

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

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Arbor Realty Trust, Inc.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

6798
(Primary Standard Industrial
Classification Code Number)

20-0057959
(I.R.S Employer
Identification Number)

333 Earle Ovington Boulevard, Suite 900
Uniondale, New York 11553
(516) 506-4200

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Paul Elenio
Chief Financial Officer
333 Earle Ovington Boulevard, Suite 900
Uniondale, New York 11553
(516) 506-4200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

David J. Goldschmidt, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, New York 10001
(212) 735-3000

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

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

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

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

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third Party Tender Offer)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit ⁽¹⁾	Proposed maximum aggregate offering price ⁽¹⁾	Amount of registration fee
5.00% Senior Notes due 2026	\$165,000,000	100%	\$165,000,000	\$18,001.50

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(f) under the Securities Act of 1933, as amended.

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

SUBJECT TO COMPLETION, DATED JUNE 28, 2021

PROSPECTUS



OFFER TO EXCHANGE

**\$165,000,000 aggregate principal amount of 5.00% Senior Notes due 2026
that have been registered under the Securities Act of 1933, as amended,
for \$165,000,000 aggregate principal amount of outstanding unregistered 5.00% Senior Notes due 2026**

We are offering to exchange 5.00% Senior Notes due 2026 that have been registered under the Securities Act of 1933, as amended (the "Securities Act"), which we refer to in this prospectus as the "New Notes," for \$165,000,000 aggregate principal amount of our outstanding unregistered 5.00% Senior Notes due 2026 that we issued in a private placement on April 30, 2021, which we refer to in this prospectus as the "Old Notes." We are making this offer to exchange the Old Notes for the New Notes to satisfy our obligations under the registration rights agreement that we entered into with certain of the purchasers of the Old Notes in connection with our issuance of the Old Notes to those purchasers.

The exchange offer will expire at 5:00 p.m., New York City time, on _____, 2021, unless extended in our sole and absolute discretion.

We will not receive any cash proceeds from this exchange offer. The issuance of the New Notes in exchange for the Old Notes will not result in any increase in our outstanding indebtedness. Old Notes that are not exchanged for New Notes in this exchange offer will remain outstanding. The exchange offer is not subject to any minimum tender condition but is subject to certain customary conditions.

Upon expiration of the exchange offer, all Old Notes that have been validly tendered and not withdrawn will be exchanged for an equal principal amount of New Notes. The terms of the New Notes are identical in all material respects to the terms of the Old Notes, except that the New Notes are registered under the Securities Act and are generally not subject to transfer restrictions, are not entitled to registration rights under the registration rights agreement that we entered into with certain of the purchasers of the Old Notes and do not have the right to additional interest under the circumstances described in the registration rights agreement relating to our fulfillment of our registration obligations. The New Notes evidence the same debt as the Old Notes and are governed by the same indenture under which the Old Notes were issued.

There is no established trading market for the Old Notes or the New Notes and an active trading market may not develop in the future for either the Old Notes or the New Notes. The Old Notes are not listed on any national securities exchange or quotation system and we do not intend to list the New Notes on any national securities exchange or quotation system.

You may withdraw your tender of Old Notes at any time prior to the expiration of the exchange offer. We will exchange all of the outstanding Old Notes that are validly tendered and not validly withdrawn prior to the expiration of the exchange offer for an equal principal amount of New Notes.

Each broker-dealer that receives New Notes for its own account pursuant to the exchange offer must acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes. A broker-dealer that acquired Old Notes because of market-making or other trading activities may use this prospectus, as supplemented or amended from time to time, in connection with resales of the New Notes for a period of 180 days after the completion of the exchange offer. See "Plan of Distribution."

Investing in our securities involves a high degree of risk. See "Risk Factors" beginning on page 8 of this prospectus and beginning on page 14 of our [Annual Report on Form 10-K for the year ended December 31, 2020](#), and the other reports filed by us with the Securities and Exchange Commission and incorporated by reference into this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2021.

The information in this prospectus is not complete and may be changed. We may not complete the exchange offer and issue these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale is not permitted or would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

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ABOUT THIS PROSPECTUS

This prospectus is a part of a registration statement that we have filed with the Securities and Exchange Commission (the “SEC”) under the Securities Act. This prospectus does not contain all the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us, the exchange offer and the securities offered by this prospectus, reference is made to the registration statement, including the exhibits to the registration statement and the documents incorporated by reference.

We are providing this prospectus to holders of Old Notes in connection with our offer to exchange Old Notes for New Notes. We are not making this exchange offer in any jurisdiction where the exchange offer is not permitted.

You should rely only on the information contained or incorporated by reference in this prospectus and in the accompanying exchange offer transmittal documents filed by us with the SEC. We have not authorized any other person to provide you with any other information. We take no responsibility for, and provide no assurance as to the reliability of, any other information that others may give you. You should not assume that the information contained or incorporated by reference in this prospectus is accurate as of any date other than the date of the applicable document that contains that information. Our business, financial condition, results of operations and prospects may have changed since that date.

You should not consider any information in this prospectus to be investment, legal or tax advice. You should consult your own counsel, accountant and other advisors for legal, tax, business, financial and related advice regarding the exchange offer and ownership of these securities.

Each broker-dealer that receives New Notes for its own account in exchange for Old Notes acquired by the broker-dealer as a result of market-making or other trading activities must acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a participating broker-dealer in connection with resales of New Notes received in exchange for Old Notes. We have agreed in the letter of transmittal to make this prospectus, as amended or supplemented, available to any such broker-dealer that requests copies of this prospectus for use in connection with any such resale. See “Plan of Distribution.”

References in this prospectus to “Arbor,” the “Company,” “we,” “our” and “us” refer to Arbor Realty Trust, Inc. and its subsidiaries, unless the context otherwise requires.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

The information contained in this prospectus is not a complete description of our business or the risks associated with an investment in us. We urge you to carefully review and consider the various disclosures made by us in this prospectus, including the documents incorporated by reference herein.

This prospectus 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. We use words such as “anticipate,” “expect,” “believe,” “intend,” “should,” “could,” “will,” “may” and similar expressions to identify forward-looking statements, although not all forward-looking statements include these words. 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. 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, in particular, due to the uncertainties created by the novel coronavirus (“COVID-19”) pandemic;
- the potential impact of the COVID-19 pandemic on our business, results of operations and financial condition;

- adverse changes in our status with government-sponsored enterprises affecting our ability to originate loans through such programs;
- 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 federal and state laws and regulations, including changes in tax laws;
- the availability and cost of capital for future investments; and
- competition.

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 the report containing such statements incorporated herein by reference or as of the date of this prospectus with respect to statements that are expressly stated herein. The factors noted above could cause our actual results to differ significantly from those contained in any forward-looking statement.

Additional information regarding these and other risks and uncertainties we face is contained in our [Annual Report on Form 10-K for the year ended December 31, 2020 filed with the SEC on February 19, 2021](#), Item 1A under "Risk Factors" and elsewhere in our [Quarterly Report on Form 10-Q for the quarter ended March 31, 2021](#) and in our other reports and filings with the SEC. See "[Where You Can Find More Information](#)" and "[Incorporation of Certain Documents by Reference](#)" for information about how to obtain copies of our filings with the SEC. For a discussion of significant risk factors that apply to the exchange offer and the notes, see "[Risk Factors](#)" beginning on page 7 of this prospectus.

Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. We do not intend and we disclaim any duty or obligation to update or revise any industry information or forward-looking statement set forth in this prospectus or the documents incorporated by reference herein to reflect new information, future events, or otherwise, except as required by U.S. federal securities laws.

SUMMARY

This summary highlights selected information appearing elsewhere, or incorporated by reference, in this prospectus and is, therefore, qualified in its entirety by the more detailed information appearing elsewhere, or incorporated by reference, in this prospectus. It may not contain all of the information that may be important to you in deciding to exchange your Old Notes for New Notes. We urge you to read carefully this entire prospectus and the other documents to which it refers to understand fully the terms of the New Notes and the exchange offer. You should pay special attention to the “Risk Factors” and the “Cautionary Note Regarding Forward-Looking Statements.”

Our Company

We operate through two business segments: our Structured Loan Origination and Investment Business (“Structured Business”) and our Agency Loan Origination and Servicing Business (“Agency Business”).

Through our Structured Business, we invest in a diversified portfolio of structured finance assets in the multifamily, single-family rental and commercial real estate markets, primarily consisting of bridge and mezzanine loans, including junior participating interests in first mortgages and preferred and direct equity. We also invest in real estate-related joint ventures and may directly acquire real property and invest in real estate-related notes and certain mortgage-related securities.

Through our Agency Business, we originate, sell and service a range of multifamily finance products through the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac,” and together with Fannie Mae, the government-sponsored enterprises, or “GSEs”), the Government National Mortgage Association (“Ginnie Mae”), Federal Housing Authority (“FHA”) and the U.S. Department of Housing and Urban Development (together with Ginnie Mae and FHA, “HUD”). We retain the servicing rights and asset management responsibilities on substantially all loans we originate and sell under the GSE and HUD programs. We are an approved Fannie Mae Delegated Underwriting and Servicing lender nationally, a Freddie Mac Multifamily Conventional Loan lender, seller/servicer, in New York, New Jersey and Connecticut, a Freddie Mac affordable, manufactured housing, senior housing and small balance loan lender, seller/servicer, nationally and a HUD MAP and LEAN senior housing/healthcare lender nationally. We also originate and service permanent financing loans underwritten using the guidelines of our existing agency loans sold to the GSEs, which we refer to as “Private Label” loans, and originate and sell finance products through conduit/commercial mortgage-backed securities programs. We pool and securitize the Private Label loans and sell certificates in the securitizations to third-party investors, while retaining the servicing rights and the highest risk bottom tranche certificate of the securitization.

We are organized to qualify as a real estate investment trust (“REIT”) for U.S. federal income tax purposes. A REIT is generally not subject to federal income tax on that portion of its REIT-taxable income that is distributed to its stockholders, provided that at least 90% of taxable income is distributed and provided that certain other requirements are met. Certain of our assets that produce non-qualifying REIT income, primarily within the Agency Business, are operated through taxable REIT subsidiaries (“TRS”), which is part of our TRS consolidated group and is subject to U.S. federal, state and local income taxes. In general, our TRS entities may hold assets that the REIT cannot hold directly and may engage in real estate or non-real estate-related business.

Substantially all of our operations are conducted through our operating partnership, Arbor Realty Limited Partnership (“ARLP”), and ARLP’s subsidiaries, including Arbor Realty SR, Inc., a subsidiary REIT, which we refer to as SR Inc., and its subsidiaries. Arbor Realty GPOP, Inc. and Arbor Realty LPOP, Inc., our wholly owned subsidiaries, serve as the general partner and limited partner, respectively, of our operating partnership, and currently own, collectively, 89.7% of its partnership interests.

We are a Maryland corporation formed in June 2003. Our principal executive offices are located at 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York 11553. Our telephone number is (516) 506-4200. Our website is located at www.arbor.com. The information on our website is not incorporated by reference in this prospectus, and you should not consider it a part of this prospectus.

Summary of the Exchange Offer

The following provides a summary of certain terms of the exchange offer. Please refer to the section "[The Exchange Offer](#)" appearing elsewhere in this prospectus for a more complete description of the exchange offer and the section "[Description of the Notes](#)" for a more complete description of the terms of the Old Notes and New Notes.

Old Notes	\$165,000,000 in aggregate principal amount of 5.00% Senior Notes due 2026.
New Notes	Up to \$165,000,000 in aggregate principal amount of 5.00% Senior Notes due 2026 which have terms that are identical in all material respects to the terms of the Old Notes, except that the New Notes are registered under the Securities Act and are generally not subject to transfer restrictions, are not entitled to registration rights under the registration rights agreement and do not have the right to additional interest under the circumstances described in the registration rights agreement relating to our fulfillment of our registration obligations.
Exchange Offer	We are offering to exchange the Old Notes for a like principal amount of New Notes. Subject to the terms of this exchange offer, promptly following the termination of the exchange offer, we will exchange all Old Notes that have been validly tendered and not validly withdrawn prior to the expiration of the exchange offer for New Notes.
Expiration Date	The exchange offer will expire at 11:59 p.m., New York City time, on _____, 2021, unless extended.
Withdrawal Rights	You may withdraw the tender of your Old Notes at any time before the expiration date.
Conditions to Exchange Offer	This exchange offer is subject to customary conditions, which we may waive. See " The Exchange Offer — Conditions ."
Procedures for Tendering Old Notes	<p>Since the Old Notes are represented by global book-entry notes, the Depository Trust Company, or DTC, as depository, or its nominee is treated as the registered holder of the Old Notes and will be the only entity that can tender your Old Notes for New Notes. In order to participate in the exchange offer, you must follow the procedures established by DTC for tendering Old Notes held in book-entry form. These procedures, which we call "ATOP" procedures, require that (i) the exchange agent receive, prior to the expiration date of the exchange offer, a computer generated message known as an "agent's message" that is transmitted through ATOP, and (ii) DTC has received (a) your instructions to exchange your Old Notes, and (b) your agreement to be bound by the terms of the accompanying letter of transmittal for book-entry notes.</p> <p>Please note that by signing, or agreeing to be bound by, such letter of transmittal, you will be making a number of important representations to us. See "The Exchange Offer — Eligibility; Transferability."</p>
U.S. Federal Income Tax Considerations	The exchange of Old Notes for New Notes in the exchange offer generally should not constitute a taxable event for U.S. federal income tax purposes. See " U.S. Federal Income Tax Considerations ." You

Registration Rights	<p>should consult your own tax advisor as to the tax consequences of exchanging your Old Notes for New Notes.</p> <p>Under the terms of the registration rights agreement that we entered into with certain of the purchasers of the Old Notes at the time we issued the Old Notes, we agreed to register the New Notes and undertake this exchange offer. This exchange offer is intended to satisfy the rights of certain holders of Old Notes under the registration rights agreement. After the exchange offer is completed, we will have no further obligations to provide for any exchange or undertake any further registration with respect to the Old Notes.</p>
Transferability	<p>Based upon existing interpretations of the Securities Act by the staff of the SEC contained in several no-action letters issued to third parties, we believe that the New Notes may be offered for resale, resold or otherwise transferred by you without compliance with the registration and prospectus delivery requirements of the Securities Act, provided that:</p> <ul style="list-style-type: none"> • you are acquiring the New Notes in the ordinary course of your business; • you are not participating or engaged in, do not intend to participate or engage in, and have no arrangement or understanding with any person to participate in, the distribution of the New Notes issued to you; • you are not an “affiliate” of ours within the meaning of Rule 405 under the Securities Act; and • you are not acting on behalf of any person who could not truthfully make these statements. <p>Our belief that transfers of New Notes would be permitted without registration or prospectus delivery under the conditions described above is based on interpretations by the staff of the SEC given to other, unrelated issuers in similar exchange offers. The staff of the SEC has not considered this exchange offer in the context of a no-action letter, and we cannot assure you that the staff of the SEC would make a similar interpretation with respect to our exchange offer.</p> <p>If our belief is not accurate and you transfer a New Note without delivering a prospectus meeting the requirements of the Securities Act or without an exemption from such requirements, you may incur liability under the Securities Act. We do not and will not assume, or indemnify you against, such liability.</p> <p>Each broker-dealer that receives New Notes for its own account under the exchange offer in exchange for Old Notes that were acquired by the broker-dealer as a result of market-making or other trading activity must acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of the New Notes.</p> <p>See “<u>The Exchange Offer — Eligibility; Transferability;</u>” and “<u>Plan of Distribution.</u>”</p>
Consequences of Failing to Exchange Old Notes	<p>Any Old Notes that are not exchanged in the exchange offer will continue to be governed by the indenture relating to the Old Notes</p>

	and the terms of the Old Notes. Old Notes that are not exchanged will remain subject to the restrictions on transfer described in the Old Notes, and you will not be able to offer or sell the Old Notes except under an exemption from the requirements of the Securities Act or unless the Old Notes are otherwise registered under the Securities Act. Upon the completion of the exchange offer, we will have no further obligations to provide for registration of the Old Notes under the U.S. federal securities laws. If you do not participate in the exchange offer, the liquidity of your Old Notes could be adversely affected. See “ The Exchange Offer — Consequences of Failure to Exchange. ”
Use of Proceeds	We will not receive any cash proceeds from the exchange of Old Notes for New Notes as a result of the exchange offer.
Cancellation of Exchanged Old Notes	Old Notes that are surrendered in exchange for New Notes will be retired and cancelled by us upon receipt and will not be reissued. Accordingly, the issuance of the New Notes under this exchange offer will not result in any increase in our outstanding indebtedness.
Exchange Agent	UMB Bank, NA is serving as the exchange agent for this exchange offer. See “ The Exchange Offer — Exchange Agent ” for the address and telephone number of the exchange agent.
Summary of the New Notes	
The following provides a summary of certain terms of the New Notes. The New Notes have terms that are identical in all material respects to the terms of the Old Notes, except that the New Notes are registered under the Securities Act and are generally not subject to transfer restrictions, are not entitled to registration rights under the registration rights agreement and do not have the right to additional interest under the circumstances described in the registration rights agreement relating to our fulfillment of our registration obligations. The New Notes will evidence the same debt as the Old Notes and will be governed by the same indenture under which the Old Notes were issued. Please refer to the section “ Description of the Notes ” for a more complete description of the terms of the New Notes. References in this prospectus to the “notes” include both the Old Notes and the New Notes unless otherwise specified or the context otherwise requires.	
Issuer	Arbor Realty Trust, Inc.
Securities Offered	5.00% Senior Notes due 2026.
Aggregate Principal Amount	Up to \$165,000,000.
Maturity Date	April 30, 2026, unless previously redeemed.
Interest Rate	5.00% per annum, subject to adjustment from time to time as described under “ Description of the Notes — Maturity and Interest. ”
Interest Payment Dates	April 30 and October 30 of each year, beginning on October 30, 2021.
No Guarantees	At issuance, the New Notes will not be guaranteed by any of our subsidiaries, however our subsidiaries may be required to guarantee the New Notes in the future under the circumstances set forth in the covenant described under “ Description of the Notes — Possible Future Guarantees. ”

Security and Ranking	<p>The New Notes will be our senior unsecured obligations and will rank:</p> <ul style="list-style-type: none"> • senior in right of payment to any of our indebtedness that is expressly subordinated in right of payment to the New Notes; • equal in right of payment to any of our unsecured indebtedness outstanding from time to time that is not so subordinated; • effectively subordinated to any of our secured indebtedness to the extent of the value of the collateral securing such indebtedness; and • structurally subordinated to the existing and future indebtedness and other liabilities (including trade payables) and preferred equity of our subsidiaries, including any of our future indebtedness and other liabilities that are guaranteed by our subsidiaries. <p>If any of our subsidiaries becomes a guarantor of the New Notes, its guarantee of the New Notes will be:</p> <ul style="list-style-type: none"> • a senior unsecured obligation of such guarantor; • rank equally in right of payment with all existing and future senior unsecured indebtedness and senior unsecured guarantees of such guarantor; • effectively subordinated in right of payment to all existing and future secured indebtedness and secured guarantees of such guarantor to the extent of the value of the collateral securing such indebtedness and guarantees; and • senior in right of payment to any future subordinated indebtedness and subordinated guarantees of such guarantor.
Certain Covenants	<p>The indenture, among other things, requires us to:</p> <ul style="list-style-type: none"> • maintain a minimum net asset value • maintain a minimum unencumbered asset, senior debt service coverage ratio and debt to equity ratio • comply with sanctions laws • maintain a rating on the New Notes <p>The indenture also restricts our ability to:</p> <ul style="list-style-type: none"> • incur liens • engage in affiliate transactions • change our business <p>See “Description of the Notes — Restrictive Covenants,” “Description of the Notes — Ranking” and “Description of the Notes — Merger, Consolidation or Sale of Assets.”</p>

	<p>These covenants are subject to a number of important qualifications and limitations. See “Description of the Notes — Restrictive Covenants.”</p>
Optional Redemption	<p>The New Notes may be redeemed by us, at our option, in whole or in part, at any time or from time to time prior to January 30, 2026 (which we refer to as the “Par Call Date”), at a redemption price equal to 100% of the aggregate principal amount of the New Notes to be redeemed, plus a “make-whole” premium plus accrued and unpaid interest thereon, if any, to, but excluding, the redemption date. At any time or from time to time on or after the Par Call Date, we may redeem the New Notes in whole or in part by paying 100% of the aggregate principal amount of the New Notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the redemption date. See “Description of the Notes — Optional Redemption.”</p>
Change of Control Offer	<p>If a change of control triggering event as described herein occurs, each holder of the New Notes may require us to purchase all or a portion of such holder’s notes at a price equal to 101% of their principal amount, plus accrued and unpaid interest thereon, if any, to, but excluding, the date of purchase. See “Description of the Notes — Change of Control Offer.”</p>
Form and Denomination	<p>The New Notes will be issued only in fully registered form without interest coupons, in minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof. Unless otherwise required for accredited investors, the New Notes will be evidenced by a global note deposited with the trustee for the New Notes, as custodian for DTC and transfers of beneficial interests will be facilitated only through records maintained by DTC and its participants.</p>
Use of Proceeds	<p>We will not receive any proceeds from the exchange offer. Any Old Notes that are properly tendered and exchanged pursuant to the exchange offer will be retired and cancelled.</p>
Risk Factors	<p>Tendering your Old Notes in the exchange offer involves risks. You should carefully consider the information set forth in this prospectus and, in particular, should evaluate the specific factors set forth in the section entitled “Risk Factors” for an explanation of certain risks of the exchange offer and investing in the New Notes before tendering any Old Notes. You should also evaluate the risk factors described in “Part I. Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2020 and in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2021 and the other information set forth or incorporated by reference into this prospectus.</p>
Absence of a Public Market for the New Notes	<p>The New Notes will be freely transferable but will be new securities for which there will not initially be a market. Accordingly, a market for the New Notes may not develop or there may be limited liquidity in any such market that may develop. We do not intend to apply for a listing of the New Notes on any securities exchange or any automated dealer quotation system.</p>

Trustee	UMB Bank, NA
Listing	The New Notes will not be listed on any securities exchange.
Governing Law	The indenture and the New Notes will be governed by and construed in accordance with the laws of the State of New York.

RISK FACTORS

In consultation with your own advisors, you should carefully consider, among other matters, the factors set forth below as well as the other information included or incorporated by reference in this prospectus before deciding whether to participate in the exchange offer. In particular, you should carefully consider, among other things, the factors described under the caption “Risk Factors” in our [Annual Report on Form 10-K for the year ended December 31, 2020](#), which is incorporated herein by reference, as updated by our subsequently filed Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. If any of the risks contained in or incorporated by reference into this prospectus develop into actual events, our business, financial condition, liquidity, results of operations and prospects could be materially and adversely affected, the value of the New Notes could decline, our ability to repay the New Notes may be impaired, and you may lose all or part of your investment. Some statements in this prospectus, including statements in the following risk factors, constitute forward-looking statements. See the “[Cautionary Note Regarding Forward-Looking Statements](#)” section in this prospectus.

Risks Related to our Business

For a discussion of certain risks applicable to our business and operations, please refer to the section entitled “Risk Factors” in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2020 and our Quarterly Report on Form 10-Q for the period ended March 31, 2021.

Risks Related to the Exchange Offer

If you do not properly tender your Old Notes, you will continue to hold unregistered Old Notes and your ability to transfer Old Notes will be adversely affected.

We will only issue New Notes in exchange for Old Notes that you timely and properly tender. Therefore, you should allow sufficient time to ensure timely delivery of the Old Notes and you should carefully follow the instructions on how to tender your Old Notes. Neither we nor the exchange agent are required to tell you of any defects or irregularities with respect to your tender of Old Notes. See “[The Exchange Offer — Procedures for Tendering Old Notes.](#)”

If you do not exchange your Old Notes for New Notes in the exchange offer, you will continue to be subject to the restrictions on transfer of your Old Notes described in the legend on the certificates for your Old Notes. In general, you may only offer or sell the Old Notes if they are registered under the Securities Act and applicable state securities laws, or you offer and sell under an exemption from these requirements. We do not plan to register any sale of the Old Notes under the Securities Act.

The tender of Old Notes under the exchange offer will reduce the principal amount of the Old Notes outstanding, which may have an adverse effect upon, and increase the volatility of, the market price of the Old Notes due to reduction in liquidity.

You may not receive New Notes in the exchange offer if you do not properly follow the exchange offer procedures.

We will issue New Notes in exchange for your Old Notes only if you properly tender the Old Notes before expiration of the exchange offer. Neither we nor the exchange agent are required to tell you of any defects or irregularities with respect to your tender of Old Notes. If you are the beneficial holder of Old Notes that are held through your broker, dealer, commercial bank, trust company or other nominee, and you wish to tender such Old Notes in the exchange offer, you should promptly contact the person through whom your Old Notes are held and instruct that person to tender on your behalf in accordance with the procedures described in this prospectus and the accompanying transmittal letter.

Some holders who exchange their Old Notes may be deemed to be underwriters.

Based on interpretations of the staff of the SEC contained in certain no action letters addressed to other parties, we believe that you may offer for resale, resell or otherwise transfer the New Notes without compliance with the registration and prospectus delivery requirements of the Securities Act. However, in

some instances described in this prospectus under “Plan of Distribution,” certain holders of New Notes will remain obligated to comply with the registration and prospectus delivery requirements of the Securities Act to transfer the New Notes. If such a holder transfers any New Notes without delivering a prospectus meeting the requirements of the Securities Act or without an applicable exemption from registration under the Securities Act, such a holder may incur liability under the Securities Act. We do not and will not assume, or indemnify such a holder against, such liability.

Risks Related to the New Notes

We are a holding company whose principal assets are the equity interests we hold in our subsidiaries. We will depend upon our subsidiaries to provide us with substantially all of the funds to meet our obligations under the New Notes.

We are a holding company, and we conduct our operations principally through our subsidiaries. We derive substantially all our revenues from our subsidiaries, and substantially all of our operating assets are owned by our subsidiaries. As a result, our cash flow and our ability to service our debt, including the New Notes, largely depend on the results of operations of our subsidiaries and upon the ability of our subsidiaries to provide us with cash to pay amounts due on our obligations, including the New Notes. Dividends, loans or other distributions from our subsidiaries to us also may be subject to contractual and other restrictions, are dependent upon results of operations of our subsidiaries and are subject to other business considerations.

Our substantial indebtedness could adversely affect our business, financial condition or results of operations and prevent us from fulfilling our obligations under the New Notes.

We currently have and will continue to have a significant amount of indebtedness. As of March 31, 2021, the principal amount of our total consolidated indebtedness was approximately \$6.10 billion, of which an aggregate of \$5.96 billion was senior indebtedness and an aggregate of \$5.03 billion was secured indebtedness. As of March 31, 2021, our subsidiaries had \$5.39 billion principal amount of indebtedness and other liabilities (including trade payables) to which the New Notes would have been structurally subordinated. After giving effect to the issuance of the Old Notes on April 30, 2021 and the use of proceeds therefrom, our total consolidated indebtedness as of March 31, 2021 would have been approximately \$6.28 billion. This substantial level of indebtedness increases the risk that we may be unable to generate enough cash to pay amounts due in respect of our indebtedness, including the New Notes.

Our substantial indebtedness could have important consequences to you and significant effects on our business. For example, it could:

- make it more difficult for us to satisfy our obligations with respect to the New Notes;
- increase our vulnerability to general adverse economic and industry conditions;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flow to fund investments in our targeted assets, working capital and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate;
- restrict us from exploiting business opportunities; and
- limit our ability to borrow additional funds.

Despite our substantial level of indebtedness, we may still incur significantly more debt, which could exacerbate any or all of the risks described above.

The indenture requires us to maintain a minimum Net Asset Value, a minimum ratio of Consolidated Unencumbered Assets to Debt, a minimum Senior Debt Service Coverage Ratio and a minimum Debt to Equity Ratio. Accordingly, the indenture governing the New Notes restricts, but does not eliminate, our and our subsidiaries’ ability to incur indebtedness, including indebtedness that would be senior to the New

Notes. The incurrence of additional indebtedness could have the effect of diminishing our ability to make payments of principal, premium, if any, and interest on the New Notes when due and payable.

Moreover, the restrictive covenants in the indenture are subject to numerous exceptions and we and our subsidiaries will likely be able to incur substantial additional secured and unsecured indebtedness without violating such covenants. In addition, the indenture does not impose any limitation on the incurrence or issuance by us or our subsidiaries of liabilities that are not considered Debt.

Although the indenture governing the New Notes will restrict our ability and the ability of our subsidiaries to grant liens to secure indebtedness outstanding pursuant to a Material Credit Facility, this restriction is subject to a number of qualifications and exceptions and, under certain circumstances, Debt incurred in compliance with these restrictions could be substantial. See “Description of the Notes — Restrictive Covenants — Liens.”

For definitions of the terms “Net Asset Value,” “Consolidated Unencumbered Assets,” “Debt,” “Senior Debt Service Coverage Ratio,” “Debt to Equity Ratio” and “Material Credit Facility,” see “Description of the Notes — Certain Definitions.”

In addition, the agreements that govern our current indebtedness contain, and the agreements that may govern any future indebtedness that we may incur may contain, financial and other restrictive covenants that limit or may limit our ability to engage in activities that may be in our long-term best interests.

Servicing our debt requires a significant amount of cash, and we may not have sufficient cash flow from our business to pay our substantial debt.

Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance our indebtedness, including the New Notes, depends on our future performance, which is subject to economic, financial, competitive and other factors beyond our control. Our business may not continue to generate cash flow from operations in the future sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations.

The New Notes will be structurally subordinated to all of the indebtedness of our subsidiaries that do not guarantee the New Notes and the New Notes will be effectively junior to all of our future secured indebtedness.

As the New Notes will not be guaranteed by any of our subsidiaries at issuance, the New Notes will be structurally subordinated to the existing and future indebtedness and other liabilities (including trade payables) and preferred equity of our subsidiaries, including any future indebtedness and other liabilities of Arbor Realty Trust, Inc. that are guaranteed by our subsidiaries, unless any of our subsidiaries are required to guarantee the New Notes in the future, under the circumstances set forth in the covenant described in “Description of the Notes — Possible Future Guarantees.” In any liquidation, dissolution, bankruptcy or other similar proceeding involving one of our non-guarantor subsidiaries, any right we or any holders of the New Notes have to participate in the assets of the subsidiary will effectively be subordinated to the claims of creditors of the subsidiary, and following payment by the subsidiary of its liabilities, the subsidiary may not have sufficient assets remaining to make payments to us as a stockholder or otherwise. We conduct all of our operations and business activities through our operating partnership and its subsidiaries. As of March 31, 2021, our subsidiaries had, in the aggregate, indebtedness and other liabilities of approximately \$5.39 billion to which the New Notes would have been structurally subordinated. As of March 31, 2021, Arbor Realty Trust, Inc. had no outstanding indebtedness or other liabilities guaranteed by our subsidiaries.

In addition, the New Notes will be effectively subordinated to any of our secured indebtedness to the extent of the value of the collateral securing such indebtedness. In the event that we are declared bankrupt, become insolvent or are liquidated or reorganized, any indebtedness that ranks ahead of the New Notes will be entitled to be paid in full from our assets before any payment may be made with respect to the New Notes. Holders of the New Notes will participate ratably with all holders of our unsecured indebtedness

that is deemed to be of the same ranking as the New Notes, and potentially with all of our other general creditors, based upon the respective amounts owed to each holder or creditor, in our remaining assets. In any of the foregoing events, we may not have sufficient assets to pay amounts due on the New Notes. As a result, if holders of the New Notes receive any payments, they may receive less, ratably, than holders of secured indebtedness. As of March 31, 2021, Arbor Realty Trust, Inc. had no outstanding secured indebtedness.

If any of our subsidiaries guarantees the New Notes, such guarantor's obligations and liabilities under its guarantee of the New Notes may be discharged under certain circumstances and you may not receive any payments from some or all of the subsidiary guarantors.

The New Notes will not be guaranteed by any of our subsidiaries at issuance, however our subsidiaries may be required to guarantee the New Notes in the future, under the circumstances set forth in the covenant described in "Description of the Notes — Possible Future Guarantees," subject to the discharge of any such subsidiary from its obligations and liabilities under such guarantee as described in "Description of the Notes — Possible Future Guarantees." You will not have a claim as a creditor against any subsidiary that does not guarantee the New Notes or whose guarantee of the New Notes has been discharged, and the indebtedness and other liabilities (including trade payables) and preferred equity of those subsidiaries will effectively be senior to claims of holders of the New Notes.

Your ability to transfer the New Notes may be limited by the absence of an active trading market, and there is no assurance that any active trading market will develop for the New Notes.

There is no established trading market for the New Notes. We do not intend to apply for listing of the New Notes on any national securities exchange or for quotation of the New Notes on any automated dealer quotation system. Therefore, an active market for the New Notes may not develop or, if developed, may not continue. The liquidity of any market for the New Notes will depend upon, among other things, the number of holders of the New Notes, our performance, the market for similar securities, the interest of securities dealers in making a market in the New Notes and other factors. If a market develops, the New Notes could trade at prices that may be lower than the initial offering price of the New Notes. Historically, the market for non-investment grade debt securities has been subject to disruptions that have caused substantial price volatility. The market, if any, for the New Notes may not be free from similar disruptions and any such disruptions may adversely affect the prices at which you may sell your New Notes.

We may not have sufficient funds to purchase the New Notes upon a Change of Control Triggering Event as required by the indenture governing the New Notes.

Holders of the New Notes may require us to purchase their notes upon a "Change of Control Triggering Event" as defined under "Description of the Notes — Change of Control Offer." A Change of Control (as defined in such section of this prospectus) may also result in holders of certain of our future indebtedness having the right to require us to purchase or repay indebtedness issued under one or more indentures or other agreements. As a result, holders of such other indebtedness may have the ability to require us to repurchase those notes before the holders of the New Notes would have such repurchase rights. We cannot assure you that we would have sufficient financial resources, or would be able to arrange financing, to pay the purchase price of all notes that may be tendered by the holders thereof in such a circumstance plus any other indebtedness that may also become due. Furthermore, the terms of our then existing indebtedness or other agreements may contain covenants, events of default or other provisions that could be violated if a Change of Control were to occur or if we were required to purchase the New Notes and purchase or repay other indebtedness containing a similar repurchase or repayment requirement.

The Change of Control Offer covenant provides limited protection.

The Change of Control Offer covenant is a result of negotiations between us and the purchasers of the Old Notes and is limited to the circumstances specified in "Description of the Notes — Change of Control Offer." We have no current intention to engage in a transaction involving a Change of Control Triggering Event, although it is possible that we could decide to do so in the future. We could, in the future, enter into certain transactions, including acquisitions, dispositions, refinancings or other recapitalizations, that would

not constitute a Change of Control Triggering Event under the indenture, but that could increase the amount of indebtedness outstanding at such time or otherwise affect the capital structure or the credit ratings of the New Notes or us.

Beginning on January 30, 2026, the New Notes may be redeemed at our option, which limits the ability of holders of the New Notes to accrue interest over the full stated term of the New Notes.

We may, at our option, redeem the New Notes in whole or in part, beginning on January 30, 2026 at a redemption price equal to 100% of the principal amount of the New Notes to be redeemed plus accrued and unpaid interest to, but excluding, the date of redemption. You should not expect us to redeem any New Notes when they first become redeemable or on any particular date thereafter. If we redeem the New Notes for any reason, you will not have the opportunity to continue to accrue and be paid interest to the stated maturity date and you may not be able to reinvest the redemption proceeds you receive in a similar security or in securities bearing similar interest rates or yields.

Changes in our credit ratings may adversely affect your investment in the New Notes.

The credit ratings on the New Notes are an assessment by rating agencies of our ability to pay our debts when due. These ratings are not recommendations to purchase, hold or sell the New Notes, inasmuch as the ratings do not comment as to market price or suitability for a particular investor, are limited in scope, and do not address all material risks relating to an investment in the New Notes, but rather reflect only the view of each rating agency at the time the rating is issued. The ratings are based on current information furnished to the ratings agencies by us and information obtained by the ratings agencies from other sources. An explanation of the significance of such rating may be obtained from such rating agency. There can be no assurance that such credit ratings will remain in effect for any given period of time or that such ratings will not be lowered, suspended or withdrawn entirely by the rating agencies, if, in each rating agency's judgment, circumstances so warrant.

Any ratings of our long-term debt are based on a number of factors, including our financial strength as well as factors not entirely within our control, including conditions affecting the financial services industry generally. There can be no assurance that we will not receive adverse changes in our ratings in the future, which could adversely affect the cost and other terms upon which we are able to obtain funding and the way in which we are perceived in the capital markets. Actual or anticipated changes or downgrades in our credit ratings, including any announcement that our ratings are under review for a downgrade, could affect the market value and liquidity of the New Notes and increase our borrowing costs.

USE OF PROCEEDS

We will not receive any cash proceeds from the exchange offer. In consideration for issuing the New Notes as contemplated by this prospectus, we will receive in exchange Old Notes in like principal amount. We intend to cancel all Old Notes received in exchange for New Notes in the exchange offer.

THE EXCHANGE OFFER

General

In connection with the issuance of the Old Notes on April 30, 2021, we entered into registration rights agreement with certain of the purchasers of the Old Notes, which provides for the exchange offer we are making pursuant to this prospectus. The exchange offer will permit eligible holders of Old Notes to exchange their Old Notes for New Notes that are identical in all material respects with the Old Notes, except that:

- the New Notes have been registered with the SEC under the Securities Act and, as a result, will not bear any legend restricting their transfer;
- the New Notes bear different CUSIP numbers from the Old Notes;
- the New Notes generally will not be subject to transfer restrictions;
- the New Notes will not be entitled to registration rights under the registration rights agreement or otherwise; and
- because the New Notes will not be entitled to registration rights, holders of the New Notes will not have the right to additional interest under the circumstances described in the registration rights agreement relating to our fulfillment of our registration obligations.

The New Notes will evidence the same debt as the Old Notes. Holders of the New Notes will be entitled to the benefits of the indenture. Accordingly, the New Notes and the Old Notes will be treated as a single series of debt securities under the indenture. Old Notes that are not tendered for exchange in the exchange offer will remain outstanding and interest on those Old Notes will continue to accrue at the applicable interest rate and be subject to the terms of the indenture.

The exchange offer does not depend on any minimum aggregate principal amount of Old Notes being tendered for exchange.

We intend to conduct the exchange offer in accordance with the provisions of the registration rights agreement and the applicable requirements of the Exchange Act, and the related rules and regulations of the SEC applicable to transactions of this type.

We will be deemed to have accepted validly tendered Old Notes when and if we have given oral or written notice to the exchange agent of our acceptance of such Old Notes. Subject to the terms and conditions of this exchange offer, delivery of New Notes will be made by the exchange agent promptly after receipt of our notice of acceptance. The exchange agent will act as agent for the holders of Old Notes tendering their Old Notes for the purpose of receiving New Notes from us in exchange for such tendered and accepted Old Notes. If any tendered Old Notes are not accepted for exchange because of an invalid tender, the occurrence of other events described in this prospectus or otherwise, we will return or cause to be returned the certificates for any unaccepted Old Notes, at our expense, to the tendering holder promptly after the expiration of the exchange offer.

If a holder of Old Notes validly tenders Old Notes in the exchange offer, the tendering holder will not be required to pay us brokerage commissions or fees. In addition, subject to the instructions in such letter of transmittal and certain limited exceptions described in this prospectus, the tendering holder will not have to pay transfer taxes for the exchange of Old Notes. Subject to certain exceptions described in this prospectus, we will pay all of the expenses in connection with the exchange offer, other than certain applicable taxes. See “— [Fees and Expenses](#).”

Holders of outstanding Old Notes do not have any appraisal, dissenters’ or similar rights in connection with the exchange offer. Outstanding Old Notes which are not tendered, or are tendered but not accepted,

in connection with the exchange offer will remain outstanding. See “Risk Factors — Risks Related to the Exchange Offer — If you do not properly tender your Old Notes, you will continue to hold unregistered Old Notes and your ability to transfer Old Notes will be adversely affected.”

NEITHER WE NOR THE EXCHANGE AGENT ARE MAKING ANY RECOMMENDATION TO THE HOLDERS OF THE OUTSTANDING OLD NOTES AS TO WHETHER TO TENDER OR REFRAIN FROM TENDERING ALL OR ANY PORTION OF THEIR OUTSTANDING OLD NOTES IN THE EXCHANGE OFFER. IN ADDITION, NEITHER WE NOR THE EXCHANGE AGENT HAVE AUTHORIZED ANYONE TO MAKE ANY SUCH RECOMMENDATION. HOLDERS OF THE OUTSTANDING OLD NOTES MUST MAKE THEIR OWN DECISION WHETHER TO TENDER PURSUANT TO THE EXCHANGE OFFER, AND, IF SO, THE AGGREGATE PRINCIPAL AMOUNT OF OUTSTANDING OLD NOTES TO TENDER AFTER READING THIS PROSPECTUS AND THE LETTER OF TRANSMITTAL AND CONSULTING WITH THEIR ADVISERS, IF ANY, BASED ON THEIR FINANCIAL POSITION AND INDIVIDUAL REQUIREMENTS.

