) Material Events. Promptly upon notice or knowledge thereof, notice of any other event or circumstances that, in the reasonable judgment of any Borrower, is likely to have a Material Adverse Effect.

Each notice pursuant to this Subsection 5.1(j) shall be accompanied by a statement of a Responsible Officer of the Borrowers setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken or proposes to take with respect thereto.

(k) Deposits to Accounts. The Borrowers will not deposit or otherwise credit, or cause or permit to be so deposited or credited, to the Collection Account or the CDO Management Fee Account cash or cash proceeds other than Income in respect of Collateral, Required Payments or any other amounts authorized or required under this Agreement or the other Loan Documents to be deposited therein.

(l) Change of Name or Location of Loan Files. No Borrower nor any Guarantor shall (i) change its name, organizational number, identity, structure or jurisdiction of formation, move the location of its principal place of business and chief executive office, or change the offices where it keeps the records (as defined in the UCC) from the location referred to in Subsection 4.1(n), or (ii) as applicable, move, or consent to any Person moving, the Collateral from the location thereof on the Restatement Date, unless the Borrowers and Guarantors have given at least thirty (30) days' prior written notice to the Administrative Agent and have taken all actions required under the UCC of each relevant jurisdiction in order to continue the first priority perfected security interest of the Administrative Agent in the Collateral.

(m) ERISA Matters. No Borrower nor any Guarantor shall (i) engage or permit any ERISA Affiliate to engage in any prohibited transaction for which an exemption is not available or has not previously been obtained from the United States Department of Labor, (ii) permit to exist any accumulated funding deficiency, as defined in Section 302(a) of ERISA and Section 412(a) of the Code, or funding deficiency with respect to any Benefit Plan other than a Multiemployer Plan, (iii) fail to make any payments to a Multiemployer Plan that any Borrower, any Guarantor or any ERISA Affiliate may be required to make under the agreement relating to such Multiemployer Plan or any law pertaining thereto, (iv) terminate any Benefit Plan so as to result in any liability, (v) permit to exist any occurrence of any Reportable Event or (vi) otherwise violate the provisions of ERISA or the Code with respect to any Benefit Plan.

(n) Compliance with Anti-Terrorism Laws. The Borrowers and the Guarantors shall comply with all applicable Anti-Terrorism Laws. The Borrowers and the Guarantors shall conduct the requisite due diligence in connection with the origination or acquisition of the Collateral and any assets or Property for purposes of complying with the Anti-Terrorism Laws, including with respect to the legitimacy of the applicable obligor or account debtor and the origin of the assets used by the said obligor or account debtor to purchase the property in question, and will maintain sufficient information to identify the applicable obligor or account debtor for purposes of the Anti-Terrorism Laws. No Borrower, Guarantor nor any Consolidated Subsidiary thereof shall engage in any conduct described in Subsection 4.1(p). The Borrowers and the Guarantors shall, upon the request of the Administrative Agent from time to time, provide certification and other evidence of the Borrowers', the Guarantor's and their Consolidated Subsidiaries' compliance with this Subsection 5.1(n).

(o) Financial Statements. The Borrowers and the Guarantors, as applicable, shall deliver to the Administrative Agent:

(i) as soon as available, and in any event within forty-five (45) calendar days after the end of each fiscal quarter of ART, the unaudited consolidated and consolidating balance sheets of ART and its Consolidated Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for ART and its Consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, accompanied by a certificate of a Responsible Officer of ART, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition and results of operations of ART and its Consolidated Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end adjustments);

(ii) as soon as available, and in any event within one hundred twenty (120) days after the end of each fiscal year of ART, the audited consolidated balance sheets of ART and its Consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for ART and its Consolidated Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be qualified as to scope of audit or going concern and shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of ART and its Consolidated Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP;

(iii) **[Reserved]**;

(iv) from time to time such other information regarding the financial condition, operations, business, Properties or assets of the Borrowers and the Guarantors as the Administrative Agent may reasonably request;

(v) as soon as reasonably possible, and in any event within thirty (30) days after a Responsible Officer of the Borrowers or Guarantors knows, or with respect to any Plan or Multiemployer Plan to which the Borrowers, the Guarantors or any ERISA Affiliate makes direct contributions, has reason to believe, that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior financial officer of the Borrowers or the Guarantors setting forth details respecting such event or condition and the action, if any, that the Borrowers, the Guarantors or their ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to the PBGC by the Borrowers, the Guarantors or an ERISA Affiliate with respect to such event or condition):

(A) any Reportable Event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA or any successor provision thereof, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA or any successor provision thereof, shall be a "Reportable Event" regardless of the issuance of any waivers in accordance with Section 412(d) of the Code or any successor provision thereof); and any request for a waiver under Section 412(d) of the Code or any successor provision thereof for any Plan;

(B) the distribution under Section 4041(c) of ERISA or any successor provision thereof of a notice of intent to terminate any Plan or any action taken by any Borrower, any Guarantor or an ERISA Affiliate to terminate any Plan;

(C) the institution by the PBGC of proceedings under Section 4042 of ERISA or any successor provision thereof for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by any Borrower, any Guarantor or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan;

(D) the complete or partial withdrawal from a Multiemployer Plan by any Borrower, any Guarantor or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA or any successor provision thereof (including the obligation to satisfy secondary liability as a result of a purchaser default) that would have a Material Adverse Effect or the receipt by any Borrower, any Guarantor or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or any successor provision thereof or that it intends to terminate or has terminated under Section 4041A of ERISA or any successor provision thereof;

(E) the institution of a proceeding by a fiduciary of any Multiemployer Plan against any Borrower, any Guarantor or any ERISA Affiliate to enforce Section 515 of ERISA or any successor provision thereof, which proceeding is not dismissed within thirty (30) days; and

(F) the adoption of an amendment to any Plan that would result in the loss of tax exempt status of the trust of which such Plan is a part if any Borrower, any Guarantor or an ERISA Affiliate fails to provide timely security to such Plan in accordance with the provisions of Section 401(a)(29) of the Code or Section 307 of ERISA or any successor provision thereof; and

(vi) all such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

(p) Certificates; Other Information. The Borrowers and the Guarantors, as applicable, shall furnish to the Administrative Agent:

(i) concurrently with the delivery of the financial statements referred to in Subsections 5.1(o)(i) and (ii) above and in connection with the delivery of each Notice of Borrowing, a Compliance Certificate from a Responsible Officer of each of ART and ARSR, which Compliance Certificate shall, among other things, on a quarterly basis describe in detail the calculations supporting the Responsible Officer's certification of ART's compliance with the Financial Covenants;

(ii) as soon as available, but in any event not later than one hundred twenty (120) days after the end of each fiscal year of the Borrowers, and provided that the disclosure does not violate Applicable Laws relating to insider trading, a copy of the projections of the Borrowers (if any) of the operating budget and cash flow budget of Borrowers (if any), for the succeeding fiscal

year, such projections to be accompanied by a certificate of a Responsible Officer certifying that such projections have been prepared in good faith based upon reasonable assumptions;

(iii) promptly upon receipt thereof, copies of all reports submitted to any of the Borrowers (if any) by independent certified public accountants in connection with each annual, interim or special audit of the books and records of the Borrowers (if applicable) made by such accountants, including, without limitation, any management letter commenting on any Borrower's internal controls submitted by such accountants to management in connection with their annual audit;

(iv) within thirty (30) days after the same are sent, copies of all financial statements, reports, notices and other documents that any Borrower or any Guarantor sends to its stockholders and, within thirty (30) days after the same are filed, copies of all financial statements and reports that any Borrower and/or any Guarantor may make to, or file with, the Securities and Exchange Commission or any successor or analogous Governmental Authority;

(v) with respect to the Collateral, any and all documents, certificates, agreements, instruments, reports or notices received by or available to any Borrower or any Guarantor within three (3) Business Days of the receipt or availability thereof;

(vi) any and all information, documents and reports regarding the Collateral (including, without limitation, information regarding the CDO Issuances relating to the Collateral, including information relating to any ratings downgrade, any Credit Risk Security, any Defaulted Security or other material events, actions or conditions affecting such CDO Issuance), any future Collateral and the Required Payments as the Administrative Agent may require in its discretion;

(vii) to the extent not prohibited by Applicable Law, the Borrowers shall promptly provide the Administrative Agent with copies of all documents that the Borrowers, the Guarantors or any Consolidated Subsidiary thereof are required to file with any regulatory body in accordance with its regulations;

(viii) upon request, an update to the organizational chart attached hereto as Schedule 4.1(ll);

(ix) promptly upon entering into an engagement letter or commitment or otherwise documenting any proposed Debt Issuance or Equity Issuance, a notice containing information regarding any proposed Debt Issuance or Equity Issuance, including, without limitation, the parties involved, the expected closing date, the amount to be received in connection therewith and such other information as the Administrative Agent may request in its discretion;

(x) to the extent not previously delivered hereunder, within five (5) Business Days of the end of each calendar quarter, an Officer's Certificate regarding the Projected Collateral Cash Flow for each of the next four (4) calendar quarters;

(xi) at such time as the Administrative Agent shall request and, in any event, within five (5) Business Days of the end of each calendar month, an Officer's Certificate regarding compliance with the Availability and the calculation thereof and/or any update that the Administrative Agent may request with respect to the Officer's Certificate regarding the Projected Collateral Cash Flow;

(xii) promptly upon their becoming available, copies of (i) all press releases and other statements made available generally by any Borrower to the public concerning material developments in the business of any Borrower or any Consolidated Subsidiary of a Borrower and (ii) any non-routine correspondence or official notices received by any Borrower or any Consolidated Subsidiary of a Borrower from any Governmental Authority which regulates the operations of any Borrower or any Consolidated Subsidiary of a Borrower which is likely to have a Material Adverse Effect;

(xiii) notice of the passage of any bill by the United States Senate or United States House of Representatives that any Borrower, Guarantor or any Affiliate of the foregoing becomes aware of that would result in any Tax Law Change;

(xiv) upon request, any and all information, documents and reports regarding any proposed Permitted Credit Facility as the Administrative Agent may require in its reasonable discretion;

(xv) as soon as possible and in any event within thirty (30) days after the closing of any Permitted Credit Facility, fully executed copies of all loan documentation for any such Permitted Credit Facility; and

(xvi) promptly, such additional financial and other information (including, without limitation, any watch lists, impairment reporting, concentration lists or investor reports) as the Administrative Agent may from time to time reasonably request.

(q) Existence, etc. Each Borrower shall:

(i) continue to engage in business of the same general type as now conducted by it and maintain and preserve its legal existence and all of its material rights, privileges, licenses and franchises necessary for the operation of its business; provided, however, that nothing in this Subsection 5.1(q) shall prohibit any transaction expressly permitted under Subsection 5.1(r);

(ii) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained in accordance with GAAP; and

(iii) permit representatives of the Administrative Agent, upon reasonable notice (unless a Default or Event of Default shall have occurred and is continuing, in which case, no prior notice shall be required) during normal business hours and at the expense of the Borrowers, to examine, copy and make extracts from any Borrower, the Guarantor's or any of their Subsidiary's books and records, to inspect any of their Properties, and to discuss its business and affairs with their officers, employees and independent accountants, all to the extent reasonably requested by the Administrative Agent.

(r) Prohibition of Fundamental Changes. No Borrower nor any Guarantor shall enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all or substantially all of its assets (other than in connection with a CDO Issuance); provided, however, that any Borrower and any Guarantor may merge or consolidate with (i) any wholly owned Subsidiary of such Borrower or such Guarantor, respectively, or

(ii) any other Person if the Borrower or the Guarantor, as applicable, is the surviving entity; and provided, further, that, if after giving effect thereto, no Default or Event of Default would exist hereunder.

(s) Loans with Affiliates. Each Borrower and Guarantor may enter into any transaction with an Affiliate; provided, that such transaction is upon fair and reasonable terms no less favorable to the Borrowers or the Guarantors than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate.

(t) Limitations on Guarantees. The Borrowers shall not create, incur, assume or suffer to exist any Guarantee Obligation in excess of $5,000,000 in the aggregate or $500,000 per incurrence, except in connection with the Wachovia Indebtedness, other Existing Financing Facilities, Permitted Credit Facilities, Trust Preferred Debt and such other Guarantee Obligations approved by the Administrative Agent in its discretion.

(u) Limitation on Indebtedness. The Borrowers shall not create, incur, assume or suffer to exist any Indebtedness, in each case, in excess of $5,000,000 in the aggregate or $500,000 per incurrence, of the Borrowers, except Indebtedness of the Borrowers permitted under this Agreement, the Wachovia Indebtedness, other Existing Financing Facilities, Permitted Credit Facilities, Trust Preferred Debt and such other Indebtedness approved by the Administrative Agent in its discretion.

(v) Limitation on Distributions. Except as otherwise required or permitted by the Loan Documents, no Borrower nor any Guarantor shall declare or make any payment on account of, or set apart assets for, a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of any Equity Interest of any Borrower or any Guarantor whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Borrower or any Guarantor, except that a Borrower or Guarantor (i) may declare and pay dividends in an amount necessary to maintain its status as a REIT and, (ii) so long as no Default or Event of Default shall have occurred, (a) in the case of ART, may declare and pay dividends in the amounts permitted by, but subject to the terms and conditions of, Subsection 5.1(w)(iv), and (b) may distribute funds among the Borrowers and their Consolidated Subsidiaries.

(w) Financial Covenants. ART shall comply with the following Financial Covenants:

(i) Maintenance of Liquidity. ART shall not permit, for any Test Period, Liquidity for such Test Period to be less than $7,500,000, all of which shall consist of cash or Cash Equivalents; provided, however, that such $7,500,000 shall be reduced for each dollar of cash collateral in excess of $25,000,000 posted as collateral for a Wachovia Derivatives Contract (as defined in the Arbor Credit Agreement).

(ii) Maintenance of Tangible Net Worth. ART shall not permit, for any Test Period, Tangible Net Worth to be less than $150,000,000.

(iii) Maintenance of Ratio of Net Total Liabilities to Adjusted Tangible Net Worth. ART shall not permit, for any Test Period, the ratio of its Net Total Liabilities to Adjusted Tangible Net Worth to be greater than 4:5 to 1:0.

(iv) Payout Restrictions. For any calendar year, ART shall not make dividend or distribution payments in excess of 100% of taxable income; provided, that, except as set forth in clause (h) of the Fee Letter with respect to any New Stock Class, for so long as (x) the Obligations outstanding under the Arbor Credit Facility exceed $210,000,000, (y) the obligations outstanding under this Agreement exceed $30,000,000 and (y) the Liquidity of ART is less than

$35,000,000, all dividend or distribution payments shall be paid as Equity Interests up to the highest percentage permitted by the Code to be paid in Equity Interests; provided, however, nothing in this Section 5.1(w)(iv) shall prohibit ART from declaring and paying dividends in an amount necessary to maintain its status as a REIT. Notwithstanding the foregoing, in the event that ART mistakenly makes distributions in excess of 100% of taxable income during any calendar year, then, so long as such distributions did not exceed 110% of taxable income, such excess distributions shall not constitute a Default or Event of Default hereunder but shall be deemed distributions related to the following calendar year.

