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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported):
July 15, 2016 (July 13, 2016)

Arbor Realty Trust, Inc.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

MARYLAND
(STATE OF INCORPORATION)

001-32136	**20-0057959**
(COMMISSION FILE NUMBER)	(IRS EMPLOYER ID. NUMBER)
333 Earle Ovington Boulevard, Suite 900 **Uniondale, New York**	**11553**
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(ZIP CODE)

(516) 506-4200
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

As previously reported, on February 25, 2016, Arbor Realty Trust, Inc., a Maryland corporation (the "Company"), Arbor Realty Limited Partnership, a Delaware limited partnership (the "Partnership"), and Arbor Multifamily Lending, LLC (f/k/a) ARSR Acquisition Company, LLC), a Delaware limited liability company ("AML"), entered into an asset purchase agreement (the "Asset Purchase Agreement") with Arbor Commercial Funding, LLC, a New York limited liability company ("ACF"), and Arbor Commercial Mortgage, LLC, a New York limited liability company ("ACM" and together with ACF, the "Seller") to purchase the agency business of ACM (the "Acquisition"). The Acquisition was consummated on July 14, 2016 (the "Closing Date") for a price of $276.0 million. In connection with the consummation of the Acquisition, the Company and certain of its subsidiaries entered into various agreements with ACM, which is the external manager of the Company pursuant to the Management and Advisory Agreement (as defined below) and of which Mr. Ivan Kaufman, the Company's President, Chief Executive Officer and Chairman of the Board, is the Principal, Chief Executive Officer and the beneficial owner of approximately 92% of the outstanding membership interests. Certain of these agreements are described below pursuant to Item 1.01 of Form 8-K.

Option Agreement

On the Closing Date, pursuant to the Asset Purchase Agreement, the Company entered into an option agreement by and among the Company, the Partnership, Arbor Realty SR, Inc. and ACM (the "Option Agreement"). Under the Option Agreement, the Partnership has an irrevocable, non-transferable right (the "Option") from ACM to purchase the Management and Advisory Agreement, and, as a result, fully internalize the management of the Company. The Option is exercisable by the Partnership upon the approval of a special committee of four (4) disinterested, independent directors (the "Special Committee"), or if the Special Committee no longer exists, by the Audit Committee of the Company's Board of Directors, at any time for two (2) years after the Closing Date. The exercise price for the Option (the "Option Price") is (i) $25.0 million if exercised on or before the date that is one (1) year after the Closing Date or (ii) $27.0 million if exercised thereafter. The Option Price is payable 50% in cash and 50% in common units of the Partnership ("OP Units"). The number of OP Units to be issued will be calculated by dividing 50% of the Option Price by the reference market value of a share of the Company's common stock, par value $0.01 per share (the "Common Stock"). The "reference market value" is the volume-weighted average closing sale price, as published in the Eastern Edition of The Wall Street Journal, of a share of the Common Stock on the New York Stock Exchange ("NYSE") for the 30 consecutive trading day period ending on the close of business on the trading day that is three (3) days prior to the closing date of the Option.

The Option Agreement provides that, three (3) days before the closing date of the Option, ACM must deliver to the Company a statement that includes its good faith estimate of accrued and unpaid compensation and reimbursable expenses to which ACM is entitled under the Management Agreement. After the closing of the Option and ACM has received the exercise price and such accrued amounts, the Management Agreement shall terminate in all respects except for (i) provisions thereof which by their terms survive such termination and (ii) provisions related to confidentiality, limits of manager responsibility and indemnification by ACM or the Company.

The foregoing description of the Option Agreement is qualified in its entirety by reference to the full text of the Option Agreement, which is filed as Exhibit 10.1 to this report, and is incorporated herein by reference.

Amended and Restated Agreement of Limited Partnership of the Partnership

In connection with the Acquisition, on the Closing Date the Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated as of January 18, 2005, by and among Arbor

Realty GPOP, Inc., Arbor Realty LPOP, Inc., ACM and the Company was amended and restated (the "Amended and Restated Agreement of Limited Partnership") by the same parties to re-establish ACM as a limited partner and to amend certain other provisions, including that (i) Arbor Realty LPOP, Inc., the Company's subsidiary that is a limited partner of the Partnership, does not have a vote on certain matters requiring consent of a majority interest of the limited partners of the Partnership and (ii) the Company's ability to engage in a termination transaction is restricted in certain respects.

The foregoing description of the Amended and Restated Agreement of Limited Partnership is qualified in its entirety by reference to the full text of the Agreement, which is filed as Exhibit 10.2 to this report, and is incorporated herein by reference.

Non-Competition Agreement

On the Closing Date, pursuant to the Asset Purchase Agreement, the Company, the Partnership, ACM and Mr. Kaufman entered into a non-competition agreement (the "Non-Competition Agreement"). Under the Non-Competition Agreement, each of Mr. Kaufman and the businesses he controls, ACM and its subsidiaries, and the Company have agreed to restrict its ability to compete in certain businesses for a specified period of time, as summarized below.