Registration Rights Agreement

The following provides a summary of certain terms of the registration rights agreement. This summary is qualified in its entirety by reference to the complete version of the registration rights agreement, which is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part.

Under the terms of the registration rights agreement that we entered into with certain of the purchasers of the Old Notes at the time we issued the Old Notes, we agreed to register the New Notes and undertake this exchange offer. This exchange offer is intended to satisfy the rights of holders of Old Notes under the registration rights agreement. After the exchange offer is completed, we will have no further obligations, except under the limited circumstances described below, to provide for any exchange or undertake any further registration with respect to the Old Notes.

Under the terms of the registration rights agreement, we agreed, among other things, to:

- file a registration statement with the SEC under the Securities Act with respect to a registered offer to exchange the Old Notes for substantially identical notes that do not contain transfer restrictions and will be registered under the Securities Act; and
- use our commercially reasonable efforts to cause that registration statement to become effective no later than 120 days after April 30, 2021.

The registration rights agreement also requires us to commence the exchange offer promptly after the effectiveness of the registration statement and to keep the exchange offer open for not less than 20 business days, or longer if required by applicable law, after the date on which notice of the exchange offer is mailed to the holders of the Old Notes.

We also agreed to issue and exchange New Notes for all Old Notes validly tendered and not validly withdrawn before the expiration of the exchange offer. We are sending this prospectus, together with a letter of transmittal for book-entry shares, to all the holders of the Old Notes known to us. For each Old Note validly tendered to us in the exchange offer and not validly withdrawn, the holder will receive a New Note having a principal amount equal to the principal amount of the tendered Old Note. Old Notes may be exchanged, and New Notes will be issued, only in minimum denominations of \$1,000 and integral multiples of \$1,000 in excess thereof.

We further agreed that under certain circumstances we would either file a shelf registration statement with the SEC or designate an existing effective shelf registration statement of ours that would allow resales by certain holders of the Old Notes in lieu of such holders participating in the exchange offer.

Eligibility; Transferability

We are making this exchange offer in reliance on interpretations of the staff of the SEC set forth in several no-action letters provided to other parties. We have not sought our own no-action letter from the staff of the SEC with respect to this particular exchange offer. However, based on these existing SEC staff interpretations, we believe that you, or any other person receiving New Notes, may offer for resale, resell or

otherwise transfer the New Notes without complying with the registration and prospectus delivery requirements of the U.S. federal securities laws, if:

- you are, or the person receiving the New Notes is, acquiring the New Notes in the ordinary course of business;
- you do not, nor does any such person, have an arrangement or understanding with any person to participate in any distribution (within the meaning of the Securities Act) of the New Notes;
- you are not, nor is any such person, our “affiliate” as such term is defined under Rule 405 under the Securities Act;
- you are not, or any such person is not, a broker-dealer registered under the Exchange Act, and you are not engaged in or such person is not engaged in, and do not intend to engage in, any distribution (within the meaning of the Securities Act) of the New Notes; and
- you are not acting on behalf of any person who could not truthfully make these statements.

To participate in the exchange offer, you must represent as a holder of Old Notes that each of these statements is true.

In addition, in order for broker-dealers registered under the Exchange Act to participate in the exchange offer, each such broker-dealer must also (i) represent that it is participating in the exchange offer for its own account and is exchanging Old Notes acquired as a result of market-making activities or other trading activities; (ii) confirm that it has not entered into any arrangement or understanding with us or any of our affiliates to distribute the New Notes; and (iii) acknowledge that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of the New Notes. The letter of transmittal to be delivered in connection with a tender of the Old Notes states that by acknowledging that it will deliver, and by delivering, a prospectus, a broker-dealer will not be deemed to admit that it is an underwriter within the meaning of the Securities Act. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resale of the New Notes received in exchange for the Old Notes where such Old Notes were acquired by such broker-dealer as a result of market-making activities or other trading activities. We have agreed that, for a period of 180 days following the expiration date of the exchange offer, we will amend or supplement this prospectus to expedite or facilitate the disposition of any New Notes by such broker-dealers.

Any holder of Old Notes (i) who is our “affiliate” (as such term is defined under Rule 405 under the Securities Act), (ii) who does not acquire the New Notes in the ordinary course of business, (iii) who intends to participate in the exchange offer for the purpose of distributing the New Notes, or (iv) who is a broker-dealer that purchased the Old Notes directly from us:

- will not be able to rely on the interpretation of the staff of the SEC set forth in the no-action letters described above;
- will not be able to tender Old Notes in the exchange offer; and
- must comply with the registration and prospectus delivery requirements of the Securities Act in connection with any sale or transfer of the New Notes, unless the sale or transfer is made pursuant to an exemption from those requirements.

The exchange offer is not being made to, nor will we accept tenders for exchange from, holders of Old Notes in any jurisdiction in which the exchange offer or the acceptance of the exchange offer would not be in compliance with the securities or blue sky laws of such jurisdiction.

Expiration of the Exchange Offer; Extensions; Amendments

The exchange offer will expire at 11:59 p.m., New York City time on _____, 2021, which we refer to as the expiration date, unless we extend the exchange offer. If we extend the exchange offer, the expiration date will be the latest date and time to which the exchange offer is extended. To extend the exchange offer, we will notify the exchange agent and each registered holder of the Old Notes of any extension before

9:00 a.m., New York City time on the next business day after the previously scheduled expiration date. During any such extension, all Old Notes previously tendered will remain subject to the exchange offer and may be accepted for exchange by us.

We reserve the right to extend the exchange offer, delay accepting any tendered Old Notes or, if any of the conditions described below under the heading “— Conditions” have not been satisfied, to terminate the exchange offer. We also reserve the right to amend the terms of the exchange offer in any manner. We will give oral or written notice of any delay, extension, termination or amendment to the exchange agent. We will keep the exchange offer open for not less than 20 business days, or longer if required by applicable law, after the date on which notice of the exchange offer is mailed to holders of the Old Notes.

If we amend the exchange offer in a manner that we consider material, we will disclose that amendment by means of a prospectus supplement, and we will extend the exchange offer so that at least five business days remain in the exchange offer following notice of the material change.

If we determine to make a public announcement of any delay, extension, amendment or termination of the exchange offer, we will do so by making a timely release through an appropriate news agency.

If we terminate or withdraw the exchange offer, we will promptly return any Old Notes deposited, under the exchange offer as required by Rule 14e-1 (c) under the Exchange Act.

Conditions

The exchange offer is not conditioned on any minimum aggregate principal amount of Old Notes being tendered or accepted for exchange. Notwithstanding any other term of the exchange offer, we will not be required to accept for exchange, or issue any New Notes for, any Old Notes, and may terminate or amend the exchange offer before the acceptance of the Old Notes, if:

- such Old Notes are tendered to us other than in accordance with the terms and conditions of the exchange offer;
- we determine that the exchange offer violates any law, statute, rule, regulation or interpretation by the staff of the SEC; or
- any action or proceeding is instituted or threatened in any court or by or before any governmental agency relating to the exchange offer which, in our judgment, could reasonably be expected to impair our ability to proceed with the exchange offer.

The conditions listed above are for our sole benefit and may be asserted by us regardless of the circumstances giving rise to any of these conditions. We may waive these conditions in our absolute discretion in whole or in part at any time and from time to time prior to the expiration date. Our failure at any time to exercise any of the above rights will not be considered a waiver of that right, and that right will be considered an ongoing right which we may assert at any time and from time to time.

In addition, we will not accept for exchange any Old Notes tendered, and no New Notes will be issued in exchange for those Old Notes, if at any time any stop order is threatened or issued by the SEC with respect to the registration statement for the exchange offer and the New Notes or the qualification of the indenture under the Trust Indenture Act of 1939. In any such event, we will use our commercially reasonable efforts to obtain the withdrawal of any stop order as soon as practicable.

Further, we will not be obligated to accept for exchange the Old Notes of any holder that has not made to us the representations described under “— Eligibility; Transferability” and “Plan of Distribution.”

Procedures for Tendering Old Notes

In order to participate in the exchange offer, you must validly tender your Old Notes to the exchange agent, as described below, by the expiration date. It is your responsibility to validly tender your Old Notes. We have the right to waive any defects. However, we are not required to waive defects and are not required to notify you of defects in your tender.

If you have any questions or need help in exchanging your Old Notes, please call the exchange agent, whose address and phone number are set forth in “— Exchange Agent.”

We will determine all questions as to the validity, form, eligibility (including time of receipt) and acceptance and withdrawal of tendered Old Notes in our sole discretion. We reserve the absolute right to reject any and all Old Notes not properly tendered or any Old Notes whose acceptance by us would, in the opinion of our counsel, be unlawful. We also reserve the right to waive any defects, irregularities or conditions of tender as to any particular Old Notes either before or after the expiration date. Our interpretation of the terms and conditions of the exchange offer (including the instructions in the accompanying letter of transmittal for book-entry notes) will be final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of Old Notes must be cured within a time period we will reasonably determine. Although we intend to request the exchange agent to notify holders of defects or irregularities relating to tenders of Old Notes, neither we, the exchange agent nor any other person will have any duty or incur any liability for failure to give such notification. Tenderees of Old Notes will not be considered to have been made until such defects or irregularities have been cured or waived. If we waive any terms or conditions with respect to a noteholder, we will extend the same waiver to all noteholders with respect to that term or condition. Any Old Notes received by the exchange agent that are not validly tendered and as to which the defects or irregularities have not been cured or waived will be returned by the exchange agent, without expense, to the tendering holders, unless otherwise provided in the accompanying letter of transmittal, promptly following the expiration date of the exchange offer.

All of the Old Notes were issued in book-entry form, and are currently represented by global certificates held for the account of DTC. Accordingly, DTC will be the only entity that can tender such Old Notes for New Notes. Therefore, to tender book-entry form Old Notes subject to the exchange offer and to obtain New Notes you must:

- comply with DTC’s ATOP procedures described below; and
- the exchange agent must receive a timely confirmation of a book-entry transfer of the Old Notes into its account at DTC through ATOP pursuant to the procedure for book-entry transfer described below, along with a properly transmitted “agent’s message” (as defined below), before the expiration date of the exchange offer.

Following receipt, the exchange agent will establish an ATOP account with DTC for purposes of the exchange offer promptly after the commencement of the exchange offer. Any financial institution that is a DTC participant, including your broker or bank, may make a book-entry tender of outstanding Old Notes by causing the book-entry transfer of such Old Notes into our ATOP account in accordance with DTC’s procedures for such transfers. In connection with the transfer, DTC must send an “agent’s message” to the exchange agent on or prior to 5:00 p.m., New York City time, on the expiration date of the exchange offer.

The term “agent’s message” means a message transmitted by the DTC participants to DTC, and thereafter transmitted by DTC to the exchange agent, which states that DTC has received an express acknowledgement from the participant stating that such participant and beneficial holder agree to be bound by the terms of the exchange offer, including the letter of transmittal for book-entry notes, and that the agreement may be enforced against such participant.

Each agent’s message must include the following information:

- name of the beneficial owner tendering such Old Notes;
- account number of the beneficial owner tendering such Old Notes;
- principal amount of Old Notes tendered by such beneficial owner; and
- a confirmation that the beneficial owner of the Old Notes has made the representations for our benefit set forth under “— Representations” below.

The delivery of the Old Notes through DTC, and any transmission of an agent’s message through ATOP, is at the election and risk of the person tendering Old Notes. If we do not accept any tendered Old Notes for exchange or if Old Notes are submitted for a greater principal amount than the holder desires to exchange, the unaccepted or non-exchanged Old Notes will be returned, without expense, to their tendering

holder. Such non-exchanged Old Notes will be credited to an account maintained with DTC. These actions will occur promptly after the expiration or termination of the exchange offer.

The tender by a holder of Old Notes that is not validly withdrawn prior to the expiration date of the exchange offer and that is accepted by us will constitute a binding agreement between us and the holder in accordance with the terms and subject to the conditions set forth in this prospectus and in the accompanying letter of transmittal for book-entry notes. By using the ATOP procedures to exchange Old Notes, you will not be required to deliver such letter of transmittal to the exchange agent. However, you will be bound by its terms, and you will be deemed to have made the acknowledgements and the representations and warranties it contains, just as if you had signed it.

There is no procedure for guaranteed late delivery of the book-entry form Old Notes.

Representations

By tendering Old Notes, each holder is deemed to have represented to us that:

- any New Notes that you receive will be acquired in the ordinary course of business;
- you have no arrangement or understanding with any person to participate in the distribution (within the meaning of the Securities Act) of the New Notes in violation of the provisions of the Securities Act;
- you are not an “affiliate” (within the meaning of Rule 405 under the Securities Act); and
- if you are a broker-dealer that will receive New Notes for your own account in exchange for Old Notes, you acquired those New Notes as a result of market-making or other trading activities and you will deliver a prospectus (or to the extent permitted by law, make available a prospectus to purchasers) in connection with any resale of such New Notes.

Withdrawal of Tenders

Except as otherwise provided in this prospectus, you may validly withdraw your tender of Old Notes at any time prior to 5:00 p.m., New York City time, on the expiration date of the exchange offer. For a withdrawal to be effective you must comply with the appropriate procedures of DTC’s ATOP system. Any such notice of withdrawal must:

- specify the name of the tendering holder of Old Notes;
- the principal amount of the Old Notes delivered for exchange;
- a statement that such holder is withdrawing its election to have such Old Notes exchanged; and
- specify the name and number of the account at DTC to be credited with the withdrawn Old Notes.

We will determine all questions as to the validity, form and eligibility (including time of receipt) of such withdrawal notices. Any Old Notes so withdrawn will be considered not to have been validly tendered for purposes of the exchange offer, and no New Notes will be issued in exchange for such Old Notes unless the Old Notes withdrawn are validly re-tendered. Any Old Notes which have been tendered but which are not accepted for exchange or which are withdrawn will be returned to the holder, without expense to such holder, promptly after withdrawal, rejection of tender or termination of the exchange offer. Validly withdrawn Old Notes may be re-tendered by following one of the procedures described above under “— Procedures for Tendering” at any time prior to the expiration date of the exchange offer.

Exchange Agent

UMB Bank, NA, the trustee under the indenture, has been appointed the exchange agent for this exchange offer. The letters of transmittal and all correspondence in connection with this exchange offer should be sent or delivered by each holder of Old Notes, or a beneficial owner’s commercial bank, broker,

dealer, trust company or other nominee, to the exchange agent as follows:

By Mail or Hand Delivery:	UMB Bank, NA Attn: Corporate Trust and Escrow Services 5555 San Felipe, Suite 870 Houston, Texas 77056
Telephone:	(713) 300-0587
Facsimile:	(214) 389-5949
Email:	mauri.cowen@umb.com

We will pay the exchange agent reasonable and customary fees for its services (including attorney's fees) and will reimburse it for its reasonable, out-of-pocket expenses in connection with this exchange offer.

Fees and Expenses

We will bear the expenses of soliciting tenders of the Old Notes and issuance of the New Notes. The principal solicitation is being made by mail. However, we may make additional solicitations by email, telephone or in person by our officers and employees and those of our affiliates.

We have not retained any dealer-manager in connection with the exchange offer and will not make any payments to broker-dealers or others soliciting acceptances of the exchange offer. As indicated above, we will, however, pay the exchange agent reasonable and customary fees for its services and reimburse it for its related reasonable out-of-pocket expenses. We will also pay any other cash expenses that we incur in connection with the exchange offer.

Except as described below, we will pay all transfer taxes, if any, applicable to the exchange of Old Notes under the exchange offer. The tendering holder will be required to pay any transfer taxes, whether imposed on the registered holder or any other person, if:

- New Notes and/or substitute Old Notes not exchanged are to be delivered to, or registered or issued in the name of, any person other than the registered holder of the Old Notes so exchanged;
- tendered Old Notes are registered in the name of any person other than the person signing such letter of transmittal; or
- a transfer tax is imposed for any reason other than the exchange of Old Notes under the exchange offer.

If satisfactory evidence of payment of transfer taxes is not submitted with such letter of transmittal, the amount of any transfer taxes will be billed to the tendering holder.

Accounting Treatment

We will record the New Notes at the same carrying value as the Old Notes reflected in our accounting records on the date of the exchange. Accordingly, we will not recognize any gain or loss for accounting purposes upon completion of the exchange offer.

Consequences of Failure to Exchange

Old Notes that are not exchanged will remain "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act.

Accordingly, they may not be offered, sold, pledged or otherwise transferred except:

- to us or to any of our subsidiaries;
- under a registration statement which has been declared effective under the Securities Act;
- for so long as the Old Notes are eligible for resale pursuant to Rule 144A under the Securities Act, to a person the holder of the Old Notes and any person acting on its behalf reasonably believes is a "qualified institutional buyer" as defined in Rule 144A, that purchases for its own account or for the

account of another qualified institutional buyer, in each case to whom notice is given that the transfer is being made in reliance on Rule 144A; or

- under any other available exemption from the registration requirements of the Securities Act (in which case we and the trustee shall have the right to require the delivery of an opinion of counsel (at the holder's sole cost), certifications and/or other information satisfactory to us and the trustee);
- in each case subject to compliance with any applicable foreign, state or other securities laws.

Upon completion of the exchange offer, due to the restrictions on transfer of the Old Notes and the absence of such restrictions applicable to the New Notes, it is likely that the market, if any, for Old Notes will be relatively less liquid than the market for New Notes. Consequently, holders of Old Notes who do not participate in the exchange offer could experience significant diminution in the value of their Old Notes, compared to the value of the New Notes. The holders of Old Notes not tendered will have no further registration rights.

Additional Information Regarding the Registration Rights Agreement

As noted above, we are effecting the exchange offer to comply with the registration rights agreement. The registration rights agreement requires us to cause an exchange offer registration statement to be filed with the SEC under the Securities Act, use our commercially reasonable efforts to cause the registration statement to become effective, and satisfy certain other obligations, within certain time periods.

In the event that:

- the registration statement is not filed with the SEC on or prior to the 60th day after April 30, 2021;
- the registration statement has not been declared effective by the SEC on or prior to the 120th day after April 30, 2021; or
- the exchange offer is not completed on or prior to the 60th day following the effective date of the registration statement;
- the interest rate on the Old Notes will be increased by a rate of 0.25% per annum immediately following such registration default and will increase by 0.25% per annum immediately following each 90-day period during which additional interest accrues, but in no event will such increase exceed 0.50% per annum. Following the cure of all such registration defaults, the accrual of additional interest will cease and the interest rate will be immediately reduced to the original interest rate borne by the Old Notes.

Our obligation to register the New Notes will terminate upon completion of the exchange offer. However, under certain limited circumstances specified in the registration rights agreement, we may be required to file a shelf registration statement for a continuous offer in connection with the Old Notes.

DESCRIPTION OF THE NOTES

On April 30, 2021, we issued \$175,000,000 in aggregate principal amount of our 5.00% Senior Notes due 2026, which we have referred to in this prospectus as the Old Notes. The Old Notes were issued in a private placement transaction to certain qualified institutional buyers and accredited investors, and as such, were not registered under the Securities Act. The Old Notes were issued under an indenture dated as of April 30, 2021, between Arbor Realty Trust, Inc., as issuer, and UMB Bank, NA, as trustee (the “trustee”), which we have referred to in this prospectus as the “indenture.” The term “notes” refers collectively to the Old Notes and the New Notes.

The New Notes will be issued under the indenture and will evidence the same debt as the Old Notes. The terms of the New Notes are identical in all material respects to those of the Old Notes, except that:

- the New Notes have been registered with the SEC under the Securities Act and, as a result, will not bear any legend restricting their transfer;
- the New Notes bear different CUSIP numbers from the Old Notes;
- the New Notes generally will not be subject to transfer restrictions;
- the New Notes will not be entitled to registration rights under the registration rights agreement or otherwise; and
- because the New Notes will not be entitled to registration rights, holders of the New Notes will not have the right to additional interest under the circumstances described in the registration rights agreement relating to our fulfillment of our registration obligations.

The New Notes will be issued only in fully registered form without interest coupons, in minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof. Unless otherwise required for accredited investors, the New Notes will be evidenced by a global note deposited with the trustee for the New Notes, as custodian for The Depository Trust Company, or DTC, and transfers of beneficial interests will be facilitated only through records maintained by DTC and its participants.

The terms of the New Notes include those stated in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”).

The following provides a summary of certain terms of the indenture and the New Notes. This summary is qualified in its entirety by reference to the complete version of the indenture, which is incorporated by reference as an exhibit to the registration statement of which this prospectus is a part and to the form of New Notes, which is included as an exhibit to the registration statement of which this prospectus is a part. We urge you to read the indenture and the form of New Notes because those documents, not this summary description, define your rights as holders of the New Notes. Whenever we refer to the defined terms of the indenture in this prospectus without defining them, the terms have the meanings given to them in the indenture. You must look to the indenture for the most complete description of the information summarized in this prospectus.

General

The exchange offer for the New Notes will be for up to \$165,000,000 aggregate principal amount of the Old Notes. The New Notes, together with any Old Notes that remain outstanding after the exchange offer, will be treated as a single class for all purposes of the indenture, including, without limitation, waivers, consents, amendments, redemptions and offers to purchase.

Maturity and Interest

The notes will mature and become payable, unless earlier redeemed, on April 30, 2026. Interest on the notes will accrue from and including April 30, 2021.

Interest on the notes will be payable semi-annually in arrears on April 30 and October 30 of each year (each such date, an “interest payment date”), beginning on October 30, 2021, to the persons in whose names the notes are registered at the close of business on the preceding April 15 and October 15 of each year.

Interest on the notes at the maturity date will be payable to the persons to whom principal is payable. Interest on the notes will be computed on the basis of a 360-day year comprised of twelve 30-day months. Interest payments on the notes will be the amount of interest accrued from and including April 30, 2021 or the most recent interest payment date on which interest has been paid to, but excluding, the interest payment date, redemption date or the maturity date, as the case may be.

If any interest or other payment date of the notes falls on a day that is not a business day, the required payment of principal, premium, if any, and interest will be made on the next succeeding business day and no interest on such payment will accrue in respect of the delay. The term “business day” means, when used with respect to the notes, any day other than a Saturday, a Sunday or a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

The initial annual interest rate of 5.00% per annum is subject to adjustment from time to time based on changes to the ratings of the notes by one or more “nationally recognized statistical rating organizations” (each, an “NRSRO”) within the meaning of Section 3(a)(62) of the Securities Exchange Act of 1934 (the “Exchange Act”) and to the extent permitted by law, interest shall accrue (a) on any overdue payment of interest and (b) during the continuance of an Event of Default (as defined below), on such unpaid balance and on any overdue payment of any premium (whether such premium is due and payable as described under “— Events of Default” or “— Optional Redemption”), at a rate per annum from time to time equal to the Default Rate (as defined below), payable semi-annually as aforesaid (or, at the option of the holders of record of the notes, on demand).

The annual interest rate on the notes will increase by 0.25% beginning on the first day of any Six-Month Interest Period (as defined below) if as of such day the notes have a Triple-B Rating (as defined below), and likewise it will increase by 0.50% in excess of the initial rate beginning on the first day of any Six-Month Interest Period if as of such day the notes have either a Non-IG Rating (as defined below) or no rating from any NRSRO. In the event that the annual interest rate on the notes increases due to one or more downgrades, the rate will revert to the initial interest rate beginning on the first day of any Six-Month Interest Period if as of such day the notes have a Single-A Rating (as defined below), and it will revert to 0.25% over the initial interest rate beginning on the first day of any Six-Month Interest Period if as of such day the notes have been upgraded from a Non-IG Rating to a Triple-B Rating.

We will notify the trustee and DTC in writing within five business days of any change in the ratings of the notes and any resulting change in annual interest rate and the effective dates thereof, and in no event will the trustee be responsible for monitoring such changes. Further, in no circumstances will the annual interest rate exceed the initial rate by more than 0.50% due to changes in ratings of the notes, and in no event will it ever be less than the initial rate.

Set forth below are the definitions of certain terms used in this “— Interest” section.

“Six-Month Interest Period” means the period beginning on each interest payment date for the notes and ending on the day immediately preceding the commencement of the next following interest payment date for the notes. The initial Six-Month Interest Period will begin on the first interest payment date for the notes.

A “Triple-B Rating” will occur if as of the last day of the then current Six-Month Interest Period:

- assuming the notes are rated by only one NRSRO, the then most recent rating from such NRSRO is no lower than a BBB — and no higher than a BBB+;
- assuming the notes are rated by only two NRSROs, the then lower of the most recent ratings from such NRSROs is no lower than a BBB — and no higher than a BBB+; or
- assuming the notes are rated by three or more NRSROs, the then second lowest of the most recent ratings from such NRSROs is no lower than a BBB — and no higher than a BBB+.

A “Non-IG Rating” will occur if as of the last day of the then current Six-Month Interest Period:

- assuming the notes are rated by only one NRSRO, the then most recent rating from such NRSRO is a BB+ or lower;

- assuming the notes are rated by only two NRSROs, the then lower of the most recent ratings from such NRSROs is a BB+ or lower; or
- assuming the notes are rated by three or more NRSROs, the then second lowest of the most recent ratings from such NRSROs is a BB+ or lower.

A “Single-A Rating” will occur if as of the last day of the then current Six-Month Interest Period:

- assuming the notes are rated by only one NRSRO, the then most recent rating from such NRSRO is at least an A-;
- assuming the notes are rated by only two NRSROs, the then lower of the most recent ratings from such NRSROs is at least an A-; or
- assuming the notes are rated by three or more NRSROs, the then second lowest of the most recent ratings from such NRSROs is at least an A-.

The ratings categories referred to in the preceding definitions are those used by Egan-Jones Ratings Company but are deemed to refer also to the equivalent ratings of any other NRSRO.

The indenture provides that we must maintain a rating of the notes by at least one NRSRO at all times while the notes are outstanding.

Payment and Transfer or Exchange

Principal of and premium, if any, and interest on the notes will be payable, and the notes may be exchanged or transferred, at the office or agency designated by us for such purpose. We have initially designated the trustee as our paying agent and registrar and its agency in Houston, TX as a place where notes may be presented for payment and its agency in Kansas City, MO for registration of transfer or exchange. Payment of principal of and premium, if any, and interest on a global note registered in the name of or held by DTC or its nominee will be made in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global note. If any of the notes is no longer represented by a global note, payment of interest on certificated notes in definitive form may, at our option, be made by check mailed directly to holders at their registered addresses. See “Book-Entry, Delivery and Form.”

A holder may transfer or exchange any certificated notes in definitive form at the same location given in the preceding paragraph. No service charge will be made for any registration of transfer or exchange of notes, but we may require payment of a sum sufficient to cover any transfer tax or other similar governmental charge payable in connection therewith. We will not be required to transfer or exchange any note selected for redemption for a period of 15 days before providing a notice of redemption of notes to be redeemed.

The registered holder of a note will be treated as the owner of it for all purposes. Only registered holders will have rights under the indenture, and unless otherwise indicated all references to “holders” in this “Description of the Notes” section are to registered holders of the notes.

All amounts of principal of and premium, if any, or interest on the notes paid by us that remain unclaimed two years after such payment was due and payable will be repaid to us, subject to applicable abandoned property law, and the holders of such notes will thereafter look solely to us for payment.

Ranking

The notes will be our senior unsecured obligations and rank equally in right of payment with all of our other senior unsecured indebtedness from time to time outstanding. The notes will rank senior in right of payment to any of our indebtedness that is expressly subordinated in right of payment to the notes. The notes will be effectively subordinated to our secured indebtedness, to the extent of the value of the collateral securing such indebtedness. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure our secured debt will be available to pay obligations on the notes only after all indebtedness under such secured indebtedness has been repaid in full from such assets.

In addition, because the notes will not be guaranteed by any of our Subsidiaries at issuance, the notes will be structurally subordinated to the existing and future indebtedness and other liabilities (including trade

payables) and preferred equity of our Subsidiaries, including any of our future indebtedness and other liabilities that are guaranteed by our Subsidiaries, unless any of our Subsidiaries are required to guarantee the notes in the future, under the circumstances set forth in the covenant described below in “— Possible Future Guarantees.” In the event that any of our Subsidiaries becomes a guarantor of the notes, its guarantee of the notes will be a senior unsecured obligation of such guarantor, rank equally in right of payment with all existing and future senior unsecured indebtedness and senior unsecured guarantees of such guarantor, effectively subordinated in right of payment to all existing and future secured indebtedness and secured guarantees of such guarantor to the extent of the value of the collateral securing such indebtedness and guarantees, and senior in right of payment to any future subordinated indebtedness and subordinated guarantees of such guarantor.

In any liquidation, dissolution, bankruptcy or other similar proceeding involving one of our non-guarantor Subsidiaries, any right we or any holders of the notes have to participate in the assets of the Subsidiary will effectively be subordinated to the claims of creditors of the Subsidiary, and following payment by the Subsidiary of its liabilities, the Subsidiary may not have sufficient assets remaining to make payments to us as a stockholder or otherwise. See “Risk Factors — Risks Related to the New Notes — The New Notes will be structurally subordinated to all of the indebtedness of our subsidiaries that do not guarantee the New Notes and the New Notes will be effectively junior to all of our future secured indebtedness” in this prospectus.

As of March 31, 2021, the principal amount of our total consolidated indebtedness was approximately \$6.10 billion, of which an aggregate of \$5.96 billion was senior indebtedness and an aggregate of \$5.03 billion was secured indebtedness. As of March 31, 2021, our Subsidiaries had \$5.39 billion principal amount of indebtedness and other liabilities (including trade payables) to which the notes would have been structurally subordinated. After giving effect to the issuance of the Old Notes on April 30, 2021 and the use of proceeds therefrom, our total consolidated indebtedness as of March 31, 2021 would have been approximately \$6.28 billion.

Optional Redemption

We may redeem the notes at our option, in whole or in part, at any time or from time to time prior to January 30, 2026 (the date that is three months prior to the scheduled maturity date of the notes and which we refer to as the “Par Call Date”), at a redemption price equal to the greater of the following amounts, plus, in each case, accrued and unpaid interest thereon to, but excluding, the redemption date:

- 100% of the aggregate principal amount of the notes to be redeemed; or
- the sum of the present values, determined as provided below, of the remaining scheduled payments of principal and interest on the notes to be redeemed that would have been due if the notes matured on the Par Call Date.

In determining the present values of the remaining scheduled payments, we will discount such payments to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) using a discount rate equal to the Treasury Rate plus 50 basis points. Notwithstanding the foregoing, installments of interest on notes that are due and payable on interest payment dates falling on or prior to the relevant redemption date will be payable to the holders of such notes registered as such at the close of business on the relevant record date according to their terms and the provisions of the indenture.

We may redeem the notes at our option, in whole or in part, at any time or from time to time on or after the Par Call Date, at a redemption price equal to 100% of the aggregate principal amount of the notes to be redeemed, plus accrued and unpaid interest thereon to, but excluding, the redemption date.

“Comparable Treasury Issue” means the United States Treasury security selected by the Independent Investment Banker as having an actual or interpolated maturity comparable to the remaining term of the notes to be redeemed, determined as if the notes matured on the Par Call Date (the “Remaining Life”), that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Remaining Life of the notes.

“Comparable Treasury Price” means, with respect to any redemption date for the notes, (i) the arithmetic average of five Reference Treasury Dealer Quotations for such redemption date, after excluding the highest

and lowest such Reference Treasury Dealer Quotations, or (ii) if we obtain fewer than five such Reference Treasury Dealer Quotations, the arithmetic average of all such quotations for such redemption date.

“Independent Investment Banker” means, with respect to any redemption date for the notes, one of the Reference Treasury Dealers selected by us or, if such firms or any such successors, as the case may be, are unwilling or unable to select the Comparable Treasury Issue, an independent investment banking institution of national standing selected by us.

“Primary Treasury Dealer” means a primary U.S. government securities dealer in the United States.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the arithmetic average of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to us (and provided to the trustee) by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third business day preceding such redemption date.

“Reference Treasury Dealers” means, with respect to any redemption date for the notes, five Primary Treasury Dealers selected by us; provided, however, that if any of the foregoing ceases to be a Primary Treasury Dealer, we shall substitute therefor another Primary Treasury Dealer selected by us.

“Treasury Rate” means, with respect to any redemption date for the notes, (1) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15 (519)” or any successor publication which is published weekly by the Federal Reserve and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Par Call Date, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue will be determined and the Treasury Rate will be interpolated or extrapolated from those yields on a straight line basis, rounding to the nearest month) or (2) if the release referred to in clause (1) (or any successor release) is not published during the week preceding the calculation date or does not contain the yields referred to above, the rate per annum equal to the semi-annual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for such redemption date. We shall calculate the Treasury Rate on the third business day preceding the redemption date.

Notice of any redemption will be sent at least 10 days but not more than 60 days before the redemption date to (w) each holder of notes to be redeemed at such holder’s registered address, (x) to the trustee, (y) to the security registrar to forward to each holder of notes to be redeemed at such holder’s registered address, or (z) otherwise in accordance with the procedures of DTC. If less than all the notes are to be redeemed at any time, the notes to be redeemed will be selected by DTC in accordance with DTC’s standard procedures, as a pro rata pass-through distribution of principal. If the notes to be redeemed are certificated notes, the trustee will select, in such manner as it deems fair and appropriate, the notes (or portions thereof) to be redeemed. The trustee shall have no duty to calculate or verify the calculation of the redemption price.

Unless we default in payment of the redemption price, on and after the redemption date interest will cease to accrue on the notes or portions thereof called for redemption on such redemption date.

Change of Control Offer

Upon the occurrence of a Change of Control Triggering Event (as defined below), each holder of notes will have the right to require us to purchase all or any part (equal to \$1,000 or an integral multiple of \$1,000 in excess thereof) of the holder’s notes at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, up to, but excluding, the date of purchase (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), except to the extent that we have exercised our right to redeem the notes as described under “— Optional Redemption.”

For purposes of this covenant, “Change of Control” means the occurrence of any one of the following:

- a. the sale, assignment, lease, transfer or other conveyance (other than by way of merger or

consolidation), in one or a series of related transactions, of all or substantially all of the properties and assets of us and our Subsidiaries taken as a whole to any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) other than to us or one or more of our Subsidiaries or a combination thereof or a Person controlled by us or one or more of our Subsidiaries or a combination thereof; or

- b. the consummation of any transaction (including without limitation, any merger or consolidation) the result of which is that any “person” (as that term is used in Section 13(d)(3) of the Exchange Act) (other than any Subsidiary of ours) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of our outstanding Voting Stock (as defined below), measured by voting power rather than number of shares or the like.

Notwithstanding the foregoing, a transaction will not be deemed to involve a “Change of Control” under clause (b) above if (i) we become a direct or indirect wholly owned Subsidiary of a holding company and (ii)(A) the direct or indirect holders of the Voting Stock of such holding company immediately following such transaction are substantially the same as the holders of our Voting Stock immediately prior to such transaction or (B) immediately following such transaction no “person” (as that term is used in Section 13(d)(3) of the Exchange Act) (other than a holding company satisfying the requirements of this sentence) is the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the outstanding Voting Stock of such holding company, measured by voting power rather than number of shares or the like.

“Change of Control Triggering Event” means the notes fail to have at least a Triple-B Rating on any date during the period commencing on the date of the first public announcement by us of any Change of Control (or pending Change of Control) and ending 60 days following consummation of such Change of Control (which 60-day period will be extended for so long as the rating of the notes is under publicly announced consideration for a possible downgrade as a result of the Change of Control by any of the NRSROs). Notwithstanding the foregoing, no Change of Control Triggering Event will be deemed to have occurred in connection with any particular Change of Control unless and until such Change of Control has actually been consummated.

Within 10 business days following the date upon which the Change of Control Triggering Event has occurred, or, at our option, prior to any Change of Control but after the public announcement of the transaction that constitutes or may constitute the Change of Control, except to the extent that we have exercised our right to redeem the notes as described under “— Optional Redemption,” we will send a notice (a “Change of Control Offer”) to each holder of notes with a copy to the trustee, which notice will govern the terms of the Change of Control Offer, stating:

- that a Change of Control Triggering Event has occurred or may occur and that such holder has or may have the right to require us to purchase all or a portion of such holder’s notes at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, up to, but excluding, the date of purchase (subject to the right of holders of record on the relevant record date to receive interest on the relevant interest payment date);
- the circumstances regarding such Change of Control Triggering Event;
- the purchase date (which shall be (i) no earlier than 30 days nor later than 60 days from the date such notice is sent, if sent after consummation of the Change of Control and (ii) on the date of the Change of Control, if such notice is sent prior to consummation of the Change of Control, in each case, other than as may be required by law) (such date, the “Change of Control Payment Date”); and
- the instructions that a holder must follow in order to have its notes purchased.

Holders of notes electing to have notes purchased pursuant to a Change of Control Offer will be required to surrender their notes, with the form entitled “Option of Holder to Elect Purchase” on the reverse of the note completed, to the paying agent at the address specified in the notice, or transfer their notes to the paying agent by book-entry transfer pursuant to the applicable procedures of the paying agent, prior to the close of business on the third business day prior to the Change of Control Payment Date.

We may make a Change of Control Offer in advance of a Change of Control and the Change of Control Payment Date, and our Change of Control Offer may be conditioned upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making the Change of Control Offer.

If holders of not less than 90% in aggregate principal amount of the outstanding notes validly tender and do not withdraw the notes in a Change of Control Offer and we, or any third party making a Change of Control Offer in lieu of us, as described below, purchases all of the notes validly tendered and not withdrawn by such holders, we will have the right, upon not less than 15 nor more than 60 days' prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all notes that remain outstanding following such purchase at a redemption price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, up to, but excluding, the date of redemption (subject to the right of holders of record on the relevant record date to receive interest on the relevant interest payment date).

We will not be required to make a Change of Control Offer if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for such an offer made by us and such third party purchases all notes properly tendered and not withdrawn under its offer.

We will comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the terms described in this prospectus, we shall comply with the applicable securities laws and regulations and will not be deemed to have breached our obligations by virtue thereof.

The definition of Change of Control includes a phrase relating to the sale, assignment, lease, transfer or other conveyance of "all or substantially all" of the properties and assets of us and our Subsidiaries taken as a whole. Although there is a limited body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, the ability of a holder of notes to require us to repurchase its notes as a result of a sale, lease, transfer, conveyance or other disposition of less than all of the properties and assets of us and the Subsidiaries taken as a whole to another Person may be uncertain.

Possible Future Guarantees

None of our Subsidiaries are currently guarantors of the Old Notes and, at issuance, none of our Subsidiaries will be guarantors of the New Notes. The indenture provides that we will cause each of our Subsidiaries that guarantees or otherwise becomes liable at any time, whether as a borrower or an additional or co-borrower or otherwise, for or in respect of any Debt under any Material Credit Facility (as defined below) to concurrently therewith, execute and deliver to the trustee (i) a supplemental indenture providing for the guaranty by such Subsidiary, on a joint and several basis with all other such Subsidiaries, in the form as agreed between us, the applicable Subsidiary Guarantor and the trustee, of (x) the prompt payment in full when due of all amounts payable by us pursuant to the notes (whether for principal, interest, premium or otherwise) and the indenture, including all indemnities, fees and expenses payable by us thereunder and (y) the prompt, full and faithful performance, observance and discharge by us of each and every covenant, agreement, undertaking and provision required pursuant to the notes or the indenture to be performed, observed or discharged by us and (ii) the officer's certificate and opinion of counsel required by the indenture.

At our election and by written notice to each holder of notes, any Subsidiary Guarantor that has provided a Subsidiary Guaranty as set forth above may be discharged from all of its obligations and liabilities under its Subsidiary Guaranty and shall be automatically released from its obligations thereunder without the need for the execution or delivery of any other document by the trustee, provided that (i) if such Subsidiary Guarantor is a guarantor or is otherwise liable for or in respect of any Material Credit Facility, then such Subsidiary Guarantor has been released and discharged (or will be released and discharged concurrently with the release of such Subsidiary Guarantor under its Subsidiary Guaranty) under such Material Credit Facility, (ii) at the time of, and after giving effect to, such release and discharge, no Default or Event of Default shall be existing, (iii) no amount is then due and payable under such Subsidiary Guaranty,

(iv) if in connection with such Subsidiary Guarantor being released and discharged under any Material Credit Facility, any fee or other form of consideration is given to any holder of Debt under such Material Credit Facility for such release, the holders of the notes shall receive equivalent consideration substantially concurrently therewith and (v) the trustee shall have received a certificate of an officer certifying as to the matters set forth in clauses (i) through (iv). In the event of any such release, for purposes of “— Restrictive Covenants — Subsidiary Debt,” all Debt of such Subsidiary shall be deemed to have been incurred concurrently with such release.