(x) Extension or Amendment of Collateral. The Borrowers will not, except as otherwise permitted in by the last sentence of this Subsection 5.1(x), extend, amend, waive or otherwise modify, or permit any Servicer to extend, amend, waive or otherwise modify, the material terms of any Collateral, provided that the foregoing shall not prohibit the Borrower, a Servicer or a PSA Servicer from permitting, prior to a default thereunder, any Obligor to exercise an extension option contained in any Mortgage Loan Documents. Unless otherwise agreed to by the Administrative Agent in its reasonable discretion, the Borrower and the Servicers shall have no right to waive, amend, modify or alter the material terms of any Additional Collateral and the Borrowers shall have no obligation or right to repossess any such Additional Collateral or substitute other Additional Collateral, in each case except as provided in the Custodial Agreement.

(y) Collateral Documents. On and after the Restatement Date, the Borrowers shall, within five (5) Business Days of receipt, provide to the Administrative Agent all documents and agreements relating to the Collateral created, generated or received after the Restatement Date, including, without limitation, each Collateral Management Agreement entered into after the Restatement Date, including documents and agreements relating to or governing the payment or the right to receive payment of any of the CDO Management Fees, all documents relating to or governing the right to receive payments, dividends and distributions from ARCM, all documents relating to or governing any CDO Issuance or proposed CDO Issuance after the Restatement Date, all documents related to any CDO Equity Distributions, all documents and agreements related to or governing the right of any CDO Subsidiary to receive payments, dividends or distributions from a CDO Issuer in a CDO Issuance and all other documents requested by the Administrative Agent.

(z) Account Control Agreement. The Borrowers shall maintain the Account Control Agreement in full force and effect and shall not amend or modify the Account Control Agreement or waive compliance with any provisions thereunder without the prior written consent of the Administrative Agent.

(aa) Inconsistent Agreements. No Borrower and no Guarantor shall, and neither shall permit any of its Consolidated Subsidiaries to, directly or indirectly, enter into any agreement containing any provision that would be violated or breached by any Loan hereunder or by the performance by the Borrowers or the Guarantors of their obligations under any Loan Document.

(bb) Maintenance of Property; Insurance. Each Borrower shall keep all Property useful and necessary in its business in good working order and condition, shall maintain with financially sound and reputable insurance companies insurance on all its Property in at least such amounts and against at least such risks as are usually insured against in the same general area by companies engaged in the same or a similar business, and furnish to the Administrative Agent, upon written request, full information as to the insurance carried.

(cc) Interest Rate Protection Agreements. Each Borrower shall perform its duties and obligations under and shall otherwise maintain any existing Interest Rate Protection Agreements to which it is a party.

(dd) Payment of Obligations. Each Borrower and Guarantor shall pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all material obligations of whatever nature, except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrowers, Guarantors or any of their Affiliates or Subsidiaries, as the case may be.

(ee) Distributions in Respect of Collateral. If the Borrowers or the Guarantors shall receive any rights, whether in addition to, in substitution of, as a conversion of, or in exchange for any Collateral, or otherwise in respect thereof, the Borrowers and the Guarantors shall accept the same as the Administrative Agent's agent, hold the same in trust for the Administrative Agent and deliver the same forthwith to the Administrative Agent (or its designee) in the exact form received, together with duly executed instruments of transfer, assignments in blank, executed and undated stock powers in blank and such other documentation as the Administrative Agent shall reasonably request. If any sums of money or property are paid or distributed in respect of the Collateral and received by any Borrower, any Guarantor or any Consolidated Subsidiary of a Borrower or a Guarantor, the Borrowers and the Guarantors shall promptly pay or deliver, or caused to be paid or delivered, such money or property to the Administrative Agent and, until such money or property is so paid or delivered to the Administrative Agent, hold such money or property in trust for the Administrative Agent, segregated from other funds of the Borrowers and the Guarantors.

(ff) Unrelated Activities. The Borrowers shall not engage in any activity other than activities specifically permitted by this Section 5.1, including, but not limited to, investment in mortgage loans, mezzanine loans, participations, preferred equity and other real estate related assets and the purchasing, financing and holding of commercial mortgage-backed securities and activities incident thereto.

(gg) Authority Documents. The Borrowers shall not amend their Authority Documents in a manner which would impact, impair or affect the Collateral or any Required Payment without the prior written consent of the Administrative Agent. Without the Administrative Agent's prior written consent in its discretion, no Borrower shall amend or modify the Authority Documents for any Pledged CDO Subsidiary, and no Borrower shall amend or modify any document governing a related CDO Issuance, in any manner that would alter the provisions governing transfers of the Equity Interests in such entities or would otherwise impair or limit the Administrative Agent's ability to foreclose on and transfer or to otherwise exercise rights or remedies with respect to the Pledged Collateral.

(hh) [Reserved].

(ii) REIT Status. (i) ART shall at all times continue to be (A) qualified as a REIT as defined in Section 856 of the Code without giving any effect to any cure or corrective periods or allowances, (B) entitled to a dividends paid deduction under Section 857 of the Code with respect to dividends paid by it with respect to each taxable year for which it claims a deduction on its Form 1120-REIT filed with the United States Internal Revenue Service for such year, or the entering into by it of any material "prohibited transactions" as defined in Sections 857(b) and 856(c) of the Code, and (C) a publicly traded company listed, quoted or traded on and in good standing in respect of any Stock Exchange, (ii) ARSR shall at all times continue to be qualified as a REIT and (iii) the Borrowers shall cause each CDO Issuer owned by a CDO Subsidiary to remain qualified as a QRS, in each case without giving any effect to any cure or corrective periods or allowances.

(jj) Pledged Interests. Except as set forth in the Fee Letter, no Borrower nor any Guarantor shall repurchase any outstanding common stock or operating partnership units of any Borrower or any Guarantor prior to the later of (i) the Facility Maturity Date and (ii) the payment in full of the Aggregate Unpaids.

(kk) Borrower Subsidiaries. The Borrowers shall give notice of any new Subsidiary that, upon the formation thereof, would be a Consolidated Subsidiary.

(ll) Independence of Covenants. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of an Default or Event of Default if such action is taken or condition exists.

(mm) Negative Pledge. ART shall not grant or permit, or suffer to be granted or permitted, any Lien on, or any Encumbrances upon, any of the assets or Properties of ART, which shall include, without limitation, any Collateral and any Required Payment, in favor of any Person, other than Liens in favor of the Administrative Agent and the Lenders.

(nn) No Other Negative Pledge. None of the Borrowers or any of their Consolidated Subsidiaries shall grant, allow or enter into any agreement or arrangement with any Person that prohibits or restricts, or purports to prohibit or restrict, the granting of any Lien or other Encumbrance on any of the assets or Properties of the Borrowers or their Consolidated Subsidiaries; provided, however, that the foregoing shall not apply to (i) the negative pledge contained in Subsection 5.1(mm), (ii) Existing Financing Facilities or (iii) any other negative pledge or grant of any Lien or other Encumbrance approved by the Administrative Agent in its discretion.

(oo) ARSR. ARSR (i) shall be the direct owner of 100% of the Equity Interests in all Pledged CDO Subsidiaries and ARCM, (ii) shall not transfer or grant any Lien or Encumbrance on any such Equity Interests in a Pledged CDO Subsidiary (other than pursuant to the Pledge and Security Agreement) or ARCM, (iii) shall not transfer or grant any Lien or Encumbrance on any Required Payment, (iv) shall not permit any CDO Subsidiary or ARCM to transfer or grant any Lien or Encumbrance on any assets of the CDO Subsidiary or ARCM (including, without limitation, any Equity Interests in a CDO Issuer), (v) shall execute and comply and shall cause each CDO Subsidiary and ARCM to execute and comply with an Irrevocable Instruction and shall cause each CDO Subsidiary and ARCM to make all dividends, distributions and payments of the CDO Equity Distributions and the CDO Collateral Manager Distributions, as applicable, to the Collection Account or the CDO Management Fee Account, as applicable, as required in such Irrevocable Instructions, (vi) shall not amend or modify any Authority Documents for any CDO Subsidiary or ARCM without the Administrative Agent's consent in its discretion, (vii) shall enforce its right to dividends, distributions and other payments from each CDO Subsidiary and ARCM as the 100% owner for each said entity and (viii) shall immediately inform the Administrative Agent in writing if any provision of this covenant is not satisfied or is breached in any respect.

(pp) ARCM. ARCM (i) shall be the Collateral Manager under the Collateral Management Agreements for each existing and future CDO Issuance and shall be the Person entitled to receive the CDO Management Fees thereunder, (ii) shall not transfer or grant any Lien or Encumbrance on any rights to the Collateral Management Agreements or the CDO Management Fees (other than Permitted Liens), (iii) shall execute and comply and shall cause all other applicable Persons to execute and comply with an Irrevocable Instruction, (iv) shall enforce all payments due to ARCM as Collateral Manager, and cause same to be remitted by the payor thereof directly to the CDO Management Fee Account (v) shall provide

the Administrative Agent with all Collateral Management Agreements in effect from time to time, (vi) shall not amend any such Collateral Management Agreements or other related agreements in any manner that would reduce or adversely affect the payments due thereunder to the Collateral Manager without the Administrative Agent's consent in its discretion, (vii) shall pay all dividends, distributions and other amounts payable on or with respect to the Equity Interests in ARCM to the Collection Account instead of to ARSR or any other Person that may hold the Equity Interests in ARCM, (viii) shall not amend its Authority Documents without the Administrative Agent's consent, in its discretion, and (ix) shall immediately inform the Administrative Agent in writing if any provision of this covenant is not satisfied or is breached in any respect.

(qq) CDO Issuances. With respect to each CDO Issuance engaged in by a Borrower, the Guarantors or any Consolidated Subsidiaries, the Borrowers shall (i) not transfer or grant any Lien or Encumbrance on its rights to the Net Proceeds (other than Permitted Liens), (ii) execute and comply and cause all other Persons to execute and comply with Irrevocable Instructions to require the Net Proceeds to be paid directly to the Collection Account and not to any Borrower, any Guarantor or any other Person, (iii) provide the Administrative Agent with all documents related to such CDO Issuance, (iv) enforce its rights to the Net Proceeds and (v) immediately notify the Administrative Agent in writing of any provision of this covenant is not satisfied or is breached in any respect. With respect to any CDO Issuance engaged in by a Consolidated Subsidiary of a Borrower, the Borrowers shall (i) not transfer or grant any Lien or Encumbrance on any rights to the dividends, distributions and payments from the Consolidated Subsidiary (other than Permitted Liens), (ii) execute and comply and cause the Consolidated Subsidiary to execute and comply with Irrevocable Instructions to cause the dividends, distributions and other payments from such Consolidated Subsidiary to be paid directly to the Collection Account and not to the Borrowers, the Guarantors or any other Person, (iii) provide the Administrative Agent with all documents related to such CDO Issuance, (iv) enforce its rights to dividends, distributions and other payments from the Consolidated Subsidiary, (v) not amend the Authority Documents for such Consolidated Subsidiary without the Administrative Agent's consent in its discretion and (vi) immediately notify the Administrative Agent in writing if any provision of this covenant is not satisfied or is breached in any respect.

(rr) Additional Collateral. The Borrowers shall perform each and every covenant, duty and agreement set forth in the Arbor Credit Documents that are applicable to the Additional Collateral by virtue of Subsection 2.1(f) of this Agreement, including, without limitation, those set forth in the Security Agreement and Articles V, VI and IX of the Arbor Credit Agreement.

(ss) Eligible Subordinated Debt. The Borrowers shall not, nor shall it permit any Consolidated Subsidiary to, issue any Trust Preferred Debt that (i) does not have subordination provisions substantially the same as those in the indentures for the transactions listed in clause (i) of the definition of "Eligible Subordinated Debt," (ii) does not have enforceable subordination provisions, or (iii) has a maturity date earlier than the date that is six (6) months following the Facility Maturity Date. The applicable Borrowers shall deliver an Opinion of Counsel from the counsel to the applicable Borrower or the applicable Consolidated Subsidiary of a Borrower in connection with the creation of such Eligible Subordinated Debt as to the enforceability of the subordination provisions contained in all Eligible Subordinated Debt, each in form and substance satisfactory to the Administrative Agent in its discretion.

(tt) Intercreditor Agreement. The Borrower and the Guarantor shall acknowledge and agree to the Intercreditor Agreement to the extent the Administrative Agent deems that such Intercreditor Agreement is necessary.

(uu) Repurchase of Debt. For any given calendar quarter, no Credit Party and no Affiliate of a Credit Party shall use any Liquidity, cash, Cash Equivalents or other funds to repurchase any outstanding

debt securities of any Credit Party or any Affiliate of a Credit Party (other than proceeds of an Equity Issuance) in an amount greater than the lesser of (a) $7,500,000 in the aggregate for such calendar quarter and (b) 50% of the CDO Equity Distributions received by the Credit Parties or their Affiliates in connection with any CDO Issuance for the previous calendar quarter. The Administrative Agent and the Lenders acknowledge that ARSR intends to modify (or replace) the Original Kodiak Indentures and, in connection therewith, exchange the debt securities issued thereunder for new debt securities of ARSR. The Administrative Agent and the Lenders agree that such exchange shall not constitute a repurchase of debt securities by ARSR.