None of Mr. Kaufman, ACM, its subsidiaries or any other business in which Mr. Kaufman owns equity interests sufficient to control such business (a "Kaufman Business") is permitted to (i) solicit any of the Company's employees or employees of its subsidiaries (including any transferred employee) to cease their relationship with the Company, (ii) solicit (A) an investment in the Included Business and commercial mortgage backed securities and permanent and bridge multifamily and commercial real estate mortgage loans, mezzanine loans on multifamily and commercial real estate, and preferred equity investments in multifamily and commercial real estate, whether by purchase or origination (a "Company Target Investment") or (B) any of our customers or customers of our subsidiaries for an investment which is a Company Target Investment, (iii) refer Company Target Investments from any customer to any person or entity or be paid commissions based on Company Target Investment sales received from any customer by any person or entity, or (iv) among other things, render financial assistance to, receive any economic benefit from, exert any influence upon or otherwise assist any person or entity which is engaged in a business that is in competition with the Company's business, including with respect to Company Target Investments.

In addition, the Company is not permitted to (i) solicit any employee of the Excluded Business, ACM or its subsidiaries, or any Kaufman Business to cease such employee's relationship with such business, (ii) solicit (A) the Excluded Business and all other investments of any kind other than Company Target Investments (collectively, a "Seller Target Investment") or (B) a customer of the Excluded Business, ACM or its subsidiaries or Mr. Kaufman or any Kaufman Business (collectively, the "Seller Businesses") for a Seller Target Investment, (iii) refer Seller Target Investments from any customer or be paid commissions based on Seller Target Investment sales received from any customer by any person or entity, or (iv) among other things, render financial assistance to, receive any economic benefit from, exert any influence upon or otherwise assist any person or entity which is engaged in a business that is in competition with any of the Seller Businesses with respect to Seller Target Investments.

The Non-Competition Agreement does not preclude Mr. Kaufman from serving as a member of the Board or as an officer of our Company or our subsidiaries. It further provides that the Kaufman Businesses and Seller Target Investments are outside of our sphere of influence and is not to be deemed a corporate opportunity available to us. The Non-Competition Agreement remains in effect until two (2) years after the date that both (a) Mr. Kaufman is no longer our CEO and (b) the fully diluted beneficial ownership of our Common Stock collectively held by ACM, Mr. Kaufman and their respective affiliates falls below 10%.

The foregoing description of the Non-Competition Agreement is qualified in its entirety by reference to the full text of the Non-Competition Agreement, which is filed as Exhibit 10.3 to this report, and is incorporated herein by reference.

Third Amended and Restated Management and Advisory Agreement

On the Closing Date, the Second Amended and Restated Management and Advisory Agreement, dated August 6, 2009, by and among the Company, the Partnership, Arbor Realty SR, Inc., and ACM, and amended by such parties as of January 1, 2015 was amended and restated by the same parties (the "Third Amended and Restated Management and Advisory Agreement") in order to apply only to the services to be provided by ACM employees who are not directly related to the agency business of ACM and therefore, will remain ACM employees after the Acquisition. Upon any termination of the Third Amended and Restated Management and Advisory Agreement in connection with the exercise by the Company of its option under the Option Agreement, the termination fee under the Third Amended and Restated Management and Advisory Agreement will not apply but the option exercise price described above will be payable.

The foregoing description of the Third Amended and Restated Management and Advisory Agreement is qualified in its entirety by reference to the full text of the Agreement, which is filed as Exhibit 10.4 to this report, and is incorporated herein by reference.

Pairing Agreement

On the Closing Date, the Company, the Partnership and ACM entered into a Pairing Agreement pursuant to which each of the 21,230,769 OP Units sold to ACM pursuant to the Asset Purchase Agreement are, and any additional OP Units issued to ACM in connection with any exercise of the Company's option under the Option Agreement will be, paired with one (1) share of the Company's newly designated Special Voting Preferred Stock, par value $0.01 per share (the "Special Voting Preferred Stock"), each of which entitle the holder to one (1) vote per share on any matter submitted to a vote of the Company's shareholders. Upon any redemption of an OP Unit that is paired with a share of Special Voting Preferred Stock in accordance with the redemption provisions of the Third Amended and Restated Agreement of Limited Partnership, the share will be redeemed by the Company and cancelled.

The foregoing description of the Pairing Agreement is qualified in its entirety by reference to the full text of the Agreement, which is filed as Exhibit 10.5 to this report, and is incorporated herein by reference.

Seller Financing

As part of the financing for the Acquisition, the Company financed $50.0 million of the consideration to be paid to ACM through the issuance of 50,000 preferred equity units in ARSR PE, LLC, an indirect subsidiary of the Company, to ACM (the "Amended and Restated Limited Liability Company Operating Agreement of ARSR PE, LLC"). The preferred equity units have a stated value of $1,000 per unit, have a preferred return of 7% from the day of issuance through December 31, 2016, increasing by one (1) percentage point for each year thereafter, with a maximum rate of 12%, beginning January 1, 2021 and continuing thereafter. The preferred equity units are redeemable by the Company (at the direction of the Special Committee) at any time, and are subject to mandatory redemption at the election of the holders thereof on or after June 30, 2021, or under certain conditions, at par from the date of issuance through December 31, 2017; at $1,060 per unit from January 1, 2018 through June 30, 2018; at $1,120 per unit from July 1, 2018 through December 31,2018; at $1,180 per unit from January 1, 2019 through December 31,2019; at $1,200 per

unit from January 1, 2020 through December 31, 2020; and at $1,250 per unit from January 1, 2021 and thereafter.