Restrictive Covenants

The indenture contains the covenants set forth below. For the definition of certain terms used in this “— Restrictive Covenants” section, see “— Certain Definitions” below.

Maintenance of Minimum Net Asset Value

The indenture provides that we will not permit the Net Asset Value as of the close of business on the last day of each of our fiscal quarters to be less than \$350,000,000 plus the greater of (i) zero dollars and (ii) 50% of Net Equity Capital Activity.

Maintenance of Consolidated Unencumbered Assets

The indenture provides that we will not permit the ratio of our Consolidated Unencumbered Assets as of the close of business on the last day of each of our fiscal quarters to the aggregate principal amount of unsecured Debt of us and our Subsidiaries as of such date to be less than 1.12 to 1.0.

Limitation on Debt

The indenture provides that we will not permit (i) the Senior Debt Service Coverage Ratio as of the close of business on the last day of each of our fiscal quarters, calculated on a pro forma basis for the incurrence of any Debt during the applicable Testing Period, to be less than 1.2 to 1.0 and (ii) the Debt to Equity Ratio on the last day of each of our fiscal quarters to exceed 6.0 to 1.0. In giving pro forma effect to the incurrence of any Debt during the applicable Testing Period, with respect to the Senior Debt Service Coverage Ratio, (i) our Operating Cash Flow for the applicable Testing Period shall be increased by an amount equal to the product of (x) the principal amount of such Debt and (y) our average yield on earning assets during the applicable Testing Period and (ii) our Senior Debt Service shall be increased by the interest that would have been paid on such Debt had it been issued on the first day of the applicable Testing Period.

Transactions with Affiliates

The indenture provides that we will not, and will not permit any Subsidiary to, enter into directly or indirectly any Material transaction or Material group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate (other than us or another Subsidiary), except in the ordinary course of business and upon fair and reasonable terms no less favorable to us or such Subsidiary than would be obtainable in a comparable arm’s-length transaction with a Person not an Affiliate.

Liens

The indenture provides that we will not secure any Debt outstanding under or pursuant to any Material Credit Facility unless and until the notes shall be concurrently secured equally and ratably with such Debt pursuant to documentation reasonably acceptable to the trustee.

Subsidiary Debt

The indenture provides that we will not permit any Subsidiary, which is not a Subsidiary Guarantor, to create, incur, assume or suffer to exist any unsecured Debt in an aggregate amount in excess of \$75,000,000

at any time for all such Subsidiaries; provided that for purposes of determining compliance with this covenant, certain exceptions to the definition of Debt apply.

Economic Sanctions, Etc.

The indenture provides that we will not, and will not permit any Controlled Entity to (i) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (ii) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the notes) with any Person if such investment, dealing or transaction (x) would cause any holder or any affiliate of such holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such holder, or (y) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.

Except as described in the immediately preceding paragraphs, the indenture does not include restrictive covenants that would limit or restrict our or our Subsidiaries' ability to pay dividends, incur liens, sell less than substantially all of our assets, enter into transactions with affiliates, enter into sale-leaseback transactions, enter into agreements that restrict the ability of our Subsidiaries to make distributions to us or make investments, issue or repurchase our other securities or secure indebtedness with the assets, stock or equity interests of our Subsidiaries.

Rating

The indenture provides that we will maintain a rating on the notes from a NRSRO at all times, and we will cause such rating to be updated on an annual basis. We will provide the trustee with a copy of any rating letter or notification from a NRSRO following receipt by us, in a form each holder of notes may share with their regulators, including the SVO. Such form of rating letter or notification will identify the notes to which such rating is applicable including the aggregate principal amount, initial interest rate, maturity date and private placement number assigned to the notes.

Merger, Consolidation or Sale of Assets

The indenture provides that we shall not, in any transaction or series of related transactions, consolidate with or merge into any Person or sell, assign, transfer, lease or otherwise convey all or substantially all of our properties and assets to any Person unless:

- 1) either (i) we shall be the continuing Person (in the case of a merger) or (ii) the successor Person (if other than us) formed by such consolidation or into which we merged or which acquires by sale, assignment, transfer, lease or other conveyance all or substantially all of our properties and assets shall be an entity organized and existing under the laws of the United States, any state thereof or the District of Columbia and shall expressly assume the due and punctual payment of the principal of, any premium and interest on all the outstanding notes and the due and punctual performance and observance of every obligation in the indenture and the outstanding notes to be observed or performed by us;
- 2) immediately after giving effect to such transaction, no Event of Default and no event which, after notice or lapse of time or both, would become an Event of Default shall have occurred and be continuing;
- 3) each Subsidiary Guarantor under any Subsidiary Guaranty that is outstanding at the time such transaction or each transaction in such a series of transactions occurs reaffirms its obligations under such Subsidiary Guaranty in writing at such time; and
- 4) we shall have delivered to the trustee the officer's certificate and opinion of counsel required by the indenture.

Upon any consolidation by us with or merger of us into any other Person or any sale, assignment, transfer, lease or other conveyance of all or substantially all of our properties and assets to any Person in accordance with the provisions described in the preceding paragraph, the successor Person or the Person to which such sale, assignment, transfer or lease or other conveyance is made shall succeed to, and be

substituted for, us under the indenture and the notes and, thereafter, except in the case of a lease, we shall be released from all obligations under the indenture and the notes.

For purposes of this covenant, the sale, assignment, transfer, lease or conveyance of all or substantially all of the properties and assets of one or more of our Subsidiaries, which properties and assets, if held by us instead of such Subsidiaries, would constitute all or substantially all of our properties and assets on a consolidated basis, will be deemed to be the sale, assignment, transfer, lease or conveyance of all or substantially all of our properties and assets.

Although there is a limited body of case law interpreting the phrase “substantially all,” there is no precise established definition of the phrase under applicable law. Accordingly, in certain circumstances there may be a degree of uncertainty as to whether a particular transaction would involve “all or substantially all” of the properties and assets of a Person.

Provision of Financial Information

For so long as any notes are outstanding, if we are subject to Section 13(a) or 15(d) of the Exchange Act or any successor provision, we shall deliver to the trustee the annual reports, quarterly reports and other documents which we are required to file with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act or any successor provision, within 15 days after the date that we are required to file the same with the SEC. Reports and other documents filed with the SEC via the EDGAR system will be deemed to be delivered to the trustee as of the time of such filing via EDGAR for purposes of this covenant; provided, however, that the trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed via EDGAR.

Delivery of Rule 144A Information

The indenture provides that, if at any time we are not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, we will, so long as the notes constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, prepare and will furnish to the trustee and, upon written request, furnish to any holder of notes, any beneficial owner of an interest in a global note and any prospective purchaser or other prospective transferee of notes designated by a holder of notes or a beneficial owner of an interest in a global note, in each case, at our expense, the financial statements and other information specified in Rule 144A(d)(4) (or any successor provision thereto) under the Securities Act, in each case to the extent necessary to permit the resale or other transfer of notes by such holder or beneficial owner to be made in compliance with Rule 144A under the Securities Act. We will take such further action as any holder or beneficial owner of such notes may reasonably request to the extent from time to time required to enable such holder or beneficial owner to sell such notes or shares of our common stock in accordance with Rule 144A under the Securities Act, as such rule may be amended from time to time.

Certain Definitions

Set forth below are the definitions of certain terms used in this “Description of the Notes” section. Reference is made to the indenture for the definition of certain other terms defined in the indenture and used in this “Description of the Notes” section for which no definitions are provided herein.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“Blocked Person” means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

“Capitalized Lease Obligations” means obligations under a lease that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on the balance sheet prepared in accordance with GAAP of the applicable Person as of the applicable date.

“Consolidated Unencumbered Assets” as of any date means all of the assets (excluding intangibles) of us and our Subsidiaries that are not subject to a Lien (other than a Permitted Lien) securing Debt, all on a consolidated basis for us and our Subsidiaries in accordance with GAAP, plus equity in our CLO securitizations that is not subject to a Lien (other than a Permitted Lien).

“Controlled Entity” means (a) any of our Subsidiaries and any of their or our respective Controlled Affiliates and (b) if we have a parent company, such parent company and its Controlled Affiliates.

“Debt” means, for any Person, (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of property to another Person subject to agreement, contingent or otherwise, to repurchase such property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within 90 days of the date the respective goods are delivered or the respective services are rendered; (c) Debt of others secured by a lien on the property of such Person, whether or not the respective Debt so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for account of such Person; (e) obligations of such Person under repurchase agreements, sale/buy-back agreements or like arrangements; (f) Debt of others guaranteed by such Person; (g) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (h) Recourse Debt of such Person; (i) Debt of general partnerships of which such Person is secondarily or contingently liable (other than by endorsement of instruments in the course of collection), whether by reason of any agreement to acquire such indebtedness to supply or advance sums or otherwise; (j) Capitalized Lease Obligations of such Person; (k) all net liabilities or obligations under any interest rate, interest rate swap, interest rate cap, interest rate floor, interest rate collar, or other hedging instrument or agreement; and (l) all obligations of such Person under Financing Leases.

“Debt to Equity Ratio” means, with respect to us on any date, the ratio of (i) (a) Total Liabilities, plus (b) letters of credit outstanding, minus (c) the TRUPs Indebtedness and any other Subordinated Debt, minus (d) indebtedness related to the Agency Business, minus (e) allowance for loss sharing obligations relating to the Agency Business, to (ii) Tangible Capital Base.

“Default” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“Default Rate” means the rate of interest per annum that is the greater of (a) 2.00% above the applicable interest rate on the notes as calculated as described under “— Maturity and Interest” or (b) 2.00% over the rate of interest publicly announced by Citibank, N.A. in New York, New York as its “base” or “prime” rate.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests or equivalents (however designated, including any instrument treated as equity for U.S. federal income tax purposes) in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“Financing Lease” means any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP to be capitalized on a balance sheet of the lessee.

“GAAP” means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and in statements and pronouncements of the Financial Accounting Standards Board, or in opinions, statements or pronouncements of any other entity approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

“guarantee” means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including obligations incurred through an agreement, contingent or otherwise, by such Person:

- to purchase such indebtedness or obligation or any property constituting security therefor;
- to advance or supply funds (i) for the purchase or payment of such indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;
- to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such indebtedness or obligation of the ability of any other Person to make payment of the indebtedness or obligation; or
- otherwise to assure the owner of such indebtedness or obligation against loss in respect thereof.

In any computation of the indebtedness or other liabilities of the obligor under any guarantee, the indebtedness or other obligations that are the subject of such guarantee shall be assumed to be direct obligations of such obligor.

“Lien” means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

“Material” means material in relation to the business, operations, affairs, financial condition, assets or properties of us and our Subsidiaries taken as a whole.

“Material Credit Facility” means, as to us,

(a) the Indenture dated as of March 13, 2018 between us and U.S. Bank National Association, as trustee, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(b) the Indenture dated as of July 3, 2018 between us and U.S. Bank National Association, as trustee, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(c) the Indenture dated as of July 20, 2018 between us and U.S. Bank National Association, as trustee, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(d) the Note Purchase Agreement dated as of March 22, 2019 between us and each of the purchasers party thereto, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(e) the Note Purchase Agreement dated as of October 15, 2019 between us and each of the purchasers party thereto, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(f) the Indenture dated as of November 12, 2019 between us and U.S. Bank National Association, as trustee, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(g) the Note Purchase Agreement dated as of March 4, 2020 between us and each of the purchasers party thereto, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof;

(h) the Amended and Restated Note Purchase Agreement dated as of June 25, 2020 between us and each of the purchasers party thereto, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancing thereof; and

(i) with respect to the covenant “Restricted Covenants — Liens” only, any other agreement(s) creating or evidencing indebtedness for borrowed money entered into on or after April 30, 2021 by us, or in respect of which we are an obligor or otherwise provides a guarantee or other credit support (“Credit Facility”), in a principal amount outstanding or available for borrowing equal to or greater than \$50,000,000 (or the equivalent of such amount in the relevant currency of payment, determined as of the date of the closing of such facility based on the exchange rate of such other currency); and if no Credit Facility or Credit Facilities equal or exceed such amounts, then the largest Credit Facility shall be deemed to be a Material Credit Facility.

“Net Asset Value” means, as of the date of determination, the total value of the assets less the total value of the liabilities shown on our consolidated statement of assets, liabilities and equity on such date, as calculated and determined in accordance with GAAP.

“Net Cash Proceeds” means with respect to any issuance or sale of Equity Interests, the cash proceeds of such issuance, sale or incurrence, as the case may be, net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, discounts and commissions and brokerage, consultant and other fees and expenses incurred in connection with such issuance, sale or incurrence, as the case may be, and net of taxes paid or payable as a result thereof.

“Net Equity Capital Activity” means the aggregate Net Cash Proceeds from the sale by us of our Equity Interests at any time after the date of the indenture less (i) the aggregate amount paid by us after the date of the indenture to repurchase our Equity Interests and (ii) the aggregate amount of cash distributions made by us to the holders of our Equity Interests at any time after the date of the indenture.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“OFAC Sanctions Program” means any economic or trade sanction that OFAC is responsible for administering and enforcing. A list of OFAC Sanctions Programs may be found at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

“Operating Cash Flow” means, for any period of determination, with respect to us and our Subsidiaries, on a consolidated basis, net cash provided by operating activities, exclusive of the effects from changes in operating assets and liabilities, plus cash paid for income taxes and interest payments, determined in accordance with GAAP applied in a manner consistent with our most recent audited financial statements.

“Permitted Liens” means:

- Liens securing our obligations under the notes;
- Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided any reserve or other appropriate provision as is required by GAAP has been made therefor; and
- Liens of a depository institution or broker-dealer arising solely by virtue of any contractual, statutory or common law provisions relating to broker’s Liens, banker’s Liens, rights of set-off or similar rights and remedies as to deposit or brokerage accounts or other funds maintained with such depository institution or broker-dealer.

“Person” means any individual, corporation, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“Recourse Debt” means, for any Person on any date, without duplication, the indebtedness of such Person (and its consolidated Subsidiaries) for which such Person (and its consolidated Subsidiaries) is directly responsible or liable as obligor or guarantor (excluding obligations arising by reason of customary recourse carve-outs under a non-recourse instrument, including, but not limited to, fraud, misappropriation and environmental indemnities).

“Senior Debt Service” means, for the Testing Period, the sum of: (a) the interest paid in cash or required to be paid in cash by us and our Subsidiaries, on a consolidated basis, for the Testing Period with respect to all Debt, together with all fees and expenses paid on account of or with respect thereto, minus the interest paid in cash or required to be paid in cash by us and our Subsidiaries, on a consolidated basis, for

the Testing Period with respect to all Subordinated Debt together with all fees and expenses paid on account of or with respect thereto, in each case, determined in accordance with GAAP; plus (b) regularly scheduled principal amortization payments made or required to be made on account of Debt for the Testing Period (exclusive of pay-offs or pay-downs on account of such Debt), in each case determined in accordance with GAAP.

“Senior Debt Service Coverage Ratio” means, with respect to us, at any date of determination, the ratio of Operating Cash Flow during the Testing Period to Senior Debt Service for the Testing Period.

“Significant Subsidiary” means, with respect to any Person, a Subsidiary of such Person that would constitute a “significant subsidiary” as such term is defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as in effect on the original date of issuance of the notes.

“Subordinated Debt” means all Debt of us and our Subsidiaries that is effectively subordinated in right of payment to the notes.

“Subsidiary” or “Subsidiaries” means, as to any Person, a corporation, partnership 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, 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” shall refer to our Subsidiary or Subsidiaries.

“Subsidiary Guarantor” means each Subsidiary that has executed and delivered a Subsidiary Guaranty. On the date of hereof, none of our Subsidiaries are Subsidiary Guarantors.

“Subsidiary Guaranty” means the guarantee by each Subsidiary Guarantor of our obligations under the indenture and the New Notes.

“Tangible Capital Base” means, with respect to us on any date, Total Assets less Total Liabilities plus the TRUPs Indebtedness plus any other subordinated debt.

“Testing Period” means, with respect to us, at any date of determination, our four consecutive fiscal quarters most recently ended immediately prior to such determination date.

“Total Assets” means, with respect to us on any date, all amounts that would be included under total assets on the balance sheet of us and our consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP less intangible assets at such date, determined in accordance with GAAP.

“Total Liabilities” means, with respect to us on any date, all amounts that would be included under total liabilities on the balance sheet of us and our consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP.

“TRUPs Indebtedness” means, with respect to us, as of any date, all amounts that would be included under junior subordinated notes on the balance sheet of us and our consolidated Subsidiaries at such date, determined on a consolidated basis in accordance with GAAP, consistent with our past practices.

“U.S. Economic Sanctions Laws” means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

“Voting Stock,” as applied to stock of any Person, means shares, interests, participations or other equivalents in the equity interest (however designated) in such Person having ordinary voting power for the election of, or to appoint or to approve the appointment of the directors (or the equivalent) of such Person, other than shares, interests, participations or other equivalents having such power only by reason of the occurrence of a contingency.

Events of Default, Notice and Waiver

An “Event of Default” with respect to the notes is defined in the indenture as being:

- (i) default in the payment of any principal of, or premium, if any, on any note when due;
- (ii) default for 30 days in the payment of any interest on any note;
- (iii) default by us in the performance of or compliance with the covenants described under “— Restrictive Covenants — Maintenance of Minimum Net Asset Value,” “— Restrictive Covenants — Maintenance of Consolidated Unencumbered Assets,” “— Restrictive Covenants — Limitation on Debt” and “— Restrictive Covenants — Subsidiary Debt,” or our failure to deliver to the trustee an officer’s certificate specifying when a Default or Event of Default has occurred within 15 days of becoming aware of its occurrence;
- (iv) default in the performance, or breach, of any other covenant or warranty of us or any Subsidiary Guarantor in the indenture or in the notes which shall not have been remedied for a period of 60 days after written notice to us by the trustee or the holders of not less than 25% in aggregate principal amount of the notes then outstanding;
- (v) default in the payment of principal when due on, or any other default resulting in the acceleration of, other indebtedness of ours or of any Significant Subsidiary for borrowed money where the aggregate principal amount with respect to which the default or acceleration has occurred exceeds \$25,000,000 or which constitutes a failure to pay when due (after expiration of any applicable grace period) such indebtedness in an aggregate principal amount exceeding \$25,000,000, but only if such indebtedness for borrowed money is not discharged or such acceleration is not rescinded or annulled within 30 days after written notice to us by the trustee or to us and the trustee by the holders of at least 25% in aggregate principal amount of the notes then outstanding;
- (vi) certain events of bankruptcy, insolvency or reorganization involving us or any of our Significant Subsidiaries; or
- (vii) one or more final judgments or orders for the payment of money aggregating in excess of \$100,000,000 (or its equivalent in the relevant currency of payment), including any such final order enforcing a binding arbitration decision, are rendered against one or more of us and our Significant Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay.

The indenture provides that the trustee may withhold notice to the holders of the notes of the occurrence of a Default with respect to the notes (except a Default in payment of principal, premium, if any, or interest) if the trustee considers it in the interest of the holders to do so.

If an Event of Default under paragraph (vi) above has occurred, all the notes then outstanding shall automatically become immediately due and payable. If any other Event of Default has occurred and is continuing, then either the trustee or the holders of not less than 25% of the aggregate principal amount of the notes then outstanding may declare the principal of all the notes, and accrued and unpaid interest, if any, thereon to be due and payable immediately, by a notice in writing to us (and to the trustee if given by the holders), and the trustee at the written direction of such holders shall declare the principal of, premium, and accrued and unpaid interest, if any, on the notes to be immediately due and payable. At any time after the notes have been accelerated, but before a judgment or decree based on acceleration has been obtained, the holders of a majority of the aggregate principal amount of notes then outstanding may, under certain circumstances, rescind and annul such acceleration.

Upon any notes becoming due and payable as set forth above, whether automatically or by declaration of acceleration, such notes will forthwith mature and the entire unpaid principal amount of such notes, plus (x) all accrued and unpaid interest thereon (including interest accrued thereon at the Default Rate) and (y) the premium determined in respect of such principal amount calculated as the greater of (i) 100% of the aggregate principal amount of the notes due and payable on such date or (ii) the sum of the present values of the remaining scheduled payments of principal and interest on the notes due and payable that would have

been due if the notes matured on the maturity date, discounted to the date of acceleration on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, shall all be immediately due and payable, in each and every case without presentment, demand protest or further notice, all of which are hereby waived. Each holder of a note has the right to hold the notes free from repayment by us (except as herein specifically provided for) and the provision for payment of a premium by us in the event that the notes are prepaid or are accelerated as a result of an Event of Default, which is intended to provide compensation for the deprivation of such right under such circumstances. Upon payment of such amount, all of our obligations in respect of the payment of principal of, premium and interest on the notes shall terminate.

If an Event of Default under paragraphs (i) or (ii) above with respect to the notes has occurred and is continuing, any holder or holders of notes at the time outstanding affected by such Event of Default may at any time, at its or their option, by notice or notices to us and the trustee, declare the notes held by it or them to be immediately due and payable.

The indenture provides that, subject to the duty of the trustee during the continuance of an Event of Default to act with the required standard of care, the trustee will be under no obligation to exercise any of its rights or powers under the indenture at the request or direction of any of the holders of notes unless such holders shall have offered to the trustee satisfactory security or indemnity. Subject to the foregoing, the holders of a majority of the aggregate principal amount of the notes then outstanding will have the right, subject to certain limitations, to direct the time, method and place of conducting any proceeding for any remedy available to the trustee under the indenture with respect to the notes.

No holder of any notes shall have any right to institute any proceeding with respect to the indenture, any Subsidiary Guaranty or the notes or for any other remedy thereunder unless: (i) such holder previously has given written notice to the trustee of a continuing Event of Default with respect to the notes; (ii) the holders of at least 25% in aggregate principal amount of the notes then outstanding have made written request to the trustee to pursue the remedy, and offered to the trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities incurred in compliance with such request; (iii) in the 60-day period following receipt of the notice, request and offer of security or indemnity referred to above, the trustee has failed to initiate such proceeding; and (iv) during such 60-day period, the trustee has not received from the holders of a majority in aggregate principal amount of the notes then outstanding a direction inconsistent with such request.

Notwithstanding the provisions described in the immediately preceding paragraph or any other provision of the indenture, the holder of any note shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and interest on such note on the respective dates such payments are due and to institute suit for enforcement of any such payment, and such right shall not be impaired without the consent of such holder.

We are required to furnish to the trustee an officer's certificate within 60 days (or such shorter period as is 15 days greater than the period applicable to the filing of our Quarterly Report on Form 10-Q with the SEC regardless of whether we are subject to the filing requirements thereof) after the end of each of our first three fiscal quarters of our fiscal year as to our compliance with the covenants described under "Maintenance of Minimum Net Asset Value," "Maintenance of Consolidated Unencumbered Assets," and "Limitation on Debt," in "Restrictive Covenants" above. We are also required to furnish to the trustee an officer's certificate within 120 days (or such shorter period as is 15 days greater than the period applicable to the filing of our Annual Report on Form 10-K with the SEC regardless of whether we are subject to the filing requirements thereof) after the end of each fiscal year (which as of the date hereof, ends on December 31) as to our performance of, or compliance with, all of our obligations under the indenture, including the covenants described under "Restrictive Covenants" above. The trustee shall have no duty to monitor, inquire as to or ascertain compliance with, or the performance of, our obligations under the indenture other than our obligations with respect to payment of principal or interest due on any note, provided that the trustee remains the paying agent for the notes.

Modification of the Indenture

The indenture contains provisions permitting us, any Subsidiary Guarantors and the trustee, with the consent of the holders of a majority in aggregate principal amount of the notes then outstanding, to modify

or amend any of the provisions of the indenture, the notes or any Subsidiary Guaranty or the rights of the holders of the notes under the indenture, provided that no such modification or amendment shall, among other things:

- change the stated maturity of the notes;
- reduce the principal amount of any notes or any premium thereon, or reduce the rate of interest thereon;
- change any place where, or the currency in which, any notes are payable;
- impair the holder's right to institute suit to enforce the payment of any notes when due;
- reduce the aforesaid percentage of notes, the consent of whose holders is required for any such modification or amendment or the consent of whose holders is required for any waiver (of compliance with certain provisions of the indenture or certain defaults thereunder and their consequences), without in each case obtaining the consent of the holder of each note then outstanding that is so affected;
- waive a Default or Event of Default in the payment of principal of, premium on, if any, or interest on, the notes (except a rescission of acceleration of the notes by the holders of at least a majority in aggregate principal amount of the then outstanding notes and a waiver of the payment default that resulted from such acceleration);
- make any change in the provisions of the indenture relating to waivers of past Defaults or the rights of holders to receive payments of principal of, premium on, if any, or interest on, the notes;
- waive a redemption payment with respect to any note; or
- release any Subsidiary Guarantor from any of its obligations under its Subsidiary Guaranty or the indenture, except in accordance with the terms of the indenture.

The indenture also contains provisions permitting us, any Subsidiary Guarantor and the trustee, without notice to or the consent of the holders of any notes, to modify or amend the indenture in order to, among other things:

- to evidence a successor to us and the assumption by that successor of our obligations under the indenture and the notes;
- to provide for the assumption of our any Subsidiary's obligations to the holders of the notes in accordance with the terms of the indenture and any Subsidiary Guaranty if any consolidation, merger or sale of all or substantially all of our or any Subsidiary Guarantor's property or assets occurs;
- to add to the Events of Default or our covenants for the benefit of the holders of the notes;
- to evidence and provide for the acceptance and appointment of a successor trustee;
- to cure any ambiguity or omission, or to correct or supplement any provision therein which may be defective or inconsistent with any other provisions therein or to make any other provisions with respect to matters or questions arising under the indenture which shall not adversely affect the interests of the holders of the notes then outstanding, as determined by us;
- to secure the notes or to provide a guarantee of the notes;
- to provide for a successor trustee or the appointment of more than one trustee;
- to comply with the requirements of the SEC in order to effect or maintain qualification of the indenture under the Trust Indenture Act, as contemplated by the indenture or otherwise;
- to release any Subsidiary Guarantor in accordance with the terms of the indenture; or
- to allow any Subsidiary Guarantor to execute a supplemental indenture and/or a Subsidiary Guaranty with respect to the notes.

The holders of a majority in aggregate principal amount of the notes then outstanding may, on behalf of all holders of notes, waive compliance by us with certain provisions of the indenture, including the

covenants described above under “— Restrictive Covenants.” The holders of a majority in aggregate principal amount of the notes then outstanding may, on behalf of all holders of notes, waive any past Default under the indenture and its consequences, except a Default in the payment of the principal of, or premium, if any, or interest on any notes or in respect of a covenant or provision which cannot be modified or amended without the consent of the holder of each note.

In determining whether the holders of the requisite aggregate principal amount of the notes then outstanding have given any request, demand, authorization, direction, notice, consent or waiver under the indenture, any notes owned by us or any other obligor on the notes or any affiliate of ours or such other obligor shall be deemed not to be outstanding.

Discharge, Defeasance and Covenant Defeasance

Upon our direction, the indenture shall cease to be of further effect (subject to the survival of certain provisions thereof) when (i) either (A) all notes then outstanding have been delivered to the trustee for cancellation (subject to certain exceptions) or (B) all notes then outstanding have become due and payable or will become due and payable at their stated maturity within one year or are to be called for redemption within one year and we have deposited with the trustee, in trust, money in an amount sufficient to pay the entire indebtedness on the notes in respect of principal, premium, if any, and interest to the date of such deposit (if the notes have become due and payable) or to the stated maturity or redemption date thereof, as the case may be, (ii) we have paid all other sums payable under the indenture, and (iii) certain other conditions are met.

Subject to the satisfaction of certain conditions set forth in the indenture, we may elect either (a) to defease and be discharged from any and all obligations with respect to the notes (except for, among other things, the obligations to register the transfer or exchange of the notes, to replace temporary or mutilated, destroyed, lost or stolen notes, to maintain an office or agency in respect of the notes and to hold money for payment in trust) (“defeasance”), or (b) to be released from our obligations with respect to the notes described above under “— Restrictive Covenants” and certain other restrictive covenants in the indenture, and any omission to comply with such obligations shall not constitute a Default or an Event of Default (“covenant defeasance”), in either case upon the irrevocable deposit with the trustee (or other qualifying trustee), in trust for such purpose, of money and/or U.S. government obligations which through the payment of principal and interest in accordance with their terms will provide money, in an amount sufficient, in the opinion of a nationally-recognized firm of independent public accountants, investment bank or appraisal firm expressed in a written certification thereof delivered to the trustee, to pay the principal of and any premium and interest on the notes on the scheduled due dates therefor or the applicable redemption date, as the case may be. Such conditions to defeasance or covenant defeasance include the delivery to the trustee of an opinion of independent counsel in the United States to the effect that the beneficial owners of the notes then outstanding will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance or covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance or covenant defeasance had not occurred.

In the event we effect covenant defeasance with respect to the notes and the notes are declared due and payable because of the occurrence of any Event of Default other than an Event of Default resulting from a breach of a covenant as to which there has been covenant defeasance, the amount of money and/or U.S. government obligations deposited with the trustee to effect such covenant defeasance may not be sufficient to pay amounts due on the notes at the time of any acceleration resulting from such Event of Default. However, we would remain liable to make payment of such amounts due at the time of acceleration.

Trustee, Paying Agent and Security Registrar

UMB Bank, NA will act as trustee, paying agent and security registrar for the notes. From time to time, we and some of our Subsidiaries may maintain deposit accounts and conduct other banking transactions, including lending transactions, with the trustee and its affiliates in the ordinary course of business. Upon the occurrence of a Default or an Event of Default under the notes, the trustee may be deemed to have a conflicting interest with respect to any of our other debt securities as to which it acts as trustee

and we are not in default for purposes of the TIA, and, accordingly, may be required to resign as trustee under the indenture. In that event, we would be required to appoint a successor trustee.

Governing Law

The indenture is and the New Notes will be governed by, and construed in accordance with, the laws of the State of New York.

BOOK-ENTRY, DELIVERY AND FORM

The Global Notes

The New Notes will be issued in the form of one or more registered notes in global form, without interest coupons (the “global notes”). Upon issuance, each of the global notes will be deposited with the trustee as custodian for DTC and registered in the name of Cede & Co., as nominee of DTC.

Ownership of beneficial interests in each global note will be limited to persons who have accounts with DTC (“DTC participants”) or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

- upon deposit of each global note with DTC’s custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the purchaser; and
- ownership of beneficial interests in each global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in the global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

Exchanges Among the Global Notes

Beneficial interests in one global note may generally be exchanged for interests in another global note. The trustee may require the seller to provide certain written certifications in the form provided in the indenture and/or legal opinions.

A beneficial interest in a global note that is transferred to a person who takes delivery through another global note will, upon transfer, become subject to any transfer restrictions and other procedures applicable to beneficial interests in the other global note.

Book-Entry Procedures for the Global Notes

All interests in the global notes will be subject to the operations and procedures of DTC and, therefore, you must allow for sufficient time in order to comply with these procedures if you wish to exercise any of your rights with respect to the notes. We provide the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of each settlement system are controlled by that settlement system and may be changed at any time. We are not responsible for those operations or procedures.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York;
- a “banking organization” within the meaning of the New York State Banking Law;
- a member of the Federal Reserve System;
- a “clearing corporation” within the meaning of the New York Uniform Commercial Code; and
- a “clearing agency” registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC’s participants include securities brokers and dealers; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC’s system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global note:

- will not be entitled to have notes represented by the global note registered in their names;
- will not receive or be entitled to receive physical, certificated notes; and
- will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal, premium (if any) and interest with respect to the notes represented by a global note will be made by the paying agent to DTC's nominee as the registered holder of the global note. Neither we nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds.

Certificated Notes

New Notes in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of the related notes only if:

- DTC notifies us at any time that it is unwilling or unable to continue as depository for the global notes and a successor depository is not appointed within 90 days;
- DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days; or
- we, at our option, notify the trustee that we elect to cause the issuance of certificated notes and any participant requests a certificated note in accordance with DTC procedures.

U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of U.S. federal income tax considerations generally applicable to the exchange of Old Notes for New Notes pursuant to the exchange offer, as of the date hereof. This discussion does not address specific tax considerations that may be relevant to particular persons in light of their individual circumstances (including, for example, entities treated as partnerships for U.S. federal income tax purposes or partners or members therein, banks or other financial institutions, broker-dealers, insurance companies, regulated investment companies, tax-exempt entities, common trust funds, controlled foreign corporations, dealers in securities or currencies, and persons in special situations, such as those who hold New Notes as part of a straddle, synthetic security, conversion transaction, or other integrated investment comprising New Notes and one or more other investments). In addition, this discussion does not describe any tax considerations arising under U.S. federal gift, estate or other tax laws, or under the tax laws of any state, local or foreign jurisdiction. This discussion is based upon the Internal Revenue Code of 1986, as amended, the Treasury Department regulations promulgated thereunder, and administrative and judicial interpretations thereof, all as of the date hereof and all of which are subject to change, possibly with retroactive effect. Each holder is urged to consult its tax advisor regarding the U.S. federal, state, local and non-U.S. income and other tax considerations relating to the exchange of Old Notes for New Notes and relating to the acquisition, ownership and disposition of the New Notes.

The exchange of an Old Note for a New Note pursuant to the exchange offer should not constitute a “significant modification” of the Old Note for U.S. federal income tax purposes and, accordingly, the New Note received by a holder should be treated as a continuation of the Old Note in the hands of such holder. As a result, there should be no U.S. federal income tax consequences to a holder who exchanges an Old Note for a New Note pursuant to the exchange offer and any such holder should have the same adjusted tax basis and holding period in the New Note as it had in the Old Note immediately before the exchange. A holder who does not exchange its Old Notes for New Notes pursuant to the exchange offer should not recognize any gain or loss, for U.S. federal income tax purposes, upon consummation of the exchange offer.

PLAN OF DISTRIBUTION

Each broker-dealer that receives New Notes for its own account pursuant to the exchange offer must acknowledge that it may be a statutory underwriter and that it will deliver a prospectus in connection with any resale of such New Notes. This prospectus, as it may be amended or supplemented from time to time, may be used by a broker-dealer in connection with resales of New Notes received in exchange for Old Notes where such Old Notes were acquired as a result of market-making activities or other trading activities provided that such broker-dealer notifies us to that effect by so indicating on the letter of transmittal. To the extent that any notifying broker-dealer participates in the exchange offer, we will use our commercially reasonable efforts to maintain the effectiveness of this prospectus.

We will not receive any proceeds from any sale of New Notes by broker-dealers or any other persons. New Notes received by broker-dealers for their own account pursuant to the exchange offer may be sold from time to time in one or more transactions in the over-the-counter market, in negotiated transactions, through the writing of options on the New Notes or a combination of such methods of resale, at market prices prevailing at the time of resale, at prices related to such prevailing market prices or at negotiated prices. Any such resale may be made directly to purchasers or to or through brokers or dealers who may receive compensation in the form of commissions or concessions from any such broker-dealer and/or the purchasers of any New Notes. Any broker-dealer that receives New Notes in exchange for Old Notes acquired for its own account as a result of market-making activities or other trading activities, and resells such New Notes, and any broker-dealer that participates in a distribution of such New Notes may be deemed to be an "underwriter" within the meaning of the Securities Act and any profit on any such resale of New Notes and any commission or concessions received by any such persons may be deemed to be underwriting compensation under the Securities Act. The letter of transmittal states that, by acknowledging that it will deliver and by delivering a prospectus, a broker-dealer will not be deemed to admit that it is an "underwriter" within the meaning of the Securities Act.

We will promptly send additional copies of this prospectus and any amendment or supplement to this prospectus to any broker-dealer that reasonably requests such documents. We have agreed to pay certain expenses in connection with the exchange offer and will indemnify the holders of the Old Notes (including any broker-dealers) against certain liabilities, including certain liabilities under the Securities Act.

LEGAL MATTERS

Certain legal matters in connection with this offering will be passed upon for us by Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, and Venable LLP, Baltimore, Maryland.

EXPERTS

The consolidated financial statements of Arbor Realty Trust, Inc. and Subsidiaries appearing in Arbor Realty Trust, Inc.'s [Annual Report \(Form 10-K\) for the year ended December 31, 2020](#) (including the schedule appearing therein), and the effectiveness of Arbor Realty Trust, Inc. and Subsidiaries' internal control over financial reporting as of December 31, 2020 have been audited by Ernst & Young LLP, independent registered public accounting firm, as set forth in their reports thereon, included therein, and incorporated herein by reference which, as to the year 2020, is based in part on the report of Richey, May & Co., LLP, independent registered public accounting firm. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firms as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly, and current reports, proxy statements and other information with the SEC. Our SEC filings are available to the public at our website at www.arbor.com and at the SEC's website at www.sec.gov. The information on our website is not, and you should not consider the information to be, a part of this prospectus.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows us to "incorporate by reference" information into this prospectus, which means that we can disclose important information to you by referring you to another document filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, except for any information superseded by information contained directly in this prospectus, any subsequently filed document deemed incorporated by reference or any free writing prospectus prepared by or on behalf of us. This prospectus incorporates by reference the documents set forth below that we have previously filed with the SEC (other than information deemed furnished and not filed in accordance with SEC rules, including Items 2.02 and 7.01 of Form 8-K):

- [our Annual Report on Form 10-K for the year ended December 31, 2020](#);
- [our Quarterly Report on Form 10-Q for the quarter ended March 31, 2021](#);
- the information specifically incorporated by reference into our [Annual Report on Form 10-K for the year ended December 31, 2020](#) from our [Definitive Proxy Statement on Schedule 14A, filed with the SEC on April 30, 2021](#); and
- our Current Reports on Form 8-K filed with the SEC on [March 15, 2021](#), [March 30, 2021](#), [April 23, 2021](#), [May 4, 2021](#), [May 26, 2021](#), [May 27, 2021](#), [June 2, 2021](#), [June 10, 2021](#), [June 17, 2021](#), [June 25, 2021](#) and [June 28, 2021](#).

All documents filed by us pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this prospectus and before the termination of the offering also shall be deemed to be incorporated herein by reference. We are not, however, incorporating by reference any documents or portions thereof that are not deemed "filed" with the SEC, including any information furnished pursuant to Items 2.02 or 7.01 of Form 8-K.

If requested, we will provide to each person, including any beneficial owner, to whom this prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Exhibits to the filings will not be sent, however, unless those exhibits have specifically been incorporated by reference into such documents. To obtain a copy of these filings at no cost, you may write or telephone us at the following address: Arbor Realty Trust, Inc., 333 Earle Ovington Boulevard, Suite 900, Uniondale, New York, 11553, Attention: Secretary (telephone no.: (516) 506-4200).

To ensure timely delivery of any requested information, holders of the Old Notes must make any request no later than _____, 2021, which is five business days before the expiration date of the exchange offer, or, if we decide to extend the expiration date of the exchange offer, no later than five business days before such extended expiration date.

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Officers and Directors.

Maryland law permits a Maryland corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation and its stockholders for money damages, except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment and which is material to the cause of action. Arbor's charter contains such a provision which eliminates directors' and officers' liability to the maximum extent permitted by Maryland law.

The charter authorizes Arbor to obligate itself and the bylaws obligate Arbor, to the maximum extent permitted by Maryland law, to indemnify any present or former director or officer of Arbor or any individual who, while a director or officer of Arbor and at the request of Arbor, serves or has served another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise as a director, officer, partner or trustee of such corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or other enterprise, from and against any claim or liability to which that person may become subject or which that person may incur by reason of his or her status in any of the foregoing capacities and to pay or reimburse their reasonable expenses in advance of final disposition of a proceeding. The charter and bylaws also permit Arbor to indemnify and advance expenses to any person who served a predecessor of Arbor in any of the capacities described above and to any employee or agent of Arbor or a predecessor of Arbor.

Maryland law requires a Maryland corporation (unless its charter provides otherwise, which Arbor's charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he is made a party by reason of his service in that capacity. Maryland law permits a Maryland corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under Maryland law, a Maryland corporation may not indemnify a director or officer for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses. In addition, Maryland law permits a Maryland corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the standard of conduct was not met.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the registrant pursuant to the foregoing provisions, the registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Arbor has also entered into agreements to indemnify its directors and executive officers to the maximum extent permitted by Maryland law, and pay such persons' expenses in defending any civil or criminal proceeding in advance of final disposition of such proceeding.

Item 21. Exhibits and Financial Statement Schedules.