## ARTICLE VI

## [RESERVED]

## ARTICLE VII

## JOINT AND SEVERAL LIABILITY

**Section 7.1 Joint and Several Liability; Full Recourse Obligations.**

(a) At all times during which there is more than one (1) Borrower under this Agreement, each Borrower hereby acknowledges and agrees that (i) such Borrower shall be jointly and severally liable to the Administrative Agent, the Lenders and the Affected Parties to the maximum extent permitted by Applicable Law for all representations, warranties, covenants, duties and indemnities of the Borrowers, arising under this Agreement and the other Loan Documents, as applicable, and the Aggregate Unpaids, (ii) such Borrower has consented to ARSR delivering all Notices of Borrowing on behalf of all Borrowers and any such Notice of Borrowing delivered by ARSR on behalf of the Borrowers is binding upon and enforceable against each Borrower, (iii) the liability of each Borrower (A) shall be absolute and unconditional and shall remain in full force and effect (or be reinstated) until all the Aggregate Unpaids shall have been paid in full and the expiration of any applicable preference or similar period pursuant to any bankruptcy, insolvency, reorganization, moratorium or similar law, or at law or in equity, without any claim having been made before the expiration of such period asserting an interest in all or any part of any payment(s) received by the Administrative Agent, and (B) until such payment has been made, shall not be discharged, affected, modified or impaired on the happening from time to time of any event, including, without limitation, any of the following, whether or not with notice to or the consent of the Borrowers or the Guarantors or any other Person, (1) the waiver, compromise, settlement, release, termination or amendment (including, without limitation, any extension or postponement of the time for payment or performance or renewal or refinancing) of any or all of the obligations or agreements of any Borrower or the Guarantors under this Agreement or any Loan Document, (2) the failure to give notice to the Borrowers or the Guarantors of the occurrence of an Event of Default under any of the Loan Documents, (3) the release, substitution or exchange by the Administrative Agent of any or all of the Collateral (whether with or without consideration) or the acceptance by the Administrative Agent of any additional collateral or the availability or claimed availability of any other collateral or source of repayment or any nonperfection or other impairment of collateral, (4) the release of any Person primarily or secondarily liable for all or any part of the Obligations, whether by the Administrative Agent or in connection with any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors or similar event or proceeding affecting any or all of the Borrowers, the Guarantors or any other Person who, or any of whose Property, shall at the time in question be obligated in respect of the Obligations or any part thereof, or (5) to the extent permitted by Applicable Law, any other event, occurrence, action or circumstance that would, in the absence of this Section 7.1, result in the release or discharge of any or all of the Borrowers from the performance or observance of any obligation,

covenant or agreement contained in this Agreement or the Loan Documents, (iv) the Administrative Agent shall not be required first to initiate any suit or to exhaust its remedies against the Borrowers, the Guarantors or any other Person to become liable, or against any of the Collateral, in order to enforce this Agreement or the Loan Documents and the Borrowers, and the Guarantors expressly agree that, notwithstanding the occurrence of any of the foregoing, each Borrower shall be and remain directly and primarily liable for all sums due under this Agreement or any of the other Loan Documents, (v) when making any demand hereunder against any Borrower, the Administrative Agent or the Lenders may, but shall be under no obligation to, make a similar demand on the other Borrowers, and any failure by the Administrative Agent or Lenders to make any such demand or to collect any payments from the other Borrowers, or any release of such other Borrowers, shall not relieve any Borrower in respect of which a demand or collection is not made or the Borrowers not so released of their obligations or liabilities hereunder, and shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of the Administrative Agent or the Lenders against the Borrowers and (vi) on disposition by the Administrative Agent of any Property encumbered by any Collateral, each Borrower shall be and shall remain jointly and severally liable for any deficiency.

(b) Each Borrower hereby agrees that, to the extent another Borrower shall have paid more than its proportionate share of any payment made hereunder, the Borrowers shall be entitled to seek and receive contribution from and against any other Borrowers which have not paid their proportionate share of such payment; provided however, that the provisions of this Subsection 7.1(b) shall in no respect limit the obligations and liabilities of each Borrower to the Administrative Agent, the Lenders and the Affected Parties, and, notwithstanding any payment or payments made by a Borrower (the "paying Borrower") hereunder or any set-off or application of funds of the paying Borrower by the Administrative Agent, the Lenders or the Affected Parties, the paying Borrower shall not be entitled to be subrogated to any of the rights of the Administrative Agent, the Lenders or the Affected Parties against any other Borrowers or any collateral security or guarantee or right of offset held by the Administrative Agent, the Lenders or the Affected Parties, nor shall the paying Borrower seek or be entitled to seek any contribution or reimbursement from the other Borrowers in respect of payments made by the paying Borrower hereunder, until all amounts owing to the Administrative Agent, the Lenders and the Affected Parties by the Borrowers under the Loan Documents and the Aggregate Unpaids and the Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) are paid in full. If any amount shall be paid to the paying Borrower on account of such subrogation rights at any time when all such amounts shall not have been paid in full, such amount shall be held by the paying Borrower in trust for the Administrative Agent, segregated from other funds of the paying Borrower, and shall, forthwith upon receipt by the paying Borrower, be turned over to the Administrative Agent in the exact form received by the paying Borrower (duly indorsed by the paying Borrower to the Administrative Agent, if required), to be applied against amounts owing to the Administrative Agent and the Lenders by the Borrowers under the Loan Documents, the Aggregate Unpaids and the other Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) in such order as the Administrative Agent may determine in its discretion.

(c) The obligations of the Borrower under the Loan Documents are full recourse obligations to each Borrower and the Borrowers hereby forever waive, demise, acquit and discharge any and all defenses, and shall at no time assert or allege any defense, to the contrary.

## ARTICLE VIII

## SECURITY INTEREST

**Section 8.1 Security Interest.**

(a) Each of the following items or types of property, whether now owned or hereafter acquired, now existing or hereafter created and wherever located, is hereinafter referred to as the Collateral (the "Collateral"): (i) all Collateral Cash Flow, (ii) all rights to the CDO Collateral Manager Distributions, (iii) all Additional Collateral, (iv) all Income with respect to the Additional Collateral, (v) with respect to the Additional Collateral, all files, documents, instruments, agreements, certificates, correspondence, appraisals, computer programs, computer storage media, accounting records and other books and records relating to, governing or constituting any of the foregoing, (vi) the Collection Account, the CDO Management Fee Account and all monies, cash, deposits, securities or investment property from time to time on deposit in the Collection Account and the CDO Management Fee Account, (vii) all Mortgage Loan Documents, all Mortgage Asset Files, including, without limitation, all promissory notes, all Security Agreements relating to the Additional Collateral and any other collateral pledged or otherwise, notes, certificates, instruments, negotiable documents, chattel mortgages and all other loan, security or other documents relating to such Additional Collateral and/or any collateral pledged or otherwise, together with all files, documents, instruments, surveys, certificates, correspondence, appraisals, licenses, contracts, computer programs, computer storage media, accounting records and other books and records relating thereto, (viii) all collateral, security interests, rights and other interests under or with respect to the Additional Collateral, (ix) all purchase agreements and the collateral, security interests, rights and other interests thereunder, (x) all mortgage guaranties and insurance (issued by governmental agencies or otherwise) and any mortgage insurance certificate, policy or other document evidencing such mortgage guaranties or insurance relating to any Additional Collateral and all claims, payments and proceeds thereunder, (xi) all servicing fees to which a Borrower (or any Subsidiary of such Borrower) is entitled and servicing and other rights relating to the Additional Collateral, (xii) all Servicing Agreements, Servicing Records, Servicing Files and Servicer Accounts, to the extent related to the Additional Collateral, established pursuant to any Servicing Agreement, Pooling and Servicing Agreement or otherwise and all amounts on deposit therein, from time to time, (xiii) all rights of the Borrower under any Pooling and Servicing Agreements relating to the Additional Collateral, (xiv) all other agreements or contracts relating to, constituting, or otherwise governing, any or all of the foregoing to the extent they relate to the Additional Collateral, including the right to receive principal and interest payments and any related fees, breakage fees, late fees and penalties with respect to the Additional Collateral and the right to enforce such payments, insurance policies, certificates of insurance, insurance proceeds and the rights to any insurance proceeds, (xv) rights to any collection account, escrow account, reserve account, collateral account or lock-box account related to the Additional Collateral, including all monies, cash, deposits, securities or investment property from time to time on deposit therein, (xvi) rights of any Borrower under any letter of credit, guarantee, or other credit support or enhancement related to the Additional Collateral, (xvii) the rights of any Borrower under any Interest Rate Protection Agreements relating to the foregoing, (xviii) the Pledged Collateral and the Pledged Preferred Equity Collateral, (xix) all purchase or take-out commitments relating to or constituting any of the Additional Collateral, (xx) all "general intangibles", "accounts", "chattel paper", "deposit accounts", "security accounts", "instruments", "securities", "financial assets", "uncertified securities", "securities entitlements" and "investment property" as defined in the Uniform Commercial Code as in effect from time to time relating to the Additional Collateral or constituting any and all of the foregoing as they relate to the Additional Collateral, and (xxi) any and all replacements, substitutions, conversions, distributions on or proceeds of any and all of the foregoing; provided, however, none of the foregoing Collateral shall include any obligations. Notwithstanding the foregoing grant of a security interest, Collateral shall not include (i) any account, instrument, chattel paper or other obligation or Property of any kind due from, owed by, or belonging to, a Person described in the

definition of Prohibited Person or (ii) any lease in which the lessee is a Person described in the definition of Prohibited Person.

(b) The Borrowers hereby assign, pledge and grant a security interest in all of their right, title and interest in, to and under the Collateral to the Administrative Agent (for the benefit of the Lenders) to secure the Obligations. The assignment, pledge and grant of security interest contained herein shall be, and the Borrowers hereby represent and warrant to the Administrative Agent that it is, a first priority perfected security interest. The Borrowers agree to mark their computer records and tapes to evidence the interests granted to the Administrative Agent hereunder.

(c) The assignment, pledge and grant of a security interest under this Section 8.1 does not constitute and is not intended to result in a creation or an assumption by the Administrative Agent or any Lender of any obligation of the Borrowers or any other Person in connection with any or all of the Collateral or under any agreement or instrument relating thereto. Anything herein to the contrary notwithstanding, (i) the Borrowers shall remain liable under the Collateral to the extent set forth therein to perform all of their duties and obligations thereunder to the same extent as if this Agreement or the other Loan Documents had not been executed, (ii) the exercise by the Administrative Agent or any Lender of any of its rights in the Collateral shall not release the Borrowers from any of their duties or obligations under the Collateral, and (iii) the Administrative Agent and the Lenders shall not have any obligations or liability under the Collateral by reason of this Agreement or the other Loan Documents, nor shall the Administrative Agent or any Lender be obligated to perform any of the obligations or duties of the Borrowers thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

**Section 8.2 Release of Lien on Collateral.**

(a) (i) Notwithstanding anything provided in any other Loan Document, the Borrowers may request that the Administrative Agent release its interest in the Collateral at such time as (A) all Revolving Commitments have been terminated, (B) all Loans have been repaid in full and all other Aggregate Unpaids have been paid in full, (C) either (x) no other Obligations are outstanding or (y) no event of default, or an event that, with the notice or the lapse of time, would become an event of default, or acceleration has occurred and is continuing with respect to the other Obligations, and (D) the Total ESH Release Amount has been received by the Administrative Agent and applied to the Arbor Credit Facility. Subject to the proviso to this sentence, the Administrative Agent's interest in the Collateral shall be released ten (10) Business Days after the delivery by the Borrowers of an Officer's Certificate, which certificate may be delivered not more than twenty (20) Business Days nor less than ten (10) Business Days in advance of payment in full of the Aggregate Unpaids so long as the Borrowers re-deliver such Officer's Certificate in connection with payment in full of the Aggregate Unpaids, certifying that (A) the Total ESH Release Amount has been received by the Administrative Agent and applied to the Arbor Credit Facility and (B) either (1) no other Obligations are outstanding or (2) no event of default, or an event that, with the notice or the lapse of time, would become an event of default, or acceleration has occurred and is continuing with respect to the other Obligations; provided that such release shall have no effect if the Administrative Agent gives notice to the Borrowers, prior to the later of (x) expiration of the ten (10) Business Day period and (y) the payment in full of the Aggregate Unpaids, of its knowledge of, or belief that, an event of default, or an event that, with the notice or the lapse of time, would become an event of default, or acceleration has occurred and is continuing with respect to the other Obligations. In connection with the release of its interest in the Collateral, the Administrative Agent will make no representation or warranty, express or implied, with respect to any such Collateral in connection with such release, except that the Administrative Agent shall represent and warrant that it has not assigned, conveyed, pledged or otherwise transferred such Collateral to any other Person.

(ii) The discovery by the Administrative Agent of a breach of any representation made in any Officer's Certificate delivered pursuant to Section 8.2(a)(i) shall result in an automatic event of default under the Arbor Credit Facility.

(b) The Administrative Agent shall consent to the release of its interest in any item of Additional Collateral and any related Collateral so long as the related obligor has repaid such Mortgage Asset in full and the Borrowers have delivered to the Administrative Agent all amounts the Administrative Agent is entitled to with respect thereto, including, without limitation, all amounts required in order to maintain the Availability hereunder; provided, that, the Administrative Agent will make no representation or warranty, express or implied, with respect to any such Additional Collateral or any related Collateral in connection with such release, except that the Administrative Agent shall represent and warrant that it has not assigned, conveyed, pledged or otherwise transferred such Additional Collateral or the related Collateral to any other Person.

(c) Except as otherwise provided in any Loan Document, the Administrative Agent may, in its discretion, consent to the release of its interest in any item of Additional Collateral and any related Collateral (i) so long as no Default or Event of Default has occurred and is continuing hereunder, and (ii) so long as any such release will not result in a mandatory prepayment pursuant to Subsection 2.2(a) hereof; provided, that, the Administrative Agent will make no representation or warranty, express or implied, with respect to any such Additional Collateral or any related Collateral in connection with such release, except that the Administrative Agent shall represent and warrant that it has not assigned, conveyed, pledged or otherwise transferred such Additional Collateral or the related Collateral to any other Person.

(d) The Administrative Agent and the Lenders acknowledge that any releases of Additional Term Loan Collateral, the ESH Allocated Assets and/or the ESH Pledged Mortgage Assets shall be governed by the Arbor Credit Facility.

**Section 8.3 Further Assurances.**

The provisions of Section 13.12 shall apply to the security interest granted under Section 8.1. To the extent that any Person owns or otherwise has an interest in any Collateral that is not a party to this Agreement, the Borrowers shall provide immediate written notice of same to the Administrative Agent, and the Borrowers shall cooperate with the Administrative Agent in causing such Person to execute and permit the Administrative Agent to file such documents, agreements and instruments as the Administrative Agent may require in its discretion to obtain or maintain a perfected first priority security interest in the Collateral.

**Section 8.4 Remedies.**

Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent shall have, with respect to the security interest in the Collateral granted pursuant to Section 8.1, and in addition to all other rights and remedies available to the Administrative Agent under this Agreement or other Applicable Law, all rights and remedies of a secured party upon default under the UCC.

**Section 8.5 Waiver of Certain Laws.**

Each Borrower agrees, to the full extent that it may lawfully so agree, that neither it nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption law now or hereafter in force in any locality where any Collateral may be situated in order to prevent, hinder or delay the enforcement or foreclosure of this Agreement or the other

Loan Documents, or the absolute sale of any of the Collateral or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and each Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may be lawful so to do, the benefit of all such laws and any and all right to have any of the Properties or assets constituting the Collateral marshaled upon any such sale, and agrees that the Administrative Agent, the Lenders or any court having jurisdiction to foreclose the security interests granted in this Agreement or the other Loan Documents may sell the Collateral as an entirety or in such parcels as the Administrative Agent, the Lenders or such court may determine.