(a)

Exhibits:

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	Articles Supplementary of 6.375% Series D Cumulative Redeemable Preferred Stock. ■
3.5	Articles Supplementary reclassifying and designating the authorized shares of 8.25% Series A Cumulative Redeemable Preferred Stock, 7.75% Series B Cumulative Redeemable Preferred Stock and 8.50% Series C Cumulative Redeemable Preferred Stock as additional shares of undesignated preferred stock of Arbor Realty Trust, Inc. ■■
3.6	Articles Supplementary designating Special Voting Preferred Stock. **
3.7	Amended and Restated Bylaws of Arbor Realty Trust, Inc. ▲▲
4.1	Form of Certificate for Common Stock. ****
4.2	Specimen 6.375% Series D Cumulative Redeemable Preferred Stock Certificate. ■■■
4.3	Indenture, dated March 13, 2018, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee. ◆
4.4	Indenture, dated July 3, 2018, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee. ◆◆
4.5	Indenture, dated July 20, 2018, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee. ◆◆◆
4.6	Indenture, dated November 12, 2019, between Arbor Realty Trust, Inc. and U.S. Bank National Association, as trustee. ◆◆◆◆
4.7	Indenture, dated as of April 30, 2021, between Arbor Realty Trust, Inc. and UMB Bank, NA, as trustee. ◆◆◆◆◆
4.8	Form of 5.00% Senior Note due 2026. ◆◆◆◆◆◆
5.1	Opinion of Skadden, Arps, Slate, Meagher & Flom LLP.
5.2	Opinion of Venable LLP.
10.1	Non-Competition Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Commercial Mortgage, LLC and Ivan Kaufman. **
10.2	Fourth Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated June 25, 2021, by and among Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Trust, Inc.
10.3	Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Commercial Mortgage, LLC. *
10.4	Form of Restricted Stock Agreement. *
10.5	Benefits Participation Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Management, LLC. *
10.6	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. ◆
10.7	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. ◆

Number	Description
10.8	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. ♦
10.9	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. ♦
10.10	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. ♦
10.11	Amended and restated Annual Incentive Agreement, dated March 31, 2017, by and between Arbor Realty Trust, Inc. and Ivan Kaufman. ▲ ▲ ▲
10.12	First Amendment to Amended and restated Annual Incentive Agreement, dated October 31, 2018, by and between Arbor Realty Trust, Inc. and Ivan Kaufman. ▲ ▲ ▲ ▲
10.13	Asset Purchase Agreement, dated February 25, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, ARSR Acquisition Company, LLC, Arbor Commercial Funding, LLC and Arbor Commercial Mortgage, LLC (the schedules are omitted pursuant to Item 601(b)(2) of Regulation S-K). ♣
10.14	Voting and Standstill Agreement, dated February 25, 2016, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC, Arbor Commercial Funding, LLC and the other Persons whose names appear on the signature pages hereto. ♣
10.15	Option Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc. and Arbor Commercial Mortgage, LLC. **
10.16	Amendment No. 1 to the Option Agreement, dated May 9, 2017, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc. and Arbor Commercial Mortgage, LLC. ***
10.17	Pairing Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Arbor Commercial Mortgage, LLC. **
10.18	Amended and Restated Limited Liability Company Operating Agreement of ARSR PE, LLC, dated July 14, 2016, by and between Arbor Multifamily Lending, LLC and Arbor Commercial Mortgage, LLC. **
10.19	Pooling and Servicing Agreement, dated as of May 1, 2020, by and among Arbor Private Label Depositor, LLC, Midland Loan Services and Wells Fargo Bank, National Association. ♣♣
10.20	Form of Registration Rights Agreement relating to the 5.00% Senior Notes due 2026, dated as of April 30, 2021, among Arbor Realty Trust, Inc. and the several purchasers of the Notes party thereto. ♦♦♦♦♦♦♦♦
21.1	List of Significant Subsidiaries of Arbor Realty Trust, Inc.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Richey, May & Co., LLP.
23.3	Consent of Skadden, Arps, Slate, Meagher & Flom LLP (contained in Exhibit 5.1).
23.4	Consent of Venable LLP (contained in Exhibit 5.2).
24.1	Powers of attorney (included in signature page).
25.1	Form T-1 Statement of Eligibility and Qualification under the Trust Indenture Act of 1939, as amended, of UMB Bank, NA.
99.1	Form Letter of Transmittal.

EXHIBIT INDEX

▲	Incorporated by reference to Quarterly Report on Form 10-Q for the quarter ended June 30, 2007.
▲ ▲	Incorporated by reference to Exhibit 3.1 of Form 8-K filed December 1, 2020.
▲ ▲ ▲	Incorporated by reference to Quarterly Report on Form 10-Q for the quarter ended March 31, 2017.
▲ ▲ ▲ ▲	Incorporated by reference to Annual Report on Form 10-K for the year ended December 31, 2018.
*	Incorporated by reference to Registration Statement on Form S-11 (No. 333-110472), as amended, filed November 13, 2003.
**	Incorporated by reference to Form 8-K filed July 15, 2016.
***	Incorporated by reference to Exhibit 1.1 of Form 8-K filed May 10, 2017.
****	Incorporated by reference to Registration Statement on Form S-11/A (No. 333-110472), as amended, filed December 31, 2003.
❖	Incorporated by reference to Quarterly Report on Form 10-Q for the quarter ended March 31, 2009.
♠	Incorporated by reference to Form 8-K filed March 2, 2016.
♠♠	Incorporated by reference to Quarterly Report on Form 10-Q for the quarter ended June 30, 2020.
■	Incorporated by reference to Exhibit 3.7 of Form 8-A filed June 2, 2021.
■ ■	Incorporated by reference to Exhibit 3.1 of Form 8-K filed June 28, 2021.
■ ■ ■	Incorporated by reference to Exhibit 4.1 of Form 8-A filed June 2, 2021.
◆	Incorporated by reference to Exhibit 4.1 of Form 8-K filed March 13, 2018.
◆ ◆	Incorporated by reference to Exhibit 4.1 of Form 8-K filed July 3, 2018.
◆ ◆ ◆	Incorporated by reference to Exhibit 4.1 of Form 8-K filed July 20, 2018.
◆ ◆ ◆ ◆	Incorporated by reference to Exhibit 4.1 of Form 8-K filed November 12, 2019.
◆ ◆ ◆ ◆ ◆	Incorporated by reference to Exhibit 4.1 of Form 8-K filed May 4, 2021.
◆ ◆ ◆ ◆ ◆ ◆	Incorporated by reference to Exhibit 4.2 of Form 8-K filed May 4, 2021.
◆ ◆ ◆ ◆ ◆ ◆ ◆	Incorporated by reference to Exhibit 10.1 of Form 8-K filed May 4, 2021.

Financial Statement Schedules:

All schedules for which provision is made in the applicable accounting regulations of the SEC have been omitted because they are not required, amounts which would otherwise be required to be shown with respect to any item are not material, are inapplicable or the required information has already been provided elsewhere or incorporated by reference in the registration statement.

Item 22. Undertakings.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation

from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(5) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 Act and will be governed by the final adjudication of such issue.

(6) That, for purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(7) That, for the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(8) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of this form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(9) To supply by means of post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on June 28, 2021.

ARBOR REALTY TRUST, INC.By: /s/ PAUL ELENIO

Paul Elenio
Chief Financial Officer

POWER OF ATTORNEY

We, the undersigned officers and directors of Arbor Realty Trust, Inc. hereby severally constitute and appoint Paul Elenio and John J. Bishar, and each of them singly, our true and lawful attorneys with full power to any of them, and to each of them singly, to sign for us and in our names in the capacities indicated below the Registration Statement on Form S-4 filed herewith and any and all amendments (including post-effective amendments) to said Registration Statement under the Securities Act of 1933, as amended, in connection with said Registration Statement, and to file or cause to be filed the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and generally to do all such things in our name and on our behalf in our capacities as officers and directors to enable Arbor Realty Trust, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming all that said attorneys, and each of them, or their substitute or substitutes, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ IVAN KAUFMAN</u> Ivan Kaufman	Chairman of the Board of Directors, Chief Executive Officer and President (Principal Executive Officer)	June 28, 2021
<u>/s/ PAUL ELENIO</u> Paul Elenio	Chief Financial Officer (Principal Financial and Accounting Officer)	June 28, 2021
<u>/s/ KENNETH J. BACON</u> Kenneth J. Bacon	Director	June 28, 2021
<u>/s/ ARCHIE R. DYKES</u> Archie R. Dykes	Director	June 28, 2021
<u>/s/ EDWARD FARRELL</u> Edward Farrell	Director	June 28, 2021
<u>/s/ WILLIAM C. GREEN</u> William C. Green	Director	June 28, 2021
<u>/s/ MELVIN F. LAZAR</u> Melvin F. Lazar	Director	June 28, 2021

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ JOSEPH MARTELLO</u> Joseph Martello	Director	June 28, 2021
<u>/s/ ELLIOT G. SCHWARTZ</u> Elliot G. Schwartz	Director	June 28, 2021
<u>/s/ GEORGE TSUNIS</u> George Tsunis	Director	June 28, 2021

[Letterhead of Skadden, Arps, Slate, Meagher & Flom LLP]

June 28, 2021

Arbor Realty Trust, Inc.
333 Earle Ovington Blvd
Suite 900
Uniondale, New York 11553

Re: Arbor Realty Trust, Inc. — Registration Statement on Form S-4

Ladies and Gentlemen:

We have acted as special United States counsel to Arbor Realty Trust, Inc., a Maryland corporation (the “Company”), in connection with the public offering of up to \$165,000,000 aggregate principal amount of the Company’s 5.00% Senior Notes due 2026 (the “Exchange Notes”) to be issued under the Indenture, dated as of April 30, 2021 (the “Indenture”) between the Company and UMB Bank, NA, as trustee (the “Trustee”).

The Exchange Notes are to be issued pursuant to an offer (the “Exchange Offer”) to exchange an aggregate principal amount of up to \$165,000,000 of the Exchange Notes, which have been registered under the Securities Act of 1933 (the “Securities Act”), for a like principal amount of the Company’s issued and outstanding 5.00% Senior Notes due 2026 (the “Original Notes”), as contemplated by the Registration Rights Agreement, dated as of April 30, 2021 (the “Registration Rights Agreement”), by and among the Company and the purchasers identified therein.

This opinion is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act of 1933 (the “Securities Act”).

In rendering the opinion stated herein, we have examined and relied upon the following:

- (a) the registration statement on Form S-4 of the Company relating to the Exchange Notes filed on the date hereof with the Securities and Exchange Commission (the “Commission”) under the Securities Act (such registration statement being hereinafter referred to as the “Registration Statement”);
 - (b) an executed copy of the Registration Rights Agreement;
 - (c) an executed copy of the Indenture;
-

(d) the form of global certificate to be used to evidence the Exchange Notes (the "Exchange Note Certificate") in the form included in the Indenture;

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinion stated below.

In our examination, we have assumed the genuineness of all signatures, including electronic signatures, the legal capacity and competency of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as facsimile, electronic, certified or photocopied copies, and the authenticity of the originals of such copies. As to any facts relevant to the opinion stated herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

We do not express any opinion with respect to the laws of any jurisdiction other than the laws of the State of New York (the "Opined-on Law").

As used herein, "Transaction Documents" means the Indenture and the Exchange Note Certificate.

Based upon the foregoing and subject to the qualifications and assumptions stated herein, we are of the opinion that when the Exchange Note Certificate has been duly executed by the Company and duly authenticated by the Trustee and issued and delivered by the Company upon consummation of the Exchange Offer against receipt of the Original Notes to be surrendered in exchange therefor in accordance with the terms of the Indenture, the Registration Rights Agreement and the Exchange Offer, the Exchange Note Certificate will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms under the laws of the State of New York.

The opinion stated herein is subject to the following qualifications:

(a) we do not express any opinion with respect to the effect on the opinion stated herein of any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer, preference and other similar laws or governmental orders affecting creditors' rights generally, and the opinions stated herein are limited by such laws and orders and by general principles of equity (regardless of whether enforcement is sought in equity or at law);

(b) we do not express any opinion with respect to any law, rule or regulation that is applicable to any party to any of the Transaction Documents or the transactions contemplated thereby solely because such law, rule or regulation is part of a regulatory regime applicable to any such party or any of its affiliates as a result of the specific assets or business operations of such party or such affiliates;

(c) except to the extent expressly stated in the opinion contained herein, we have assumed that each of the Transaction Documents constitutes the valid and binding obligation of each party to such Transaction Document, enforceable against such party in accordance with its terms;

(d) we do not express any opinion with respect to the enforceability of any provision contained in any Transaction Document relating to any indemnification, contribution, non-reliance, exculpation, release limitation or exclusion of remedies, waiver or other provisions having similar effect that may be contrary to public policy or violative of federal or state securities laws, rules or regulations, or to the extent any such provision purports to, or has the effect of, waiving or altering any statute of limitations;

(e) we call to your attention that irrespective of the agreement of the parties to any Transaction Document, a court may decline to hear a case on grounds of forum non conveniens or other doctrine limiting the availability of such court as a forum for resolution of disputes; in addition, we call to your attention that we do not express any opinion with respect to the subject matter jurisdiction of the federal courts of the United States of America in any action arising out of or relating to any Transaction Document; and

(f) to the extent that any opinion relates to the enforceability of the choice of New York law and choice of New York forum provisions contained in the Transaction Documents, the opinion stated herein is subject to the qualification that such enforceability may be subject to, in each case, (i) the exceptions and limitations in New York General Obligations Law sections 5-1401 and 5-1402 and (ii) principles of comity and constitutionality.

In addition, in rendering the foregoing opinion, we have assumed that, at all applicable times:

(a) the Company (i) was duly incorporated and was validly existing and in good standing, (ii) had requisite legal status and legal capacity under the laws of the jurisdiction of its organization and (iii) has complied and will comply with all aspects of the laws of the jurisdiction of its organization in connection with the transactions contemplated by, and the performance of its obligations under, the Transaction Documents;

(b) the Company had the corporate power and authority to execute, deliver and perform all its obligations under each of the Transaction Documents;

(c) each of the Transaction Documents has been duly authorized, executed and delivered by all requisite corporate action on the part of the Company;

(d) neither the execution and delivery by the Company of the Transaction Documents nor the performance by the Company of its obligations thereunder, including the issuance of the Exchange Notes: (i) conflicts or will conflict with the articles of incorporation or by-laws of the Company, (ii) constituted or will constitute a violation of, or a default under, any lease, indenture, agreement or other instrument to which the Company or its property is subject (except that we do not make the assumption set forth in this clause (ii) with respect to those agreements or instruments expressed to be governed by the laws of the State of New York which are listed in Part II of the Registration Statement or the Company's Annual Report on Form 10-K), (iii) contravened or will contravene any order or decree of any governmental authority to which the Company or its property is subject or (iv) violated or will violate any law, rule or regulation to which the Company or its property is subject (except that we do not make the assumption set forth in this clause (iv) with respect to the Opined-on Law); and

(e) neither the execution and delivery by the Company of the Transaction Documents nor the performance by the Company of its obligations thereunder, including the issuance of the Exchange Notes, required or will require the consent, approval, licensing or authorization of, or any filing, recording or registration with, any governmental authority under any law, rule or regulation of any jurisdiction.

We hereby consent to the filing of this opinion with the Commission as an exhibit to the Registration Statement. We also hereby consent to the reference to our firm under the heading "Legal Matters" in the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the Rules and Regulations. This opinion is expressed as of the date hereof unless otherwise expressly stated, and we disclaim any undertaking to advise you of any subsequent changes in the facts stated or assumed herein or of any subsequent changes in applicable laws.

Very truly yours,

/s/ Skadden, Arps, Slate, Meagher & Flom LLP

June 28, 2021

Arbor Realty Trust, Inc.
333 Earle Ovington Boulevard, Suite 900
Uniondale, New York 11553

Re: Registration Statement on Form S-4

Ladies and Gentlemen:

We have served as Maryland counsel to Arbor Realty Trust, Inc., a Maryland corporation (the "Company"), in connection with certain matters of Maryland law arising out of the filing of the above-referenced registration statement, and all amendments thereto (collectively, the "Registration Statement"), by the Company with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"), relating to the proposed issuance and offer to exchange up to \$165,000,000 in aggregate principal amount of the Company's new 5.00% Senior Notes due 2026 (the "Exchange Securities") for a like aggregate principal amount of outstanding 5.00% Senior Notes due 2026 (the "Original Securities"). The Exchange Securities are to be issued pursuant to the Indenture (as defined below).

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement, and the related form of prospectus included therein, substantially in the form in which it was transmitted to the Commission under the 1933 Act, related to the offering of the Exchange Securities;
 2. The charter of the Company, certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
 3. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;
 4. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;
-

5. Resolutions adopted by the Board of Directors of the Company relating to authorization of (a) the sale and issuance of the Original Securities and (b) the issuance of the Exchange Securities, certified as of the date hereof by an officer of the Company;
6. The Indenture, dated as of April 30, 2021 (the "Indenture"), by and between the Company and UMB Bank, NA, as trustee;
7. A certificate executed by an officer of the Company, dated as of the date hereof; and
8. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
 2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
 3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.
 4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.
 5. The Exchange Securities, if and when issued, will have substantially identical terms as the Original Securities and will be issued in exchange therefor as contemplated by the Indenture and the Registration Statement.
-

The phrase "known to us" is limited to the actual knowledge, without independent inquiry, of the lawyers at our firm who have performed legal services in connection with the transactions covered by, and the issuance of, this opinion.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Company is a corporation duly incorporated and validly existing under the laws of the State of Maryland and is in good standing with the SDAT.
2. The Company has the corporate power to enter into and perform its obligations under the Indenture and the Exchange Securities.
3. The execution and delivery by the Company of the Indenture and the Exchange Securities and the issuance of the Exchange Securities have been duly authorized by all necessary corporate action on the part of the Company.
4. The Indenture has been duly executed and, so far as is known to us, delivered by the Company.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning federal law or the laws of any other state. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers or the laws, codes or regulations of any municipality or other local jurisdiction. We note that the Indenture is governed by the laws of the State of New York. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Registration Statement. We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP

FOURTH AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
ARBOR REALTY LIMITED PARTNERSHIP
a Delaware limited partnership

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

dated as of June 25, 2021

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

THIS FOURTH AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ARBOR REALTY LIMITED PARTNERSHIP (the "Partnership"), dated as of June 25, 2021, is entered into by and among ARBOR REALTY GPOP, INC., a Delaware corporation (the "General Partner"), ARBOR REALTY LPOP, INC., a Delaware corporation (the "Initial Limited Partner"), ARBOR COMMERCIAL MORTGAGE, LLC, a New York limited liability company ("ACM"), and ARBOR REALTY TRUST, INC., a Maryland corporation (the "Parent REIT").

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

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

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

WHEREAS, the General Partner, the Initial Limited Partner, the Parent REIT and ACM entered into that certain Second Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated as of January 18, 2005 (the "Second Amended Partnership Agreement"), in order to allow for the transfer of assets from the Partnership to Arbor Realty SR, Inc., a Maryland corporation;

WHEREAS, in June 2008, all of ACM's interests in the Partnership were redeemed and ACM ceased to be a Limited Partner;

WHEREAS, pursuant to that certain Asset Purchase Agreement, dated as of February 25, 2016, by and among the Partnership, ARSR Acquisition Company, LLC, a Delaware limited liability company, the Parent REIT, Arbor Commercial Funding, LLC, a New York limited liability company, and ACM, the General Partner, the Initial Limited Partner, ACM and the Parent REIT entered into that certain Third Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated as of July 14, 2016 (the "Third Amended Partnership Agreement"), to admit ACM as a Limited Partner; and

WHEREAS, the parties hereto desire to amend and restate the Third Amended Partnership Agreement to provide for (i) the issuance by the Partnership of additional Partnership Units to the General Partner and the Initial Limited Partner, designated as Series D Preferred Units, in connection with the issuance by the Parent REIT of 9,200,000 shares of its 6.375% Series D Cumulative Redeemable Preferred Stock, \$0.01 par value per share, and the contribution of the proceeds therefrom to the Partnership, and (ii) the redemption by the Partnership of all outstanding Series A Preferred Units, Series B Preferred Units and Series C Preferred Units in connection with the redemption of all outstanding shares of the Parent REIT's 8.25% Series A Cumulative Redeemable Preferred Stock, \$0.01 par value per share, 7.75% Series B Cumulative Redeemable Preferred Stock, \$0.01 par value per share, and 8.50% Series C Cumulative Redeemable Preferred Stock, \$0.01 par value per share.

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

ARTICLE I

DEFINED TERMS

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

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

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

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

"Additional Limited Partner" means a Person who is admitted to the Partnership as a Limited Partner pursuant to Section 4.2 and Section 12.2 hereof and who is shown as such on the books and records of the Partnership, and who has not ceased to be a Limited Partner pursuant to the Act or this Agreement.

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

- (a) decrease such deficit by any amounts that such Partner is obligated to restore pursuant to this Agreement or by operation of law upon liquidation of such Partner's Partnership Interest or is deemed to be obligated to restore pursuant to the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and
- (b) increase such deficit by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

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

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

- (a) the Parent REIT (i) declares or pays a dividend on its outstanding REIT Shares in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares in REIT Shares, (ii) splits or subdivides its outstanding REIT Shares or (iii) effects a reverse stock split or otherwise combines its outstanding REIT Shares into a smaller number of REIT Shares, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction, (1) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination (assuming for such purposes that such dividend, distribution, split, subdivision, reverse split or combination has occurred as of such time) and (2) the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination;

- (b) the Parent REIT distributes any rights, options or warrants to all holders of its REIT Shares to subscribe for or to purchase or to otherwise acquire REIT Shares (or other securities or rights convertible into, exchangeable for or exercisable for REIT Shares) at a price per share less than the Value of a REIT Share on the record date for such distribution (each a "Distributed Right"), then, as of the distribution date of such Distributed Rights or, if later, the time such Distributed Rights become exercisable, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction (i) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the time such Distributed Rights become exercisable) plus the maximum number of REIT Shares purchasable under such Distributed Rights and (ii) the denominator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the time such Distributed Rights become exercisable) plus a fraction (1) the numerator of which is the maximum number of REIT Shares purchasable under such Distributed Rights times the minimum purchase price per REIT Share under such Distributed Rights and (2) the denominator of which is the Value of a REIT Share as of the record date (or, if later, the time such Distributed Rights become exercisable); provided, however, that, if any such Distributed Rights expire or become no longer exercisable, then the Adjustment Factor shall be adjusted, effective retroactive to the date of distribution (or, if later, the time such Distributed Rights became exercisable) of the Distributed Rights, to reflect a reduced maximum number of REIT Shares or any change in the minimum purchase price for the purposes of the above fraction; and
- (c) the Parent REIT shall, by dividend or otherwise, distribute to all holders of its REIT Shares evidences of its indebtedness or assets (including securities, but excluding any dividend or distribution referred to in subsection (a) above), which evidences of indebtedness or assets relate to assets not received by the Parent REIT pursuant to a pro rata distribution by the Partnership, then the Adjustment Factor shall be adjusted to equal the amount determined by multiplying the Adjustment Factor in effect immediately prior to the close of business on the date fixed for determination of shareholders entitled to receive such distribution by a fraction (i) the numerator of which shall be such Value of a REIT Share on the date fixed for such determination and (ii) the denominator of which shall be the Value of a REIT Share on the dates fixed for such determination less the then fair market value (as determined by the General Partner, whose determination shall be conclusive) of the portion of the evidences of indebtedness or assets so distributed applicable to one REIT Share.

Notwithstanding the foregoing, if any of the events in clause (a), (b) or (c) above occur, no adjustments will be made to the Adjustment Factor for any class or series of Partnership Interests to the extent that the Partnership concurrently makes or effects a correlative distribution or payment to all of the Partners holding Partnership Interests of such class or series, or effects a correlative split, subdivision, reverse split or combination in respect of the Partnership Interests of such class or series. If the Parent REIT effects a dividend that allows holders of REIT Shares to elect to receive cash or additional REIT Shares, the Partnership may effect a correlative distribution by distributing to all Partners holding Partnership Interests of such class or series a combination of cash and additional Partnership Interests in the same ratio as the ratio of cash and REIT Shares paid by the Parent REIT (in the aggregate), without offering Partners an opportunity to elect to receive cash or additional Partnership Interests. Any adjustments to the Adjustment Factor shall become effective immediately after the effective date of such event, retroactive to the record date, if any, for such event, provided, however, that any Limited Partner may waive, by written notice to the General Partner, the effect of any adjustment to the Adjustment Factor applicable to the Partnership Common Units held by such Limited Partner, and, thereafter, such adjustment will not be effective as to such Partnership Common Units. For illustrative purposes, examples of adjustments to the Adjustment Factor are set forth on Exhibit B attached hereto.

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

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

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

"Appraisal" means, with respect to any assets, the written opinion of an independent third party experienced in the valuation of similar assets, selected by the General Partner in good faith. Such opinion may be in the form of an opinion by such independent third party that the value for such property or asset as set by the General Partner is fair, from a financial point of view, to the Partnership.

"Assignee" means a Person to whom one or more Partnership Common Units have been Transferred in a manner permitted under this Agreement, but who has not become a Substituted Limited Partner, and who has the rights set forth in Section 11.5 hereof.

"Available Cash" means, with respect to any period for which such calculation is being made,

- (a) the sum, without duplication, of:
 - (i) the Partnership's Net Income or Net Loss (as the case may be) for such period,
 - (ii) Depreciation and all other noncash charges to the extent deducted in determining Net Income or Net Loss for such period,
 - (iii) the amount of any reduction in reserves of the Partnership referred to in clause (b)(vi) below (including, without limitation, reductions resulting because the General Partner determines such amounts are no longer necessary),
 - (iv) the excess, if any, of the net cash proceeds from the sale, exchange, disposition, financing or refinancing of Property for such period over the gain (or loss, as the case may be), if any, recognized from such sale, exchange, disposition, financing or refinancing during such period (excluding Terminating Capital Transactions), and
 - (v) all other cash received (including amounts previously accrued as Net Income and amounts of deferred income) or any net amounts borrowed by the Partnership for such period that was not included in determining Net Income or Net Loss for such period;
- (b) less the sum, without duplication, of:
 - (i) all principal debt payments made during such period by the Partnership,
 - (ii) capital expenditures made by the Partnership during such period,
 - (iii) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clause (b)(i) or clause (b)(ii) above,
 - (iv) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period (including amounts paid in respect of expenses previously accrued),
 - (v) any amount included in determining Net Income or Net Loss for such period that was not received by the Partnership during such period,
 - (vi) the amount of any increase in reserves (including, without limitation, working capital reserves) established during such period that the General Partner determines are necessary or appropriate in its sole and absolute discretion, and
 - (vii) any amount distributed or paid in redemption of any Limited Partner Interest or Partnership Units including, without limitation, any Cash Amount paid.
 - (viii) Notwithstanding the foregoing, Available Cash shall not include (1) any cash received or reductions in reserves, or take into account any disbursements made, or reserves established, after dissolution and the commencement of the liquidation and winding up of the Partnership or (2) any Capital Contributions, whenever received.

"Business Day," means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Capital Account" means, with respect to any Partner, the Capital Account maintained by the General Partner for such Partner on the Partnership's books and records in accordance with the following provisions:

- (a) To each Partner's Capital Account, there shall be added such Partner's Capital Contributions, such Partner's distributive share of Net Income and any items in the nature of income or gain that are specially allocated pursuant to Section 6.3 hereof, and the principal amount of any Partnership liabilities assumed by such Partner or that are secured by any property distributed to such Partner.
- (b) From each Partner's Capital Account, there shall be subtracted the amount of cash and the Gross Asset Value of any property distributed to such Partner pursuant to any provision of this Agreement, such Partner's distributive share of Net Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 6.3 hereof, and the principal amount of any liabilities of such Partner assumed by the Partnership or that are secured by any property contributed by such Partner to the Partnership.
- (c) In the event any interest in the Partnership is Transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Transferred interest.
- (d) In determining the principal amount of any liability for purposes of subsections (a) and (b) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.
- (e) The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Regulations. If the General Partner shall determine that it is prudent to modify the manner in which the Capital Accounts are maintained in order to comply with such Regulations, the General Partner may make such modification provided that such modification will not have a material effect on the amounts distributable to any Partner without such Partner's Consent. The General Partner also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Partners and the amount of Partnership capital reflected on the Partnership's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2.

"Capital Account Deficit" has the meaning set forth in Section 13.2C hereof.

"Capital Contribution" means, with respect to any Partner, the amount of money and the initial Gross Asset Value of any Contributed Property that such Partner contributes to the Partnership pursuant to Section 4.1, 4.2 or 4.3 hereof or is deemed to contribute pursuant to Section 4.4 hereof or as set forth in any Partnership Unit Designation.

"Cash Amount" means, with respect to a Tendering Party, an amount of cash equal to the product of (A) the Value of a REIT Share and (B) such Tendering Party's REIT Shares Amount determined as of the date of receipt by the General Partner of such Tendering Party's Notice of Redemption or, if such date is not a Business Day, the immediately preceding Business Day; provided, however, that,

- (a) in the event of a Declination not followed by an Offering Funding, the Cash Amount shall be an amount of cash equal to the product of (i) 100% minus such Tendering Party's Applicable Percentage, and (ii) the product of the amounts contemplated by clauses (A) and (B) above, and
- (b) in the event of a Declination followed by an Offering Funding, the Cash Amount shall be an amount of cash equal to the product of: (i) the amount contemplated by clause (B) above, (ii) 100% minus such Tendering Party's Applicable Percentage, and (iii) the Offering Value. The term "Offering Value" shall be the quotient obtained by dividing the Offering Funding Amount by the number of Offering Funding Shares sold in such Offering Funding.

"Certificate" means the Certificate of Limited Partnership of the Partnership filed in the office of the Secretary of State of the State of Delaware, as amended from time to time in accordance with the terms hereof and the Act.

"Charter" means the Articles of Incorporation of the Parent REIT filed with the State Department of Assessments and Taxation of Maryland, as amended, supplemented or restated from time to time.

"Closing Price" has the meaning set forth in the definition of "Value."

"Code" means the Internal Revenue Code of 1986, as amended and in effect from time to time or any successor statute thereto, as interpreted by the applicable Regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"Company Employees" means the employees of the Partnership, the Parent REIT and any of their subsidiaries.

"Consent" means the consent to, approval of, or vote in favor of a proposed action by a Partner given in accordance with Article XIV hereof.

"Consent of the Limited Partners" means the Consent of a Majority in Interest of the Limited Partners, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by a Majority in Interest of the Limited Partners.

"Contributed Property" means each item of Property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Partnership (or deemed contributed by the Partnership to a "new" partnership pursuant to Code Section 708).

"Controlled Entity" means, as to any Limited Partner, (a) any corporation more than fifty percent (50%) of the outstanding voting stock of which is owned by such Limited Partner or such Limited Partner's Family Members, (b) any trust, whether or not revocable, of which such Limited Partner or such Limited Partner's Family Members are the sole beneficiaries, (c) any partnership of which such Limited Partner is the managing partner and in which such Limited Partner or such Limited Partner's Family Members hold partnership interests representing at least twenty-five percent (25%) of such partnership's capital and profits and (d) any limited liability company of which such Limited Partner is the manager or managing member and in which such Limited Partner or such Limited Partner's Family Members hold membership interests representing at least twenty-five percent (25%) of such limited liability company's capital and profits.

"Cut-Off Date" means the fifth (5th) Business Day after the General Partner's receipt of a Notice of Redemption.

"Debt" means, as to any Person, as of any date of determination, (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (b) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; (c) all indebtedness for borrowed money or for the deferred purchase price of property or services secured by any lien on any property owned by such Person, to the extent attributable to such Person's interest in such property, even though such Person has not assumed or become liable for the payment thereof; and (d) lease obligations of such Person that, in accordance with generally accepted accounting principles, should be capitalized.

"Declination" has the meaning set forth in Section 8.6D hereof.

"Depreciation" means, for each Partnership Year or other applicable period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or period, Depreciation shall be in an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the General Partner.

"Distributed Right" has the meaning set forth in the definition of "Adjustment Factor."

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Family Members" means, as to a Person that is an individual, such Person's spouse, ancestors, descendants (whether by blood or by adoption), brothers and sisters and inter vivos or testamentary trusts of which only such Person and his spouse, ancestors, descendants (whether by blood or by adoption), brothers and sisters are beneficiaries.

"Funding Debt" means any Debt incurred by or on behalf of the Parent REIT for the purpose, in whole or in part, of providing funds to the Partnership.

"General Partner" means Arbor Realty GPOP, Inc., a Delaware corporation, and its successors and assigns, as the general partner of the Partnership in their capacities as general partner of the Partnership; provided, however, that as the context requires, references herein to the General Partner shall also mean the General Partner's corporate parent, the Parent REIT.

"General Partner Interest" means the Partnership Interest held by the General Partner, which Partnership Interest is an interest as a general partner under the Act. A General Partner Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or any other Partnership Units.

"General Partner Loan" has the meaning set forth in Section 4.3D hereof.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

- (a) The initial Gross Asset Value of any asset contributed by a Partner to the Partnership shall be the gross fair market value of such asset as determined by the General Partner and agreed to by the contributing Partner. In any case in which the General Partner and the contributing Partner are unable to agree as to the gross fair market value of any contributed asset or assets, such gross fair market value shall be determined by Appraisal.

- (b) The Gross Asset Values of all Partnership assets immediately prior to the occurrence of any event described in clause (i), clause (ii), clause (iii), clause (iv) or clause (v) hereof shall be adjusted to equal their respective gross fair market values, as determined by the General Partner using such reasonable method of valuation as it may adopt, as of the following times:
- (i) the acquisition of an additional interest in the Partnership (other than in connection with the execution of this Agreement but including, without limitation, acquisitions pursuant to Section 4.2 hereof or contributions or deemed contributions by the General Partner pursuant to Section 4.2 hereof) by a new or existing Partner in exchange for more than a de minimis Capital Contribution or the grant of an interest in the Partnership (other than a de minimis interest) as consideration for the provision of services to or for the benefit of the Partnership, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;
 - (ii) the distribution by the Partnership to a Partner of more than a de minimis amount of Property as consideration for an interest in the Partnership, if the General Partner reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Partners in the Partnership;
 - (iii) the liquidation of the Partnership within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);
 - (iv) upon the admission of a successor General Partner pursuant to Section 12.1 hereof; and
 - (v) at such other times as the General Partner shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.
- (c) The Gross Asset Value of any Partnership asset distributed to a Partner shall be the gross fair market value of such asset on the date of distribution as determined by the distributee and the General Partner provided that, if the distributee is the General Partner or if the distributee and the General Partner cannot agree on such a determination, such gross fair market value shall be determined by Appraisal.
- (d) The Gross Asset Values of Partnership assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the General Partner reasonably determines that an adjustment pursuant to subsection (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).
- (e) If the Gross Asset Value of a Partnership asset has been determined or adjusted pursuant to subsection (a), subsection (b) or subsection (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

"Holder" means either (a) a Partner or (b) an Assignee, owning a Partnership Unit, that is treated as a member of the Partnership for federal income tax purposes.

"**Incapacity**" or "**Incapacitated**" means, (a) as to any Partner who is an individual, death, total physical disability or entry by a court of competent jurisdiction adjudicating such Partner incompetent to manage his or her person or his or her estate; (b) as to any Partner that is a corporation or limited liability company, the filing of a certificate of dissolution, or its equivalent, or the revocation of the corporation's charter; (c) as to any Partner that is a partnership, the dissolution and commencement of winding up of the partnership; (d) as to any Partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the Partnership; (e) as to any trustee of a trust that is a Partner, the termination of the trust (but not the substitution of a new trustee); or (f) as to any Partner, the bankruptcy of such Partner. For purposes of this definition, bankruptcy of a Partner shall be deemed to have occurred when (i) the Partner commences a voluntary proceeding seeking liquidation, reorganization or other relief of or against such Partner under any bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) the Partner is adjudged as bankrupt or insolvent, or a final and nonappealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Partner, (iii) the Partner executes and delivers a general assignment for the benefit of the Partner's creditors, (iv) the Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in any proceeding of the nature described in clause (ii) above, (v) the Partner seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for the Partner or for all or any substantial part of the Partner's properties, (vi) any proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof, (vii) the appointment without the Partner's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment, or (viii) an appointment referred to in clause (vii) above is not vacated within ninety (90) days after the expiration of any such stay.

"**Indemnitee**" means (a) any Person made a party to a proceeding by reason of its status as (i) the General Partner, (ii) the Parent REIT or (iii) a director of the General Partner or the Parent REIT or an officer or employee of the Partnership, the Parent REIT or the General Partner and (b) such other Persons (including Affiliates of the General Partner or the Partnership) as the General Partner may designate from time to time (whether before or after the event giving rise to potential liability), in its sole and absolute discretion.

"**Independent Director**" shall have the meaning assigned to such term under the rules and regulations of the principal national securities exchange or interdealer quotation system on which the REIT Shares are now listed.

"**Initial Limited Partner**" means Arbor Realty LPOP, Inc., a Delaware corporation.

"**Interest**" means interest, original issue discount and other similar payments or amounts paid by the Partnership for the use or forbearance of money.

"**IRS**" means the Internal Revenue Service, which administers the internal revenue laws of the United States.

"**Junior Share**" means a share of capital stock of the Parent REIT now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are inferior or junior to the REIT Shares.

"**Limited Partner**" means any Person named as a Limited Partner in Exhibit A attached hereto, as such Exhibit A may be amended from time to time, or any Substituted Limited Partner or Additional Limited Partner, in such Person's capacity as a Limited Partner in the Partnership.

"**Limited Partner Interest**" means a Partnership Interest of a Limited Partner in the Partnership representing a fractional part of the Partnership Interests of all Limited Partners and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Limited Partner Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or other Partnership Units.

"**Liquidating Event**" has the meaning set forth in [Section 13.1](#) hereof.

"**Liquidator**" has the meaning set forth in [Section 13.2A](#) hereof.

"**Majority in Interest of the Limited Partners**" means Limited Partners (excluding any Limited Partner that is directly or indirectly wholly-owned by the Parent REIT) holding more than fifty percent (50%) of the outstanding Partnership Common Units held by all Limited Partners (excluding any Limited Partner that is directly or indirectly wholly-owned by the Parent REIT).

"Market Price" has the meaning set forth in the definition of "Value."

"Net Income" or "Net Loss" means, for each Partnership Year of the Partnership, an amount equal to the Partnership's taxable income or loss for such year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (a) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss" shall be added to (or subtracted from, as the case may be) such taxable income (or loss);
- (b) Any expenditure of the Partnership described in Code Section 705(a)(2)(B) or treated as a Code Section 705(a)(2)(B) expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss," shall be subtracted from (or added to, as the case may be) such taxable income (or loss);
- (c) In the event the Gross Asset Value of any Partnership asset is adjusted pursuant to subsection (b) or subsection (c) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;
- (d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;
- (e) In lieu of the depreciation, amortization and other cost recovery deductions that would otherwise be taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Partnership Year;
- (f) To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Partner's interest in the Partnership, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss; and
- (g) Notwithstanding any other provision of this definition of "Net Income" or "Net Loss," any item that is specially allocated pursuant to Section 6.3 hereof shall not be taken into account in computing Net Income or Net Loss. The amounts of the items of Partnership income, gain, loss or deduction available to be specially allocated pursuant to Section 6.3 hereof shall be determined by applying rules analogous to those set forth in this definition of "Net Income" or "Net Loss."

"New Partnership Audit Procedures" means Subchapter C of Chapter 63 of Subtitle F of the Code, as modified by Section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, and any successor statutes thereto or Regulations promulgated thereunder.

"New Securities" means (a) any rights, options, warrants or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or Preferred Shares, excluding Preferred Shares, Junior Shares and grants under the Stock Option Plans, or (b) any Debt issued by the General Partner that provides any of the rights described in clause (a).

"Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"Nonrecourse Liability" has the meaning set forth in Regulations Section 1.752-1(a)(2).

"Notice of Redemption" means the Notice of Redemption substantially in the form of Exhibit C attached to this Agreement.

"Offering Funding" has the meaning set forth in Section 8.6D(2) hereof.

"Offering Funding Amount" means the dollar amount equal to (a) the product of (i) the number of Offering Funding Shares sold in an Offering Funding and (ii) the offering price per share of such Offering Funding Shares in such Offering Funding, less (b) the aggregate underwriting discounts and commissions in such Offering Funding.

"Offering Funding Shares" has the meaning set forth in Section 8.6D(2) hereof.

"Ownership Limit" means the applicable restriction or restrictions on ownership of shares of the Parent REIT imposed under the Charter.

"Paired Common Unit" has the meaning set forth in the Pairing Agreement.

"Pairing Agreement" means the Pairing Agreement by and among the Parent REIT, the Partnership, and ACM, dated as of July 14, 2016.