**Section 8.6 Administrative Agent's Duty of Care.**

Except as provided in the Loan Documents, the Administrative Agent's sole duty with respect to the Collateral shall be to use reasonable care in the custody, use, operation and preservation of the Collateral in its possession or control. Neither the Administrative Agent nor any Lender shall incur any liability to any Borrower or any other Person for any act of government, act of God or other such destruction in whole or in part or negligence or wrongful act of custodians or agents selected by and supervised by the Administrative Agent or any Lender with reasonable care, or the Administrative Agent's or any Lender's failure to provide adequate protection or insurance for the Collateral. Neither the Administrative Agent nor any Lender shall have any obligation to take any action to preserve any rights of any Borrower in any of the Collateral against prior parties, and the Borrowers hereby agree to take such action. The Borrowers shall defend the Collateral against all such claims and demands of all Persons (other than claims and demands resulting from interests created by the Administrative Agent), at all times, as are adverse to the Administrative Agent and the Lenders. The Administrative Agent and the Lenders shall not have any obligation to realize upon any Collateral, except through proper application of any distributions with respect to the Collateral made directly to the Administrative Agent or its agent(s). So long as the Administrative Agent or any Lender shall act in good faith in its handling of the Collateral, each Borrower waives or is deemed to have waived the defense of impairment of the Collateral by the Administrative Agent or any Lender.

## ARTICLE IX

## POWER OF ATTORNEY

**Section 9.1 Administrative Agent's Appointment as Attorney-in-Fact.**

(a) Following the occurrence and during the continuance of an Event of Default, each of the Borrowers and the Guarantors hereby irrevocably constitutes and appoints the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Borrowers and the Guarantors and in the name of any of the Borrowers or any of the Guarantors or in its own name, from time to time in the Administrative Agent's discretion, for the purpose of carrying out the terms of this Agreement and the other Loan Documents, to take any and all appropriate action and to execute any and all documents and instruments that may be reasonably necessary or desirable to accomplish the purposes of this Agreement and the other Loan Documents, and, without limiting the generality of the foregoing, the Borrowers and the Guarantors hereby give the Administrative Agent the power and right, on behalf of the Borrowers and the Guarantors, without assent by, but with notice to, the Borrowers and the Guarantors, to do the following (in each case to the extent the Borrowers and the Guarantors are not prohibited by Applicable Law or any applicable Contractual Obligation):

(i) in the name of any Borrower or any Guarantor, or in its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under or with respect to any Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under or with respect to any Collateral whenever payable;

(ii) to pay or discharge taxes and Liens levied or placed on or threatened against the Collateral;

(iii) (A) to direct any party liable for any payment under any Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any proceeds thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against any of the Borrowers or the Guarantors with respect to any Collateral; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as the Administrative Agent may deem appropriate, provided that same does not impose any civil or criminal liability on the Borrowers or the Guarantors or any of their Subsidiaries; and (G) generally, to sell, transfer, pledge, exercise rights and make any agreement with respect to or otherwise deal with any Collateral as fully and completely as though the Administrative Agent were the absolute owner thereof for all purposes, and to do, at the Administrative Agent's option and the Borrowers' expense, at any time, and from time to time, all acts and things that the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as such Borrowers or the Guarantors might do; and

(iv) to execute, from time to time, in connection with any sale provided for in Section 10.2, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

The Borrowers and the Guarantors hereby ratify all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable until the occurrence of a Final Termination.

(b) The powers conferred on the Administrative Agent hereunder are solely to protect the Administrative Agent's and Lenders' interests in the Collateral and shall not impose any duty upon the Administrative Agent to exercise any such powers. The Administrative Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Administrative Agent, the Lenders nor any of their officers, directors, employees or agents shall be responsible to the Borrowers or the Guarantors for any act or failure to act hereunder.

## ARTICLE X

## EVENTS OF DEFAULT

**Section 10.1 Events of Default.**

The following events shall be Events of Default (each, an "Event of Default" and, collectively, "Events of Default") hereunder:

(a) the Borrowers shall have failed to timely make a mandatory prepayment or pledge Additional Collateral as required by Subsection 2.2(a) of this Agreement; or

(b) the Borrowers shall fail to pay any principal or Interest on any Loan or Revolving Note when due (whether at maturity, by reason of acceleration, at optional or mandatory prepayment or otherwise) in accordance with the terms thereof or the other Loan Documents, or the Borrowers or any Guarantor shall fail to pay any fee, Late Payment Fee or Interest at the Post-Default Rate when due (whether at maturity, by reason of acceleration, at optional or mandatory prepayment or otherwise) in accordance with the terms of the Loan Documents; or

(c) the Borrowers or Guarantors shall default in the payment of any other Aggregate Unpaids or other amount payable by it hereunder or under any other Loan Document after notification by the Administrative Agent of such default, and such default shall have continued unremedied for two (2) Business Days; or

(d) an Insolvency Event relating to any Borrower, any Guarantor or any Affiliate or Consolidated Subsidiary of any Borrower or any Guarantor shall have occurred; or

(e) any Borrower or any Guarantor shall become required to register as an "investment company" within the meaning of the 40 Act or the arrangements contemplated by the Loan Documents shall require registration as an "investment company" within the meaning of the 40 Act; or

(f) a regulatory, tax or accounting body has ordered that the activities of any Borrower or any Guarantor contemplated in the Loan Documents be terminated or, as a result of any other event or circumstance, the activities of any Borrower or any Guarantor contemplated in the Loan Documents may reasonably be expected to cause any Borrower or any Guarantor to suffer materially adverse regulatory, accounting or tax consequences; or

(g) there shall exist any event or occurrence that has caused a Material Adverse Effect; or

(h) the Internal Revenue Service shall file notice of a Lien pursuant to Section 6323 of the Code with regard to any assets or Property of any Borrower or any Guarantor, and such Lien shall not have been released within five (5) Business Days; or

(i) any event of default which has not been cured within any applicable grace period occurs under any Wachovia Indebtedness; or

(j) (i) any Loan Document, or any Lien or security interest granted thereunder, shall (except in accordance with its terms), in whole or in part, terminate, cease to be effective, cease to be in full force and effect or cease to be the legally valid, binding and/or enforceable obligation of the Borrowers or the Guarantors, as applicable, or

(ii) any Borrower or any Guarantor or any other Person shall, directly or indirectly, contest in any manner the effectiveness, validity, binding nature or enforceability of any Loan Document or any Lien or security interest thereunder or deny or disaffirm such Person's obligations under any Loan Document, or

(iii) the Collateral shall not have been pledged to the Administrative Agent, or the Liens contemplated under the Loan Documents shall cease or fail to be first priority perfected Liens on any Collateral in favor of the Administrative Agent or shall be Liens in favor of any Person other than the Administrative Agent, or

(iv) any Borrower shall grant, or permit or suffer to exist, any Lien on any Collateral except Permitted Liens, or

(v) any Borrower shall grant, or permit or suffer to exist, any Lien on any Required Payment; or

(k) the Borrowers fail to pledge Collateral required to be pledged under this Agreement or the other Loan Documents or fail to cooperate with the Administrative Agent as required by this Agreement or the other Loan Documents to ensure that the Administrative Agent has or obtains a perfected first priority security interest in all existing and future Collateral, or the Borrowers fail to deposit, or to cause to be deposited, any Required Payment or Income into the Collection Account or ARCM fails to cause the CDO Management Fees to be deposited directly into the CDO Management Fee Account; or

(l) any Borrower or any Guarantor shall have failed to observe or perform in any material respect any of the covenants, duties or agreements of the Borrowers or the Guarantors set forth in this Agreement or the other Loan Documents to which the Borrowers or the Guarantors are a party and the same continues unremedied for a period of twenty (20) days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Borrowers or the Guarantors by the Administrative Agent, and (ii) the date on which a Borrower or a Guarantor becomes aware thereof (provided, however, in the case of a failure which is capable of cure but cannot reasonably be cured within such twenty (20) day period (other than the payment of money), and provided the Borrowers or the Guarantors shall have timely commenced to cure such failure within such twenty (20) day period (with evidence of same delivered to the Administrative Agent) and thereafter diligently and expeditiously proceeds to cure the same, such twenty (20) day period shall be extended for an additional twenty (20) day period); or

(m) any representation, warranty, certification or affirmation made by the Borrowers or the Guarantors in this Agreement or any Loan Document or in any certificate or document delivered pursuant to this Agreement or any Loan Document shall prove to have been incorrect in any material respect when made or deemed made and that continues to be unremedied for a period of twenty (20) Business Days after the earlier to occur of (i) the date on which written notice of such incorrectness requiring the same to be remedied shall have been given to the Borrowers or the Guarantors by the Administrative Agent, and (ii) the date on which a Borrower or a Guarantor becomes aware thereof; or

(n) the Borrowers or the Guarantors shall have failed to give instructions (including, without limitation, Irrevocable Instructions required by Sections 3.1, 3.2 or 5.1) or any notice to the Administrative Agent or any Lender as required by this Agreement, or to deliver any required reports hereunder, on or before the date such instruction, notice or report is required to be made or given, as the case may be, under the terms of this Agreement and any such failure continues unremedied for a period of two (2) Business Days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Borrowers or the Guarantors by the Administrative Agent and (ii) the date on which any Borrower or any Guarantor becomes aware thereof; or

(o) any Person's attempt to disavow, revoke or act contrary to, the failure of any Person to abide by or perform, or any Borrower's or any Guarantor's failure to enforce, the terms of any Irrevocable Instruction; or

(p) any Borrower or any Guarantor shall have failed to make any payment due with respect to recourse debt, non-recourse debt or other obligations in excess of $1,500,000 or any default or any event or condition shall have occurred that would permit acceleration of such recourse debt, non-recourse debt or other obligations whether or not such event or condition has been waived; or

(q) Ivan Kaufman resigns, is removed or otherwise no longer serves as an officer or director of ART; or

(r) a final judgment or judgments for the payment of money in excess of $1,500,000 in the aggregate shall be rendered against any Borrower, any Guarantor or any of their Affiliates or Consolidated Subsidiaries by one (1) or more courts, administrative tribunals or other bodies having jurisdiction, and the same shall not be satisfied, discharged (or provision shall not be made for such discharge) or bonded, or a stay of execution thereof shall not be procured, within thirty (30) days from the date of entry thereof; or

(s) any Borrower, any Guarantor or any of their Affiliates or Consolidated Subsidiaries shall be in default (and shall not have cured such default within any applicable grace period) under (i) any Indebtedness (including recourse Indebtedness and Non-Recourse Indebtedness) or Guarantee Obligation of any Borrower, any Guarantor or of their Affiliates or Consolidated Subsidiaries, which default (A) involves the failure to pay a matured obligation in excess of $1,500,000, or (B) permits the acceleration of the maturity of obligations by any other party to or beneficiary with respect to such Indebtedness or Guarantee Obligation in excess of $1,500,000, (ii) any other material Contractual Obligation to which any Borrower, any Guarantor or any of their Affiliates or Consolidated Subsidiaries is a party, which default (A) involves the failure to pay a matured obligation, or (B) permits the acceleration of the maturity of obligations by any other party to or beneficiary of such contract, or (iii) any Borrower-Related Obligation; or

(t) ART fails to comply with any Financial Covenant; or

(u) ART grants any pledge or Lien prohibited by Subsection 5.1(mm) of this Agreement; or

(v) (i) any Borrower, any Guarantor or an ERISA Affiliate shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Benefit Plan, (ii) any material "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan, or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Borrower, any Guarantor or any ERISA Affiliate, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Administrative Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Plan shall terminate for purposes of Title IV of ERISA, (v) any Borrower, any Guarantor or any ERISA Affiliate shall, or in the reasonable opinion of the Administrative Agent is likely to, incur any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan, or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(w) a Change of Control shall have occurred with respect to any Borrower or Guarantor; or

(x) the Borrowers fail to comply with the provisions of Subsections 5.1(e), 5.1(oo), 5.1(pp), 5.1(qq) or 5.1(rr) in any material respect; or

(y) ARSR shall cease to own directly 100% of the issued and outstanding Equity Interests of the CDO Subsidiaries, ARCM, any Collateral Manager or any Consolidated Subsidiary that is the "issuer" in a Debt Issuance; or

(z) any Borrower or any Guarantor is not Solvent or shall admit its inability to, or its intentions not to, perform its obligations, covenants, duties or agreements under any Loan Document or any Obligation; or

(aa) any event of default under any other Loan Document;

(bb) any "Event of Default" (as defined in the Arbor Credit Agreement), or any breach, default or failure to comply or satisfy any term, provision, representation, warranty, covenant, duty, liability or agreement contained in the Arbor Credit Documents, that applies to the Additional Collateral and the related Collateral by virtue of Subsection 2.1(f) of this Agreement, after any notice or opportunity to cure applicable thereto, if any, set forth in such Arbor Credit Documents; or

(cc) ART ceases to qualify as a REIT (without giving any effect to any cure or corrective periods or allowances), is subject to a ratings downgrade by any Rating Agency or ceases to be a publicly traded company listed, quoted or traded on or in good standing in respect of any Stock Exchange, or ARSR fails to qualify as a REIT (without giving any effect to any cure or corrective periods or allowances); or

(dd) the Borrowers shall fail to deliver any documentation or information required to be delivered pursuant to the terms of this Agreement or the other Loan Documents and the same continues unremedied for a period of twenty (20) days after the earlier to occur of (i) the date on which written notice of such failure requiring the same to be remedied shall have been given to the Borrowers or the Guarantors by the Administrative Agent, and (ii) the date on which a Borrower or a Guarantor becomes aware thereof.

For the purposes of Subsections 10.1(d), (r) and (s) and 10.2(a)(i) and the next sentence and not with respect to any other provision of this Agreement or any other Loan Document, the percentage used in the term Affiliate shall be 50% instead of 20%. Subject to the preceding sentence, upon the occurrence of any event described in Subsections 10.1(d), (r) and (s) with respect to any Affiliate, including any Person that becomes an Affiliate of any Borrower or any Guarantor as a result of an exercise by any Borrower or any Guarantor of its remedies in connection with a pledge to a Borrower or a Guarantor of interests in such Person, the Borrowers shall promptly notify the Administrative Agent of same in writing and the Administrative Agent will make a determination in its reasonable discretion and within a reasonable period of time as to whether such event shall constitute an Event of Default.

**Section 10.2 Remedies.**

(a) If an Event of Default occurs, the following rights and remedies are available to the Administrative Agent; provided, that an Event of Default shall be deemed to be continuing unless expressly waived by the Administrative Agent in writing.

(i) At the option of the Administrative Agent (which option the Administrative Agent shall exercise at the written request of the Requisite Lenders), exercised by written notice to the Borrowers (which option shall be deemed to have been automatically exercised, even if no notice is given, immediately upon the occurrence of an Insolvency Event of any Borrower, any Guarantor or any of their Affiliates or Consolidated Subsidiaries), the Revolving Commitments shall be immediately terminated, the Facility Maturity Date and the maturity of each Loan shall be deemed to have occurred (if it has not already occurred) (except that, in the event that the Borrowing Date for any Loan has not yet occurred as of the date of such exercise or deemed exercise, such Loan shall be deemed immediately cancelled) and the Loans (together with accrued Interest), the Aggregate Unpaids shall be immediately due and payable. The Administrative Agent shall (except upon the occurrence of an Insolvency Event of any Borrower, any Guarantor or any of their Affiliates and Consolidated Subsidiaries) give notice to the Borrowers of the exercise of such option as promptly as practicable.