"Parent REIT" means Arbor Realty Trust, Inc., a Maryland corporation that intends to be taxed as a REIT and the corporate parent of the General Partner and the Initial Limited Partner.

"Partner" means the General Partner or a Limited Partner, and "Partners" means the General Partner and the Limited Partners.

"Partner Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"Partner Nonrecourse Debt" has the meaning set forth in Regulations Section 1.704-2(b)(4).

"Partner Nonrecourse Deductions" has the meaning set forth in Regulations Section 1.704-2(i)(2), and the amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2).

"Partnership" means the limited partnership formed under the Act and pursuant to this Agreement, and any successor thereto.

"Partnership Common Unit" means a fractional share of the Partnership Interests of all Partners issued pursuant to Sections 4.1 and 4.2 hereof, but does not include any Partnership Preferred Unit or any other Partnership Unit specified in a Partnership Unit Designation or this Agreement as being other than a Partnership Common Unit; provided, however, that the General Partner Interest and the Limited Partner Interests shall have the differences in rights and privileges as specified in this Agreement. The ownership of Partnership Common Units may (but need not, in the sole and absolute discretion of the General Partner) be evidenced by the form of certificate for Partnership Common Units attached hereto as Exhibit D.

"Partnership Interest" means an ownership interest in the Partnership held by either a Limited Partner or the General Partner and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Partnership Interest may be expressed as a number of Partnership Common Units, Partnership Preferred Units or other Partnership Units.

"Partnership Junior Unit" means a fractional share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1 or Section 4.2 or Section 4.3 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are inferior or junior to the Partnership Common Units.

"Partnership Minimum Gain" has the meaning set forth in Regulations Section 1.704-2(b)(2), and the amount of Partnership Minimum Gain, as well as any net increase or decrease in Partnership Minimum Gain, for a Partnership Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

"Partnership Preferred Unit" means a fractional share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1, Section 4.2 or Section 4.3 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Partnership Common Units.

"Partnership Record Date" means a record date established by the General Partner for the distribution of Available Cash pursuant to Section 5.1 hereof, which record date shall generally be the same as the record date established by the General Partner for a distribution to its shareholders of some or all of its portion of such distribution.

"Partnership Unit" shall mean a Partnership Common Unit, a Partnership Preferred Unit, a Partnership Junior Unit or any other fractional share of the Partnership Interests that the General Partner has authorized pursuant to Section 4.1, Section 4.2 or Section 4.3 hereof.

"Partnership Unit Designation" shall have the meaning set forth in Section 4.2 hereof.

"Partnership Year" means the fiscal year of the Partnership, which shall be the calendar year.

"Percentage Interest" means, as to each Partner, its interest, if any, in the Partnership Common Units as determined by dividing the Partnership Common Units owned by such Partner by the total number of Partnership Common Units then outstanding as specified in Exhibit A attached hereto, as such Exhibit may be amended from time to time. To the extent that the Partnership issues more than one class or series of Partnership Interests, the interest of such class or series shall be determined as set forth in this Agreement or any amendment hereto.

"Person" means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

"Preferred Share" means a share of capital stock of the Parent REIT now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the REIT Shares.

"Primary Offering Notice" has the meaning set forth in Section 8.6F(4) hereof.

"Property" or "Properties" means any assets and property of the Partnership such as, but not limited to, interests in real property and personal property, including, without limitation, fee interests, interests in ground leases, interests in limited liability companies, joint ventures or partnerships, interests in mortgages, and Debt instruments as the Partnership may hold from time to time and "Property" shall mean any one such asset or property.

"Publicly Traded" means having common equity securities listed or admitted to trading on any U.S. national securities exchange.

"Qualified REIT Subsidiary" means a qualified REIT subsidiary of the Parent REIT within the meaning of Code Section 856(i)(2).

"Qualified Transferee" means an "accredited investor" as defined in Rule 501 promulgated under the Securities Act.

"Qualifying Party" means (a) a Limited Partner, (b) an Additional Limited Partner, or (c) a Substituted Limited Partner succeeding to all or part of a Limited Partner Interest of (i) a Limited Partner, or (ii) an Additional Limited Partner, in each case other than the Initial Limited Partner.

"Redemption" has the meaning set forth in Section 8.6A hereof.

"Regulations" means the applicable income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Regulatory Allocations" has the meaning set forth in Section 6.3B(8) hereof.

"REIT" means a real estate investment trust qualifying under Code Section 856.

"REIT Consideration" means the aggregate number of REIT Shares equal to the product of the REIT Shares Amount and the Applicable Percentage.

"REIT Party" means the Parent REIT, the General Partner, the Initial Limited Partner or any Qualified REIT Subsidiary.

"REIT Payment" has the meaning set forth in Section 15.11 hereof.

"REIT Requirements" means the requirements for qualification as a REIT under the Code and regulations, including, without limitation, the distribution requirements contained in Section 857(a) of the Code.

"REIT Share" means a share of the Parent REIT's Common Stock, par value \$.01 per share.

"REIT Shares Amount" means a number of REIT Shares equal to the product of (a) the number of Tendered Units and (b) the Adjustment Factor in effect on the Specified Redemption Date with respect to such Tendered Units; provided, however, that, in the event that the Parent REIT issues to all holders of REIT Shares as of a certain record date rights, options, warrants or convertible or exchangeable securities entitling the Parent REIT's shareholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, the "Rights"), with the record date for such Rights issuance falling within the period starting on the date of the Notice of Redemption and ending on the day immediately preceding the Specified Redemption Date, which Rights will not be distributed before the relevant Specified Redemption Date, then the REIT Shares Amount shall also include such Rights that a holder of that number of REIT Shares would be entitled to receive, expressed, where relevant hereunder, in a number of REIT Shares determined by the General Partner in good faith.

"Related Party" means, with respect to any Person, any other Person whose ownership of shares of the General Partner's capital stock would be attributed to the first such Person under Code Section 544 (as modified by Code Section 856(h)(1)(B)).

"Rights" has the meaning set forth in the definition of "REIT Shares Amount."

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Services Agreement" means any management, development or advisory agreement with a property and/or asset manager for the provision of property management, asset management, leasing, development and/or similar services with respect to the Properties and any agreement for the provision of services of accountants, legal counsel, appraisers, insurers, brokers, transfer agents, registrars, developers, financial advisors and other professional services.

"Single Funding Notice" has the meaning set forth in Section 8.6D(3) hereof.

"Special Preferred Units" have the meaning set forth in Section 4.10 hereof.

"Special Voting Preferred Stock" means shares of Special Voting Preferred Stock, \$0.01 par value per share, of Parent REIT, as designated by articles supplementary to the Charter and subject to the Pairing Agreement.

"Specified Redemption Date" means the later of (a) the tenth (10th) Business Day after the receipt by the General Partner of a Notice of Redemption or (b) in the case of a Declination followed by an Offering Funding, the Business Day next following the date of the closing of the Offering Funding; provided, however, that no Specified Redemption Date with respect to any Partnership Common Units shall occur during the Twelve-Month Period applicable to such Partnership Common Units; provided, further, that the Specified Redemption Date, as well as the closing of a Redemption, or an acquisition of Tendered Units by a REIT Party pursuant to Section 8.6B hereof, on any Specified Redemption Date, may be deferred, in the REIT Party's sole and absolute discretion, for such time (but in any event not more than one hundred fifty (150) days in the aggregate) as may reasonably be required to effect, as applicable, (i) an Offering Funding or other necessary funding arrangements, (ii) compliance with the Securities Act or other law (including, but not limited to, (1) state "blue sky" or other securities laws and (2) the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended) and (iii) satisfaction or waiver of other commercially reasonable and customary closing conditions and requirements for a transaction of such nature.

"Stock Option Plan" means any stock option plan hereafter adopted by the Partnership or the Parent REIT.

"Subsidiary" means, with respect to any Person, any other Person (which is not an individual) of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests is owned, directly or indirectly, by such Person.

"Substituted Limited Partner" means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 11.4 hereof.

"Successor Shares Amount" has the meaning set forth in Section 11.2D(3) hereof.

"Surviving Partnership" has the meaning set forth in Section 11.2D(3) hereof.

"Tax Items" has the meaning set forth in Section 6.4A hereof.

"Tendered Units" has the meaning set forth in Section 8.6A hereof.

"Tendering Party" has the meaning set forth in Section 8.6A hereof.

"Terminating Capital Transaction" means any sale or other disposition of all or substantially all of the assets of the Partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Partnership; except that sales or other dispositions of assets to a Subsidiary will not be deemed a Terminating Capital Transaction.

"Termination Transaction" means any Transfer of all or any portion of the Parent REIT's interest in the General Partner in connection with, or the other occurrence of, (a) a merger, consolidation or other combination involving the Parent REIT and any other Person, (b) a sale, lease, exchange or other transfer of all or substantially all of the assets of the Parent REIT not in the ordinary course of its business, whether in a single transaction or a series of related transactions, (c) a reclassification, recapitalization or change of the outstanding REIT Shares (other than a change in par value, or from par value to no par value, or as a result of a stock split, stock dividend or similar subdivision), (d) the adoption of any plan of liquidation or dissolution of the Parent REIT, or (e) a Transfer of all or any portion of the Parent REIT's interest in the General Partner; provided, however, that a Termination Transaction shall not include any Transfer effected in accordance with Section 11.1C or Section 11.2C.

"Transaction Consideration" has the meaning set forth in Section 11.2D(2) hereof.

"Transfer," when used with respect to a Partnership Unit, or all or any portion of a Partnership Interest, means any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary or involuntary or by operation of law; provided, however, that when the term is used in Article XI hereof, "Transfer" does not include (a) any Redemption of Partnership Common Units by the Partnership, or acquisition of Tendered Units by a REIT Party, pursuant to Section 8.6 hereof or (b) any redemption of Partnership Units pursuant to any Partnership Unit Designation. The terms "Transferred" and "Transferring" have correlative meanings.

"Twelve-Month Period" means, as to any Partnership Interest, a twelve-month period ending on the day before the first (1st) anniversary of a Qualifying Party's first becoming a Holder of such Partnership Interest; provided, however, that the General Partner may, by written agreement with a Qualifying Party, shorten or lengthen the Twelve-Month Period to a period that is shorter or longer than twelve (12) months with respect to a Qualifying Party.

"Unitholder" means the General Partner or any Holder of Partnership Units.

"Value" means, on any date of determination with respect to a REIT Share, the average of the daily Market Prices for ten (10) consecutive trading days immediately preceding the date of determination except that, as provided in Section 4.4B, hereof, the Market Price for the trading day immediately preceding the date of exercise of a stock option under any Stock Option Plans shall be substituted for such average of daily market prices for purposes of Section 4.4 hereof; provided, however, that for purposes of Section 8.6, the "date of determination" shall be the date of receipt by the General Partner of a Notice of Redemption or, if such date is not a Business Day, the immediately preceding Business Day. The term "Market Price" on any date shall mean, with respect to any class or series of outstanding REIT Shares, the Closing Price for such REIT Shares on such date. The "Closing Price" on any date shall mean the last sale price for such REIT Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such REIT Shares, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if such REIT Shares are not listed or admitted to trading on the New York Stock Exchange, as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such REIT Shares are listed or admitted to trading or, if such REIT Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such REIT Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such REIT Shares selected by the Board of Directors of the General Partner or, in the event that no trading price is available for such REIT Shares, the fair market value of the REIT Shares, as determined in good faith by the Board of Directors of the General Partner.

In the event that the REIT Shares Amount includes Rights (as defined in the definition of "REIT Shares Amount") that a holder of REIT Shares would be entitled to receive, then the Value of such Rights shall be determined by the General Partner acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

ARTICLE II

ORGANIZATIONAL MATTERS

Section 2.1 Organization. The Partnership is a limited partnership organized pursuant to the provisions of the Act and upon the terms and subject to the conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act. The Partnership Interest of each Partner shall be personal property for all purposes.

Section 2.2 Name. The name of the Partnership is "**Arbor Realty Limited Partnership**." The Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, including the name of the General Partner or any Affiliate thereof. The words "Limited Partnership," "LP," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any jurisdiction that so requires. The General Partner in its sole and absolute discretion may change the name of the Partnership at any time and from time to time and shall notify the Partners of such change in the next regular communication to the Partners.

Section 2.3 Registered Office and Agent; Principal Office. The address of the registered office of the Partnership in the State of Delaware is located at 1209 Orange Street, Wilmington, Delaware, 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such registered office is The Corporation Trust Company. The principal office of the Partnership is located at 333 Earle Ovington Blvd., Suite 900, Uniondale, NY 11553, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems advisable.

Section 2.4 Power of Attorney.

A. Each Limited Partner and each Assignee hereby irrevocably constitutes and appoints the General Partner, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

(1) execute, swear to, seal, acknowledge, deliver, file and record in the appropriate public offices (a) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments, supplements or restatements thereof) that the General Partner or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability to the extent provided by applicable law) in the State of Delaware and in all other jurisdictions in which the Partnership may conduct business or own property; (b) all instruments that the General Partner or the Liquidator deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (c) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (d) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the distribution or exchange of assets of the Partnership pursuant to the terms of this Agreement; (e) all instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article XI, Article XII or Article XIII hereof or the Capital Contribution of any Partner; and (f) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges relating to Partnership Interests; and

(2) execute, swear to, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the General Partner or the Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Partners hereunder or is consistent with the terms of this Agreement or appropriate or necessary, in the sole and absolute discretion of the General Partner or the Liquidator, to effectuate the terms or intent of this Agreement.

Nothing contained herein shall be construed as authorizing the General Partner or the Liquidator to amend this Agreement except in accordance with Article XIV hereof or as may be otherwise expressly provided for in this Agreement.

B. The foregoing power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that each of the Limited Partners and Assignees will be relying upon the power of the General Partner or the Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Partnership, and it shall survive and not be affected by the subsequent Incapacity of any Limited Partner or Assignee and the Transfer of all or any portion of such Limited Partner's or Assignee's Partnership Units or Partnership Interest and shall extend to such Limited Partner's or Assignee's heirs, successors, assigns and personal representatives. Each such Limited Partner or Assignee hereby agrees to be bound by any representation made by the General Partner or the Liquidator, acting in good faith pursuant to such power of attorney; and each such Limited Partner or Assignee hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the General Partner or the Liquidator, taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within fifteen (15) days after receipt of the General Partner's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator, as the case may be, deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 2.5 Term. Pursuant to Section 17-217(d) of the Act, the term of the Partnership commenced on June 24, 2003 and shall continue until the Partnership is dissolved pursuant to the provisions of Article XIII hereof or as otherwise provided by law.

ARTICLE III

PURPOSE

Section 3.1 Purpose and Business. The purpose and nature of the Partnership is to conduct any business, enterprise or activity permitted by or under the Act; provided, however, such business and arrangements and interests may be limited to and conducted in such a manner as to permit the Parent REIT, in the sole and absolute discretion of the General Partner, at all times to be classified as a REIT. In connection with the foregoing, the Partnership shall have full power and authority to enter into, perform and carry out contracts of any kind, to borrow and lend money and to issue and guarantee evidence of indebtedness, whether or not secured by mortgage, deed of trust, pledge or other lien and, directly or indirectly, to acquire and construct additional Properties necessary, useful or desirable in connection with its business.

Section 3.2 Powers.

A. The Partnership shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Partnership.

B. The Partnership may contribute from time to time Partnership capital or Property to one or more of its Subsidiaries or newly formed entities solely in exchange for equity interests therein (or in a wholly-owned subsidiary entity thereof).

C. Notwithstanding any other provision in this Agreement, the General Partner may cause the Partnership not to take, or to refrain from taking, any action that, in the judgment of the General Partner, in its sole and absolute discretion, (i) could adversely affect the ability of the Parent REIT to continue to qualify as a REIT, (ii) could subject the Parent REIT to any additional taxes under Code Section 857 or Code Section 4981 or any other related or successor provision of the Code, or (iii) could violate any law or regulation of any governmental body or agency having jurisdiction over Parent REIT or the General Partner, their securities or the Partnership.

Section 3.3 Partnership Only for Partnership Purposes. This Agreement shall not be deemed to create a company, venture or partnership between or among the Partners with respect to any activities whatsoever other than the activities within the purposes of the Partnership as specified in Section 3.1 hereof. Except as otherwise provided in this Agreement, no Partner shall have any authority to act for, bind, commit or assume any obligation or responsibility on behalf of the Partnership, its properties or any other Partner. No Partner, in its capacity as a Partner under this Agreement, shall be responsible or liable for any indebtedness or obligation of another Partner, and the Partnership shall not be responsible or liable for any indebtedness or obligation of any Partner, incurred either before or after the execution and delivery of this Agreement by such Partner, except as to those responsibilities, liabilities, indebtedness or obligations incurred pursuant to and as limited by the terms of this Agreement and the Act.

Section 3.4 Representations and Warranties by the Parties.

A. Each Partner (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or a Substituted Limited Partner, respectively) that is an individual represents and warrants to each other Partner that (i) the consummation of the transactions contemplated by this Agreement to be performed by such Partner will not result in a breach or violation of, or a default under, any material agreement by which such Partner or any of such Partner's property is bound, or any statute, regulation, order or other law to which such Partner is subject, (ii) subject to the last sentence of this Section 3.4A, such Partner is neither a "foreign person" within the meaning of Code Section 1445(f) nor a "foreign partner" within the meaning of Code Section 1446(e), (iii) such Partner does not own, directly or indirectly, (a) nine and nine tenths percent (9.9%) or more of the total combined voting power of all classes of stock entitled to vote, or nine and nine tenths percent (9.9%) or more of the total number of shares of all classes of stock, of any corporation that is a tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture or limited liability company of which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member or (b) an interest of nine and nine tenths percent (9.9%) or more in the assets or net profits of any tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture, or limited liability company of which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member and (iv) this Agreement is binding upon, and enforceable against, such Partner in accordance with its terms. Notwithstanding anything contained herein to the contrary, in the event that the representation contained in the foregoing clause (ii) would be inaccurate if given by a Partner, such Partner (w) shall not be required to make and shall not be deemed to have made such representation, if it delivers to the General Partner in connection with or prior to its execution of this Agreement written notice that it may not truthfully make such representation, (x) hereby agrees that it is subject to, and hereby authorizes the General Partner to withhold, all withholdings to which such a "foreign person" or "foreign partner", as applicable, is subject under the Code and (y) hereby agrees to cooperate fully with the General Partner with respect to such withholdings, including by effecting the timely completion and delivery to the General Partner of all governmental forms required in connection therewith.

B. Each Partner (including, without limitation, each Additional Limited Partner or Substituted Limited Partner as a condition to becoming an Additional Limited Partner or a Substituted Limited Partner, respectively) that is not an individual represents and warrants to each other Partner(s) that (i) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including, without limitation, that of its general partner(s), committee(s), trustee(s), beneficiaries, directors and/or shareholder(s), as the case may be, as required, (ii) the consummation of such transactions shall not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, articles, charter or bylaws, as the case may be, any material agreement by which such Partner or any of such Partner's properties or any of its partners, members, beneficiaries, trustees or shareholders, as the case may be, is or are bound, or any statute, regulation, order or other law to which such Partner or any of its partners, members, trustees, beneficiaries or shareholders, as the case may be, is or are subject, (iii) subject to the last sentence of this Section 3.4B, such Partner is neither a "foreign person" within the meaning of Code Section 1445(f) nor a "foreign partner" within the meaning of Code Section 1446(e), (iv) such Partner does not own, directly or indirectly, (a) nine and nine tenths percent (9.9%) or more of the total combined voting power of all classes of stock entitled to vote, or nine and eight nine percent (9.9%) or more of the total number of shares of all classes of stock, of any corporation that is a tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture or limited liability company of which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member or (b) an interest of nine and nine tenths percent (9.9%) or more in the assets or net profits of any tenant of either (I) the Parent REIT, the General Partner or any Qualified REIT Subsidiary, (II) the Partnership or (III) any partnership, venture or limited liability company for which the Parent REIT, the General Partner, any Qualified REIT Subsidiary or the Partnership is a member and (v) this Agreement is binding upon, and enforceable against, such Partner in accordance with its terms. Notwithstanding anything contained herein to the contrary, in the event that the representation contained in the foregoing clause (iii) would be inaccurate if given by a Partner, such Partner (w) shall not be required to make and shall not be deemed to have made such representation, if it delivers to the General Partner in connection with or prior to its execution of this Agreement written notice that it may not truthfully make such representation, (x) hereby agrees that it is subject to, and hereby authorizes the General Partner to withhold, all withholdings to which such a "foreign person" or "foreign partner", as applicable, is subject under the Code and (y) hereby agrees to cooperate fully with the General Partner with respect to such withholdings, including by effecting the timely completion and delivery to the General Partner of all internal revenue forms required in connection therewith.

C. Each Partner (including, without limitation, each Substituted Limited Partner as a condition to becoming a Substituted Limited Partner) represents and warrants that it is a Qualified Transferee, and represents, warrants and agrees that it has acquired and continues to hold its interest in the Partnership for its own account for investment purposes only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof, and not with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances. Each Partner further represents and warrants that it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, particularly real estate investments, and that it has a sufficiently high net worth that it does not anticipate a need for the funds that it has invested in the Partnership in what it understands to be a highly speculative and illiquid investment.

D. The representations and warranties contained in Sections 3.4A, 3.4B and 3.4C hereof shall survive the execution and delivery of this Agreement by each Partner (and, in the case of an Additional Limited Partner or a Substituted Limited Partner, the admission of such Additional Limited Partner or Substituted Limited Partner as a Limited Partner in the Partnership) and the dissolution, liquidation and termination of the Partnership.

E. Each Partner (including, without limitation, each Substituted Limited Partner as a condition to becoming a Substituted Limited Partner) hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Partnership or the Parent REIT have been made by any Partner or any employee or representative or Affiliate of any Partner, and that projections and any other information, including, without limitation, financial and descriptive information and documentation, that may have been in any manner submitted to such Partner shall not constitute any representation or warranty of any kind or nature, express or implied.

ARTICLE IV

CAPITAL CONTRIBUTIONS

Section 4.1 Capital Contributions of the Partners. The Partners have made Capital Contributions to the Partnership and own Partnership Units in the amount set forth for such Partner on Exhibit A, as the same may be amended from time to time by the General Partner to the extent necessary to reflect accurately sales, exchanges or other Transfers, redemptions, Capital Contributions, the issuance of additional Partnership Units, or similar events having an effect on a Partner's ownership of Partnership Units. Except as provided by law or in Sections 4.2, 4.3 or 10.4 hereof, the Partners shall have no obligation or right to make any additional Capital Contributions or loans to the Partnership.

Section 4.2 Issuances of Additional Partnership Interests.

A. General. The General Partner is hereby authorized to cause the Partnership to issue additional Partnership Interests, in the form of Partnership Units, for any Partnership purpose, at any time or from time to time, to the Partners (including the General Partner) or to other Persons, and to admit such Persons as Additional Limited Partners, for such consideration and on such terms and conditions as shall be established by the General Partner in its sole and absolute discretion, all without the approval of any Limited Partners. Without limiting the foregoing, the General Partner is expressly authorized to cause the Partnership to issue Partnership Units (i) upon the conversion, redemption or exchange of any Debt, Partnership Units or other securities issued by the Partnership, (ii) for less than fair market value, so long as the General Partner concludes in good faith that such issuance is in the best interests of the General Partner and the Partnership, and (iii) in connection with any merger of any other Person into the Partnership or any Subsidiary of the Partnership if the applicable merger agreement provides that Persons are to receive Partnership Units in exchange for their interests in the Person merging into the Partnership or any Subsidiary of the Partnership. Subject to Delaware law, any additional Partnership Interests may be issued in one or more classes, or one or more series of any of such classes, with such designations, preferences and relative, participating, optional or other special rights, powers and duties as shall be determined by the General Partner, in its sole and absolute discretion without the approval of any Limited Partner, and set forth in this Agreement or a written document thereafter attached to and made an exhibit to this Agreement (each, a "Partnership Unit Designation"). Without limiting the generality of the foregoing, the General Partner shall have authority to specify (a) the allocations of items of Partnership income, gain, loss, deduction and credit to each such class or series of Partnership Interests; (b) the right of each such class or series of Partnership Interests to share in Partnership distributions; (c) the rights of each such class or series of Partnership Interests upon dissolution and liquidation of the Partnership; (d) the voting rights, if any, of each such class or series of Partnership Interests; and (e) the conversion, redemption or exchange rights applicable to each such class or series of Partnership Interests. Upon the issuance of any additional Partnership Interest, the General Partner shall amend Exhibit A as appropriate to reflect such issuance.

B. Issuances to the General Partner. No additional Partnership Units shall be issued to the General Partner or the Initial Limited Partner unless (i) the additional Partnership Units are issued to all Partners in proportion to their respective Percentage Interests with respect to the class of Partnership Units so issued, (ii) (a) the additional Partnership Units are (x) Partnership Common Units issued in connection with an issuance of REIT Shares, or (y) Partnership Units (other than Partnership Common Units) issued in connection with an issuance, conversion or exercise of Preferred Shares, New Securities or other interests in the Parent REIT (other than REIT Shares), which Preferred Shares, New Securities or other interests have designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of the additional Partnership Units issued to the General Partner or the Initial Limited Partner, and (b) the Parent REIT contributes or otherwise causes to be transferred to the Partnership the cash proceeds or other consideration received in connection with the issuance of such REIT Shares, Preferred Shares, New Securities or other interests in the Parent REIT, (iii) the additional Partnership Units are issued upon the conversion, redemption or exchange of Debt, Partnership Units or other securities issued by the Partnership, or (iv) the additional Partnership Units are issued pursuant to Sections 4.3B, 4.4, 4.6 or Section 4.7.

C. No Preemptive Rights. No Person, including, without limitation, any Partner or Assignee, shall have any preemptive, preferential, participation or similar right or rights to subscribe for or acquire any Partnership Interest.

Section 4.3 Additional Funds and Capital Contributions.

A. General. The General Partner may, at any time and from time to time, determine that the Partnership requires additional funds ("Additional Funds") for the acquisition or development of additional Properties, for the redemption of Partnership Units or for such other purposes as the General Partner may determine in its sole and absolute discretion. Additional Funds may be obtained by the Partnership, at the election of the General Partner, in any manner provided in, and in accordance with, the terms of this Section 4.3 without the approval of any Limited Partners.

B. Additional Capital Contributions. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by accepting Capital Contributions from any Partners or other Persons. In connection with any such Capital Contribution (of cash or property), the General Partner is hereby authorized to cause the Partnership from time to time to issue additional Partnership Units (as set forth in Section 4.2 above) in consideration therefor and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect the issuance of such additional Partnership Units.

C. Loans by Third Parties. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by causing the Partnership to incur Debt to any Person upon such terms as the General Partner determines appropriate, including making such Debt convertible, redeemable or exchangeable for Partnership Units; provided, however, that the Partnership shall not incur any such Debt if (i) a breach, violation or default of such Debt would be deemed to occur by virtue of the Transfer by any Limited Partner of any Partnership Interest, or (ii) such Debt is recourse to any Partner (unless the Partner otherwise agrees).

D. General Partner Loans. The General Partner, on behalf of the Partnership, may obtain any Additional Funds by causing the Partnership to incur Debt with the General Partner or the Parent REIT (each, a "General Partner Loan") if (i) such Debt is, to the extent permitted by law, on substantially the same terms and conditions (including interest rate, repayment schedule, and conversion, redemption, repurchase and exchange rights) as Funding Debt incurred by the General Partner or the Parent REIT, the net proceeds of which are lent to the Partnership to provide such Additional Funds, or (ii) such Debt is on terms and conditions no less favorable to the Partnership than would be available to the Partnership from any third party; provided, however, that the Partnership shall not incur any such Debt if (a) a breach, violation or default of such Debt would be deemed to occur by virtue of the Transfer by any Limited Partner of any Partnership Interest, or (b) such Debt is recourse to any Partner (unless the Partner otherwise agrees).

E. Issuance of Securities by the Parent REIT. The Parent REIT shall not issue any additional REIT Shares, Preferred Shares, Junior Shares or New Securities unless the Parent REIT contributes the cash proceeds or other consideration received from the issuance of such additional REIT Shares, Preferred Shares, Junior Shares or New Securities, as the case may be, and from the exercise of the rights contained in any such additional New Securities, to the General Partner or the Initial Limited Partner and the General Partner or the Initial Limited Partner, as the case may be, shall contribute such proceeds to the Partnership in exchange for (x) in the case of an issuance of REIT Shares, Partnership Common Units, or (y) in the case of an issuance of Preferred Shares, Junior Shares or New Securities, Partnership Units with designations, preferences and other rights, terms and provisions that are substantially the same as the designations, preferences and other rights, terms and provisions of such Preferred Shares, Junior Shares or New Securities; provided, however, that notwithstanding the foregoing, the General Partner may issue REIT Shares, Preferred Shares, Junior Shares or New Securities (a) pursuant to Section 4.4 or Section 8.6B hereof, (b) pursuant to a dividend or distribution (including any stock split) of REIT Shares, Preferred Shares, Junior Shares or New Securities to all of the holders of REIT Shares, Preferred Shares, Junior Shares or New Securities, as the case may be, (c) upon a conversion, redemption or exchange of Preferred Shares, (d) upon a conversion of Junior Shares into REIT Shares, (e) upon a conversion, redemption, exchange or exercise of New Securities, or (f) in connection with an acquisition of Partnership Units or any other property or asset to be owned, directly or indirectly, by the Parent REIT (including assets owned by the General Partner or the Initial Limited Partner). In the event of any issuance of additional REIT Shares, Preferred Shares, Junior Shares or New Securities by the Parent REIT, and the contribution to the General Partner or the Initial Limited Partner of the cash proceeds or other consideration received from such issuance, and the contribution to the Partnership, by the General Partner or the Initial Limited Partner, as the case may be, of such proceeds, the Partnership shall pay the Parent REIT's expenses associated with such issuance, including any underwriting discounts or commissions (it being understood that payment of some or all of such expenses may be made by the Parent REIT on behalf of the Partnership out of the gross proceeds of such issuance prior to the contribution of such proceeds by the Parent REIT to the General Partner or the Initial Limited Partner, as the case may be).

Section 4.4 Stock Option Plan.

A. Options Granted to Company Employees and Independent Directors. If at any time or from time to time, in connection with a Stock Option Plan, a stock option granted to a Company Employee or an Independent Director is duly exercised:

- (1) the General Partner shall, as soon as practicable after such exercise, make a Capital Contribution to the Partnership in an amount equal to the exercise price paid to the General Partner (or the Parent REIT) by such exercising party in connection with the exercise of such stock option.
- (2) on the date that the General Partner makes a capital contribution pursuant to 4.4A(1) hereof, the General Partner shall be deemed to have contributed to the Partnership as a Capital Contribution, in consideration of an additional Limited Partner Interest (expressed in and as additional Partnership Common Units), an amount equal to the Value of a REIT Share as of the date of exercise multiplied by the number of REIT Shares then being issued in connection with the exercise of such stock option.

(3) An equitable Percentage Interest adjustment shall be made in which the General Partner shall be treated as having made a cash contribution equal to the amount described in Section 4.4A(2) hereof.

B. Special Valuation Rule. For purposes of this Section 4.4, in determining the Value of a REIT Share, only the trading date immediately preceding the exercise of the relevant stock option under the Stock Option Plan shall be considered.

C. Future Stock Incentive Plans. Nothing in this Agreement shall be construed or applied to preclude or restrain the General Partner or the Parent REIT from adopting, modifying or terminating stock incentive plans, including any Stock Option Plan, for the benefit of employees, directors or other business associates of the General Partner, the Parent REIT, the Partnership or any of their Affiliates. The Limited Partners acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the General Partner or Parent REIT amendments to this Section 4.4 may become necessary or advisable and that any approval or consent of the Limited Partners required pursuant to the terms of this Agreement in order to effect any such amendments requested by the General Partner shall not be unreasonably withheld or delayed.

Section 4.5 No Interest; No Return. No Partner shall be entitled to interest on its Capital Contribution or on such Partner's Capital Account. Except as provided herein or by law, no Partner shall have any right to demand or receive the return of its Capital Contribution from the Partnership.

Section 4.6 Conversion or Redemption of Preferred Shares.

A. Conversion of Preferred Shares. If, at any time, any of the Preferred Shares are converted into REIT Shares, in whole or in part, then a number of Partnership Preferred Units equal to the number of Preferred Shares so converted shall automatically be converted into a number of Partnership Common Units equal to (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect, and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect such conversion.

B. Redemption of Preferred Shares. If, at any time, any Preferred Shares are redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the Parent REIT for cash, the Partnership shall, immediately prior to such redemption of Preferred Shares, redeem an equal number of Partnership Preferred Units held by the General Partner or the Initial Limited Partner, upon the same terms and for the same price per Partnership Preferred Unit, as such Preferred Shares are redeemed.

Section 4.7 Conversion or Redemption of Junior Shares.

A. Conversion of Junior Shares. If, at any time, any of the Junior Shares are converted into REIT Shares, in whole or in part, then a number of Partnership Common Units equal to (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect shall be issued to the General Partner, and the Percentage Interests of the General Partner and the Limited Partners shall be adjusted to reflect such conversion.

B. Redemption of Junior Shares. If, at any time, any Junior Shares are redeemed (whether by exercise of a put or call, automatically or by means of another arrangement) by the General Partner for cash, the Partnership shall, immediately prior to such redemption of Junior Shares, redeem an equal number of Partnership Junior Units held by the General Partner, upon the same terms and for the same price per Partnership Junior Unit, as such Junior Shares are redeemed.

Section 4.8 Other Contribution Provisions. In the event that any Partner is admitted to the Partnership and is given a Capital Account in exchange for services rendered to the Partnership, unless otherwise determined by the General Partner in its sole and absolute discretion, such transaction shall be treated by the Partnership and the affected Partner as if the Partnership had compensated such partner in cash and such Partner had contributed the cash to the capital of the Partnership. In addition, with the consent of the General Partner, one or more Limited Partners may enter into contribution agreements with the Partnership which have the effect of providing a guarantee of certain obligations of the Partnership.

Section 4.9 Not Publicly Traded. The General Partner, on behalf of the Partnership, shall use its best efforts not to take any action which would result in the Partnership being a "publicly traded partnership" under and as such term is defined in Section 7704(b) of the Code.

Section 4.10 Special Preferred Units. In accordance with Section 4.3E, the Parent REIT shall contribute the proceeds of the issuance of shares of Special Voting Preferred Stock to the Initial Limited Partner. The Initial Limited Partner shall contribute such proceeds to the Partnership in exchange for a number of Special Preferred Units of the Partnership (the "Special Preferred Units") equal to the number of shares of Special Voting Preferred Stock issued by the Parent REIT. The holder of each Special Preferred Unit shall receive a Capital Account, and be entitled to a preferential distribution in liquidation, of \$.01 per Special Preferred Unit. Ownership of a Special Preferred Unit shall not entitle the holder thereof to any allocation of profits or losses of the Partnership. To the extent that shares of Special Voting Preferred Stock are redeemed by the Parent REIT, a like number of Special Preferred Units shall have been first redeemed by the Partnership for the same price per Special Preferred Unit and in accordance with the terms of the Pairing Agreement. Except as otherwise provided herein or required by law, the ownership of a Special Preferred Unit shall not entitle the holder thereof to any voting rights hereunder. The Special Preferred Units shall be owned and held solely by the Initial Limited Partner.

Section 4.11 Restricted Units. In accordance with Section 4.3E, to the extent the Parent REIT issues shares of restricted common stock pursuant to a stock incentive plan, the Partnership shall issue to the Initial Limited Partner an equal number of Partnership Common Units that are subject to forfeiture in the event that such shares of restricted common stock are forfeited.

ARTICLE V

DISTRIBUTIONS

Section 5.1 Requirement and Characterization of Distributions. Subject to the terms of any Partnership Unit Designation, the General Partner shall cause the Partnership to distribute quarterly all, or such portion as the General Partner may in its sole and absolute discretion determine, of Available Cash generated by the Partnership during such quarter to the Holders of Partnership Common Units in accordance with their respective Percentage Interests of Partnership Common Units on such Partnership Record Date. Distributions payable with respect to any Partnership Common Units that were not outstanding during the entire quarterly period in respect of which any distribution is made (other than any Partnership Units issued to a REIT Party in connection with the issuance of REIT Shares by the Parent REIT) shall be prorated based on the portion of the period that such units were outstanding. The General Partner in its sole and absolute discretion may distribute to the Unitholders Available Cash on a more frequent basis and provide for an appropriate Partnership Record Date. Notwithstanding anything herein to the contrary, the General Partner shall make such reasonable efforts, as determined by it in its sole and absolute discretion and consistent with the Parent REIT's qualification as a REIT, to cause the Partnership to distribute sufficient amounts to enable the Parent REIT to pay shareholder dividends that will (a) satisfy the REIT Requirements, and (b) except to the extent otherwise determined by the General Partner, avoid any federal income or excise tax liability of the Parent REIT.

Section 5.2 Distributions in Kind. No right is given to any Unitholder to demand and receive property other than cash as provided in this Agreement. The General Partner may determine, in its sole and absolute discretion, to make a distribution in kind of Partnership assets to the Unitholders, and such assets shall be distributed in such a fashion as to ensure that the fair market value is distributed and allocated in accordance with Articles V, VI and X hereof.

Section 5.3 Amounts Withheld. All amounts withheld pursuant to the Code or any provisions of any state or local tax law and Section 10.4 hereof with respect to any allocation, payment or distribution to any Unitholder shall be treated as amounts paid or distributed to such Unitholder pursuant to Section 5.1 hereof for all purposes under this Agreement.

Section 5.4 Distributions Upon Liquidation. Notwithstanding the other provisions of this Article V, net proceeds from a Terminating Capital Transaction, and any other cash received or reductions in reserves made after commencement of the liquidation of the Partnership, shall be distributed to the Unitholders in accordance with Section 13.2 hereof.

Section 5.5 Distributions to Reflect Issuance of Additional Partnership Units. In the event that the Partnership issues additional Partnership Units pursuant to the provisions of Article IV hereof, subject to Section 7.3D, the General Partner is hereby authorized to make such revisions to this Article V as it determines are necessary or desirable to reflect the issuance of such additional Partnership Units, including, without limitation, making preferential distributions to certain classes of Partnership Units.

Section 5.6 Restricted Distributions. Notwithstanding any provision to the contrary contained in this Agreement, neither the Partnership nor the General Partner, on behalf of the Partnership, shall make a distribution to any Unitholder on account of its Partnership Interest or interest in Partnership Units if such distribution would violate Section 17-607 of the Act or other applicable law.

ARTICLE VI

ALLOCATIONS

Section 6.1 Timing and Amount of Allocations of Net Income and Net Loss. Net Income and Net Loss of the Partnership shall be determined and allocated with respect to each Partnership Year of the Partnership as of the end of each such year. Except as otherwise provided in this Article XI and subject to Section 11.6C hereof, an allocation to a Unitholder of a share of Net Income or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Income or Net Loss.

Section 6.2 General Allocations.

A. In General. Subject to the terms of any Partnership Unit Designation and Section 4.10, except as otherwise provided in this Article VI and subject to Section 11.6C hereof, Net Income and Net Loss shall be allocated to each of the Holders of Partnership Common Units in accordance with their respective Percentage Interests at the end of each Partnership Year.

B. Allocations to Reflect Issuance of Additional Partnership Units. In the event that the Partnership issues additional Partnership Units pursuant to the provisions of Article IV hereof, the General Partner is hereby authorized to make such revisions to this Section 6.2 as it determines are necessary or desirable to reflect the terms of the issuance of such additional Partnership Units, including, without limitation, making preferential allocations to certain classes of Partnership Units.

Section 6.3 Additional Allocation Provisions. Notwithstanding the foregoing provisions of this Article VI:

A. Special Allocations Regarding Partnership Preferred Units. If any Partnership Preferred Units are redeemed pursuant to Section 4.6B hereof (treating a full liquidation of the General Partner Interest for purposes of this Section 6.3A as including a redemption of any then outstanding Partnership Preferred Units pursuant to Section 4.6B hereof), for the Partnership Year that includes such redemption (and, if necessary, for subsequent Partnership Years) (a) gross income and gain shall be allocated to the General Partner to the extent that the amounts paid or payable with respect to the Partnership Preferred Units so redeemed (or treated as redeemed) exceed the aggregate Capital Contributions (net of liabilities assumed or taken subject to by the Partnership) per Partnership Preferred Unit allocable to the Partnership Preferred Units so redeemed (or treated as redeemed) and (b) deductions and losses shall be allocated to the General Partner to the extent that the aggregate Capital Contributions (net of liabilities assumed or taken subject to by the Partnership) per Partnership Preferred Unit allocable to the Partnership Preferred Units so redeemed (or treated as redeemed) exceed the amount paid or payable with respect to the Partnership Preferred Units so redeemed (or treated as redeemed).