(ii) If the Administrative Agent exercises or is deemed to have exercised the option referred to in Subsection 10.2(a)(i),

(A) the Borrowers and the Guarantors shall immediately deliver to the Administrative Agent any Collateral then in any Borrower's or Guarantor's possession or control; and

(B) all Income and other amounts actually received by the Administrative Agent or on deposit in the Collection Account shall be applied to the Aggregate Unpaids and any other Obligations in accordance with the priorities set forth in Section 2.7.

(iii) Upon the occurrence of one or more Events of Default, the Administrative Agent shall have the right to obtain physical possession of all files of the Borrowers and the Guarantors relating to the Collateral and all documents relating to the Collateral which are then or may thereafter come into the possession of the Borrowers, the Guarantors or any third party acting for the Borrowers or the Guarantors, and the Borrowers shall deliver to the Administrative Agent such assignments as the Administrative Agent shall request, and the Administrative Agent shall have the right to appoint any Person to act as the servicer for the Collateral.

(iv) At any time after the second (2nd) Business Day following notice to the Borrowers (which notice may be the notice given under Subsection 10.2(a)(i)), in the event the Borrowers have not paid all Aggregate Unpaids and other Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations), the Administrative Agent may (A) immediately sell, without demand or further notice of any kind, at a public or private sale and at such price or prices as the Administrative Agent may deem reasonably satisfactory any or all Collateral and apply the proceeds thereof to the Aggregate Unpaids and the other Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) in accordance with the priorities set forth in Section 2.7, or (B) in its discretion, elect, in lieu of selling all or a portion of such Collateral, to give the Borrowers credit for such Collateral in an amount equal to the market value of the Collateral against the Aggregate Unpaids and any other Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations). The proceeds of any disposition of Collateral shall be applied first to the costs and expenses incurred by the Administrative Agent in connection with the default; second to the costs of related covering

and/or related hedging transactions; third to the Aggregate Unpaids and other Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) in accordance with the priorities set forth in Section 2.7; and fourth to the Borrowers.

(v) The Borrowers and the Guarantors agree that the Administrative Agent may obtain an injunction or an order of specific performance to compel the Borrowers and the Guarantors to fulfill any of their obligations as set forth in this Agreement or the other Loan Documents if the Borrowers or Guarantors fail or refuse to perform their obligations as set forth herein or therein.

(vi) The Borrowers shall be liable to the Administrative Agent, payable as and when incurred by the Administrative Agent, for (A) the amount of all reasonable actual out-of-pocket expenses, including legal or other expenses, incurred by the Administrative Agent in connection with or as a consequence of an Event of Default, and (B) all reasonable costs incurred in connection with hedging or covering transactions.

(b) The Administrative Agent may exercise one or more of the remedies available to the Administrative Agent immediately upon the occurrence of an Event of Default and, except to the extent provided in Subsections 10.2(a)(i) and 10.2(a)(iv), at any time thereafter without notice to the Borrowers or the Guarantors. All rights and remedies arising under this Agreement, the other Loan Documents or any other agreement relating to the Borrower-Related Obligations, as any of the foregoing are amended from time to time, are cumulative and not exclusive of any other rights or remedies that the Administrative Agent may have.

(c) The Administrative Agent may enforce its rights and remedies hereunder without prior judicial process or hearing, and the Borrowers and Guarantors hereby expressly waive any defenses the Borrowers and Guarantors might otherwise have to require the Administrative Agent to enforce its rights by judicial process. The Borrowers and the Guarantors also waive any defense (other than a defense of payment or performance) any Borrower and/or any Guarantor might otherwise have arising from the use of nonjudicial process, enforcement and sale of all or any portion of the Collateral, or from any other election of remedies. The Borrowers and the Guarantors recognize that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's-length.

(d) To the extent permitted by Applicable Law, the Borrowers shall be liable to the Administrative Agent for interest on any amounts owing by the Borrowers hereunder, under the other Loan Documents or otherwise, from the date the Borrowers become liable for such amounts hereunder until such amounts are (i) paid in full by the Borrowers or (ii) satisfied in full by the exercise of the Administrative Agent's rights hereunder. Interest on any sum payable by the Borrowers to the Administrative Agent under this Subsection 10.2(d) shall accrue interest from and after the date of the Event of Default (but only during the continuance of that Event of Default) at a rate equal to the Post-Default Rate.

(e) In addition to the rights under this Section 10.2, the Administrative Agent shall have the following additional rights if an Event of Default occurs:

The Administrative Agent, the Borrowers and the Guarantors agree and acknowledge that the Collateral includes collateral that may decline rapidly in value. Accordingly, notwithstanding anything to the contrary in this Agreement, the other Loan Documents or otherwise, the

Administrative Agent shall not be required to give notice to the Borrowers or the Guarantors prior to exercising any remedy in respect of an Event of Default. If no prior notice is given, the Administrative Agent shall give notice to the Borrowers and the Guarantors of the remedies effected by the Administrative Agent promptly thereafter. The Administrative Agent shall act in good faith in exercising its rights pursuant to this Section 10.2.

(f) The Administrative Agent shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or Applicable Law (including, without limitation, the UCC).

(g) Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Administrative Agent shall not foreclose on any Pledged Collateral or otherwise cause ownership of any Equity Interests in any Pledged CDO Subsidiary to be transferred from the applicable Borrower unless the Administrative Agent obtains an Opinion of Counsel opining (x) that a transfer of the Pledged Collateral in connection with such foreclosure or other transfer will not cause the CDO Issuer owned by the related CDO Subsidiary to cease to be treated as a QRS or (y) that, after such transfer, the CDO Issuer will be treated as a foreign corporation that is not engaged in a trade or business in the United States for United State federal income tax purposes.

**Section 10.3 Waiver.**

Except as expressly set forth in Section 10.2, presentment, demand, protest and all other notices of any kind are hereby expressly waived by the Borrowers and the Guarantors.

**Section 10.4 Determination of Events of Default.**

In making a determination as to whether an Event of Default has occurred, the Administrative Agent shall be entitled to rely on reports published or broadcast by media sources believed by the Administrative Agent to be generally reliable and on information provided to it by any other sources believed by it to be generally reliable; provided, that the Administrative Agent reasonably and in good faith believes such information to be accurate and has taken such steps as may be reasonable in the circumstances (including consulting with the Borrowers and the Guarantors) to attempt to verify such information.

## ARTICLE XI

## INDEMNIFICATION

**Section 11.1 Indemnities by the Borrowers.**

(a) Each Borrower agrees to hold the Administrative Agent, the Lenders, the other Affected Parties and each of their Affiliates and the Administrative Agent, the Lenders, the other Affected Parties and their Affiliates' officers, directors, shareholders, members, managers, partners, owners, attorneys, employees, agents, Affiliates and advisors (each an "Indemnified Party" and collectively the "Indemnified Parties") harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs, expenses, penalties and fines of any kind or nature whatsoever that may be imposed on, incurred by or asserted against such Indemnified Party, including, without limitation, fees and expenses of counsel (collectively, the "Indemnified Amounts"), relating to or arising out of (i) this Agreement, the other Loan Documents, any Loan, any Collateral or any transaction contemplated hereby or thereby, or (ii) any amendment, supplement or modification of, or any waiver or consent under or in respect of, this

Agreement, the other Loan Documents, any Loan, any Collateral or any transaction contemplated hereby or thereby, or (iii) any violation of Applicable Law related to any of the foregoing (including, without limitation, violation of securities laws) and any civil penalties or fees assessed by OFAC against, and the reasonable costs and expenses (including fees and expenses of counsel) incurred in connection with the defense thereof by any Indemnified Party as a result of the conduct of any Borrower, any Guarantor or any Consolidated Subsidiary thereof that violates any sanctions enforced by the OFAC, or (iv) any and all Indemnified Amounts arising out of, attributable or relating to, accruing out of, or resulting from (1) a past, present or future violation or alleged violation of any Environmental Laws in connection with any Property or Underlying Mortgaged Property by any Person or other source, whether related or unrelated to any Borrower, any Guarantor or any obligor under a Mortgage Asset, (2) any presence of any Materials of Environmental Concern in, on, within, above, under, near, affecting or emanating from any Property or Underlying Mortgaged Property, (3) the failure to timely perform any Remedial Work, (4) any past, present or future activity by any Person or other source, whether related or unrelated to any Borrower, any Guarantor or any obligor under a Mortgage Asset in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from any Property or Underlying Mortgaged Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting any Property or Underlying Mortgaged Property, (5) any past, present or future actual Release (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting any Property or Underlying Mortgaged Property by any Person or other source, whether related or unrelated to any Borrower, any Guarantor or any obligor under a Mortgage Asset, (6) the imposition, recording or filing or the threatened imposition, recording or filing of any Lien on any Property or Underlying Mortgaged Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any Environmental Law, or (7) any misrepresentation or inaccuracy in any representation or warranty in any material respect or material breach or failure to perform any covenants or other obligations pursuant to this Agreement, the other Loan Documents or any of the Mortgage Loan Documents or relating to environmental matters in any way including, without limitation, under any of the Mortgage Loan Documents, or (v) any matter or item covered by the indemnification provision contained in Subsection 10.5(b) of the Arbor Credit Agreement, mutatis mutandis, or (vi) any Borrower's, any Guarantor's, or any Affiliate's conduct, duties, actions and/or inactions in connections with, related to or arising out of the foregoing clauses of this Subsection 11.1(a), that, in each case, results from anything other than any Indemnified Party's gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Borrowers agree to hold any Indemnified Party harmless from and indemnify such Indemnified Party against all Indemnified Amounts relating to or arising out of any violation or alleged violation of, noncompliance with or liability under any Applicable Law, rule or regulation (including, without limitation, Environmental Laws) with respect to any Property of a Borrower or Guarantor or any Collateral that, in each case, results from anything other than such Indemnified Party's gross negligence or willful misconduct. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 11.1 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Borrower, any Guarantor or any of their directors, shareholders, owners, partners, members, officers, managers, agents, Affiliates or creditors or an Indemnified Party or any other Person or any Indemnified Party is otherwise a party thereto and whether any transaction contemplated hereby is consummated. In any suit, proceeding or action brought by an Indemnified Party in connection with any Collateral for any sum owing thereunder, or to enforce any provisions of any Collateral, the Borrowers will save, indemnify and hold such Indemnified Party harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim, recoupment or reduction of liability whatsoever of the account debtor or obligor thereunder arising out of a breach by any Borrower or any Guarantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from any Borrower or any Guarantor. The Borrowers also

agree to reimburse an Indemnified Party as and when billed by such Indemnified Party for all such Indemnified Party's costs, expenses and fees incurred in connection with the enforcement or the preservation of such Indemnified Party's rights under this Agreement, the other Loan Documents, the Loan, the Collateral and any transaction contemplated hereby or thereby, including, without limitation, the reasonable fees and disbursements of its counsel.

(b) Any amounts subject to the indemnification provisions of this Section 11.1 shall be paid by the Borrowers to the Indemnified Party within five (5) Business Days following such Person's demand therefor.

(c) The obligations of the Borrowers under this Section 11.1 shall survive the resignation or removal of the Administrative Agent and the survive termination of this Agreement and the payment in full of the Obligations.

**Section 11.2 After-Tax Basis.**

Indemnification under Section 11.1 shall be in an amount necessary to make the Indemnified Party whole after taking into account any tax consequences to the Indemnified Party of the receipt of the indemnity provided hereunder, including the effect of such tax or refund on the amount of tax measured by net income or profits that is or was payable by the Indemnified Party.

## ARTICLE XII

## THE ADMINISTRATIVE AGENT

**Section 12.1 Appointment.**

Each Lender hereby irrevocably designates and appoints Initial Lender as the Administrative Agent of such Lender under this Agreement and the other Loan Documents, and each such Lender irrevocably authorizes Initial Lender, as the Administrative Agent for such Lender, to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, the Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein or in the other Loan Documents, or any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or the other Loan Documents or otherwise exist against the Administrative Agent.

**Section 12.2 Delegation of Duties.**

The Administrative Agent may execute any of its duties under this Agreement by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care. Without limiting the foregoing, the Administrative Agent may appoint one of its Affiliates as its agent to perform the functions of the Administrative Agent hereunder relating to the advancing of funds to the Borrowers and distribution of funds to the Lenders and to perform such other related functions of the Administrative Agent hereunder and under the other Loan Documents as are reasonably incidental to such functions.

**Section 12.3 Exculpatory Provisions.**

Neither the Administrative Agent nor any of its officers, directors, employees, agents, attorneys-in-fact, Subsidiaries or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement or the other Loan Documents (except for its or such Person's own gross negligence or willful misconduct) or (b) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrowers, the Guarantors or any of their respective Affiliates or Subsidiaries or any officer thereof contained in this Agreement or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or the other Loan Documents or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any of the Loan Documents or for any failure of the Borrowers, the Guarantors or any of their respective Affiliates or Subsidiaries to perform any of their obligations hereunder or under the other Loan Documents. The Administrative Agent shall not be under any obligation to any Lender to ascertain or to inquire as to the observance or performance by the Borrowers, the Guarantors or any of their respective Affiliates or Subsidiaries of any of the agreements contained in, or conditions of, this Agreement or the other Loan Documents, or to inspect the Properties, books or records of the Borrowers, the Guarantors or any of their respective Affiliates or Subsidiaries.

**Section 12.4 Reliance by Administrative Agent.**

(a) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Borrowers and/or the Guarantors), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Revolving Note as the owner thereof for all purposes unless an executed Commitment Transfer Supplement has been filed with the Administrative Agent pursuant to Section 13.16 with respect to the Loans evidenced by such Revolving Note. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or the other Loan Documents unless it shall first receive such advice or concurrence of the Requisite Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under any of the Loan Documents in accordance with a request of the Requisite Lenders or all of the Lenders, as may be required under this Agreement, and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders and all future holders of the Revolving Notes.

(b) For purposes of determining compliance with the conditions specified in Section 3.1 of this Agreement, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender.

**Section 12.5 Notice of Default.**

The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has received notice from a Lender, the Borrowers or the Guarantors referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default." In the event that the Administrative Agent receives such a

notice, the Administrative Agent shall give prompt notice thereof to the Lenders. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Requisite Lenders; provided, however, that unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interests of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not taken, only with the consent or upon the authorization of the Requisite Lenders, or all of the Lenders, as the case may be.

**Section 12.6 Non-Reliance on Administrative Agent and Other Lenders.**

Each Lender expressly acknowledges that neither the Administrative Agent nor any of its Affiliates has made any representation or warranty to it and that no act by the Administrative Agent hereinafter taken, including any review of the affairs of the Borrowers or the Guarantors, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender. Each Lender represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, operations, Property, financial and other condition and creditworthiness of the Borrowers and Guarantors and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, operations, Property, financial and other condition and creditworthiness of the Borrowers and the Guarantors. Except for notices, reports and other documents expressly required to be furnished to the Lenders by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, Property, condition (financial or otherwise), prospects or creditworthiness of the Borrowers or the Guarantors which may come into the possession of the Administrative Agent or any of its Affiliates.