B. Regulatory Allocations.

(1) Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding the provisions of Section 6.2 hereof, or any other provision of this Article VI, if there is a net decrease in Partnership Minimum Gain during any Partnership Year, each Holder of Partnership Units shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Partnership Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.3B(1) is intended to qualify as a "minimum gain chargeback" within the meaning of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(2) Partner Minimum Gain Chargeback. Except as otherwise provided in Regulations Section 1.704-2(i)(4) or in Section 6.3B(1) hereof, if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Partnership Year, each Holder of Partnership Units who has a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Partnership income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each General Partner, Limited Partner and other Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.3B(2) is intended to qualify as a "chargeback of partner nonrecourse debt minimum gain" within the meaning of Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(3) Nonrecourse Deductions and Partner Nonrecourse Deductions. Any Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Holders of Partnership Units in accordance with their Partnership Units. Any Partner Nonrecourse Deductions for any Partnership Year shall be specially allocated to the Holder(s) who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable, in accordance with Regulations Section 1.704-2(i).

(4) Qualified Income Offset. If any Holder of Partnership Units unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Partnership income and gain shall be allocated, in accordance with Regulations Section 1.704-1(b)(2)(ii)(d), to such Holder in an amount and manner sufficient to eliminate, to the extent required by such Regulations, the Adjusted Capital Account Deficit of such Holder as quickly as possible, provided that an allocation pursuant to this Section 6.3B(4) shall be made if and only to the extent that such Holder would have an Adjusted Capital Account Deficit after all other allocations provided in this Article VI have been tentatively made as if this Section 6.3B(4) were not in the Agreement. It is intended that this Section 6.3B(4) qualify and be construed as a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(5) Gross Income Allocation. In the event that any Holder of Partnership Units has a deficit Capital Account at the end of any Partnership Year that is in excess of the sum of (1) the amount (if any) that such Holder is obligated to restore to the Partnership upon complete liquidation of such Holder's Partnership Interest (including, the Holder's interest in outstanding Partnership Preferred Units and other Partnership Units) and (2) the amount that such Holder is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Holder shall be specially allocated items of Partnership income and gain in the amount of such excess to eliminate such deficit as quickly as possible, provided that an allocation pursuant to this Section 6.3B(5) shall be made if and only to the extent that such Holder would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article VI have been tentatively made as if this Section 6.3B(5) and Section 6.3B(4) hereof were not in the Agreement.

(6) Limitation on Allocation of Net Loss. To the extent that any allocation of Net Loss would cause or increase an Adjusted Capital Account Deficit as to any Holder of Partnership Units, such allocation of Net Loss shall be reallocated among the other Holders of Partnership Units in accordance with their respective Partnership Units, subject to the limitations of this Section 6.3B(6).

(7) Section 754 Adjustment. To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Holder of Partnership Units in complete liquidation of its interest in the Partnership, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Holders in accordance with their Partnership Common Units in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Holders to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(8) Curative Allocations. The allocations set forth in Sections 6.3B(1), (2), (3), (4), (5), (6) and (7) hereof (the "Regulatory Allocations") are intended to comply with certain regulatory requirements, including the requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Section 6.1 hereof, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Holders of Partnership Units so that to the extent possible without violating the requirements giving rise to the Regulatory Allocations, the net amount of such allocations of other items and the Regulatory Allocations to each Holder of a Partnership Unit shall be equal to the net amount that would have been allocated to each such Holder if the Regulatory Allocations had not occurred.

C. Special Allocations Upon Liquidation. Notwithstanding any provision in this Article VI to the contrary, in the event that the Partnership disposes of all or substantially all of its assets in a transaction that will lead to a liquidation of the Partnership pursuant to Article XIII hereof, then any Net Income or Net Loss realized in connection with such transaction and thereafter (and, if necessary, constituent items of income, gain, loss and deduction) shall be specially allocated among the Partners as required so as to cause liquidating distributions pursuant to Section 13.2A(4) hereof to be made in the same amounts and proportions as would have resulted had such distributions instead been made pursuant to Article V hereof (other than Section 5.4 hereof).

D. Allocation of Excess Nonrecourse Liabilities. The Partnership shall allocate "nonrecourse liabilities" (within the meaning of Regulations Section 1.752-1(a)(2)) of the Partnership that are secured by multiple Properties under any reasonable method chosen by the General Partner in accordance with Regulations Section 1.752-3(a)(3)(b). The Partnership shall allocate "excess nonrecourse liabilities" of the Partnership under any method approved under Regulations Section 1.752-3(a)(3) as chosen by the General Partner. For purposes of determining a Holder's proportional share of the "excess nonrecourse liabilities" of the Partnership within the meaning of Regulations Section 1.752-3(a)(3), each Holder's interest in Partnership profits shall be equal to such Holder's share of Partnership Units.

Section 6.4 Tax Allocations.

A. In General. Except as otherwise provided in this Section 6.4, for income tax purposes under the Code and the Regulations each Partnership item of income, gain, loss and deduction (collectively, "Tax Items") shall be allocated among the Holders of Partnership Common Units in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.2 and 6.3 hereof.

B. Allocations Respecting Section 704(c) Revaluations. Notwithstanding Section 6.4A hereof, Tax Items with respect to Property that is contributed to the Partnership with a Gross Asset Value that varies from its basis in the hands of the contributing Partner immediately preceding the date of contribution shall be allocated among the Holders of Partnership Common Units for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation. The Partnership shall account for such variation under any method approved under Code Section 704(c) and the applicable Regulations as chosen by the General Partner, including, without limitation, the "remedial allocation method" as described in Regulations Section 1.704-3(d). In the event that the Gross Asset Value of any partnership asset is adjusted pursuant to subsection (b) of the definition of "Gross Asset Value" (provided in Article I hereof), subsequent allocations of Tax Items with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the applicable Regulations.

ARTICLE VII

MANAGEMENT AND OPERATIONS OF BUSINESS

Section 7.1 Management.

A. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership are and shall be exclusively vested in the General Partner, and no Limited Partner shall have any right to participate in or exercise control or management power over the business and affairs of the Partnership. The General Partner may not be removed by the Partners with or without cause, except with the consent of the General Partner. In addition to the powers now or hereafter granted to a general partner of a limited partnership under applicable law or that are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to the other provisions hereof including Section 7.3, shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 hereof and to effectuate the purposes set forth in Section 3.1 hereof, including, without limitation:

(1) the making of any expenditures, the lending or borrowing of money (including, without limitation, making prepayments on loans and borrowing money or selling assets to permit the Partnership to make distributions to its Partners in such amounts as will permit the Parent REIT (so long as the Parent REIT desires to maintain or restore its status as a REIT) to avoid the payment of any federal income tax (including, for this purpose, any excise tax pursuant to Code Section 4981) and to make distributions sufficient to permit the Parent REIT to maintain or restore REIT status or otherwise to satisfy the REIT Requirements), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness (including the securing of same by deed to secure debt, mortgage, deed of trust or other lien or encumbrance on the Partnership's assets) and the incurring of any obligations that it deems necessary for the conduct of the activities of the Partnership;

(2) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

(3) the acquisition, sale, lease, transfer, exchange or other disposition of any, all or substantially all of the assets of the Partnership (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Partnership) or the merger, consolidation, reorganization or other combination of the Partnership with or into another entity;

(4) the mortgage, pledge, encumbrance or hypothecation of any assets of the Partnership, the use of the assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms that it sees fit, including, without limitation, the financing of the operations and activities of the Parent REIT, the General Partner, the Partnership or any of the Partnership's Subsidiaries, the lending of funds to other Persons (including, without limitation, the Partnership's Subsidiaries) and the repayment of obligations of the Partnership, its Subsidiaries and any other Person in which the Partnership has an equity investment, and the making of capital contributions to and equity investments in the Partnership's Subsidiaries;

(5) the management, operation, leasing, landscaping, repair, alteration, demolition, replacement or improvement of any Property, including, without limitation, any Contributed Property, or other asset of the Partnership or any Subsidiary, whether pursuant to a Services Agreement or otherwise;

(6) the negotiation, execution and performance of any contracts, leases, conveyances or other instruments that the General Partner considers useful or necessary to the conduct of the Partnership's operations or the implementation of the General Partner's powers under this Agreement, including contracting with contractors, developers, consultants, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation out of the Partnership's assets;

(7) the distribution of Partnership cash or other Partnership assets in accordance with this Agreement, the holding, management, investment and reinvestment of cash and other assets of the Partnership, and the collection and receipt of revenues, rents and income of the Partnership;

(8) the maintenance of such insurance for the benefit of the Partnership and the Partners as it deems necessary or appropriate, including, without limitation, (i) casualty, liability and other insurance on the Properties and (ii) liability insurance for the Indemnitees hereunder;

(9) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnerships, limited liability companies, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, any Subsidiary and any other Person in which it has an equity investment from time to time); provided, however, that, as long as the Parent REIT has determined to continue to qualify as a REIT, the General Partner may not engage in any such formation, acquisition or contribution that would cause the Parent REIT to fail to qualify as a REIT within the meaning of Code Section 856(a);

(10) the control of any matters affecting the rights and obligations of the Partnership, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment, of any claim, cause of action, liability, debt or damages, due or owing to or from the Partnership, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, and the representation of the Partnership in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(11) the undertaking of any action in connection with the Partnership's direct or indirect investment in any Subsidiary or any other Person (including, without limitation, the contribution of Property or contribution or loan of funds by the Partnership to such Persons);

(12) except as otherwise specifically set forth in this Agreement, the determination of the fair market value of any Partnership property distributed in kind using such reasonable method of valuation as it may adopt; provided that such methods are otherwise consistent with the requirements of this Agreement;

(13) the enforcement of any rights against any Partner pursuant to representations, warranties, covenants and indemnities relating to such Partner's contribution of property or assets to the Partnership;

(14) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Partnership;

(15) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Partnership or any other Person in which the Partnership has a direct or indirect interest, or jointly with any such Subsidiary or other Person;

(16) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of any Person in which the Partnership does not have an interest, pursuant to contractual or other arrangements with such Person;

(17) the making, execution and delivery of any and all deeds, leases, notes, deeds to secure debt, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases or legal instruments or agreements in writing necessary or appropriate in the judgment of the General Partner for the accomplishment of any of the powers of the General Partner enumerated in this Agreement;

(18) the issuance of additional Partnership Units, as appropriate and in the General Partner's sole and absolute discretion, in connection with Capital Contributions by Additional Limited Partners and additional Capital Contributions by Partners pursuant to Article IV hereof;

(19) the selection and dismissal of Company Employees (including, without limitation, employees having titles or offices such as president, vice president, secretary and treasurer), and agents, outside attorneys, accountants, consultants and contractors of the Partnership or the General Partner, the determination of their compensation and other terms of employment or hiring and the delegation to any such Company Employee the authority to conduct the business of the Partnership in accordance with the terms of this Agreement; and

(20) an election to dissolve the Partnership pursuant to Section 13.1C hereof.

B. Each of the Limited Partners agrees that, except as provided in Section 7.3 hereof, the General Partner is authorized to execute, deliver and perform the above-mentioned agreements and transactions on behalf of the Partnership without any further act, approval or vote of the Partners, notwithstanding any other provision of this Agreement, the Act or any applicable law, rule or regulation. The execution, delivery or performance by the General Partner or the Partnership of any agreement authorized or permitted under this Agreement shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement or of any duty stated or implied by law or equity.

C. At all times from and after the date hereof, the General Partner may cause the Partnership to establish and maintain working capital and other reserves in such amounts as the General Partner, in its sole and absolute discretion, deems appropriate and reasonable from time to time.

D. In exercising its authority under this Agreement, the General Partner may, but shall be under no obligation to, take into account the tax consequences to any Partner (including the General Partner) of any action taken by it. The General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances as a result of an income tax liability incurred by such Limited Partner as a result of an action (or inaction) by the General Partner pursuant to its authority under this Agreement.

Section 7.2 Certificate of Limited Partnership. To the extent that such action is determined by the General Partner to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate and do all the things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Delaware and each other state, the District of Columbia or any other jurisdiction, in which the Partnership may elect to do business or own property. Except as otherwise required under the Act, the General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate or any amendment thereto to any Limited Partner. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability to the extent provided by applicable law) in the State of Delaware and any other state, or the District of Columbia or other jurisdiction, in which the Partnership may elect to do business or own property.

Section 7.3 Restrictions on General Partner's Authority.

A. The General Partner may not take any action in contravention of this Agreement, including, without limitation:

- (1) taking any action that would make it impossible to carry on the ordinary business of the Partnership, except as otherwise provided in this Agreement;
- (2) possessing Property, or assigning any rights in specific Property, for other than a Partnership purpose except as otherwise provided in this Agreement, including, without limitation, Section 7.10;
- (3) admitting a Person as a Partner, except as otherwise provided in this Agreement;
- (4) performing any act that would subject a Limited Partner to liability as a general partner in any jurisdiction or any other liability except as provided Section 10.4 hereof or under the Act; or

(5) entering into any contract, mortgage, loan or other agreement that prohibits or restricts the ability of (a) the General Partner, the Parent REIT or the Partnership from satisfying its obligations under Section 8.6 hereof in full or (b) a Limited Partner from exercising its rights under Section 8.6 hereof to effect a Redemption in full, except, in either case, with the written consent of such Limited Partner affected by the prohibition or restriction.

B. The General Partner shall not, without the prior Consent of the Limited Partners, except as provided in Sections 4.2A, 5.5, 6.2B and 7.3C hereof, amend, modify or terminate this Agreement.

C. Notwithstanding Section 7.3B hereof, the General Partner shall have the power, without the Consent of the Limited Partners, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

- (1) to add to the obligations of the General Partner or surrender any right or power granted to the General Partner or any Affiliate of the General Partner for the benefit of the Limited Partners;
- (2) to reflect the admission, substitution or withdrawal of Partners, the Transfer of any Partnership Interest or the termination of the Partnership in accordance with this Agreement, and to amend Exhibit A in connection with such admission, substitution, withdrawal or Transfer;
- (3) to reflect a change that is of an inconsequential nature and does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law or with the provisions of this Agreement;
- (4) to satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law;
- (5) to reflect such changes as are reasonably necessary for the Parent REIT to maintain or restore its status as a REIT or to satisfy the REIT Requirements;

- (6) to modify the manner in which Capital Accounts are computed (but only to the extent set forth in the definition of "Capital Account" or contemplated by the Code or the Regulations);
- (7) to address any future amendments to or Regulations promulgated under the New Partnership Audit Procedures; and
- (8) to issue additional Partnership Interests in accordance with Section 4.2.

D. Notwithstanding Sections 7.3B and 7.3C hereof, this Agreement shall not be amended, and no action may be taken by the General Partner, without the Consent of each Partner adversely affected thereby, if such amendment or action would (i) convert a Limited Partner Interest in the Partnership into a General Partner Interest (except as a result of the General Partner acquiring such Partnership Interest), (ii) modify the limited liability of a Limited Partner, (iii) alter the rights of any Partner to receive the distributions to which such Partner is entitled, pursuant to Article V or Section 13.2A hereof, or alter the allocations specified in Article VI hereof (except, in any case, as permitted pursuant to Sections 4.2, 5.5, 6.2B and 7.3C hereof), (iv) alter or modify the Redemption rights, Cash Amount, REIT Consideration, or REIT Shares Amount as set forth in Sections 8.6 and 11.2 hereof, or amend or modify any related definitions, or (v) amend this Section 7.3D; provided, however, that the Consent of each Partner adversely affected shall not be required for any amendment or action that affects all Partners holding the same class or series of Partnership Units on a uniform or pro rata basis. Further, no amendment may alter the restrictions on the General Partner's authority set forth elsewhere in this Section 7.3 without the Consent specified therein. Any such amendment or action consented to by any Partner shall be effective as to that Partner, notwithstanding the absence of such consent by any other Partner.

Section 7.4 Reimbursement of the General Partner.

A. The General Partner shall not be compensated for its services as general partner of the Partnership except as provided in this Agreement (including the provisions of Articles V and VI hereof regarding distributions, payments and allocations to which it may be entitled in its capacity as the General Partner).

B. Subject to Sections 7.4C and 15.11 hereof, the Partnership shall be liable for, and shall reimburse the General Partner and the Parent REIT on a monthly basis, or such other basis as the General Partner may determine in its sole and absolute discretion, for all sums expended in connection with the Partnership's business, including, without limitation, (i) expenses relating to the ownership of interests in and management and operation of, or for the benefit of, the Partnership, (ii) compensation of officers and employees, including, without limitation, payments under future compensation plans of the Parent REIT that may provide for stock units, or phantom stock, pursuant to which employees of the Parent REIT will receive payments based upon dividends on or the value of REIT Shares, (iii) director fees and expenses and (iv) all costs and expenses of the Parent REIT being a public company, including costs of filings with the SEC, reports and other distributions to its shareholders; provided, however, that the amount of any reimbursement shall be reduced by any interest earned by the Parent REIT with respect to bank accounts or other instruments or accounts held by it on behalf of the Partnership as permitted pursuant to Section 7.5 hereof. Such reimbursements shall be in addition to any reimbursement of the General Partner as a result of indemnification pursuant to Section 7.7 hereof.

C. To the extent practicable, Partnership expenses shall be billed directly to and paid by the Partnership and, subject to Section 15.11 hereof, reimbursements to the General Partner or any of its Affiliates by the Partnership pursuant to this Section 7.4 shall be treated as non-income reimbursements, and not as "guaranteed payments" within the meaning of Code Section 707(c) or other form of gross income.

Section 7.5 Outside Activities of the General Partner. The General Partner and the Parent REIT shall not directly or indirectly enter into or conduct any business, other than in connection with (a) the ownership, acquisition and disposition of Partnership Interests, (b) the management of the business of the Partnership, (c) the operation of the Parent REIT as a reporting company with a class (or classes) of securities registered under the Exchange Act, (d) the Parent REIT's operations as a REIT, (e) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (f) financing or refinancing of any type related to the Partnership or its assets or activities, (g) any of the foregoing activities as they relate to a Subsidiary of the Partnership or of the General Partner and (h) such activities as are incidental thereto. Nothing contained herein shall be deemed to prohibit the General Partner from executing guarantees of Partnership debt for which it would otherwise be liable in its capacity as General Partner. Subject to Section 7.3B hereof, the Parent REIT shall not own any assets or take title to assets (other than temporarily in connection with an acquisition prior to contributing such assets to the Partnership) other (i) interests in Qualified REIT Subsidiaries, including without limitation, the General Partner and the Initial Limited Partner, (ii) Partnership Interests, and (ii) such cash and cash equivalents, bank accounts or similar instruments or accounts as the Parent REIT deems reasonably necessary, taking into account Section 7.1D hereof and the requirements necessary for the Parent REIT to carry out its responsibilities contemplated under this Agreement and the Charter and to qualify as a REIT. Notwithstanding the foregoing, if the Parent REIT acquires assets in its own name and owns Property other than through the Partnership, the Partners agree to negotiate in good faith to amend this Agreement, including, without limitation, the definition of "Adjustment Factor," to reflect such activities and the direct ownership of assets by the Parent REIT. The Parent REIT and any Affiliates of the Parent REIT may acquire Limited Partner Interests and shall be entitled to exercise all rights of a Limited Partner relating to such Limited Partner Interests.

Section 7.6 Contracts with Affiliates.

A. The Partnership may lend or contribute funds or other assets to its Subsidiaries or other Persons in which it has an equity investment, and such Persons may borrow funds from the Partnership, on terms and conditions established in the sole and absolute discretion of the General Partner. The foregoing authority shall not create any right or benefit in favor of any Subsidiary or any other Person.

B. Except as provided in Section 7.5 hereof and subject to Section 3.1 hereof, the Partnership may transfer assets to joint ventures, limited liability companies, partnerships, corporations, business trusts or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law as the General Partner, in its sole and absolute discretion, believes to be advisable.

C. Except as expressly permitted by this Agreement, neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to the Partnership, directly or indirectly, except pursuant to transactions that are determined by the General Partner in good faith to be fair and reasonable.

D. The General Partner, in its sole and absolute discretion and without the approval of the Limited Partners, may propose and adopt on behalf of the Partnership employee benefit plans funded by the Partnership for the benefit of employees of the Parent REIT, the Partnership, Subsidiaries of the Partnership or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Partnership or any of the Partnership's Subsidiaries.

E. The General Partner is expressly authorized to enter into, in the name and on behalf of the Partnership, any Services Agreement with Affiliates of any of the Partnership or the General Partner, on such terms as the General Partner, in its sole and absolute discretion, believes are advisable.

Section 7.7 Indemnification.

A. To the fullest extent permitted by applicable law, the Partnership shall indemnify each Indemnitee from and against any and all losses, claims, damages, liabilities (whether joint or several), expenses (including, without limitation, attorney's fees and other legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership ("Actions") as set forth in this Agreement in which such Indemnitee may be involved, or is threatened to be involved, as a party or otherwise; provided, however, that the Partnership shall not indemnify an Indemnitee (i) for the act or omission of the Indemnitee material to the matter giving rise to the proceeding which was committed in bad faith or was the result of active and deliberate dishonesty; (ii) for any transaction for which such Indemnitee received an improper personal benefit (in money, property or services) in violation or breach of any provision of this Agreement; or (iii) in the case of a criminal proceeding, for an unlawful act or omission by the Indemnitee for which the Indemnitee had reasonable cause to believe was unlawful. Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of the Partnership or any Subsidiary of the Partnership (including, without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken subject to), and the General Partner is hereby authorized and empowered, on behalf of the Partnership, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. It is the intention of this Section 7.7A that the Partnership indemnify each Indemnitee to the fullest extent permitted by law. The termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in this Section 7.7A. The termination of any proceeding by conviction of an Indemnitee or upon a plea of nolo contendere or its equivalent by an Indemnitee, or an entry of an order of probation against an Indemnitee prior to judgment, does not create a presumption that such Indemnitee acted in a manner contrary to that specified in this Section 7.7A with respect to the subject matter of such proceeding. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Partnership, and neither the General Partner nor any Limited Partner shall have any obligation to contribute to the capital of the Partnership or otherwise provide funds to enable the Partnership to fund its obligations under this Section 7.7.

B. To the fullest extent permitted by law, expenses incurred by an Indemnitee who is a party to a proceeding or otherwise subject to or the focus of or is involved in any Action shall be paid or reimbursed by the Partnership as incurred by the Indemnitee in advance of the final disposition of the Action upon receipt by the Partnership of (i) a written affirmation by the Indemnitee of the Indemnitee's good faith belief that the standard of conduct necessary for indemnification by the Partnership as authorized in this Section 7.7A has been met, and (ii) a written undertaking by or on behalf of the Indemnitee to repay the amount if it shall ultimately be determined that the standard of conduct has not been met.

C. The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee unless otherwise provided in a written agreement with such Indemnitee or in the writing pursuant to which such Indemnitee is indemnified.

D. The Partnership may, but shall not be obligated to, purchase and maintain insurance, on behalf of any of the Indemnitees and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

E. Any liabilities which an Indemnitee incurs as a result of acting on behalf of the Partnership, the Parent REIT or the General Partner (whether as a fiduciary or otherwise) in connection with the operation, administration or maintenance of an employee benefit plan or any related trust or funding mechanism (whether such liabilities are in the form of excise taxes assessed by the IRS, penalties assessed by the Department of Labor, restitutions to such a plan or trust or other funding mechanism or to a participant or beneficiary of such plan, trust or other funding mechanism, or otherwise) shall be treated as liabilities or judgments or fines under this Section 7.7, unless such liabilities arise as a result of (i) the act or omission of the Indemnitee material to the matter giving rise to the proceeding which was committed in bad faith or was the result of active and deliberate dishonesty; (ii) any transaction for which such Indemnitee received an improper personal benefit (in money, property or services) in violation or breach of any provision of this Agreement; or (iii) in the case of a criminal proceeding, an unlawful act or omission by the Indemnitee for which the Indemnitee had reasonable cause to believe was unlawful.

F. In no event may an Indemnitee subject any of the Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

G. An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

H. The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the obligations of the Partnership or the limitations on the Partnership's liability to any Indemnitee under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

I. It is the intent of the Partners that any amounts paid by the Partnership to the General Partner pursuant to this Section 7.7 shall be treated as "guaranteed payments" within the meaning of Code Section 707(c).

Section 7.8 Liability of the General Partner.

A. Notwithstanding anything to the contrary set forth in this Agreement, neither the General Partner nor any of its directors or officers shall be liable or accountable in damages or otherwise to the Partnership, any Partners or any Assignees for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission if the General Partner or such director or officer acted in good faith.

B. The Limited Partners expressly acknowledge that the General Partner is acting for the benefit of the Partnership, the Limited Partners and the General Partner's shareholders collectively and that the General Partner is under no obligation to give priority to the separate interests of the Limited Partners or the General Partner's shareholders (including, without limitation, the tax consequences to Limited Partners, Assignees or the General Partner's shareholders) in deciding whether to cause the Partnership to take (or decline to take) any actions.

C. Subject to its obligations and duties as General Partner set forth in Section 7.1A hereof, the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its employees or agents (subject to the supervision and control of the General Partner). The General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by it in good faith.

D. To the extent that, at law or in equity, the General Partner has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or the Limited Partners, the General Partner shall not be liable to the Partnership or to any other Partner for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of the General Partner otherwise existing at law or in equity, are agreed by the Partners to replace such other duties and liabilities of such General Partner.

E. Notwithstanding anything herein to the contrary, except for fraud, willful misconduct or gross negligence, or pursuant to any express indemnities given to the Partnership by any Partner pursuant to any other written instrument, no Partner shall have any personal liability whatsoever, to the Partnership or to the other Partner(s), for the debts or liabilities of the Partnership or the Partnership's obligations hereunder, and the full recourse of the other Partner(s) shall be limited to the interest of that Partner in the Partnership. To the fullest extent permitted by law, no officer, director or shareholder of the General Partner or Parent REIT shall be liable to the Partnership for money damages except for (i) active and deliberate dishonesty established by a non-appealable final judgment or (ii) actual receipt of an improper benefit or profit in money, property or services. Without limitation of the foregoing, and except for fraud, willful misconduct or gross negligence, or pursuant to any such express indemnity, no property or assets of any Partner, other than its interest in the Partnership, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) in favor of any other Partner(s) and arising out of, or in connection with, this Agreement. This Agreement is executed by the officers of the General Partner solely as officers of the same and not in their own individual capacities.

F. Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the General Partner's, and its officers' and directors', liability to the Partnership and the Limited Partners under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.9 Other Matters Concerning the General Partner.

A. The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

B. The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, architects, engineers, environmental consultants and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters that the General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

C. The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers and a duly appointed attorney or attorneys-in-fact. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform all and every act and duty that is permitted or required to be done by the General Partner hereunder.

D. Notwithstanding any other provision of this Agreement or the Act, any action of the General Partner on behalf of the Partnership or any decision of the General Partner to refrain from acting on behalf of the Partnership, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the Parent REIT to continue to qualify as a REIT, (ii) for the Parent REIT otherwise to satisfy the REIT Requirements, (iii) to avoid the Parent REIT incurring any taxes under Code Section 857 or Code Section 4981, is expressly authorized under this Agreement and is deemed approved by all of the Limited Partners.

Section 7.10 Title to Partnership Assets. Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively with other Partners or Persons, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be held by the General Partner for the use and benefit of the Partnership in accordance with the provisions of this Agreement. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

Section 7.11 Reliance by Third Parties. Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full power and authority, without the consent or approval of any other Partner or Person, to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the Partnership, and take any and all actions on behalf of the Partnership, and such Person shall be entitled to deal with the General Partner as if it were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the General Partner in connection with any such dealing. In no event shall any Person dealing with the General Partner or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expediency of any act or action of the General Partner or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying in good faith thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

ARTICLE VIII

RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

Section 8.1 Limitation of Liability. The Limited Partners shall have no liability under this Agreement (other than for breach thereof) except as expressly provided in Section 10.4 or under the Act.

Section 8.2 Management of Business. No Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, member, employee, partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such) shall take part in the operations, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any officer, director, member, employee, partner, agent, representative, or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 8.3 Outside Activities of Limited Partners. Subject to any agreements entered into pursuant to Section 7.6E hereof and any other agreements entered into by a Limited Partner or its Affiliates with the General Partner, the Partnership or a Subsidiary (including, without limitation, any employment agreement), any Limited Partner and any Assignee, officer, director, employee, agent, trustee, Affiliate, member or shareholder of any Limited Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities that are in direct or indirect competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partner shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee. Subject to such agreements, none of the Limited Partners nor any other Person shall have any rights by virtue of this Agreement or the partnership relationship established hereby in any business ventures of any other Person (other than the General Partner, to the extent expressly provided herein), and such Person shall have no obligation pursuant to this Agreement, subject to Section 7.6E hereof and any other agreements entered into by a Limited Partner or its Affiliates with the General Partner, the Partnership or a Subsidiary, to offer any interest in any such business ventures to the Partnership, any Limited Partner or any such other Person, even if such opportunity is of a character that, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such Person.

Section 8.4 Return of Capital. Except pursuant to the rights of Redemption set forth in Section 8.6 hereof, no Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon termination of the Partnership as provided herein. Except to the extent provided in Article VI hereof or otherwise expressly provided in this Agreement, no Limited Partner or Assignee shall have priority over any other Limited Partner or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 8.5 Adjustment Factor. The Partnership shall notify any Limited Partner that is a Qualifying Party, on request, of the then current Adjustment Factor or any change made to the Adjustment Factor.

Section 8.6 Redemption Rights of Qualifying Parties.

A. After the Twelve-Month Period applicable to such Partnership Common Units and subject to Section 11.6D, a Qualifying Party, but no other Limited Partner or Assignee, shall have the right (subject to the terms and conditions set forth herein) to require the Partnership to redeem (a "Redemption") all or a portion of the Partnership Common Units held by such Qualifying Party (such Partnership Common Units being hereafter "Tendered Units") in exchange for the Cash Amount payable on the Specified Redemption Date. Any Redemption shall be exercised pursuant to a Notice of Redemption delivered to the General Partner by such Qualifying Party (the "Tendering Party") when exercising the Redemption right. The Partnership's obligation to effect a Redemption, however, shall not arise or be binding against the Partnership (i) until and unless there has been a Declination and (ii) before the Business Day following the Cut-Off Date. Regardless of the binding or non-binding nature of a pending Redemption, a Tendering Party shall have no right to receive distributions with respect to any Tendered Units (other than the Cash Amount) paid after delivery of the Notice of Redemption, whether or not the Partnership Record Date for such distribution precedes or coincides with such delivery of the Notice of Redemption; provided, however, that in the event that the General Partner on behalf of the Partnership elects to fund the Cash Amount with the proceeds of an Offering Funding pursuant to Section 8.6D hereof, the Tendering Party's right to receive distributions shall not be suspended as hereinbefore provided and such Tendering Party shall have the right to receive distributions actually made hereunder prior to the date of the closing of the Offering Funding the proceeds of which are used to pay the Cash Amount. In the event of a Redemption, the Cash Amount shall be delivered as a certified check payable to the Tendering Party or, in the General Partner's sole and absolute discretion, in immediately available funds.

B. Notwithstanding the provisions of Section 8.6A hereof, on or before the close of business on the Cut-Off Date, the REIT Parties may, in their sole and absolute discretion but subject to the Ownership Limit and the transfer restrictions and other limitations of the Charter, elect to acquire, some or all of the Tendered Units from the Tendering Party (such percentage being referred to as the "Applicable Percentage") in exchange for the REIT Consideration. In making such election, the REIT Parties shall act in a fair, equitable and reasonable manner that neither prefers one group or class of Qualifying Parties over another nor discriminates against a group or class of Qualifying Parties. If any REIT Party so elects, on the Specified Redemption Date the Tendering Party shall sell the Applicable Percentage of the Tendered Units to the REIT Party in exchange for the REIT Consideration. The Tendering Party shall submit (i) such information, certification or affidavit as the Parent REIT may reasonably require in connection with the application of the Ownership Limit and other restrictions and limitations of the Charter to any such acquisition and (ii) such written representations, investment letters, legal opinions or other instruments necessary, in the view of the REIT Party to effect compliance with the Securities Act. In the event of a purchase of any Tendered Units by a REIT Party pursuant to this Section 8.6B, the Tendering Party shall no longer have the right to cause the Partnership to effect a Redemption of such Tendered Units, and, upon notice to the Tendering Party by a REIT Party given on or before the close of business on the Cut-Off Date, that the REIT Party has elected to acquire some or all of the Tendered Units pursuant to this Section 8.6B, the obligation of the Partnership to effect a Redemption of the Tendered Units as to which the notice by the REIT Party relates shall not accrue or arise. The REIT Consideration shall be delivered by the REIT Party as duly authorized, validly issued, fully paid and non-assessable REIT Shares and, if applicable, Rights, free of any pledge, lien, encumbrance or restriction, other than the Ownership Limit and other restrictions provided in the Charter, the Bylaws of the Parent REIT, the Securities Act and relevant state securities or "blue sky" laws. Neither any Tendering Party whose Tendered Units are acquired by a REIT Party pursuant to this Section 8.6B, any Partner, any Assignee nor any other interested Person shall have any right to require or cause the Parent REIT to register, qualify or list any REIT Shares owned or held by such Person, whether or not such REIT Shares are issued pursuant to this Section 8.6B, with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange; provided, however, that this limitation shall not be in derogation of any registration or similar rights granted pursuant to any other written agreement between the Parent REIT and any such Person. Notwithstanding any delay in such delivery, the Tendering Party shall be deemed the owner of such REIT Shares and Rights for all purposes, including, without limitation, rights to vote or consent, receive dividends, and exercise rights, as of the Specified Redemption Date. REIT Shares issued upon an acquisition of the Tendered Units by the Parent REIT pursuant to this Section 8.6B may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the Parent REIT in good faith determines to be necessary or advisable in order to ensure compliance with such laws.

C. Notwithstanding the provisions of Sections 8.6A and 8.6B hereof, no Tendering Party shall have any rights (including any right to a Redemption pursuant to Section 8.6A) under this Agreement that would otherwise be prohibited under the Charter with respect to the Ownership Limit. To the extent that any attempted Redemption or acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6B hereof would be in violation of this Section 8.6C, it shall be null and void ab initio, and the Tendering Party shall not acquire any rights or economic interests in REIT Shares otherwise issuable by the Parent REIT under Section 8.6B hereof.

D. To the extent that the REIT Parties decline or fail to exercise their purchase rights for all Tendered Units pursuant to Section 8.6B hereof following receipt of a Notice of Redemption (a "Declination"):

(1) The General Partner shall give notice of such Declination to the Tendering Party on or before the close of business on the Cut-Off Date. The failure of the General Partner to give notice of such Declination by the close of business on the Cut-Off Date shall itself constitute a Declination.

(2) Subject to Section 11.6D, the Parent REIT on behalf of the Partnership may elect to raise funds for the payment of all or any percentage of the Cash Amount either (a) by contribution by a REIT Party of funds from the proceeds of a private placement or registered public offering (each, an "Offering Funding") by the Parent REIT of a number of REIT Shares or other securities of the Parent REIT ("Offering Funding Shares") or (b) from any other sources (including, but not limited to, the sale of any Property and the incurrence of additional Debt) available to the Partnership.

(3) If an Offering Funding has been elected by the General Partner, promptly upon the General Partner's receipt of the Notice of Redemption and the General Partner giving notice of its Declination, the General Partner shall give notice (a "Single Funding Notice") to all Qualifying Parties then holding a Partnership Interest (or an interest therein) and having Redemption rights pursuant to this Section 8.6 and require that all such Qualifying Parties elect whether or not to effect a Redemption of their Partnership Common Units to be funded through an Offering Funding. In the event that any such Qualifying Party elects to effect such a Redemption, it shall give notice thereof and of the number of Partnership Common Units to be made subject thereto in writing to the General Partner within ten (10) Business Days after receipt of the Single Funding Notice, and such Qualifying Party shall be treated as a Tendering Party for all purposes of this Section 8.6. In the event that a Qualifying Party does not so elect, it shall be deemed to have waived its right to effect a Redemption; provided, however, that the General Partner shall not be required to acquire Partnership Common Units pursuant to this Section 8.6D more than twice within a calendar year from a particular Qualifying Party.

E. Notwithstanding the provisions of Section 8.6B hereof, a REIT Party shall not, under any circumstances, elect to acquire Tendered Units in exchange for the REIT Consideration if such exchange would be prohibited under the Charter.

F. Notwithstanding anything herein to the contrary (but subject to Section 8.6C hereof), with respect to any Redemption (or any tender of Partnership Common Units for Redemption if the Tendered Units are acquired by a REIT Party pursuant to Section 8.6B hereof) pursuant to this Section 8.6:

(1) All Partnership Common Units acquired by the General Partner pursuant to Section 8.6B hereof may, at the election of the General Partner, be converted into and deemed to be a General Partner Interest comprised of the same number of Partnership Common Units.

(2) Subject to the Ownership Limit, no Tendering Party may effect a Redemption for less than five hundred (500) Partnership Common Units or, if such Tendering Party holds (as a Limited Partner or, economically, as an Assignee) less than five hundred (500) Partnership Common Units, all of the Partnership Common Units held by such Tendering Party.

(3) Each Tendering Party (a) may effect a Redemption only once in each fiscal quarter of a twelve-month period, unless otherwise permitted by the General Partner, in its sole and absolute discretion and (b) may not effect a Redemption during the period after the Partnership Record Date with respect to a distribution and before the record date established by the Parent REIT for a distribution to its shareholders of some or all of its portion of such Partnership distribution.

(4) Notwithstanding anything herein to the contrary, with respect to any Redemption or acquisition of Tendered Units by a REIT Party pursuant to Section 8.6B hereof, in the event that the General Partner gives notice to all Limited Partners (but excluding any Assignees) then owning Partnership Interests (a "Primary Offering Notice") that the Parent REIT desires to effect a primary offering of its equity securities, then, unless the General Partner otherwise consents, commencement of the actions denoted in Section 8.6D hereof as to an Offering Funding, if any, with respect to any Notice of Redemption thereafter received, whether or not the Tendering Party is a Limited Partner, may be delayed until the earlier of (a) the completion of the primary offering or (b) ninety (90) days following the giving of the Primary Offering Notice.

(5) Without the consent of the General Partner, no Tendering Party may effect a Redemption within ninety (90) days following the closing of any prior Offering Funding.

(6) The consummation of such Redemption (or an acquisition of Tendered Units by a REIT Party pursuant to Section 8.6B hereof, as the case may be) shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(7) Subject to Section 8.6A, the Tendering Party shall continue to own (subject, in the case of an Assignee, to the provision of Section 11.5 hereof) all Partnership Common Units subject to any Redemption, and be treated as a Limited Partner or an Assignee, as applicable, with respect to such Partnership Common Units for all purposes of this Agreement, until such Partnership Common Units are either paid for by the Partnership pursuant to Section 8.6A hereof or transferred to a REIT Party and paid for, by the issuance of the REIT Shares, pursuant to Section 8.6B hereof on the Specified Redemption Date. Until a Specified Redemption Date and an acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6B hereof, the Tendering Party shall have no rights as a shareholder of the Parent REIT with respect to the REIT Shares issuable in connection with such acquisition.

(8) Each Limited Partner covenants and agrees with each REIT Party that acquires Tendered Units that all Tendered Units shall be delivered to the appropriate REIT Party free and clear of all liens, claims and encumbrances whatsoever and should any such liens, claims and/or encumbrances exist or arise with respect to such Tendered Units, the REIT Party shall be under no obligation to acquire the same. Each Limited Partner further agrees that, in the event any state or local property transfer tax is payable as a result of the transfer of its Tendered Units to a REIT Party (or its designee), such Limited Partner shall assume and pay such transfer tax.

(9) No Limited Partner may require a Redemption hereunder to the extent that the issuance of REIT Consideration pursuant to Section 8.6B hereof would violate ownership limitations contained in the Charter or would violate any REIT Requirement (notwithstanding that any such Tendered Units could otherwise be acquired for cash pursuant to Section 8.6A hereof).

(10) No Tendering Party may require a Redemption hereunder if the issuance of REIT Consideration would be likely to cause the acquisition of such REIT Consideration by such Tendering Party to be "integrated" with any other distribution of common stock of the Parent REIT or of Limited Partnership Interests for purposes of complying with the Securities Act.

For purposes of determining compliance with the restrictions set forth in this Section 8.6E, all Partnership Common Units beneficially owned by a Related Party of a Tendering Party shall be considered to be owned or held by such Tendering Party.

G. In connection with an exercise of Redemption rights pursuant to this Section 8.6, the Tendering Party shall submit the following to the General Partner, in addition to the Notice of Redemption:

(1) A written affidavit, dated the same date as the Notice of Redemption, (a) disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6) and 856(h), of REIT Shares by (i) such Tendering Party and (ii) any Related Party and (b) representing that, after giving effect to the Redemption or an acquisition of the Tendered Units by the General Partner pursuant to Section 8.6B hereof, neither the Tendering Party nor any Related Party will own REIT Shares in excess of the Ownership Limit;

(2) A written representation that neither the Tendering Party nor any Related Party has any intention to acquire any additional REIT Shares prior to the closing of the Redemption or an acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6B hereof on the Specified Redemption Date; and

(3) An undertaking to certify, at and as a condition to the closing of (i) the Redemption or (ii) the acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6B hereof on the Specified Redemption Date, that either (a) the actual and constructive ownership of REIT Shares by the Tendering Party and any Related Party remain unchanged from that disclosed in the affidavit required by Section 8.6G(1), or (b) after giving effect to the Redemption or an acquisition of the Tendered Units by a REIT Party pursuant to Section 8.6B hereof, neither the Tendering Party nor any Related Party shall own REIT Shares in violation of the Ownership Limit.

Section 8.7 Partnership Right to Call Limited Partner Interests. Notwithstanding any other provision of this Agreement, on and after the date on which the aggregate Percentage Interests of the Limited Partners (excluding any REIT Party) are less than one percent (1%), the Partnership shall have the right, but not the obligation, from time to time and at any time to redeem any and all outstanding Limited Partner Interests (excluding those held by any REIT Party) by treating any Limited Partner as a Tendering Party who has delivered a Notice of Redemption pursuant to Section 8.6 hereof for the amount of Partnership Common Units to be specified by the General Partner, in its sole and absolute discretion, by notice to such Limited Partner that the Partnership has elected to exercise its rights under this Section 8.7. Such notice given by the General Partner to a Limited Partner pursuant to this Section 8.7 shall be treated as if it were a Notice of Redemption delivered to the General Partner by such Limited Partner. For purposes of this Section 8.7, (a) any Limited Partner (whether or not otherwise a Qualifying Party) may, in the General Partner's sole and absolute discretion, be treated as a Qualifying Party that is a Tendering Party and (b) the provisions of Sections 8.6F(2), 8.6F(3) and 8.6E(5) hereof shall not apply, but the remainder of Section 8.6 hereof shall apply, mutatis mutandis.

Section 8.8 Mergers. The General Partner shall not permit the Partnership to be a party to any consolidation, merger, combination or other transaction pursuant to which the Partnership Common Units are converted or changed into or exchanged for partnership interests and/or other securities of another operating partnership in an UPREIT or similar structure, in each case without the affirmative vote of the holders of at least a majority of the outstanding Paired Common Units, voting separately as a class, unless upon consummation of any such consolidation, merger, combination or other transaction, the holders of Paired Common Units shall receive shares of stock or beneficial interest or other equity securities with preferences, rights and privileges not materially inferior to the preferences, rights and privileges of the Special Voting Preferred Stock (which shares of stock or beneficial interest or other equity securities shall be issued by the parent REIT of such operating partnership). This Section 8.8 shall not be amended or modified without the prior consent of the holders of at least a majority of the Paired Common Units.

ARTICLE IX

BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 Records and Accounting.

A. The General Partner shall keep or cause to be kept at the principal office of the Partnership those records and documents required to be maintained by the Act and other books and records deemed by the General Partner to be appropriate with respect to the Partnership's business, including, without limitation, all books and records necessary to provide to the Limited Partners any information, lists and copies of documents required to be provided pursuant to Section 9.3 hereof. Any records maintained by or on behalf of the Partnership in the regular course of its business may be kept on, or be in the form of, magnetic tape, photographs, micrographics or any other information storage device, provided that the records so maintained are convertible into clearly legible written form within a reasonable period of time.

B. The books of the Partnership shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or on such other basis as the General Partner determines to be necessary or appropriate. To the extent permitted by sound accounting practices and principles, the Partnership and the General Partner may operate with integrated or consolidated accounting records, operations and principles.

Section 9.2 Partnership Year. The Partnership Year of the Partnership shall be the calendar year.

Section 9.3 Reports.

A. As soon as practicable, but in no event later than one hundred five (105) days after the close of each Partnership Year, the General Partner shall cause to be mailed to each Limited Partner of record as of the close of the Partnership Year an annual report containing financial statements of the Partnership, or of the General Partner if such statements are prepared on a consolidated basis with the General Partner, for such Partnership Year, presented in accordance with generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the General Partner.

B. As soon as practicable, but in no event later than one hundred five (105) days after the close of each calendar quarter (except the last calendar quarter of each year), the General Partner shall cause to be mailed to each Limited Partner of record as of the last day of the calendar quarter a report containing unaudited financial statements of the Partnership, or of the General Partner if such statements are prepared on a consolidated basis with the General Partner, and such other information as may be required by applicable law or regulation or as the General Partner determines to be appropriate.

C. The General Partner may satisfy its obligations under Section 9.3A and Section 9.3B by posting or making available the reports specified in such sections on a website maintained by a REIT Party, or through the Parent REIT's filing of annual and quarterly reports with the SEC.

D. At the request of any Limited Partner, the General Partner shall provide access to the books, records and workpapers upon which the reports required by this Section 9.3 are based, to the extent required by the Act.

ARTICLE X

TAX MATTERS

Section 10.1 Preparation of Tax Returns. The General Partner shall arrange for the preparation and timely filing of all returns with respect to Partnership income, gains, deductions, losses and other items required of the Partnership for federal and state income tax purposes and shall use all reasonable effort to furnish, within ninety (90) days after the close of each taxable year, an estimate of the information to be included in Schedule K-1 or analogous schedule for each Partner reflecting such Partner's pro rata share of income, gain, loss, deductions and credits for such taxable year, and, within one hundred fifty (150) days after the close of each taxable year, a final Schedule K-1 or analogous schedule for each Partner. The Limited Partners shall promptly provide the General Partner with such information relating to the Contributed Properties, including tax basis and other relevant information, as may be reasonably requested by the General Partner from time to time.

Section 10.2 Tax Elections. Except as otherwise provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make or revoke any available election pursuant to the Code, including, but not limited to, the election under Code Section 754.

Section 10.3 Tax Matters Partner.

A. The General Partner shall be the "tax matters partner" of the Partnership for federal income tax purposes and the Partnership's "partnership representative" (within the meaning of Section 6223 of the New Partnership Audit Procedures). The tax matters partner shall receive no compensation for its services. All third-party costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Partnership in addition to any reimbursement pursuant to Section 7.4 hereof. Nothing herein shall be construed to restrict the Partnership from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder, so long as the compensation paid by the Partnership for such services is reasonable. At the request of any Limited Partner, the General Partner agrees to consult with such Limited Partner with respect to the preparation and filing of any returns and with respect to any subsequent audit or litigation relating to such returns; provided, however, that the filing of such returns shall be in the sole and absolute discretion of the General Partner.

B. The tax matters partner is authorized, but not required:

(1) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the tax matters partner may expressly state that such agreement shall bind all Partners, except that such settlement agreement shall not bind any Partner (i) who (within the time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner or (ii) who is a "notice partner" (as defined in Code Section 6231) or a member of a "notice group" (as defined in Code Section 6223(b)(2));

(2) in the event that a notice of a final administrative adjustment at the Partnership level of any item required to be taken into account by a Partner for tax purposes (a "final adjustment") is mailed to the tax matters partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the United States Tax Court or the United States Claims Court, or the filing of a complaint for refund with the District Court of the United States for the district in which the Partnership's principal place of business is located;

(3) to intervene in any action brought by any other Partner for judicial review of a final adjustment;

(4) to file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(5) to enter into an agreement with the IRS to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Partner for tax purposes, or an item affected by such item;

(6) to make any elections on behalf of the Partnership, including any election permitted to be made pursuant to the New Partnership Audit Procedures or any other section of the Code or the Treasury Regulations promulgated thereunder; and

(7) to take any other action on behalf of the Partners in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the tax matters partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the tax matters partner and the provisions relating to indemnification of the General Partner set forth in Section 7.7 hereof shall be fully applicable to the tax matters partner in its capacity as such.

Section 10.4 Withholding. Each Limited Partner hereby authorizes the Partnership to withhold from or pay on behalf of or with respect to such Limited Partner any amount of federal, state, local or foreign taxes that the General Partner determines that the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Limited Partner pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Partnership pursuant to Code Section 1441, Code Section 1442, Code Section 1445, Code Section 1446 or any assessment under the New Partnership Audit Procedures). Any amount paid on behalf of or with respect to a Limited Partner shall constitute a loan by the Partnership to such Limited Partner, which loan shall be repaid by such Limited Partner within fifteen (15) days after notice from the General Partner that such payment must be made unless (i) the Partnership withholds such payment from a distribution that would otherwise be made to the Limited Partner or (ii) the General Partner determines, in its sole and absolute discretion, that such payment may be satisfied out of the Available Funds of the Partnership that would, but for such payment, be distributed to the Limited Partner. Each Limited Partner hereby unconditionally and irrevocably grants to the Partnership a security interest in such Limited Partner's Partnership Interest to secure such Limited Partner's obligation to pay to the Partnership any amounts required to be paid pursuant to this Section 10.4. In the event that a Limited Partner fails to pay any amounts owed to the Partnership pursuant to this Section 10.4 when due, the General Partner may, in its sole and absolute discretion, elect to make the payment to the Partnership on behalf of such defaulting Limited Partner, and in such event shall be deemed to have lent such amount to such defaulting Limited Partner and shall succeed to all rights and remedies of the Partnership as against such defaulting Limited Partner (including, without limitation, the right to receive distributions). Any amounts payable by a Limited Partner hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in The Wall Street Journal, plus four (4) percentage points (but not higher than the maximum lawful rate) from the date such amount is due (i.e., fifteen (15) days after demand) until such amount is paid in full. Each Limited Partner shall take such actions as the Partnership or the General Partner shall request in order to perfect or enforce the security interest created hereunder.

Section 10.5 Organizational Expenses. The Partnership shall elect to deduct expenses, if any, incurred by it in organizing the Partnership ratably over a 60 month period as provided in Section 709 of the Code.

ARTICLE XI

TRANSFERS AND WITHDRAWALS

Section 11.1 Transfer.

A. No part of the interest of a Partner shall be subject to the claims of any creditor, to any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement.

B. No Partnership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article XI. Any Transfer or purported Transfer of a Partnership Interest not made in accordance with this Article XI shall be null and void ab initio.

C. Notwithstanding the other provisions of this Article XI (other than Section 11.6D hereof), the Partnership Interests of the General Partner may be Transferred, in whole or in part, at any time or from time to time, to the Parent REIT or any Person that is, at the time of such Transfer, a Qualified REIT Subsidiary. Any transferee of the entire General Partner Interest pursuant to this Section 11.1C shall automatically become, without further action or Consent of any Limited Partners, the sole general partner of the Partnership, subject to all the rights, privileges, duties and obligations under this Agreement and the Act relating to a general partner. Upon any Transfer permitted by this Section 11.1C, the transferor Partner shall be relieved of all its obligations under this Agreement. The provisions of Section 11.2B (other than the last sentence thereof), 11.3, 11.4A and 11.5 hereof shall not apply to any Transfer permitted by this Section 11.1C.

D. No Transfer of any Partnership Interest may be made to a lender to the Partnership or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Partnership whose loan constitutes a Nonrecourse Liability, without the consent of the General Partner in its sole and absolute discretion; provided that as a condition to such consent, the lender will be required to enter into an arrangement with the Partnership and the General Partner to redeem or exchange for the REIT Consideration any Partnership Units in which a security interest is held by such lender concurrently with such time as such lender would be deemed to be a partner in the Partnership for purposes of allocating liabilities to such lender under Section 752 of the Code.

Section 11.2 Transfer of General Partner's Partnership Interest.

A. The General Partner may not Transfer any of its General Partner Interest or withdraw from the Partnership except as provided in Sections 11.1C, 11.2B and 11.2C hereof.

B. Except as set forth in Section 11.1C, Section 11.2C or Section 11.2D, the General Partner shall not withdraw from the Partnership and shall not Transfer all or any portion of its interest in the Partnership (whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise). Upon any Transfer of such a Partnership Interest in accordance with such provisions, the transferee shall become a successor General Partner for all purposes herein, and shall be vested with the powers and rights of the transferor General Partner, and shall be liable for all obligations and responsible for all duties of the General Partner, once such transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Partnership Interest so acquired. It is a condition to any Transfer otherwise permitted hereunder that the transferee assumes, by operation of law or express agreement, all of the obligations of the transferor General Partner under this Agreement with respect to such Transferred Partnership Interest, and such Transfer shall relieve the transferor General Partner of its obligations under this Agreement without the Consent of the Limited Partners. In the event that the General Partner withdraws from the Partnership, in violation of this Agreement or otherwise, or otherwise dissolves or terminates, or upon the bankruptcy of the General Partner, a Majority in Interest of the Limited Partners may elect to continue the Partnership business by selecting a successor General Partner in accordance with the Act.

C. Notwithstanding Section 11.2B, the General Partner may merge with another entity if immediately after such merger substantially all of the assets of the surviving entity, other than the General Partner Interest held by the General Partner, are contributed to the Partnership as a Capital Contribution in exchange for Partnership Units.

D. The Parent REIT shall not engage in, or cause or permit, a Termination Transaction, unless:

(1) the Consent of the Limited Partners is obtained (which consent may be given or withheld in the sole and absolute discretion of the Limited Partners);

(2) in connection with any such Termination Transaction, each holder of Partnership Common Units (other than the REIT Parties) will receive, or will have the right to elect to receive, for each Partnership Common Unit, an amount of cash, securities or other property equal to the product of the Adjustment Factor and the greatest amount of cash, securities or other property paid to a holder of one REIT Share in consideration of one REIT Share pursuant to the terms of such Termination Transaction; provided that if, in connection with such Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of a majority of the outstanding REIT Shares, each holder of Partnership Common Units (other than the REIT Parties) will receive, or will have the right to elect to receive, the greatest amount of cash, securities or other property which such holder of Partnership Common Units would have received had it exercised its right to Redemption pursuant to Section 8.6 and received REIT Shares in exchange for its Partnership Common Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer and then such Termination Transaction shall have been consummated (the fair market value, at the time of the Termination Transaction, of the amount specified herein with respect to each Partnership Common Unit is referred to as the "Transaction Consideration"); or

(3) all of the following conditions are met: (i) substantially all of the assets directly or indirectly owned by the Partnership prior to the announcement of the Termination Transaction are, immediately after the Termination Transaction, owned directly or indirectly by the Partnership or another limited partnership or limited liability company which is the survivor of a merger, consolidation or combination of assets with the Partnership (in each case, the "Surviving Partnership"); (ii) the Surviving Partnership is classified as a partnership for U.S. Federal income tax purposes; (iii) the Limited Partners (other than the Initial Limited Partner) that held Partnership Common Units immediately prior to the consummation of such Termination Transaction own a percentage interest of the Surviving Partnership based on the relative fair market value of the net assets of the Partnership and the other net assets of the Surviving Partnership immediately prior to the consummation of such transaction; (iv) the rights of such Limited Partners with respect to the Surviving Partnership include: (x) if the Parent REIT or its successor is a REIT with a single class of Publicly Traded common equity securities, the right to redeem their interests in the Surviving Partnership at any time for either: (1) a number of such REIT's Publicly Traded common equity securities with a fair market value, as of the date of consummation of such Termination Transaction, equal to the Transaction Consideration, subject to antidilution adjustments comparable to those set forth in the definition of "Adjustment Factor" herein (the "Successor Shares Amount"); or (2) cash in an amount equal to the fair market value of the Successor Shares Amount at the time of such redemption, determined in a manner consistent with the definition of "Value" herein; or (y) if the Parent REIT or its successor is not a REIT with a single class of Publicly Traded common equity securities, the right to redeem their interests in the Surviving Partnership at any time for cash in an amount equal to the Transaction Consideration; and (v) the General Partner determines, in good faith, that the other rights of such Limited Partners with respect to the Surviving Partnership, in the aggregate, are not materially less favorable than those of Limited Partners holding Partnership Common Units immediately prior to the consummation of such transaction.

Section 11.3 Transfer of Limited Partners' Partnership Interests.

A. General. No Limited Partner shall Transfer all or any portion of its Partnership Interest to any transferee without the consent of the General Partner, which consent may be withheld in its sole and absolute discretion, provided, however, that subject to Section 11.3E hereof, ACM may distribute some or all of its Partnership Interests to its owners, and any Limited Partner that is an individual may transfer all or any portion of his Partnership Interest to his immediate family or a trust for his immediate family without the consent of the General Partner, provided, further, that the General Partner has the right not to admit such transferee as a Limited Partner in the Partnership.

B. Conditions to Transfer Consent. Without limiting the generality of Section 11.3A hereof, it is expressly understood and agreed that the General Partner will not consent to any Transfer of all or any portion of any Partnership Interest pursuant to Section 11.3A above unless such Transfer meets each of the following conditions:

(1) Qualified Transferee. Such Transfer is made only to a single Qualified Transferee; provided, however, that, for such purposes, all Qualified Transferees that are Affiliates, or that comprise investment accounts or funds managed by a single Qualified Transferee and its Affiliates, shall be considered together to be a single Qualified Transferee.

(2) Assumption of Obligations. The transferee in such Transfer assumes by operation of law or express agreement all of the obligations of the transferor Limited Partner under this Agreement with respect to such Transferred Partnership Interest; provided, that no such Transfer (unless made pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Partner are assumed by a successor corporation by operation of law) shall relieve the transferor Partner of its obligations under this Agreement without the approval of the General Partner, in its sole and absolute discretion. Notwithstanding the foregoing, any transferee of any Transferred Partnership Interest shall be subject to any and all ownership limitations contained in the Charter that may limit or restrict such transferee's ability to exercise its Redemption rights, including, without limitation, the Ownership Limit. Any transferee, whether or not admitted as a Substituted Limited Partner, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Limited Partner, no transferee, whether by a voluntary Transfer, by operation of law or otherwise, shall have any rights hereunder, other than the rights of an Assignee as provided in Section 11.5 hereof.

(3) Effective Date. Such Transfer is effective as of the first day of a fiscal quarter of the Partnership.

C. Incapacity. If a Limited Partner is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator or receiver of such Limited Partner's estate shall have all the rights of a Limited Partner, but not more rights than those enjoyed by other Limited Partners, for the purpose of settling or managing the estate, and such power as the Incapacitated Limited Partner possessed to Transfer all or any part of its interest in the Partnership. The Incapacity of a Limited Partner, in and of itself, shall not dissolve or terminate the Partnership.

D. Opinion of Counsel. In connection with any proposed Transfer of a Limited Partner Interest, the General Partner shall have the right to receive an opinion of counsel reasonably satisfactory to it to the effect that the proposed Transfer may be effected without registration under the Securities Act and will not otherwise violate any federal or state securities laws or regulations applicable to the Partnership or the Partnership Interests Transferred.

E. Adverse Tax Consequences. No Transfer by a Limited Partner of its Partnership Interests (including any Redemption, any other acquisition of Partnership Units by the Partnership or a REIT Party) may be made to or by any person if (i) in the opinion of legal counsel for the Partnership, it would result in the Partnership being treated as an association taxable as a corporation or would result in a termination of the Partnership under Code Section 708, or (ii) such Transfer would be effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Code Section 7704.

Section 11.4 Substituted Limited Partners.

A. A transferee of the interest of a Limited Partner pursuant to a Transfer consented to by the General Partner pursuant to Section 11.3A may be admitted as a Substituted Limited Partner only with the consent of the General Partner, which consent may be given or withheld by the General Partner in its sole and absolute discretion. The failure or refusal by the General Partner to permit a transferee of any such interests to become a Substituted Limited Partner shall not give rise to any cause of action against the Partnership or the General Partner. Subject to the foregoing, an Assignee shall not be admitted as a Substituted Limited Partner until and unless it furnishes to the General Partner (i) evidence of acceptance, in form and substance satisfactory to the General Partner, of all the terms, conditions and applicable obligations of this Agreement, (ii) a counterpart signature page to this Agreement executed by such Assignee and (iii) such other documents and instruments as may be required or advisable, in the sole and absolute discretion of the General Partner, to effect such Assignee's admission as a Substituted Limited Partner.

B. A transferee who has been admitted as a Substituted Limited Partner in accordance with this Article XI shall have all the rights and powers and be subject to all the restrictions and liabilities of a Limited Partner under this Agreement.

C. Upon the admission of a Substituted Limited Partner, the General Partner shall amend Exhibit A to reflect the name, address and number of Partnership Units of such Substituted Limited Partner and to eliminate or adjust, if necessary, the name, address and number of Partnership Units of the predecessor of such Substituted Limited Partner.

Section 11.5 Assignees. If the General Partner, in its sole and absolute discretion, does not consent to the admission of any transferee of any Partnership Interest as a Substituted Limited Partner in connection with a transfer permitted by the General Partner pursuant to Section 11.3A, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be entitled to all the rights of an assignee of a limited partnership interest under the Act, including the right to receive distributions from the Partnership and the share of Net Income, Net Losses and other items of income, gain, loss, deduction and credit of the Partnership attributable to the Partnership Units assigned to such transferee and the rights to Transfer the Partnership Units only in accordance with the provisions of this Article XI, but shall not be deemed to be a holder of Partnership Units for any other purpose under this Agreement, and shall not be entitled to effect a Consent or vote or effect a Redemption with respect to such Partnership Units on any matter presented to the Limited Partners for approval (such right to Consent or vote or effect a Redemption, to the extent provided in this Agreement or under the Act, fully remaining with the transferor Limited Partner). In the event that any such transferee desires to make a further assignment of any such Partnership Units, such transferee shall be subject to all the provisions of this Article XI to the same extent and in the same manner as any Limited Partner desiring to make an assignment of Partnership Units.

Section 11.6 General Provisions.

A. No Limited Partner may withdraw from the Partnership other than as a result of a permitted Transfer of all of such Limited Partner's Partnership Units in accordance with this Article XI, with respect to which the transferee becomes a Substituted Limited Partner, or pursuant to a redemption (or acquisition by the General Partner) of all of its Partnership Units pursuant to a Redemption under Section 8.6 hereof and/or pursuant to any Partnership Unit Designation.

B. Any Limited Partner who shall Transfer all of its Partnership Units in a Transfer (i) consented to by the General Partner pursuant to this Article XI where such transferee was admitted as a Substituted Limited Partner, (ii) pursuant to the exercise of its rights to effect a redemption of all of its Partnership Units pursuant to a Redemption under Section 8.6 hereof and/or pursuant to any Partnership Unit Designation or (iii) to the General Partner, whether or not pursuant to Section 8.6B hereof, shall cease to be a Limited Partner.

C. If any Partnership Unit is Transferred in compliance with the provisions of this Article XI, or is redeemed by the Partnership, or acquired by the General Partner pursuant to Section 8.6 hereof, on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit attributable to such Partnership Unit for such Partnership Year shall be allocated to the transferor Partner or the Tendering Party, as the case may be, and, in the case of a Transfer or assignment other than a Redemption, to the transferee Partner, by taking into account their varying interests during the Partnership Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the General Partner. Solely for purposes of making such allocations, each of such items for the calendar month in which a Transfer occurs shall be allocated to the transferee Partner and none of such items for the calendar month in which a Transfer or a Redemption occurs shall be allocated to the transferor Partner or the Tendering Party, as the case may be, if such Transfer occurs on or before the fifteenth (15th) day of the month, otherwise such items shall be allocated to the transferor. All distributions of Available Cash attributable to such Partnership Unit with respect to which the Partnership Record Date is before the date of such Transfer, assignment or Redemption shall be made to the transferor Partner or the Tendering Party, as the case may be, and, in the case of a Transfer other than a Redemption, all distributions of Available Cash thereafter attributable to such Partnership Unit shall be made to the transferee Partner.

D. In no event may any Transfer or assignment of a Partnership Interest by any Partner (including any Redemption, any acquisition of Partnership Units by the General Partner or any other acquisition of Partnership Units by the Partnership) be made (i) to any person or entity who lacks the legal right, power or capacity to own a Partnership Interest; (ii) in violation of applicable law; (iii) of any component portion of a Partnership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Partnership Interest; (iv) in the event that such Transfer would cause the Parent REIT to cease to comply with the REIT Requirements; (v) if such Transfer would, in the opinion of counsel to the Partnership, Parent REIT or the General Partner, cause a termination of the Partnership for federal or state income tax purposes (except as a result of the Redemption (or acquisition by a REIT Party) of all Partnership Common Units held by all Limited Partners); (vi) if such Transfer would, in the opinion of legal counsel to the Partnership, cause the Partnership to cease to be classified as a partnership for federal income tax purposes (except as a result of the Redemption (or acquisition by a REIT Party) of all Partnership Common Units held by all Limited Partners); (vii) if such Transfer would cause the Partnership to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in ERISA Section 3(14)) or a "disqualified person" (as defined in Code Section 4975(c)); (viii) if such Transfer would, in the opinion of legal counsel to the Partnership, cause any portion of the assets of the Partnership to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.2-101; (ix) if such Transfer requires the registration of such Partnership Interest pursuant to any applicable federal or state securities laws; (x) if such Transfer causes the Partnership to become a "publicly traded partnership," as such term is defined in Code Section 469(k)(2) or Code 7704(b); (xi) if such Transfer causes the Partnership (as opposed to the General Partner) to become a reporting company under the Exchange Act; or (xii) if such Transfer subjects the Partnership to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended.

ARTICLE XII

ADMISSION OF PARTNERS

Section 12.1 Admission of Successor General Partner. A successor to all of the General Partner's General Partner Interest pursuant to Section 11.2 hereof who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective immediately prior to such Transfer. Any such successor shall carry on the business of the Partnership without dissolution. In each case, the admission shall be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission.

Section 12.2 Admission of Additional Limited Partners.

A. After the date hereof, a Person (other than an existing Partner) who makes a Capital Contribution to the Partnership in accordance with this Agreement shall be admitted to the Partnership as an Additional Limited Partner only upon furnishing to the General Partner (i) evidence of acceptance, in form and substance satisfactory to the General Partner, of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 hereof, (ii) a counterpart signature page to this Agreement executed by such Person and (iii) such other documents or instruments as may be required in the sole and absolute discretion of the General Partner in order to effect such Person's admission as an Additional Limited Partner.

B. Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Limited Partner without the consent of the General Partner, which consent may be given or withheld in the General Partner's sole and absolute discretion. The admission of any Person as an Additional Limited Partner shall become effective on the date upon which the name of such Person is recorded on the books and records of the Partnership, following the consent of the General Partner to such admission.

C. If any Additional Limited Partner is admitted to the Partnership on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit allocable among Partners and Assignees for such Partnership Year shall be allocated pro rata among such Additional Limited Partner and all other Partners and Assignees by taking into account their varying interests during the Partnership Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the General Partner. Solely for purposes of making such allocations, each of such items for the calendar month in which an admission of any Additional Limited Partner occurs shall be allocated among all the Partners and Assignees including such Additional Limited Partner, in accordance with the principles described in Section 11.6C hereof. All distributions of Available Cash with respect to which the Partnership Record Date is before the date of such admission shall be made solely to Partners and Assignees other than the Additional Limited Partner, and all distributions of Available Cash thereafter shall be made to all the Partners and Assignees including such Additional Limited Partner.

Section 12.3 Amendment of Agreement and Certificate of Limited Partnership. For the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Act to amend the records of the Partnership and, if necessary, to prepare as soon as practical an amendment of this Agreement (including an amendment of Exhibit A) and, if required by law, shall prepare and file an amendment to the Certificate and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

Section 12.4 Limit on Number of Partners. Unless otherwise permitted by the General Partner, no Person shall be admitted to the Partnership as an Additional Limited Partner if the effect of such admission would be to cause the Partnership to have a number of Partners (including as Partners for this purpose those Persons indirectly owning an interest in the Partnership through another partnership, a limited liability company, a subchapter S corporation or a grantor trust) that would cause the Partnership to become a reporting company under the Exchange Act.

ARTICLE XIII

DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 Dissolution. The Partnership shall not be dissolved by the admission of Substituted Limited Partners or Additional Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the withdrawal of the General Partner, any successor General Partner shall continue the business of the Partnership without dissolution. However, the Partnership shall dissolve, and its affairs shall be wound up, upon the first to occur of any of the following (each a "Liquidating Event"):

- A. an event of withdrawal, as defined in the Act (including, without limitation, bankruptcy), of the sole General Partner unless, within ninety (90) days after the withdrawal, a Majority in Interest of the remaining Limited Partners agree in writing, in their sole and absolute discretion, to continue the business of the Partnership and to the appointment, effective as of the date of withdrawal, of a successor General Partner;
- B. an election to dissolve the Partnership made by the General Partner in its sole and absolute discretion, with or without the Consent of the Limited Partners;
- C. entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Act;
- D. the occurrence of a Terminating Capital Transaction; or
- E. the Redemption (or acquisition by the General Partner) of all Partnership Units other than Partnership Units held by the General Partner.

Section 13.2 Winding Up.

A. Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and Partners. After the occurrence of a Liquidating Event, no Partner shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Partnership's business and affairs. The General Partner (or, in the event that there is no remaining General Partner or the General Partner has dissolved, become bankrupt within the meaning of the Act or ceased to operate, any Person elected by a Majority in Interest of the Limited Partners (the General Partner or such other Person being referred to herein as the "Liquidator")) shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and property, and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the General Partner, include shares of stock in the General Partner) shall be applied and distributed in the following order:

- (1) First, to the satisfaction of all of the Partnership's debts and liabilities to creditors other than the Partners and their Assignees (whether by payment or the making of reasonable provision for payment thereof);
- (2) Second, to the satisfaction of all of the Partnership's debts and liabilities to the General Partner (whether by payment or the making of reasonable provision for payment thereof), including, but not limited to, amounts due as reimbursements under Section 7.4 hereof;
- (3) Third, to the satisfaction of all of the Partnership's debts and liabilities to the other Partners and any Assignees (whether by payment or the making of reasonable provision for payment thereof); and
- (4) Subject to the terms of any Partnership Unit Designation, the balance, if any, to the General Partner, the Limited Partners and any Assignees in accordance with and in proportion to their positive Capital Account balances, after giving effect to all contributions, distributions and allocations for all periods.

The General Partner shall not receive any additional compensation for any services performed pursuant to this Article XIII.

B. Notwithstanding the provisions of Section 13.2A hereof that require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (including to those Partners as creditors) and/or distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2A hereof, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Partners, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

C. In the event that the Partnership is "liquidated" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), distributions shall be made pursuant to this Article XIII to the Partners and Assignees that have positive Capital Accounts in compliance with Regulations Section 1.704-1(b)(2)(ii)(b)(2) to the extent of, and in proportion to, positive Capital Account balances. If the General Partner has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs) (a "Capital Account Deficit"), the General Partner shall make a contribution to the capital of the Partnership equal to the amount of such deficit. No Partner other than the General Partner shall be required to make any contribution to the capital of the Partnership with respect to a Capital Account Deficit, if any, of such Partner, and such Capital Account Deficit shall not be considered a debt owed to the Partnership or any other person for any purpose whatsoever. In the sole and absolute discretion of the General Partner or the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Partners pursuant to this Article XIII may be:

(1) distributed to a trust established for the benefit of the General Partner and the Limited Partners for the purpose of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or of the General Partner arising out of or in connection with the Partnership and/or Partnership activities. The assets of any such trust shall be distributed to the General Partner and the Limited Partners, from time to time, in the reasonable discretion of the General Partner, in the same proportions and amounts as would otherwise have been distributed to the General Partner and the Limited Partners pursuant to this Agreement; or

(2) withheld or escrowed to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that such withheld or escrowed amounts shall be distributed to the General Partner and Limited Partners in the manner and order of priority set forth in Section 13.2A hereof as soon as practicable.

Section 13.3 Deemed Distribution and Recontribution. Notwithstanding any other provision of this Article XIII, in the event that the Partnership is liquidated within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g), but no Liquidating Event has occurred, the Partnership's Property shall not be liquidated, the Partnership's liabilities shall not be paid or discharged and the Partnership's affairs shall not be wound up. Instead, for federal income tax purposes the Partnership shall be deemed to have contributed all of its assets and liabilities to a new partnership in exchange for an interest in the new partnership; and, immediately thereafter, distributed interests in the new partnership to the Partners in accordance with their respective Capital Accounts in liquidation of the Partnership, and the new partnership is deemed to continue the business of the Partnership. Nothing in this Section 13.3 shall be deemed to have constituted any Assignee as a Substituted Limited Partner without compliance with the provisions of Section 11.4 hereof.

Section 13.4 Rights of Limited Partners. Except as otherwise provided in this Agreement, (a) each Limited Partner shall look solely to the assets of the Partnership for the return of its Capital Contribution, (b) no Limited Partner shall have the right or power to demand or receive property other than cash from the Partnership and (c) no Limited Partner (other than any Limited Partner who holds Partnership Preferred Units, to the extent specifically set forth herein and in the applicable Partnership Unit Designation) shall have priority over any other Limited Partner as to the return of its Capital Contributions, distributions or allocations.

Section 13.5 Notice of Dissolution. In the event that a Liquidating Event occurs or an event occurs that would, but for an election or objection by one or more Partners pursuant to Section 13.1 hereof, result in a dissolution of the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each of the Partners and, in the General Partner's sole and absolute discretion or as required by the Act, to all other parties with whom the Partnership regularly conducts business (as determined in the sole and absolute discretion of the General Partner), and the General Partner may, or, if required by the Act, shall, publish notice thereof in a newspaper of general circulation in each place in which the Partnership regularly conducts business (as determined in the sole and absolute discretion of the General Partner).

Section 13.6 Cancellation of Certificate of Limited Partnership. Upon the completion of the liquidation of the Partnership cash and property as provided in Section 13.2 hereof, the Partnership shall be terminated, a certificate of cancellation shall be filed with the State of Delaware, all qualifications of the Partnership as a foreign limited partnership or association in jurisdictions other than the State of Delaware shall be cancelled, and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 13.7 Reasonable Time for Winding-Up. A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between the Partners during the period of liquidation.

ARTICLE XIV

PROCEDURES FOR ACTIONS AND CONSENTS OF PARTNERS; AMENDMENTS; MEETINGS

Section 14.1 Procedures for Actions and Consents of Partners. The actions requiring consent or approval of Limited Partners pursuant to this Agreement, including Section 7.3 hereof, or otherwise pursuant to applicable law, are subject to the procedures set forth in this Article XIV.

Section 14.2 Amendments. Amendments to this Agreement may be proposed by the General Partner or by a Majority in Interest of the Limited Partners. Following such proposal, the General Partner shall submit any proposed amendment to the Limited Partners. The General Partner shall seek the written consent of the Limited Partners on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that the General Partner may deem appropriate. For purposes of obtaining a written consent, the General Partner may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a consent that is consistent with the General Partner's recommendation with respect to the proposal; provided, however, that an action shall become effective at such time as requisite consents are received even if prior to such specified time.

Section 14.3 Meetings of the Partners.

A. Meetings of the Partners may be called by the General Partner and shall be called upon the receipt by the General Partner of a written request by a Majority in Interest of the Limited Partners. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Partners not less than seven (7) days nor more than thirty (30) days prior to the date of such meeting. Partners may vote in person or by proxy at such meeting. Whenever the vote or Consent of Partners is permitted or required under this Agreement, such vote or Consent may be given at a meeting of Partners or may be given in accordance with the procedure prescribed in Section 14.3B hereof.

B. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a written consent setting forth the action so taken is signed by a majority of the Percentage Interests of the Partners (or such other percentage as is expressly required by this Agreement for the action in question). Such consent may be in one instrument or in several instruments, and shall have the same force and effect as a vote of a majority of the Percentage Interests of the Partners (or such other percentage as is expressly required by this Agreement). Such consent shall be filed with the General Partner. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified.

C. Each Limited Partner may authorize any Person or Persons to act for it by proxy on all matters in which a Limited Partner is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Every proxy must be signed by the Limited Partner or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy (or there is receipt of a proxy authorizing a later date). Every proxy shall be revocable at the pleasure of the Limited Partner executing it, such revocation to be effective upon the Partnership's receipt of written notice of such revocation from the Limited Partner executing such proxy. The use of proxies will be governed in the same manner as in the case of corporations organized under the General Corporation Law of Delaware (including Section 212 thereof).

D. Each meeting of Partners shall be conducted by the General Partner or such other Person as the General Partner may appoint pursuant to such rules for the conduct of the meeting as the General Partner or such other Person deems appropriate in its sole and absolute discretion. Without limitation, meetings of Partners may be conducted in the same manner as meetings of the General Partner's shareholders and may be held at the same time as, and as part of, the meetings of the General Partner's shareholders.

ARTICLE XV

GENERAL PROVISIONS

Section 15.1 Addresses and Notice. Any notice, demand, request or report required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication (including by telecopy, facsimile, or commercial courier service) to the Partner or Assignee at the address set forth in Exhibit A or such other address of which the Partner shall notify the General Partner in writing.

Section 15.2 Titles and Captions. All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" or "Sections" are to Articles and Sections of this Agreement.

Section 15.3 Pronouns and Plurals. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.4 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.6 Waiver.

A. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

B. The restrictions, conditions and other limitations on the rights and benefits of the Limited Partners contained in this Agreement, and the duties, covenants and other requirements of performance or notice by the Limited Partners, are for the benefit of the Partnership and, except for an obligation to pay money to the Partnership, may be waived or relinquished by the General Partner, in its sole and absolute discretion, on behalf of the Partnership in one or more instances from time to time and at any time; provided, however, that any such waiver or relinquishment may not be made if it would have the effect of (i) creating liability for any other Limited Partner, (ii) causing the Partnership to cease to qualify as a limited partnership, (iii) reducing the amount of cash otherwise distributable to the Limited Partners, (iv) resulting in the classification of the Partnership as an association or publicly traded partnership taxable as a corporation or (v) violating the Securities Act, the Exchange Act or any state "blue sky" or other securities laws; provided, further, that any waiver relating to compliance with the Ownership Limit or other restrictions in the Charter shall be made and shall be effective only as provided in the Charter.

Section 15.7 Counterparts. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.8 Applicable Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law. In the event of a conflict between any provision of this Agreement and any non-mandatory provision of the Act, the provisions of this Agreement shall control and take precedence.

Section 15.9 Entire Agreement. This Agreement amends and restates the Second Amended Partnership Agreement and contains all of the understandings and agreements between and among the Partners with respect to the subject matter of this Agreement and the rights, interests and obligations of the Partners with respect to the Partnership.

Section 15.10 Invalidity of Provisions. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.11 Limitation to Preserve REIT Status. Notwithstanding anything else in this Agreement, to the extent that the amount paid, credited, distributed or reimbursed by the Partnership to any REIT Party or its officers, directors, employees or agents, whether as a reimbursement, fee, expense or indemnity (a "REIT Payment"), would constitute gross income to the Parent REIT for purposes of Code Section 856(c)(2) or Code Section 856(c)(3), then, notwithstanding any other provision of this Agreement, the amount of such REIT Payments, as selected by the General Partner in its discretion from among items of potential distribution, reimbursement, fees, expenses and indemnities, shall be reduced for any Partnership Year so that the REIT Payments, as so reduced, for or with respect to such REIT Party shall not exceed the lesser of:

(i) an amount equal to the excess, if any, of (a) four and nine-tenths percent (4.9%) of the REIT Party's total gross income (but excluding the amount of any REIT Payments) for the Partnership Year that is described in subsections (A) through (H) of Code Section 856(c)(2) over (b) the amount of gross income (within the meaning of Code Section 856(c)(2)) derived by the REIT Party from sources other than those described in subsections (A) through (H) of Code Section 856(c)(2) (but not including the amount of any REIT Payments); or

(ii) an amount equal to the excess, if any, of (a) twenty-four percent (24%) of the REIT Party's total gross income (but excluding the amount of any REIT Payments) for the Partnership Year that is described in subsections (A) through (I) of Code Section 856(c)(3) over (b) the amount of gross income (within the meaning of Code Section 856(c)(3)) derived by the REIT Party from sources other than those described in subsections (A) through (I) of Code Section 856(c)(3) (but not including the amount of any REIT Payments);

provided, however, that REIT Payments in excess of the amounts set forth in clauses (i) and (ii) above may be made if the General Partner, as a condition precedent, obtains an opinion of tax counsel that the receipt of such excess amounts shall not adversely affect the Parent REIT's ability to qualify as a REIT. To the extent that REIT Payments may not be made in a Partnership Year as a consequence of the limitations set forth in this Section 15.11, such REIT Payments shall carry over and shall be treated as arising in the following Partnership Year. The purpose of the limitations contained in this Section 15.11 is to prevent the Parent REIT from failing to qualify as a REIT under the Code by reason of any REIT Party's share of items, including distributions, reimbursements, fees, expenses or indemnities, receivable directly or indirectly from the Partnership, and this Section 15.11 shall be interpreted and applied to effectuate such purpose.