**Section 12.7 Indemnification.**

The Lenders agree to indemnify the Administrative Agent in its capacity hereunder (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), ratably according to their respective Revolving Commitment Percentages in effect on the date on which indemnification is sought under this Section 12.7, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including, without limitation, at any time following the payment of the Revolving Notes) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of any Loan Document or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing; provided, however, that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting from the Administrative Agent's gross negligence or willful misconduct, as determined by a court of competent jurisdiction. The agreements in this Section 12.7 shall survive the termination of this Agreement and the payment in full of the Obligations.

**Section 12.8 The Administrative Agent in Its Individual Capacity.**

The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrowers and Guarantors as though the Administrative Agent were not the Administrative Agent hereunder. With respect to the Loans made or renewed by it and any Revolving Note issued to it, the Administrative Agent shall have the same rights and powers under this Agreement and the other Loan Documents as any Lender and may exercise the same as though it were not the Administrative Agent, and the terms "Lender" and "Lenders" shall include the Administrative Agent in its individual capacity.

**Section 12.9 Successor Administrative Agent.**

The Administrative Agent may resign as Administrative Agent upon thirty (30) days' prior written notice to the Borrowers and the Lenders provided there exists at such time Lenders other than the Initial Lender. If the Administrative Agent shall resign as Administrative Agent under this Agreement and the other Loan Documents, then the Requisite Lenders shall appoint from among the Lenders a successor administrative agent for the Lenders, whereupon such successor administrative agent shall succeed to the rights, powers and duties of the Administrative Agent, and the term "Administrative Agent" shall mean such successor administrative agent effective upon such appointment and approval, and the former Administrative Agent's rights, powers and duties as Administrative Agent shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or any of the parties to this Agreement or any holders of the Revolving Notes. If no successor Administrative Agent has accepted appointment as Administrative Agent within thirty (30) days after the retiring Administrative Agent's giving notice of resignation, the retiring Administrative Agent shall have the right, on behalf of the Lenders, to appoint a successor administrative agent; provided, that such successor administrative agent has minimum capital and surplus of at least $50,000,000. If no successor administrative agent has accepted appointment as Administrative Agent within sixty (60) days after the retiring Administrative Agent's giving notice of resignation, the retiring Administrative Agent's resignation shall nevertheless become effective and the Lenders shall perform all duties of the Administrative Agent hereunder and under the other Loan Documents until such time, if any, as the Requisite Lenders appoint a successor administrative agent as provided for above. After any retiring Administrative Agent's resignation as Administrative Agent, the indemnification provisions of this Agreement and the other Loan Documents and the provisions of this Article XII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

**Section 12.10 Other Administrative Agents.**

None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent", "documentation agent", "co-agent", "book manager", "book runner", "lead manager", "arranger", "lead arranger" or "co-arranger", if applicable, shall have any right (except as expressly set forth herein), power, obligation, liability, responsibility or duty under this Agreement or the other Loan Documents other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or the other Loan Documents or in taking or not taking action hereunder.

## ARTICLE XIII

## MISCELLANEOUS

**Section 13.1 Amendments, Waivers and Release of Collateral.**

(a) Neither this Agreement, nor any of the Revolving Notes, nor any of the other Loan Documents, nor any terms hereof or thereof, may be amended, supplemented, waived or modified except in accordance with the provisions of this Section 13.1 nor may any Borrower or any Guarantor be released except in accordance with the provisions of this Section 13.1. The Requisite Lenders may, or, with the written consent of the Requisite Lenders, the Administrative Agent may, from time to time, (a) enter into with the Borrowers and Guarantors written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Borrowers and Guarantors hereunder or thereunder or (b) waive, on such terms and conditions as the Requisite Lenders may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that no such waiver and no such amendment, waiver, supplement, modification or release shall:

(i) extend the Facility Maturity Date, reduce the amount or extend the scheduled date of maturity of any Loan or Revolving Note or any installment thereon, or reduce the stated rate of any interest or fee payable hereunder (except in connection with a waiver of interest at the increased Post-Default Rate which shall be determined by a vote of the Requisite Lenders) or extend the scheduled date of any payment thereof or increase the amount or extend the expiration date of any Lender's Revolving Commitment, in each case without the written consent of each Lender directly affected thereby; or

(ii) amend, modify, supplement or waive any provision of this Section 13.1 or reduce the percentage specified in the definition of Requisite Lenders, without the written consent of all the Lenders; or

(iii) amend, modify, supplement or waive any provision of Articles VII and XII without the written consent of the Administrative Agent; or

(iv) release any Borrower or any Guarantor from its obligations hereunder or under the other Loan Documents, without the written consent of all of the Lenders and, if applicable, any counterparty to any Interest Rate Protection Agreement; or

(v) release all or substantially all of the Collateral without the written consent of all of the Lenders and, if applicable, any counterparty to any Interest Rate Protection Agreement; or

(vi) subordinate the Loans to any other Indebtedness without the written consent of all of the Lenders; or

(vii) permit the Borrowers or Guarantors to assign or transfer any of their rights or obligations under this Agreement or other Loan Documents without the written consent of all of the Lenders; or

(viii) amend, modify, supplement or waive any provision of the Loan Documents requiring consent, approval or request of the Requisite Lenders or all Lenders without the written consent of the Requisite Lenders or all Lenders, as appropriate; or

(ix) amend, modify, supplement or waive the order in which Obligations are paid in Section 2.7 without the written consent of each Lender directly affected thereby; or

(x) without the consent of Lenders having Revolving Commitment Percentages in the aggregate more than 50% amend, modify or waive Section 3.2 or any other provision of this Agreement if the effect of such amendment or waiver is to require Lenders to make Loans when such Lenders would not otherwise be required to do so; or

(xi) amend, modify or supplement the definition of Obligations to delete or exclude any obligation or liability described therein without the written consent of each Lender and, if applicable, each counterparty to any Interest Rate Protection Agreement directly affected thereby;

provided, however, that no amendment, modification, supplement, waiver or consent affecting the rights or duties of the Administrative Agent under any Loan Document shall in any event be effective unless the same is in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action.

(b) Any such waiver, any such amendment, supplement or modification and any such release shall apply equally to each of the Lenders and shall be binding upon the Borrowers, the Guarantors, the Lenders, the Administrative Agent and all future holders of the Revolving Notes. In the case of any waiver, the Borrowers, the Guarantors, the Lenders and the Administrative Agent shall be restored to their former position and rights hereunder and under the outstanding Loans and Revolving Notes and other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing, but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(c) Notwithstanding any of the foregoing to the contrary, the consent of the Borrowers or the Guarantors shall not be required for any amendment, modification, supplement or waiver of the provisions of Article XII except to the extent that any of the Borrowers or Guarantors would be materially adversely affected thereby; provided, however, that the Administrative Agent will provide written notice to the Borrowers of any such amendment, modification or waiver. In addition, the Borrowers and the Lenders hereby authorize the Administrative Agent to modify this Agreement by unilaterally amending or supplementing Schedule 2, which should contain a listing of all Lenders and their respective Revolving Commitments from time to time in the manner requested by the Borrowers, the Administrative Agent or any Lender in order to reflect any assignments or transfers of the Loans as provided for hereunder; provided, however, that the Administrative Agent shall promptly deliver a copy of any such modification to the Borrowers and each Lender.

(d) Notwithstanding the fact that the consent of all the Lenders is required in certain circumstances as set forth above, (x) each Lender is entitled to vote as such Lender sees fit on any bankruptcy reorganization plan that affects the Loans, and each Lender acknowledges that the provisions of Section 1126(c) of the Bankruptcy Code supersede the unanimous consent provisions set forth herein and (y) the Requisite Lenders may consent to allow the Borrowers to use cash collateral in the context of a bankruptcy or insolvency proceeding.

(e) Any waiver or consent shall be effective only if it is in writing and only in the specific instance and for the specific purpose for which given.

**Section 13.2 Notices, Etc.**

All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including communication by facsimile copy) and mailed, telexed, transmitted or delivered, as to each party hereto, at its address set forth on Schedule 3 or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective, upon receipt, or in the case of (a) notice by mail, five (5) days after being deposited in the United States mail, first class postage prepaid, or (b) notice by facsimile copy, when verbal communication of receipt is obtained.

**Section 13.3 Set-offs.**

(a) In addition to any rights now or hereafter granted under Applicable Law or otherwise, and not by way of limitation of such rights, each Borrower and each Guarantor hereby grants to the Administrative Agent and the Lenders a right of set-off, to secure repayment of all amounts owing to the Administrative Agent and the Lenders by the Borrowers and the Guarantors under the Loan Documents and the Obligations, upon any and all (regardless of any currency thereof) monies, securities, collateral or other Property of any Borrower or any Guarantor (but specifically excluding any Excluded Account) and any proceeds from the foregoing, now or hereafter held or received by the Administrative Agent, the Lenders or any entity under the control of the Administrative Agent or the Lenders and their respective successors and assigns (including, without limitation, branches and agencies of the Administrative Agent or Lenders wherever located), for the account of any Borrower or any Guarantor, whether for safekeeping, custody, pledge, transmission, collection or otherwise, and also upon any and all deposits (general, specified, special, time, demand, provisional or final) and credits, claims or Indebtedness of any Borrower or any Guarantor at any time existing, in each case whether direct or indirect, absolute or contingent, matured or unmatured, and in each case at any time held or owing by the Administrative Agent, any Lender or any Affiliate of the foregoing to or for the credit of any Borrower or any Guarantor. The Administrative Agent and each Lender is hereby authorized at any time and from time to time upon any amount becoming due and payable by any Borrower to the Administrative Agent or the Lenders under the Loan Documents, the Aggregate Unpaids, the Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations) or otherwise (whether at stated maturity, by acceleration, by mandatory or optional prepayment or otherwise) or upon the occurrence of an Event of Default, without notice to any Borrower or any Guarantor, any such notice being expressly waived by the Borrowers to the extent permitted by Applicable Law, to set-off, appropriate, apply and enforce such right of set-off against any and all items hereinabove referred to against any amounts owing to the Administrative Agent or Lenders by the Borrowers and the Guarantors under the Loan Documents, the Aggregate Unpaids and the Obligations (but only to the extent that an event of default, an event that, with the notice or the lapse of time, would become an event of default, or any acceleration has occurred with respect to such other Obligations), irrespective of whether the Administrative Agent or Lenders shall have made any demand hereunder and regardless of any other collateral securing such amounts. Each Borrower and each Guarantor shall be deemed directly indebted to the Administrative Agent and each Lender in the full amount of all amounts owing to the Administrative Agent and the Lenders by the Borrowers and the Guarantors under this Agreement, the Revolving Notes, the other Loan Documents and the Obligations, and the Administrative Agent and Lenders shall be entitled to exercise the rights of set-off provided for above. **ANY AND ALL RIGHTS TO REQUIRE THE ADMINISTRATIVE AGENT OR LENDERS TO EXERCISE THEIR RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE AMOUNTS OWING TO THE ADMINISTRATIVE AGENT OR LENDERS BY THE BORROWERS AND THE GUARANTORS UNDER THE LOAN DOCUMENTS, PRIOR TO EXERCISING ITS RIGHT OF SET-OFF WITH RESPECT TO SUCH MONIES, SECURITIES, COLLATERAL, DEPOSITS, CREDITS OR**

**OTHER PROPERTY OF THE BORROWERS, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY EACH BORROWER.**

(b) The Administrative Agent agrees promptly to notify the affected Borrower or Guarantor after any such set-off and application made by the Administrative Agent; provided, that the failure to give such notice shall not affect the validity of such set-off and application.

**Section 13.4 No Waiver; Remedies.**

No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any further exercise thereof or the exercise of any other right. The rights and remedies herein provided are cumulative and not exclusive of any rights and remedies provided by Applicable Law.

**Section 13.5 Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of the Borrowers, the Guarantors, the Administrative Agent, the Lenders and their respective successors and permitted assigns.

**Section 13.6 Term of this Agreement.**

(a) This Agreement, including, without limitation, the Borrowers' and the Guarantors' representations, warranties, covenants and duties set herein, create and constitute the continuing obligation of the parties hereto in accordance with its terms and shall remain in full force and effect until such time as (i) all Revolving Commitments have been terminated, (ii) all Loans have been repaid in full and all other Aggregate Unpaids have been paid in full, and (iii) either (A) no other Obligations are outstanding or (B) no event of default, or an event that, with the notice or the lapse of time, would become an event of default, or acceleration has occurred and is continuing with respect to the other Obligations; provided, however, that any provision that, by its terms, expressly survives termination shall be continuing and shall survive any termination of this Agreement and the payment in full of the Obligations.

(b) Subject to Subsection 13.6(a), this Agreement may be terminated by the Lenders or the Borrowers upon giving thirty (30) days prior written notice to the other parties.

**Section 13.7 Governing Law.**

This Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

**Section 13.8 Waivers.**

(a) THE BORROWERS AND THE GUARANTORS EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO ASSERT A COUNTERCLAIM, OTHER THAN A COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST IT BY THE ADMINISTRATIVE AGENT, THE LENDERS, THE AFFECTED PARTIES OR ANY OF THE AFFILIATES OR AGENTS OF THE FOREGOING.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO AND THE GUARANTORS KNOWINGLY, VOLUNTARILY AND INTENTIONALLY

HEREBY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE PARTIES HERETO AND/OR THE GUARANTOR ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN ANY OF THEM IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED HEREBY, THE OBLIGATIONS OR ANY DEALINGS, COURSE OF DEALINGS, COURSE OF CONDUCT AMONG THEM OR ANY STATEMENTS (WRITTEN OR ORAL) OR OTHER ACTIONS OF ANY PARTY, AND NONE OF THE PARTIES OR THE GUARANTOR WILL SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. INSTEAD, ANY SUCH DISPUTE RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

(c) ANY LEGAL ACTION OR PROCEEDING AGAINST THE BORROWERS OR THE GUARANTORS WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT TO WHICH THE BORROWERS AND/OR THE GUARANTORS ARE A PARTY MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE BORROWERS AND THE GUARANTORS HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. EACH OF THE BORROWERS AND THE GUARANTORS IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWERS OR THE GUARANTORS, AS APPLICABLE, AT THEIR ADDRESS SET FORTH ON SCHEDULE 3, SUCH SERVICE TO BECOME EFFECTIVE TEN (10) DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE ADMINISTRATIVE AGENT OR LENDERS TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY BORROWER OR ANY GUARANTORS IN ANY OTHER JURISDICTION.

(d) EACH OF THE BORROWERS AND THE GUARANTORS HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (c) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(e) EXCEPT AS PROHIBITED BY LAW, EACH OF THE BORROWERS AND THE GUARANTORS HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION WHATSOEVER INVOLVING THE ADMINISTRATIVE AGENT, THE LENDERS, ANY AFFECTED PARTY OR ANY AFFILIATE OF THE FOREGOING ANY SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. EACH OF THE BORROWERS AND THE GUARANTORS CERTIFY THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE ADMINISTRATIVE AGENT OR THE INITIAL LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE ADMINISTRATIVE AGENT OR INITIAL LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE

FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

(f) EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO AND THE GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL AND OTHER RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

(g) THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO ANY TRANSACTION ENTERED INTO HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(h) EACH BORROWER COVENANTS AND AGREES THAT, UPON THE COMMENCEMENT OF A VOLUNTARY OR INVOLUNTARY BANKRUPTCY PROCEEDING BY OR AGAINST A BORROWER, THE OTHER BORROWERS SHALL NOT SEEK A SUPPLEMENTAL STAY OR OTHERWISE SEEK, PURSUANT TO 11 U.S.C. § 105 OR ANY OTHER PROVISION OF THE BANKRUPTCY CODE OR ANY OTHER DEBTOR RELIEF LAW (WHETHER STATUTORY, COMMON LAW, CASE LAW OR OTHERWISE) OF ANY JURISDICTION WHATSOEVER, NOW OR HEREAFTER IN EFFECT, WHICH MAY BE OR BECOME APPLICABLE, TO STAY, INTERDICT, CONDITION, REDUCE OR INHIBIT THE ABILITY OF AN INDEMNIFIED PARTY TO ENFORCE ANY RIGHTS OF SUCH INDEMNIFIED PARTY AGAINST SUCH BORROWER BY VIRTUE OF THIS AGREEMENT OR OTHERWISE.

(i) IT IS EXPRESSLY AGREED AND UNDERSTOOD THAT THIS AGREEMENT INCLUDES INDEMNIFICATION PROVISIONS WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY A BORROWER OF AN INDEMNIFIED PARTY FROM CLAIMS OR LOSSES ARISING AS A RESULT OF SUCH INDEMNIFIED PARTY'S OWN NEGLIGENCE.

**Section 13.9 Costs, Expenses and Taxes.**

(a) The Borrowers agree to pay as and when billed by the Administrative Agent or the Lenders all of the reasonable out-of-pocket costs and expenses incurred by the Administrative Agent and the Lenders in connection with the development, preparation and execution of, and any amendment, supplement or modification to, or waiver of, this Agreement, the Loan Documents or any other documents and agreements prepared in connection herewith or therewith. The Borrowers agree to pay as and when billed by the Administrative Agent and the Lenders all of the out-of-pocket costs and expenses incurred in connection with the consummation and administration of the transactions contemplated hereby and thereby including, without limitation, (i) all the reasonable fees, disbursements and expenses of counsel to the Administrative Agent and the Lenders (provided, however, prior to the occurrence of an Event of Default, the Borrowers shall only be responsible for the fees, disbursements and expenses of one law firm) and (ii) all the due diligence, inspection, testing and review costs and expenses incurred by the

Administrative Agent and the Lenders with respect to the Collateral under this Agreement, including, but not limited to, those costs and expenses incurred by the Administrative Agent and the Lenders and reimbursable by the Borrowers pursuant to Subsection 11.1(a) of this Agreement.

(b) The Borrowers shall pay on demand any and all stamp, sales, excise and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement, the Loan Documents or the other documents to be delivered hereunder or thereunder or the funding or maintenance of Loans hereunder.

(c) The provision of this Section 13.9 shall survive the termination of this Agreement and the payment in full of the Obligations.

(d) The Borrowers shall pay on demand all other reasonable costs, expenses and Taxes (except for Taxes on, or Taxes one or more of the alternative bases for which are, the overall net income of the Administrative Agent, any Lender or any Affected Party, and except for franchise taxes imposed in lieu thereof) incurred by the Administrative Agent, the Lenders and the Affected Parties ("Other Costs"), including without limitation, all costs and expenses incurred by the Administrative Agent, the Lenders and the Affected Parties in connection with periodic audits of any Borrower's, any Guarantor's or any Servicer's books and records.

**Section 13.10 Legal Matters.**

(a) In the event of any conflict between the terms of this Agreement, any other Loan Document or any Confirmation with respect to any Additional Collateral, the documents shall control in the following order of priority: first, the terms of the related Confirmation shall prevail, then the terms of this Agreement shall prevail, and then the terms of the other Loan Documents shall prevail.

(b) Each Borrower and Guarantor hereby acknowledges that:

(i) it has been advised by counsel in the negotiation, execution and delivery of the Loan Documents;

(ii) it has no fiduciary relationship with the Administrative Agent or the Initial Lender; and

(iii) no joint venture exists with the Administrative Agent or the Initial lender.

**Section 13.11 Recourse Against Certain Parties.**

No recourse under or with respect to any obligation, covenant or agreement (including, without limitation, the payment of any fees or any other obligations) of the Administrative Agent, the Lenders, the Borrowers or the Guarantors as contained in this Agreement, the Loan Documents or any other agreement, instrument or document entered into by the Administrative Agent, the Lenders, the Borrowers, the Guarantors or any such party pursuant hereto or thereto or in connection herewith or therewith shall be had against any administrator of the Administrative Agent, the Lenders, the Borrowers or the Guarantors or any incorporator, Affiliate (direct or indirect), owner, member, partner, stockholder, officer, director, employee, agent or attorney of the Administrative Agent, the Lenders, the Borrowers or the Guarantors or of any such administrator, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that the agreements of the Administrative Agent, the Lenders, the Borrowers or the Guarantors contained in this Agreement, the Loan Documents and all of the other agreements,

instruments and documents entered into by it pursuant hereto or thereto or in connection herewith or therewith are, in each case, solely the corporate obligations of the Administrative Agent, the Lenders, the Borrowers or the Guarantors, and that no personal liability whatsoever shall attach to or be incurred by any administrator of the Administrative Agent, the Lenders, the Borrowers or the Guarantors or any incorporator, owner, member, partner, stockholder, Affiliate (direct or indirect), officer, director, employee, agent or attorney of the Administrative Agent, the Lenders, the Borrowers or the Guarantors, or of any such administrator, as such, or any other of them, under or by reason of any of the obligations, covenants or agreements of the Administrative Agent, the Lenders, the Borrowers or the Guarantors contained in this Agreement, the Loan Documents or in any other such instruments, documents or agreements, or that are implied therefrom, and that any and all personal liability of every such administrator of the Administrative Agent, the Lenders, the Borrowers or the Guarantors and each incorporator, owner, member, partner, stockholder, Affiliate (direct or indirect), officer, director, employee, agent or attorney of the Administrative Agent, the Lenders, the Borrowers or the Guarantors, or of any such administrator, or any of them, for breaches by the Administrative Agent, the Lenders, the Borrowers or the Guarantors of any such obligations, covenants or agreements, which liability may arise either at common law or at equity, by statute or constitution, or otherwise, is hereby expressly waived as a condition of and in consideration for the execution of this Agreement. The provisions of this Section 13.11 shall survive the termination of this Agreement and the payment in full of the Obligations.

**Section 13.12 Protection of Right, Title and Interest in the Collateral; Further Action Evidencing Loans.**

(a) The Borrowers and the Guarantors shall cause all financing statements and continuation statements and any other necessary documents covering the right, title and interest of the Administrative Agent to the Collateral to be promptly recorded, registered and filed, and at all times to be kept recorded, registered and filed, all in such manner and in such places as may be required by law fully to preserve and protect the right, title and interest of the Administrative Agent (on behalf of the Lenders) hereunder to all property comprising the Collateral. The Borrowers and the Guarantors shall deliver to the Administrative Agent file-stamped copies of, or filing receipts for, any document recorded, registered or filed as provided above, as soon as available following such recording, registration or filing. The Borrowers and the Guarantors shall execute any and all documents reasonably required to fulfill the intent of this Subsection 13.12(a).

(b) The Borrowers and the Guarantors agree that from time to time, at their expense, they will promptly execute and deliver all instruments and documents, and take all actions, that the Administrative Agent or any Lender may reasonably request in order to perfect, protect or more fully evidence the Loans hereunder and the security interest granted in the Collateral, or to enable the Administrative Agent to exercise and enforce their rights and remedies hereunder or under any Loan Document.

(c) If the Borrowers or the Guarantors fail to perform any of their obligations hereunder, the Administrative Agent may (but shall not be required to) perform, or cause performance of, such obligation; and the Administrative Agent's costs and expenses incurred in connection therewith shall be payable by the Borrowers. The Borrowers and the Guarantors irrevocably appoint the Administrative Agent as their attorney-in-fact and authorize the Administrative Agent to act on behalf of the Borrowers and the Guarantors (i) to execute on behalf of the Borrowers and the Guarantors as debtor and to file financing statements necessary or desirable in the Administrative Agent's discretion to perfect and to maintain the perfection and priority of the interest in the Collateral, and (ii) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Collateral as a financing statement in such offices as the Administrative Agent in its discretion deems necessary or

desirable to perfect and to maintain the perfection and priority of the interests in the Collateral. This appointment is coupled with an interest and is irrevocable.

(d) Without limiting the generality of the foregoing, the Borrowers and the Guarantors will not earlier than six (6) months and not later than three (3) months prior to the fifth anniversary of the date of filing of the financing statement referred to in Subsection 3.1(m)(ii) or any other financing statement filed pursuant to this Agreement or in connection with any Loan hereunder, unless this Agreement has terminated in accordance with Section 13.6:

(i) execute and deliver and file or cause to be filed an appropriate continuation statement with respect to such financing statement; and

(ii) deliver or cause to be delivered to the Administrative Agent an opinion of the counsel for the Borrowers and the Guarantors, in form and substance reasonably satisfactory to the Administrative Agent, confirming and updating the opinion delivered pursuant to Subsection 3.1(g) with respect to perfection and otherwise to the effect that the security interest hereunder continues to be an enforceable and perfected security interest, subject to no other Liens of record except as provided herein or otherwise permitted hereunder, which opinion may contain usual and customary assumptions, limitations and exceptions.

**Section 13.13 Confidentiality.**

(a) Each of the Administrative Agent, the Lenders, the Borrowers and the Guarantors shall maintain and shall cause each of its employees and officers to maintain the confidentiality of this Agreement and all information with respect to the other parties, including all information regarding the Collateral and the Loans and each party's business obtained by it or them in connection with the structuring, negotiating and execution of the transactions contemplated herein, except that each such party and its officers and employees may (i) disclose such information to its external accountants, attorneys, investors, potential investors, Affiliates and the agents of such Persons ("Excepted Persons"); provided, however, that each Excepted Person shall, as a condition to any such disclosure, agree for the benefit of the Administrative Agent, the Lenders, the Borrowers and the Guarantors that such information shall be used solely in connection with such Excepted Person's evaluation of, or relationship with, the Borrowers, the Guarantors and their Affiliates or Subsidiaries, (ii) disclose the existence of the Agreement and the Loan Documents, but not the financial terms thereof, (iii) disclose such information as is required by Applicable Law, and (iv) disclose the Agreement, the Loan Documents and such other information in any suit, action, proceeding or investigation (whether in law or in equity or pursuant to arbitration) involving any of the Loan Documents for the purpose of defending itself, reducing its liability, or protecting or exercising any of its claims, rights, remedies or interests under or in connection with any of the Loan Documents and (v) disclose as set forth in Section 13.22. It is understood that the financial terms that may not be disclosed except in compliance with this Subsection 13.13(a) include, without limitation, all fees and other pricing terms, all Events of Default and any priority of payment provisions.

(b) Anything herein to the contrary notwithstanding, each Borrower and Guarantor hereby consents to the disclosure of any nonpublic information with respect to it by the Administrative Agent or the Lenders to any prospective or actual assignee, participant or pledgee provided each such Person is informed of the confidential nature of such information and such Person agrees to be bound by the confidentiality provisions set forth herein.

(c) Notwithstanding anything herein to the contrary, the foregoing shall not be construed to prohibit (i) disclosure of any and all information that is or becomes publicly known; (ii) disclosure of any and all information (A) if required to do so by any Applicable Law, (B) to any Governmental Authority

having or claiming authority to regulate or oversee any respects of the Administrative Agent's, any Lender's, any Borrower's or any Guarantor's business or that of their respective Affiliates or Subsidiaries, (C) pursuant to any subpoena, civil investigative demand or similar demand or request of any court, regulatory authority, arbitrator or arbitration to which the Administrative Agent, any Lender, any Borrower or any Guarantor or an officer, director, employer, shareholder, owner, member, partner, agent, employee, Affiliate or Subsidiary of any of the foregoing is a party, or (D) in any preliminary or final offering circular, registration statement or contract or other document approved in writing in advance by any Borrower or any Guarantor; or (iii) any other disclosure authorized by the Administrative Agent, the Lenders, the Borrowers or any Guarantor, as applicable.

(d) Notwithstanding anything to the contrary contained herein or in any related document, all Persons may disclose to any and all Persons, without limitation of any kind, the federal income tax treatment of any of the transactions contemplated by this Agreement, the other Loan Documents or any other related document, any fact relevant to understanding the federal tax treatment of such transactions and all materials of any kind (including opinions or other tax analyses) relating to such federal income tax treatment.

**Section 13.14 Execution in Counterparts; Severability; Integration.**

This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts (including by facsimile), each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. This Agreement and the other Loan Documents executed in connection herewith contain the final and complete integration of all prior expressions by the parties hereto and thereto with respect to the subject matter hereof and thereof and shall constitute the entire agreement among the parties hereto and thereto with respect to the subject matter hereof and thereof, superseding all prior and contemporaneous oral or written understandings.

**Section 13.15 Borrowers Waiver of Setoff.**

Each Borrower and Guarantor hereby waives any right of setoff it may have or to which it may be entitled under this Agreement, the other Loan Documents or otherwise from time to time against the Administrative Agent, any Lender, any Affected Parties, or any Property or assets, or any of the foregoing.

**Section 13.16 Assignments and Participations.**

(a) No Borrower or Guarantor may assign, delegate or otherwise transfer in any way any of its rights or obligations under this Agreement or the other Loan Documents without the prior written consent of all of the Lenders and any attempt by any Borrower or any Guarantor to assign, delegate or otherwise transfer in any way any of its rights or obligations under this Agreement or the other Loan Documents without the prior written consent of the Administrative Agent shall be null and void.