Section 15.12 No Partition. No Partner nor any successor-in-interest to a Partner shall have the right while this Agreement remains in effect to have any property of the Partnership partitioned, or to file a complaint or institute any proceeding at law or in equity to have such property of the Partnership partitioned, and each Partner, on behalf of itself and its successors and assigns hereby waives any such right. It is the intention of the Partners that the rights of the parties hereto and their successors-in-interest to Partnership property, as among themselves, shall be governed by the terms of this Agreement, and that the rights of the Partners and their successors-in-interest shall be subject to the limitations and restrictions as set forth in this Agreement.

Section 15.13 No Third-Party Rights Created Hereby. The provisions of this Agreement are solely for the purpose of defining the interests of the Partners, inter se; and no other person, firm or entity (i.e., a party who is not a signatory hereto or a permitted successor to such signatory hereto) shall have any right, power, title or interest by way of subrogation or otherwise, in and to the rights, powers, title and provisions of this Agreement. No creditor or other third party having dealings with the Partnership (other than as expressly set forth herein with respect to Indemnitees) shall have the right to enforce the right or obligation of any Partner to make Capital Contributions or loans to the Partnership or to pursue any other right or remedy hereunder or at law or in equity. None of the rights or obligations of the Partners herein set forth to make Capital Contributions or loans to the Partnership shall be deemed an asset of the Partnership for any purpose by any creditor or other third party, nor may any such rights or obligations be sold, transferred or assigned by the Partnership or pledged or encumbered by the Partnership to secure any debt or other obligation of the Partnership or any of the Partners.

Section 15.14 No Rights as Stockholders. Nothing contained in this Agreement shall be construed as conferring upon the Holders of Partnership Units any rights whatsoever as stockholders of the General Partner, including without limitation any right to receive dividends or other distributions made to stockholders of the General Partner or to vote or to consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the General Partner or any other matter.

[The next page is the signature page.]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

GENERAL PARTNER:

ARBOR REALTY GPOP, INC.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

INITIAL LIMITED PARTNER:

ARBOR REALTY LPOP, INC.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

LIMITED PARTNERS:

ARBOR COMMERCIAL MORTGAGE, LLC

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

PARENT REIT:

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio

Name: Paul Elenio

Title: Chief Financial Officer

[Signature Page to the Fourth Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership]

Exhibit A

PARTNERS AND PARTNERSHIP UNITS

Name and Address of Partners	Partnership Units (Type and Amount)	Percentage Interests
<u>General Partner:</u>		
ARBOR REALTY GPOP, INC. 333 Earle Ovington Boulevard, Suite 900 Uniondale, NY 11553	[_____] Common Units [_____] Series D Preferred Units	[__]%
<u>Limited Partners:</u>		
ARBOR REALTY LPOP, INC. 333 Earle Ovington Boulevard, Suite 900 Uniondale, NY 11553	[_____] Common Units [_____] Special Preferred Units [_____] Series D Preferred Units	[__]%
ARBOR COMMERCIAL MORTGAGE, LLC [_____]	[_____] Common Units	[__]%

Exhibit B

EXAMPLES REGARDING ADJUSTMENT FACTOR

For purposes of the following examples, it is assumed that (a) the Adjustment Factor in effect on December 30, 2002 is 1.0 and (b) on January 1, 2003 (the "Partnership Record Date" for purposes of these examples), prior to the events described in the examples, there are 100 REIT Shares issued and outstanding.

Example 1

On the Partnership Record Date, the Parent REIT declares a dividend on its outstanding REIT Shares in REIT Shares. The amount of the dividend is one REIT Share paid in respect of each REIT Share owned. Pursuant to Paragraph (a) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the stock dividend is declared, as follows:

$$1.0 * \frac{200}{100} = 2.0$$

Accordingly, the Adjustment Factor after the stock dividend is declared is 2.0.

Example 2

On the Partnership Record Date, the Parent REIT distributes options to purchase REIT Shares to all holders of its REIT Shares. The amount of the distribution is one option to acquire one REIT Share in respect of each REIT Share owned. The strike price is \$4.00 a share. The Value of a REIT Share on the Partnership Record Date is \$5.00 per share. Pursuant to Paragraph (b) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the options are distributed, as follows:

$$1.0 * \frac{\{(100+100)\}}{100 + \frac{\{(100 * \{100 * \$4.00\}\}}{\{ \$5.00 \}}} = 1.1111$$

Accordingly, the Adjustment Factor after the options are distributed is 1.1111. If the options expire or become no longer exercisable, then the retroactive adjustment specified in Paragraph (b) of the definition of "Adjustment Factor" shall apply.

Example 3

On the Partnership Record Date, the Parent REIT distributes assets to all holders of its REIT Shares. The amount of the distribution is one asset with a fair market value (as determined by the Parent REIT) of \$1.00 in respect of each REIT Share owned. It is also assumed that the assets do not relate to assets received by the General Partner pursuant to a pro rata distribution by the Partnership. The Value of a REIT Share on the Partnership Record Date is \$5.00 a share. Pursuant to Paragraph (c) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Partnership Record Date, effective immediately after the assets are distributed, as follows:

$$1.0 * \frac{\{ \$5.00 \}}{\{ \$5.00 - \$1.00 \}} = 1.25$$

Accordingly, the Adjustment Factor after the assets are distributed is 1.25.

Exhibit C

NOTICE OF REDEMPTION

To: Arbor Realty GPOP, Inc.
333 Earle Ovington Boulevard
Suite 900
Uniondale, New York 11553

The undersigned Limited Partner or Assignee hereby irrevocably tenders for Redemption _____ Partnership Common Units in Arbor Realty Limited Partnership in accordance with the terms of the Agreement of Limited Partnership of Arbor Realty Limited Partnership, as the same may be amended and/or supplemented from time to time (the "Agreement"), and the Redemption rights referred to therein. The undersigned Limited Partner or Assignee:

- (a) undertakes (i) to surrender such Partnership Common Units and any certificate therefor at the closing of the Redemption and (ii) to furnish to the General Partner, prior to the Specified Redemption Date, the documentation, instruments and information required under Section 8.6G of the Agreement;
- (b) directs that the certified check representing the Cash Amount, or the REIT Shares Amount, as applicable, deliverable upon the closing of such Redemption be delivered to the address specified below;
- (c) represents, warrants, certifies and agrees that:
 - (i) the undersigned Limited Partner or Assignee is a Qualifying Party,
 - (ii) the undersigned Limited Partner or Assignee has, and at the closing of the Redemption will have, good, marketable and unencumbered title to such Partnership Common Units, free and clear of the rights or interests of any other person or entity,
 - (iii) the undersigned Limited Partner or Assignee has, and at the closing of the Redemption will have, the full right, power and authority to tender and surrender such Partnership Common Units as provided herein, and
 - (iv) the undersigned Limited Partner or Assignee has obtained the consent or approval of all persons and entities, if any, having the right to consent to or approve such tender and surrender; and
- (d) acknowledges that he will continue to own such Partnership Common Units until and unless either (i) such Partnership Common Units are acquired by a REIT Party pursuant to Section 8.6B of the Agreement or (ii) such redemption transaction closes.

All capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to them respectively in the Agreement.

Dated: _____

Name of Limited Partner or Assignee:

(Signature of Limited Partner or Assignee)

(Street Address)

(City)

(State)

(Zip Code)

Signature Guaranteed by:

Issue Check Payable to:

Please insert social security
or identifying number:

Exhibit D

FORM OF UNIT CERTIFICATE

THE SECURITY EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS THE TRANSFEROR DELIVERS TO THE PARTNERSHIP AN OPINION OF COUNSEL SATISFACTORY TO THE PARTNERSHIP, IN FORM AND SUBSTANCE SATISFACTORY TO THE PARTNERSHIP, TO THE EFFECT THAT THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS. IN ADDITION, THE LIMITED PARTNERSHIP INTEREST EVIDENCED BY THIS CERTIFICATE MAY BE SOLD OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE RESTRICTIONS ON TRANSFER SET FORTH IN THE AGREEMENT OF LIMITED PARTNERSHIP OF ARBOR REALTY LIMITED PARTNERSHIP, AS THE SAME MAY BE AMENDED AND/OR SUPPLEMENTED FROM TIME TO TIME, A COPY OF WHICH MAY BE OBTAINED FROM ARBOR REALTY TRUST, INC. AT ITS PRINCIPAL EXECUTIVE OFFICE.

Certificate Number _____

ARBOR REALTY LIMITED PARTNERSHIP
FORMED UNDER THE LAWS OF THE STATE OF DELAWARE

This certifies that _____
is the owner of _____

FULLY PAID PARTNERSHIP COMMON UNITS OF
ARBOR REALTY LIMITED PARTNERSHIP

transferable on the books of the Partnership in person or by duly authorized attorney on the surrender of this Certificate properly endorsed. This Certificate and the Partnership Common Units represented hereby are issued and shall be held subject to all of the provisions of the Agreement of Limited Partnership of Arbor Realty Limited Partnership, as the same may be amended and/or supplemented from time to time.

IN WITNESS WHEREOF, the undersigned has signed this Certificate.

Dated:

By: _____

Exhibit E

PARTNERSHIP UNIT DESIGNATION OF THE SERIES D PREFERRED UNITS

Arbor Realty Trust, Inc.
List of Significant Subsidiaries

<u>Name</u>	<u>Jurisdiction of Organization</u>
Arbor Realty GPOP, Inc.	Delaware
Arbor Realty Limited Partnership	Delaware
ARSR Holdings, LLC	Delaware
Arbor Realty SR, Inc.	Maryland
Arbor Realty Commercial Real Estate Notes 2018-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2019-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2019-FL2 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2020-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2021-FL1 Ltd.	Cayman Islands
Arbor Realty Commercial Real Estate Notes 2021-FL2 Ltd.	Cayman Islands
ARSR Alpine LLC	Delaware
Arbor Private Label, LLC	Delaware
ART Cardinal, LLC	Delaware

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" in the Registration Statement (Form S-4) and related Prospectus of Arbor Realty Trust, Inc. for the registration of \$165,000,000 aggregate principal amount of 5.00% Senior Notes due 2026 and to the incorporation by reference therein of our reports dated February 19, 2021, with respect to the consolidated financial statements and schedule of Arbor Realty Trust, Inc. and Subsidiaries, and the effectiveness of internal control over financial reporting of Arbor Realty Trust, Inc. and Subsidiaries, included in its Annual Report (Form 10-K) for the year ended December 31, 2020, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

New York, New York
June 28, 2021

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated February 17, 2021, with respect to the consolidated financial statements of Wakefield Investment Holdings LLC incorporated by reference in the Registration Statement (Form S-4) and related Prospectus of Arbor Realty Trust, Inc. for the registration of \$165,000,000 aggregate principal amount of 5.00% Senior Notes.

/s/ Richey, May & Co., LLP

Englewood, Colorado
June 28, 2021

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM T-1

**STATEMENT OF ELIGIBILITY UNDER
THE TRUST INDENTURE ACT OF 1939 OF A
CORPORATION DESIGNATED TO ACT AS TRUSTEE**
Check if an Application to Determine Eligibility of
a Trustee Pursuant to Section 305(b)(2)

UMB BANK, NATIONAL ASSOCIATION
(Exact name of Trustee as specified in its charter)

44-0194180
I.R.S. Employer Identification No.

1010 Grand Blvd. Kansas City, Missouri	64106
(Address of principal executive offices)	(Zip Code)

Mauri J. Cowen
UMB BANK, NATIONAL ASSOCIATION
5555 San Felipe, Suite 870
Houston, Texas 77056
(713) 300-0586
(Name, address and telephone number of agent for service)

Arbor Realty Trust, Inc.
(Issuer with respect to the Securities)

Maryland	20-0057959
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

333 Earle Ovington Boulevard, Suite 900 Uniondale, New York	11553
(Address of Principal Executive Offices)	(Zip Code)

5.00% Senior Notes due 2026
(Title of the Indenture Securities)

FORM T-1

Item 1. **GENERAL INFORMATION.** Furnish the following information as to the Trustee.

a) *Name and address of each examining or supervising authority to which it is subject.*

The Comptroller of the Currency
Mid-Western District
2345 Grand Avenue, Suite 700
Kansas City, Missouri 64108

Federal Reserve Bank of Kansas City
Federal Reserve P.O. Station
Kansas City, Missouri 64198

Supervising Examiner
Federal Deposit Insurance Corporation
720 Olive Street, Suite 2909
St. Louis, Missouri 63101

b) *Whether it is authorized to exercise corporate trust powers.*

Yes

Item 2. **AFFILIATIONS WITH OBLIGOR.** *If the obligor is an affiliate of the Trustee, describe each such affiliation.*

None

Items 3-15 *Items 3-15 are not applicable because, to the best of the Trustee's knowledge, the obligor is not in default under any Indenture for which the Trustee acts as Trustee.*

Item 16. **LIST OF EXHIBITS:** *List below all exhibits filed as a part of this statement of eligibility and qualification.*

1. A copy of the Articles of Association of the Trustee (Exhibit 1 to Form T-1 filed with Registration Statement No. 333-74008).
 2. Certificate of Authority from the Comptroller of the Currency evidencing a change of the corporate title of the Association (Exhibit 2 to Form T-1 filed with Registration Statement No. 333-74008).
 3. Certificate from the Comptroller of the Currency evidencing authority to exercise corporate trust powers and a letter evidencing a change of the corporate title of the Association (Exhibit 3 to Form T-1 filed with Registration Statement No. 333-74008).
 4. Bylaws, as amended of the Trustee (Exhibit 4 to Form T-1 filed with Registration Statement No. 333-74008).
-

5. A copy of each Indenture referred to in Item 4. Not applicable.
6. The consent of the Trustee required by Section 321(b) of the Act (Exhibit 6 to Registration Statement No. 333-74008).
7. Report of Condition of the Trustee as of June 30, 2018 published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the Trustee, UMB BANK, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility and qualification to be signed on its behalf by the undersigned, thereunto duly authorized, all in the city of Houston, State of Texas on the 28th of June, 2021.

By: /s/ Mauri J. Cowen
Mauri J. Cowen
Sr. Vice President

Exhibit 7

**Consolidated Report of Condition for Insured Banks
and Savings Associations for March 31, 2021**

All schedules are to be reported in thousands of dollars. Unless otherwise indicated, report the amount outstanding as of the last business day of the quarter.

Schedule RC—Balance Sheet

		Dollar Amounts in Thousands		RCFD	Amount	
Assets						
1.	Cash and balances due from depository institutions (from Schedule RC-A):					
a.	Noninterest-bearing balances and currency and coin (1).....			0081	386,622	1.a.
b.	Interest-bearing balances (2).....			0071	3,830,763	1.b.
2.	Securities:					
a.	Held-to-maturity securities (from Schedule RC-B, column A) (3).....			JJ34	1,039,711	2.a.
b.	Available-for-sale debt securities (from Schedule RC-B, column D).....			1773	9,753,330	2.b.
c.	Equity securities with readily determinable fair values not held for trading (4).....			JA22	101,801	2.c.
3.	Federal funds sold and securities purchased under agreements to resell:					
a.	Federal funds sold.....			RCON B987	0	3.a.
b.	Securities purchased under agreements to resell (5,6).....			RCFD B989	1,629,813	3.b.
4.	Loans and lease financing receivables (from Schedule RC-C):			RCFD		
a.	Loans and leases held for sale.....			5369	10,275	4.a.
b.	Loans and leases held for investment.....	B528	16,497,352			4.b.
c.	LESS: Allowance for loan and lease losses (7).....	3123	202,814			4.c.
d.	Loans and leases held for investment, net of allowance (item 4.b minus 4.c).....			B529	16,294,538	4.d.
5.	Trading assets (from Schedule RC-D).....			3545	25,329	5.
6.	Premises and fixed assets (including capitalized leases).....			2145	220,435	6.
7.	Other real estate owned (from Schedule RC-M).....			2150	4,740	7.
8.	Investments in unconsolidated subsidiaries and associated companies.....			2130	0	8.
9.	Direct and indirect investments in real estate ventures.....			3656	0	9.
10.	Intangible assets (from Schedule RC-M).....			2143	151,036	10.
11.	Other assets (from Schedule RC-F) (6).....			2160	960,891	11.
12.	Total assets (sum of items 1 through 11).....			2170	34,409,284	12.
Liabilities						
13.	Deposits:			RCON		
a.	In domestic offices (sum of totals of columns A and C from Schedule RC-E, Part I)			2200	28,483,240	13.a.
(1)	Noninterest-bearing (8).....	RCON 6631	11,806,864			13.a.1.
(2)	Interest-bearing.....	RCON 6636	16,676,376			13.a.2.
b.	In foreign offices, Edge and Agreement subsidiaries, and IBFs (from Schedule RC-E, Part II)			RCFN 2200	0	13.b.
(1)	Noninterest-bearing.....	RCFN 6631	0			13.b.1.
(2)	Interest-bearing.....	RCFN 6636	0			13.b.2.
14.	Federal funds purchased and securities sold under agreements to repurchase:					
a.	Federal funds purchased in domestic offices (9).....			RCON B993	217,301	14.a.
b.	Securities sold under agreements to repurchase (10).....			RCFD B995	2,542,517	14.b.
15.	Trading liabilities (from Schedule RC-D).....			RCFD 3548	0	15.
16.	Other borrowed money (includes mortgage indebtedness) (from Schedule RC-M).....			RCFD 3190	0	16.

1 Includes cash items in process of collection and unposted debits.
 2 Includes time certificates of deposit not held for trading.
 3 Institutions that have adopted ASU 2016-13 should report in item 2.a amounts net of any applicable allowance for credit losses, and item 2.a should equal Schedule RC-B, item 8, column A, less Schedule RI-B, Part II, item 7, column B.
 4 Item 2.c is to be completed by all institutions. See the instructions for this item and the Glossary entry for "Securities Activities" for further detail on accounting for investments in equity securities.
 5 Includes all securities resale agreements, regardless of maturity.
 6 Institutions that have adopted ASU 2016-13 should report in items 3.b and 11 amounts net of any applicable allowance for credit losses.
 7 Institutions that have adopted ASU 2016-13 should report in item 4.c the allowance for credit losses on loans and leases.
 8 Includes noninterest-bearing, demand, time, and savings deposits.
 9 Report overnight Federal Home Loan Bank advances in Schedule RC, item 16, "Other borrowed money."
 10 Includes all securities repurchase agreements, regardless of maturity.

Schedule RC—Continued

Dollar Amounts in Thousands	RCFD	Amount	
Liabilities - continued			
17. and 18. Not applicable			
19. Subordinated notes and debentures (1).....	3200	0	19.
20. Other liabilities (from Schedule RC-G).....	2930	351,833	20.
21. Total liabilities (sum of items 13 through 20).....	2948	31,594,891	21.
22. Not applicable			
Equity Capital			
Bank Equity Capital			
23. Perpetual preferred stock and related surplus.....	3838	0	23.
24. Common stock.....	3230	21,250	24.
25. Surplus (excludes all surplus related to preferred stock).....	3839	849,822	25.
26. a. Retained earnings.....	3632	1,770,238	26.a.
b. Accumulated other comprehensive income (2).....	8530	173,083	26.b.
c. Other equity capital components (3).....	A130	0	26.c.
27. a. Total bank equity capital (sum of items 23 through 26.c).....	3210	2,814,393	27.a.
b. Noncontrolling (minority) interests in consolidated subsidiaries.....	3000	0	27.b.
28. Total equity capital (sum of items 27.a and 27.b).....	G105	2,814,393	28.
29. Total liabilities and equity capital (sum of items 21 and 28).....	3300	34,409,284	29.

Memoranda

To be reported with the March Report of Condition.

1. Indicate in the box at the right the number of the statement below that best describes the most comprehensive level of auditing work performed for the bank by independent external auditors as of any date during 2020.....

RCFD	Number	
6724	2a	M.1.

- 1a = An integrated audit of the reporting institution's financial statements and its internal control over financial reporting conducted in accordance with the standards of the American Institute of Certified Public Accountants (AICPA) or the Public Company Accounting Oversight Board (PCAOB) by an independent public accountant that submits a report on the institution
- 1b = An audit of the reporting institution's financial statements only conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the institution
- 2a = An integrated audit of the reporting institution's parent holding company's consolidated financial statements and its internal control over financial reporting conducted in accordance with the standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the consolidated holding company (but not on the institution separately)

- 2b = An audit of the reporting institution's parent holding company's consolidated financial statements only conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant that submits a report on the consolidated holding company (but not on the institution separately)
- 3 = This number is not to be used
- 4 = Directors' examination of the bank conducted in accordance with generally accepted auditing standards by a certified public accounting firm (may be required by state-chartering authority)
- 5 = Directors' examination of the bank performed by other external auditors (may be required by state-chartering authority)
- 6 = Review of the bank's financial statements by external auditors
- 7 = Compilation of the bank's financial statements by external auditors
- 8 = Other audit procedures (excluding tax preparation work)
- 9 = No external audit work

To be reported with the March Report of Condition.

2. Bank's fiscal year-end date (report the date in MMDD format).....

RCON	Date	
8678	12/31	M.2.

1 Includes limited-life preferred stock and related surplus.
 2 Includes, but is not limited to, net unrealized holding gains (losses) on available-for-sale securities, accumulated net gains (losses) on cash flow hedges, and accumulated defined benefit pension and other postretirement plan adjustments.
 3 Includes treasury stock and unearned Employee Stock Ownership Plan shares.

LETTER OF TRANSMITTAL

to Tender for Exchange

\$165,000,000 Unregistered Outstanding
5.00% Senior Notes due 2026
in Exchange for Registered
5.00% Senior Notes due 2026
of
ARBOR REALTY TRUST, INC.

Pursuant to the Prospectus Dated _____, 2021

The Exchange Offer will expire at 11:59 p.m., New York City time, on _____, 2021, unless extended (the "Expiration Date"). Old Notes (defined below) tendered in the Exchange Offer may be withdrawn at any time prior to 5:00 p.m., New York City time, on the Expiration Date, but not thereafter.

The exchange agent for the Exchange Offer is:

UMB Bank, National Association (the "Exchange Agent"):

By Mail, Overnight Mail or Courier:

UMB Bank, National Association
Attention: Mauri J. Cowen, Corporate Trust Services
5555 San Felipe Street, Suite 870
Houston, Texas 77056

By Facsimile Transmission (Eligible Institutions Only):

(214) 389-5949

Confirm by Telephone:

(713) 300-0587

For Information Call or email:

(713) 300-0587; mauri.cowen@umb.com

The undersigned hereby acknowledges receipt of the prospectus, dated as of _____, 2021 (as it may be amended or supplemented from time to time, the "Prospectus"), of Arbor Realty Trust, Inc. (the "Issuer") which, together with this Letter of Transmittal, constitute the Company's offer to exchange (the "Exchange Offer") up to \$165,000,000 aggregate principal amount of its new 5.00% Senior Notes due 2026 (Registered CUSIP: 038923 AW8) (the "New Notes"), which have been registered under the Securities Act of 1933, as amended (the "Securities Act"), for \$165,000,000 of its outstanding unregistered 5.00% Senior Notes due 2026 (Accredited Investor CUSIP: 038923 AV0; QIB CUSIP: 038923 AU2) (the "Old Notes").

Old Notes may be tendered only in minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof.

Tender of the Old Notes is to be made by book-entry transfer to the Exchange Agent's account at the Depository Trust Company ("DTC") by executing the tender through the DTC Automated Tender Offer Program ("ATOP"), for which the Exchange Offer is eligible. DTC participants that are tendering Old Notes pursuant to the Exchange Offer must transmit their acceptance through the ATOP to DTC, which will verify the acceptance and execute a book-entry delivery to the Exchange Agent's DTC account. DTC will then send an agent's message to the Exchange Agent for its acceptance. For you to validly tender your Old Notes pursuant to the Exchange Offer, the Exchange Agent must receive, prior to the Expiration Date, an agent's message under the ATOP procedures confirming that (i) DTC has received your instructions to tender your Old Notes and (ii) you agree to be bound by the terms of this Letter of Transmittal. **Accordingly,**

this Letter of Transmittal need not be completed and delivered by a holder tendering through the DTC ATOP. However, such holder, as a result of its transmission of acceptance to DTC, will be bound by the terms of this Letter of Transmittal and the terms of the Exchange Offer, as described in the Prospectus and this Letter of Transmittal. Delivery by a holder of documents to DTC does not constitute delivery to the Exchange Agent.

There is no procedure for guaranteed delivery of Old Notes held in book-entry.

The Issuer reserves the right, at any time or from time to time, to extend the period of time during which the Exchange Offer is open, at its discretion, in which event the term "Expiration Date" shall mean the latest date to which the Exchange Offer is extended. The Issuer shall notify the Exchange Agent and each registered holder of the Old Notes of any such extension by oral or written notice no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled Expiration Date.

Please read this entire Letter of Transmittal, including the instructions set forth below, and the Prospectus, including the information incorporated by reference therein, carefully. Questions and requests for assistance or for additional copies of the Prospectus and this Letter of Transmittal may be directed to the Exchange Agent. See Instruction 8 of this Letter of Transmittal.

[Remainder of page intentionally left blank]

PLEASE READ THE ACCOMPANYING INSTRUCTIONS CAREFULLY

Ladies and Gentlemen:

Subject to the terms and conditions of the Exchange Offer, the undersigned hereby tenders to the Issuer for exchange the principal amount of Old Notes credited by the undersigned to the Exchange Agent's account at DTC using the DTC ATOP. Subject to and effective upon the acceptance for exchange of the principal amount of Old Notes tendered in accordance with this Letter of Transmittal, the undersigned hereby exchanges, assigns and transfers to, or upon the order of, the Issuer all right, title and interest in and to such Old Notes tendered for exchange hereby. The undersigned hereby irrevocably constitutes and appoints the Exchange Agent as the true and lawful agent and attorney-in-fact for the undersigned (with full knowledge that such Exchange Agent also acts as the agent for the Issuer in connection with the Exchange Offer) with respect to the tendered Old Notes with full power of substitution to:

- transfer ownership of such Old Notes, on the account books maintained by DTC and to deliver all accompanying evidences of transfer and authenticity to, or upon the order of, the Issuer upon receipt by the Exchange Agent, as the undersigned's agent, of the New Notes to which the undersigned is entitled upon the acceptance by the Issuer of such Old Notes for exchange pursuant to the Exchange Offer; and
- present such Old Notes for transfer on the books of the Issuer and receive all benefits and otherwise exercise all rights of beneficial ownership of such Old Notes, all in accordance with the terms of the Exchange Offer.

The power of attorney granted in this paragraph shall be deemed to be irrevocable and coupled with an interest.

The undersigned hereby represents and warrants that the undersigned has full power and authority to tender, exchange, assign and transfer the Old Notes tendered hereby and to acquire the New Notes issuable upon the exchange of such tendered Old Notes, and that the Issuer will acquire good and unencumbered title to such Old Notes, free and clear of all liens, restrictions, charges and encumbrances and not subject to any adverse claim or right, when the same are accepted for exchange by the Issuer. The undersigned also warrants that it will, upon request, execute and deliver any additional documents deemed by the Exchange Agent or the Issuer to be necessary or desirable to complete the sale, exchange, assignment and transfer of tendered Old Notes or to transfer ownership of such notes on the account books maintained by DTC. The undersigned agrees to all of the terms of the Exchange Offer, as described in the Prospectus and this Letter of Transmittal.

The undersigned acknowledges that the Exchange Offer is being made in reliance upon interpretations set forth in "no-action" letters issued to third parties by the staff of the U.S. Securities and Exchange Commission (the "SEC"), that the New Notes issued in exchange for the Old Notes pursuant to the Exchange Offer may be offered for resale, resold and otherwise transferred by a holder thereof (other than any holder that is a broker-dealer who purchased Old Notes directly from the Issuer for resale and any holder that is an "affiliate" of the Issuer within the meaning of Rule 405 under the Securities Act) without compliance with the registration and prospectus delivery provisions of the Securities Act (except for prospectus delivery obligations applicable to certain broker-dealers), provided that such New Notes are acquired in the ordinary course of such holder's business and such holder is not engaged in, and does not intend to engage in, and has no arrangement or understanding with any person to participate in, a distribution of such New Notes. The SEC has not, however, considered the Exchange Offer in the context of a "no-action letter," and there can be no assurance that the staff of the SEC would make a similar determination with respect to the Exchange Offer as it has in other circumstances.

The undersigned hereby further represents to the Issuer that (i) any New Notes received in exchange for Old Notes are being acquired in the ordinary course of business of the person receiving such New Notes, whether or not such person is the undersigned, (ii) neither the undersigned nor any such other person has any arrangement or understanding with any person to participate in the distribution of the Old Notes or the New Notes within the meaning of the Securities Act and (iii) neither the undersigned nor any such other person is an "affiliate" of the Issuer within the meaning of Rule 405 under the Securities Act, or if

any such person is an “affiliate,” such person will comply with the registration and prospectus delivery requirements of the Securities Act to the extent applicable.

The undersigned represents that it is not engaged in, and does not intend to engage in, a distribution of New Notes. If the undersigned is a broker-dealer, it represents that it will receive New Notes in exchange for Old Notes that were acquired for its own account as a result of market-making activities or other trading activities, and it acknowledges that it will deliver a prospectus meeting the requirements of the Securities Act in connection with any resale of such New Notes; however, by so acknowledging and by delivering a prospectus, the undersigned will not be deemed to admit that it is an “underwriter” within the meaning of the Securities Act. If the undersigned is a broker-dealer, the undersigned represents that it did not purchase the Old Notes to be exchanged for the New Notes from the Issuer. Additionally, the undersigned represents that it is not acting on behalf of any person who could not truthfully and completely make the foregoing representations and the representations in the immediately preceding paragraph.

The undersigned acknowledges that if the undersigned is tendering Old Notes in the Exchange Offer with the intention of participating in any manner in a distribution of the New Notes:

- the undersigned cannot rely on the position of the staff of the SEC set forth in the above mentioned “no-action” letters and, in the absence of an exemption therefrom, must comply with the registration and prospectus delivery requirements of the Securities Act in connection with a secondary resale transaction of the New Notes, in which case the registration statement must contain the selling security holder information required by Item 507 or Item 508, as applicable, of Regulation S-K promulgated by the SEC; and
- failure to comply with such requirements in such instance could result in the undersigned incurring liability for which the undersigned is not indemnified by the Issuer.

The undersigned will, upon request, execute and deliver any additional documents deemed by the Exchange Agent or the Issuer to be necessary or desirable to complete the exchange, assignment and transfer of the Old Notes tendered hereby.

For purposes of the Exchange Offer, the Issuer shall be deemed to have accepted for exchange validly tendered Old Notes when, as and if the Issuer gives oral or written notice thereof to the Exchange Agent. New Notes issued in exchange for the Old Notes accepted for exchange will be issued in the name of the undersigned. Any tendered Old Notes that are not accepted for exchange pursuant to the Exchange Offer for any reason will be returned, without expense, to the undersigned’s account at DTC, pursuant to the book-entry procedures described in the Prospectus, promptly after the Expiration Date or the Issuer’s withdrawal of the Exchange Offer, as applicable. See Instructions 3 and 6 of this Letter of Transmittal.

All authority conferred or agreed to be conferred by this Letter of Transmittal shall not be affected by, and shall survive, the death, incapacity or dissolution of the undersigned, and every obligation of the undersigned under this Letter of Transmittal shall be binding upon the undersigned’s successors, assigns, heirs, executors, administrators, trustees in bankruptcy and legal representatives. This tender may be withdrawn only in accordance with the procedures set forth in the Prospectus under the caption “The Exchange Offer — Withdrawal of Tenders.”

The undersigned acknowledges that the acceptance by the Issuer of properly tendered Old Notes pursuant to the procedures described in the Prospectus under the caption “The Exchange Offer — Procedures for Tendering Old Notes” and in the instructions hereto will constitute a binding agreement between the undersigned, on the one hand, and the Issuer, on the other hand, upon the terms and subject to the conditions of the Exchange Offer.

The Exchange Offer is subject to certain conditions set forth in the Prospectus under the caption “The Exchange Offer — Conditions.” The undersigned recognizes that as a result of these conditions (which may be waived, in whole or in part, by the Issuer), the Issuer may not be required to exchange any of the Old Notes tendered hereby.

**INSTRUCTIONS TO LETTER OF TRANSMITTAL
FORMING PART OF THE TERMS AND CONDITIONS OF THE EXCHANGE OFFER**

1. *Book-Entry Confirmations.* For a holder to properly tender Old Notes in book-entry form pursuant to the Exchange Offer, a properly transmitted agent's message must be received by the Exchange Agent at its address set forth herein on or prior to the Expiration Date, such Old Notes must be transferred pursuant to the procedures for book-entry transfer described in the Prospectus under "The Exchange Offer — Procedures for Tendering Old Notes" and a book-entry confirmation must be received by the Exchange Agent on or prior to the Expiration Date.

The method of delivery of all required documents to the Exchange Agent is at the election and risk of the tendering holder and the delivery will be deemed made only when actually received or confirmed by the Exchange Agent. If delivery is by mail, then registered mail with return receipt requested and proper insurance is advised. However, it is recommended that, instead of delivery by mail, the tendering holder use an overnight or courier service. In all cases, sufficient time should be allowed to assure delivery to the Exchange Agent before 11:59 p.m., New York City time, on the Expiration Date. NO REQUIRED DOCUMENT SHOULD BE SENT TO THE ISSUER. Neither the Issuer nor the Exchange Agent is under any obligation to notify any tendering holder of the Issuer's acceptance of any tendered Old Notes prior to the Expiration Date.

2. *Withdrawal.* Tenders of Old Notes may be withdrawn at any time on or prior to 5:00 p.m., New York City time, on the Expiration Date. For a withdrawal of tendered Old Notes to be effective, the Exchange Agent must receive on or prior to the Expiration Date a computer-generated notice of withdrawal transmitted on behalf of DTC on behalf of the holder in accordance with DTC's procedures. Any such notice of withdrawal must (1) specify the name of the person who tendered the Old Notes to be withdrawn, (2) specify the principal of Old Notes delivered for exchange, (3) specify the name and number of the account at DTC to be credited with the withdrawn Old Notes, (4) include a statement that such holder is withdrawing its election to have the Old Notes exchanged, and (5) otherwise comply with the procedures of DTC.

Any permitted withdrawal of Old Notes may not be rescinded. Any Old Notes properly withdrawn will thereafter be deemed not validly tendered for purposes of the Exchange Offer. However, properly withdrawn Old Notes may be re-tendered by following the procedures described in the Prospectus under "The Exchange Offer — Procedures for Tendering Old Notes" at any time prior to the Expiration Date.

All questions as to the validity, form and eligibility (including time of receipt) of such withdrawal notices will be determined by the Issuer, in its sole discretion, which determination shall be final and binding on all parties. Neither the Issuer, any affiliates of the Issuer, the Exchange Agent nor any other person shall be under any duty to give any notification of any defects or irregularities in any notice of withdrawal or incur any liability for failure to give any such notification.

3. *Partial Tenders.* Tenders of Old Notes will be accepted only in principal amounts equal to at least \$1,000 and in integral multiples of \$1,000 in excess thereof. The entire principal amount of Old Notes delivered to the Exchange Agent will be deemed to have been tendered unless otherwise communicated to the Exchange Agent. If the entire principal amount of all Old Notes held by a holder is not tendered, then Old Notes for the principal amount of Old Notes not tendered and New Notes issued in exchange for any Old Notes accepted will be returned by credit to the holder's account at DTC, as soon as practicable following the Expiration Date.

4. *Important Tax Information.* Each tendering holder should provide the Exchange Agent with its correct taxpayer identification number, which, in the case of a holder who is an individual, is his or her social security number. If the Exchange Agent is not provided with the correct taxpayer identification number or an adequate basis for an exemption, the holder may be subject to backup withholding in an amount currently equal to up to 24% of any reportable payments and a \$50 penalty imposed by the Internal Revenue Service (the "IRS"). If withholding results in an over-payment of taxes, a refund may be obtained.

To prevent backup withholding on any reportable payments, each holder tendering Old Notes may be requested to provide such holder's correct taxpayer identification number by completing an IRS Form W-9, certifying (under penalties of perjury) that such holder is a U.S. person (including a resident alien), that the taxpayer identification number provided is correct (or that such holder is awaiting a taxpayer identification number), and that (1) such holder is exempt from backup withholding, (2) the holder has not been notified

by the IRS that such holder is subject to backup withholding as a result of failure to report all interest or dividends or (3) the IRS has notified the holder that such holder is no longer subject to backup withholding.

Certain holders (including, among others, certain non-United States individuals) tendering Old Notes are exempt from these backup withholding and reporting requirements. If requested to provide an IRS Form W-9, to prevent possible erroneous backup withholding, an exempt holder that is a U.S. person (as defined in the instructions to the IRS Form W-9) should provide its correct taxpayer identification number and check the "Exempt payee" box on the IRS Form W-9. In order for a non-U.S. person to qualify as exempt, such person may be requested to submit an appropriate IRS Form W-8 (for example, an IRS Form W-8BEN). An IRS Form W-9 or IRS Form W-8 may be obtained from the IRS website at www.irs.gov or from the Exchange Agent.

The Issuer reserves the right in its sole discretion to take whatever steps are necessary to comply with its obligation regarding backup withholding. Holders are urged to consult with their own tax advisors to determine if they are exempt from backup withholding.

5. *Transfer Taxes.* The Issuer will pay or cause to be paid all transfer taxes, if any, applicable to the exchange of Old Notes pursuant to the Exchange Offer. If, however, New Notes or Old Notes for principal amounts not tendered or accepted for exchange are to be delivered to, or are to be registered or issued in the name of, any person other than the registered holder of the Old Notes tendered hereby, or if tendered Old Notes are registered in the name of any person other than the person signing this Letter of Transmittal, or if a transfer tax is imposed for any reason other than the exchange of Old Notes pursuant to the Exchange Offer, then the amount of any such transfer taxes (whether imposed on the registered holder or any other person) will be payable by the tendering holder. If satisfactory evidence of payment of such taxes or exemption therefrom is not submitted with this Letter of Transmittal, the amount of such transfer taxes will be billed directly to such tendering holder and the Exchange Agent will retain possession of an amount of New Notes with a face amount at least equal to the amount of such transfer taxes due by such tendering holder pending receipt by the Exchange Agent of the amount of such taxes.

6. *Validity of Tenders.* All questions as to the validity, form, eligibility (including time of receipt), acceptance and withdrawal of tendered Old Notes will be determined by the Issuer in its sole discretion, which determination will be conclusive, final and binding. The Issuer reserves the absolute right to reject any and all Old Notes not properly tendered or any Old Notes the Issuer's acceptance of which would, in the opinion of the Issuer's counsel, be unlawful. The Issuer also reserves the right to waive any conditions of the Exchange Offer or defects or irregularities of tenders as to particular Old Notes. The Issuer's interpretation of the terms and conditions of the Exchange Offer (including the instructions in this Letter of Transmittal) shall be conclusive, final and binding on all parties. Unless waived, any defects or irregularities in connection with tenders of Old Notes must be cured within such time as the Issuer shall determine. Each tendering holder, by delivery of an agent's message, waives any right to receive any notice of the acceptance of such tender. Tenders of such Old Notes shall not be deemed to have been made until such irregularities have been cured or waived. Any Old Notes received by the Exchange Agent that are not properly tendered and as to which the irregularities have not been cured or waived will be returned by the Exchange Agent, without expense, to the tendering holders, promptly following the Expiration Date. Neither the Issuer, the Exchange Agent nor any other person shall be under any duty to give notification of defects or irregularities with respect to tenders of Old Notes nor shall any of them incur any liability for failure to give such notification.

7. *No Conditional Tender.* No alternative, conditional, irregular or contingent tender of Old Notes will be accepted.

8. *Requests for Assistance or Additional Copies.* Questions and requests for assistance or for additional copies of the Prospectus or this Letter of Transmittal may be directed to the Exchange Agent at the address, telephone number or facsimile number set forth on the cover page of this Letter of Transmittal. Holders may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the Exchange Offer.

IMPORTANT: BY USING THE ATOP PROCEDURES TO TENDER OLD NOTES, YOU WILL NOT BE REQUIRED TO DELIVER THIS LETTER OF TRANSMITTAL TO THE EXCHANGE AGENT. HOWEVER, YOU WILL BE BOUND BY THE TERMS, AND YOU WILL BE DEEMED TO HAVE MADE THE ACKNOWLEDGEMENTS AND THE REPRESENTATIONS AND WARRANTIES IT CONTAINS, JUST AS IF YOU HAD SIGNED IT.