(b) Each Lender may upon the consent of the Administrative Agent (other than in connection with existing Lenders or Affiliates thereof) and notice to each Borrower, and (i) without the consent of the Borrowers (A) in the case of a Pre-Approved Lender, (B) after an Event of Default, or (C) any existing Lender or any Affiliate thereof, and (ii) with the prior written consent of each Borrower (not to be unreasonably withheld, conditioned or delayed) in the case of a Person that is not a Pre-Approved Lender

or any existing Lender or Affiliate thereof, sell, transfer, assign, pledge or grant participation interests to any Person (each, a "Transferee"), all or any part of its rights and obligations under this Agreement, the Revolving Notes and its other rights and interests under the Loan Documents in minimum amounts of $5,000,000 (or, if less, the entire amount of such Lender's obligations), pursuant to, in the case of assignments only, a Commitment Transfer Supplement, executed by such Transferee and such transferor Lender (and, in the case of a Transferee that is not then a Lender or an Affiliate thereof, the Administrative Agent) and delivered to the Administrative Agent for its acceptance and recording in the Register; provided, however, that any transfer to an existing Lender or an Affiliate of an existing Lender shall not be subject to the minimum transfer amounts specified herein.

(c) In the event of any such sale by a Lender of participating interests, such Lender's obligations under this Agreement to the other parties to this Agreement shall remain unchanged, such Lender shall remain solely responsible for the performance thereof, such Lender shall remain the holder of any such Revolving Note for all purposes under this Agreement, and the Borrowers and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Loan Documents (the participant's rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto) and all amounts payable by the Borrowers hereunder shall be determined as if such Lender had not sold such participation; provided, that each participant shall be entitled to the benefits of Subsections 2.9(c), 2.11, 2.12 and 11.1 with respect to its participation in the Revolving Commitments and the Loans outstanding from time to time; provided, that no participant shall be entitled to receive any greater amount pursuant to such Sections than the transferor Lender would have been entitled to receive in respect of the amount of the participation transferred by such transferor Lender to such participant had no such transfer occurred.

(d) In the case of assignments, upon such execution, delivery, acceptance and recording, from and after the Transfer Effective Date specified in such Commitment Transfer Supplement, (x) the Transferee thereunder shall be a party hereto and, to the extent provided in such Commitment Transfer Supplement, have the rights and obligations of a Lender hereunder with a Revolving Commitment as set forth therein, and (y) the transferor Lender thereunder shall, to the extent provided in such Commitment Transfer Supplement, be released from its obligations under this Agreement (and, in the case of a Commitment Transfer Supplement covering all or the remaining portion of a transferor Lender's rights and obligations under this Agreement, such transferor Lender shall cease to be a party hereto). Such Commitment Transfer Supplement shall be deemed to amend this Agreement to the extent, and only to the extent, necessary to reflect the addition of such Transferee and the resulting adjustment of Revolving Commitment Percentages arising from the purchase by such Transferee of all or a portion of the rights and obligations of such transferor Lender under this Agreement and the Revolving Notes. On or prior to the Transfer Effective Date specified in such Commitment Transfer Supplement, the Borrowers, at their own expense, shall execute and deliver to the Administrative Agent in exchange for the Revolving Notes delivered to the Administrative Agent pursuant to such Commitment Transfer Supplement new Revolving Notes to the order of such Transferee in an amount equal to the Revolving Commitment assumed by it pursuant to such Commitment Transfer Supplement and, unless the transferor Lender has not retained a Revolving Commitment hereunder, new Revolving Notes to the order of the transferor Lender in an amount equal to the Revolving Commitment retained by it hereunder. Such new Revolving Notes shall be dated the Restatement Date and shall otherwise be in the form of the Revolving Notes replaced thereby. The Revolving Notes surrendered by the transferor Lender shall be returned by the Administrative Agent to the Borrower marked "canceled."

(e) Each Borrower agrees to cooperate with the Administrative Agent and Lenders, at the Borrowers' expense, in connection with any such assignment, transfer, pledge, participation or sale, and

to enter into such restatements of, and amendments, supplements and other modifications to this Agreement, in order to give effect to such assignment, transfer, pledge, participation or sale.

(f) The Administrative Agent shall maintain at its principal office a copy of each Commitment Transfer Supplement delivered to it and a register (the "Register") for the recordation of the names and addresses of the Lenders and the Revolving Commitment of, and principal amount of the Loans owing to, each Lender from time to time. The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as the owner of the Loan recorded therein for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(g) Upon its receipt of a duly executed Commitment Transfer Supplement, together with payment to the Administrative Agent by the transferor Lender or the Transferee (except for any assignment by a Lender to an existing Lender or an Affiliate of an existing Lender), as agreed between them, of a registration and processing fee of $3,500 for each Transferee listed in such Commitment Transfer Supplement and the Revolving Notes subject to such Commitment Transfer Supplement, the Administrative Agent shall (i) accept such Commitment Transfer Supplement and (ii) record the information contained therein in the Register.

(h) Each Borrower and Guarantor authorizes each Lender to disclose to any Transferee and any prospective Transferee any and all financial information in such Lender's possession concerning the Borrowers, the Guarantors and their Affiliates and Subsidiaries which has been delivered to such Lender by or on behalf of the Borrowers or the Guarantors pursuant to this Agreement or the other Loan Documents or which has been delivered to such Lender by or on behalf of the Borrowers or the Guarantors in connection with such Lender's credit evaluation of the Borrowers, the Guarantors and their Affiliates and Subsidiaries prior to becoming a party to this Agreement, in each case subject to Section 13.13.

(i) At the time of each assignment pursuant to this Section 13.16 to a Person which is not already a Lender hereunder and which is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) for federal income tax purposes, the respective assignee Lender shall provide to the Borrowers and the Administrative Agent the appropriate Internal Revenue Service Forms described in Section 2.12.

(j) Nothing herein shall prohibit any Lender from pledging or assigning any of its rights under this Agreement (including, without limitation, any right to payment of principal and interest under any Revolving Note) to any Federal Reserve Bank in accordance with Applicable Laws.

**Section 13.17 Heading and Exhibits.**

The headings herein are for purposes of references only and shall not otherwise affect the meaning or interpretation of any provision hereof. The schedules and exhibits attached hereto and referred to herein shall constitute a part of this Agreement and are incorporated into this Agreement for all purposes.

**Section 13.18 Single Agreements.**

The Administrative Agent, the Lenders and the Borrowers acknowledge that, and have entered hereinto and will enter into each Loan hereunder in consideration of and in reliance upon the fact that all Loans hereunder constitute a single business and contractual relationship and that each has been entered

into in consideration of the other Loans. Accordingly, each Borrower agrees to perform all of its obligations in respect of each Loan hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Loans hereunder.

**Section 13.19 Periodic Due Diligence Review.**

Each Borrower and Guarantor acknowledges that the Administrative Agent and each Lender has the right to perform continuing due diligence reviews with respect to the Collateral and the Borrowers, the Guarantors and Consolidated Subsidiaries of the foregoing for purposes of verifying compliance with the representations, warranties, covenants, agreements and specifications made hereunder, or otherwise, and each Borrower and Guarantor agrees that upon reasonable (but no less than one (1) Business Day) prior notice, unless an Event of Default shall have occurred, in which case no notice is required, to the Borrowers and/or the Guarantors, as applicable, the Administrative Agent, the Lenders or their authorized representatives shall be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Collateral and any and all documents, records, agreements, instruments or information relating to such Collateral, the Borrowers, the Guarantors and their Consolidated Subsidiaries in the possession or under the control of the any Borrower and/or any Guarantor. Each Borrower and Guarantor also shall make available to the Administrative Agent a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Collateral, the Borrowers, the Guarantors and their Consolidated Subsidiaries. Each Borrower and Guarantor shall also make available to the Administrative Agent and the Lenders any accountants or auditors of any Borrower or any Guarantor to answer any questions or provide any documents as the Administrative Agent or the Lenders may require. The Borrowers shall pay all out-of-pocket costs and expenses incurred by the Administrative Agent and/or the Lenders in connection with the Administrative Agent's and the Lenders' activities pursuant to this Section 13.19 ("Due Diligence Costs").

**Section 13.20 Use of Employee Plan Assets.**

(a) If assets of an employee benefit plan subject to any provision ERISA are intended to be used by any party hereto (the "Plan Party") in a Loan, the Plan Party shall so notify the other parties prior to the Loan. The Plan Party shall represent in writing to the other parties that the Loan does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

(b) Subject to the last sentence of Subsection 13.20(a) above, any such Loan shall proceed only if the Plan Party furnishes or has furnished to the other parties its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

(c) By entering into a Loan pursuant to this Section 13.20, the Borrowers shall be deemed (i) to represent to the Administrative Agent and the Lenders that since the date of the applicable Borrower's latest such financial statements, there has been no material adverse change in the Borrower's financial condition which such Borrower has not disclosed to the Administrative Agent, and (ii) to agree to provide the Administrative Agent with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Borrower in any outstanding Loan involving a Plan Party.

**Section 13.21 Adjustments.**

Each Lender agrees that if any Lender (a "Benefited Lender") shall at any time receive any payment of all or part of its Loans, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in

Subsection 10.1(d), or otherwise) in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Loans, or interest thereon, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Loan, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders in accordance with the respective Revolving Loan Percentages; provided, however, that if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest. The Borrowers agree that each Lender so purchasing a portion of another Lender's Loans may exercise all rights of payment (including, without limitation, rights of set-off) with respect to such portion as fully as if such Lender were the direct holder of such portion. The provisions of this Section 13.21 shall survive the termination of this Agreement and the payment in full of the Obligations.

**Section 13.22 Filings, Recordation, etc.**

Each Borrower and Guarantor hereby authorizes and expressly permits the Administrative Agent to file and record this Agreement with each filing office located in the organizational jurisdictions of the Borrowers and the Guarantors and in such other filing offices as Administrative Agent may deem necessary and appropriate to inform and give notice to prospective parties as to the existence of this Agreement, the other Loan Documents and the restrictions herein and therein contained. Each Borrower and Guarantor hereby expressly waives and discharges any obligations of confidentiality that Administrative Agent may owe to the Borrowers or the Guarantors, whether in connection with this Agreement, the other Loan Documents or otherwise, to preserve any information herein contained and the Borrowers and the Guarantors agree not to allege or assert any claims or defenses based on breach of confidentiality obligations or any other similar defenses or legal theories with respect to the public filing, recordation and disclosure of this Agreement from and after the effective time hereof.

**Section 13.23 Resolution of Drafting Ambiguities**.

Each Arbor Entity that is a party hereto acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of this Agreement and the other Loan Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

**Section 13.24 Character of Loans for Income Tax Purposes**.

The Lenders and the Borrowers shall treat all Loans hereunder as indebtedness of the Borrowers for United States federal income tax purposes.

**Section 13.25 Amendment and Restatement.**

This Agreement amends, restates and supersedes in its entirety the Original Agreement. Notwithstanding the amendment and restatement of the Original Agreement by this Agreement: (a) unless modified by the express terms of this Agreement or the other Loan Documents, each Loan outstanding on the date hereof under the Original Agreement shall continue in effect as a Loan hereunder, without any transfer, conveyance, diminution, forbearance, forgiveness or other modification thereto or effect thereon occurring or being deemed to occur by reason of the amendment and restatement of the Original Agreement hereby and (b) the Existing Borrower shall continue to be liable to the Lenders for (i) all "Obligations" (under and as defined in the Original Agreement) accrued to the date hereof under

the Original Agreement and (ii) all agreements on the part of the Existing Borrower under the Original Agreement to indemnify the Lenders or the Administrative Agent in connection with events or conditions arising or existing prior to the effective date of this Agreement, including, but not limited to, those events and conditions set forth in Section 11.1 thereof. This Agreement is given in substitution for the Original Agreement and not as payment of any of the obligations of the Existing Borrower thereunder, and is in no way intended to constitute a novation of the Original Agreement. Nothing contained herein is intended to amend, modify or otherwise affect any obligation of the Existing Borrower, the Guarantor or the Pledgor existing prior to the date hereof. Upon the effectiveness of this Agreement, each reference to the Original Agreement in any other Loan Document, or document, instrument or agreement executed and/or delivered in connection therewith, shall mean and be a reference to this Agreement unless the context otherwise requires. Upon the effectiveness of this Agreement, the terms of this Agreement shall govern all aspects of the facility represented by the Original Agreement, including, without limitation, the eligibility of Collateral financed under the Original Agreement and any settlements to be made with respect thereto.

**Section 13.26 Modification of Other Loan Documents.**

The amendments and modifications to this Agreement shall amend and modify the other Loan Documents to the extent such other Loan Documents are not separately amended or modified on the Restatement Date. The Credit Parties agree that all other Loan Documents that are not separately amended or modified on the Restatement Date are binding and enforceable obligations and are in full force and effect, as modified and amended by this Agreement.

**[Remainder of Page Intentionally Left Blank.]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

**THE BORROWERS:**

**ARBOR REALTY TRUST, INC.,**
a Maryland corporation

By: /s/ Paul Elenio, Chief Financial Officer
Name: Paul Elenio
Title: Chief Financial Officer

**ARBOR REALTY GPOP, INC.**,
a Delaware corporation

By: /s/ Paul Elenio, Chief Financial Officer
Name: Paul Elenio
Title: Chief Financial Officer

**ARBOR REALTY LPOP, INC.**,
a Delaware corporation

By: /s/ Paul Elenio, Chief Financial Officer
Name: Paul Elenio
Title: Chief Financial Officer

**ARBOR REALTY LIMITED PARTNERSHIP**,
a Delaware limited partnership

By: Arbor Realty GPOP, Inc.,
its General Partner

By: /s/ Paul Elenio, Chief Financial Officer
Name: Paul Elenio
Title: Chief Financial Officer

[Signatures Continued on the Following Page]

**THE BORROWERS (cont.):**

**ARBOR REALTY SR, INC.**,
a Maryland corporation

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

**ARBOR REALTY COLLATERAL MANAGEMENT, LLC,** a Delaware limited liability company

By: /s/ John Natalone, Executive Vice President
Name: John Natalone
Title: Executive Vice President

[Signatures Continued on the Following Page]

**THE INITIAL LENDER:**

**WACHOVIA BANK, NATIONAL ASSOCIATION,**
a national banking association

By: /s/ John Nelson, Managing Director
Name: John Nelson
Title: Managing Director

**THE ADMINISTRATIVE AGENT:**

**WACHOVIA BANK, NATIONAL ASSOCIATION,**
a national banking association

By: /s/ John Nelson, Managing Director
Name: John Nelson
Title: Managing Director

**EXHIBIT 31.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, Ivan Kaufman, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a—15(f) and 15d—15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;

   c) 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

   d) 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 the 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.

Date: August 7, 2009

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

**EXHIBIT 31.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Paul Elenio, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a—15(f) and 15d—15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, 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;

   c) 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

   d) 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 the 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.

Date: August 7, 2009

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer

**EXHIBIT 32.1**

**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-Q of Arbor Realty Trust, Inc. (the "Company") for the quarterly period ended June 30, 2009 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: August 7, 2009

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.

**EXHIBIT 32.2**

**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-Q of Arbor Realty Trust, Inc. (the "Company") for the quarterly period ended June 30, 2009 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: August 7, 2009

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.