The foregoing description of the seller financing is qualified in its entirety by reference to the full text of the Amended and Restated Limited Liability Company Operating Agreement of ARSR PE, LLC, which is filed as Exhibit 10.6 to this report, and is incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On the Closing Date, the acquisition of the assets and liabilities associated with the agency business of ACM was completed pursuant to the terms of and as described in more detail in the Asset Purchase Agreement. All of the ACM employees directly related to the agency business acquired are part of the Company as of the Closing Date.

The aggregate purchase price was $276.0 million, which was paid with $138.0 million in stock, $88.0 million in cash and with the issuance of a $50.0 million seller financing instrument. The equity component of the purchase price consisted of 21,230,769 OP Units, which was based on a price of $6.50 per share of Common Stock. Each OP Unit is redeemable for cash or, at the Company's election, one (1) share of the Common Stock.

The 21,230,769 shares of Common Stock that may be issuable upon redemption of these OP Units are subject to an existing Registration Rights Agreement between the Company and ACM. In addition, each of these OP Units are paired with a share of the Company's Special Voting Preferred Stock which entitle ACM to one (1) vote per share on any matter submitted to a vote of the Company's stockholders. When OP Units are redeemed, the paired shares of Special Voting Preferred Stock are redeemed and cancelled.

The foregoing information relating to the completion of the Acquisition is qualified in its entirety by reference to the disclosures originally included in the Company's Definitive Proxy Statement filed with the SEC on April 22, 2016 (the "Acquisition Proxy Statement") under the headings "The ACM Agency Business," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations of the ACM Agency Business," and "Proposal No. 1: The Acquisition Proposal- The Purchase Agreement," and "Proposal No. 1: The Acquisition Proposal- Interests of Certain Persons in the Proposed Acquisition." The foregoing sections of the Acquisition Proxy Statement are hereby incorporated by reference herein. These disclosures contain additional information regarding (i) the agency business acquired in the Acquisition, (ii) the consideration to be received by the Company in connection with the Acquisition, and (iii) the nature of the relationships between the parties to the Asset Purchase Agreement and the other agreements described in the Acquisition Proxy Statement, and the Company and its affiliates.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information included in Item 1.01 of this Current Report under the caption "Seller Financing" is incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

As previously reported on a Current Report on Form 8-K filed by the Company on March 2, 2016, the OP Units, which are redeemable for cash or, at the Company's option an equivalent number of shares of the Common Stock, sold pursuant to the Asset Purchase Agreement and the paired shares of the Company's newly designated special voting preferred stock were sold in reliance on an exemption from registration under the Securities Act of 1933, as amended (the "Securities Act") pursuant to Section 4(a)(2) of the Securities Act. On the Closing Date, the Company issued and sold 21,230,769

OP Units to ACM in exchange for the Company's acquisition of the assets and related liabilities of the agency business of ACM. In addition, the Company issued and sold 21,230,769 shares of Special Voting Preferred Stock to ACM in exchange for $212,307.69.

Item 3.03 Material Modification to Rights of Security Holders

(b) The information set forth above under Item 5.03 of this report is hereby incorporated by reference into this Item 3.03.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On July 13, 2016, the Company filed Articles Supplementary designating the Special Voting Preferred Stock (the "Articles Supplementary") with the Maryland State Department of Assessments and Taxation to designate 25,000,000 shares of the Company's authorized but unissued preferred stock, $0.01 par value per share, as shares of Special Voting Preferred Stock, with the powers, designations, preferences and other rights as set forth therein (the "Special Voting Preferred Stock"). The Articles Supplementary became effective upon filing on July 13, 2016.

The Articles Supplementary provide that each share of Special Voting Preferred Stock entitles the holder to one (1) vote on all matters submitted to a vote of the Company's stockholders, but these holders have no separate class voting rights, except for charter amendments that materially alter or change the rights of the Special Voting Preferred Stock. A holder of Special Voting Preferred Stock is not entitled to any regular or special dividend payments or other distributions and is only entitled to receive a $0.01 distribution per share in the event of the Company's liquidation, dissolution or redemption of the Special Voting Preferred Stock. If the Company completes a merger transaction in connection with which the holders of OP Units either continue to hold interests in the Partnership or receive partnership interests or other securities of another operating partnership in an "umbrella partnership" REIT structure, then the holders of Special Voting Preferred Stock are generally entitled to vote separately as a class on such a merger transaction, unless they receive a voting security comparable to the Special Voting Preferred Stock.

A copy of the Articles Supplementary is filed as Exhibit 3.1 to this report, and the information in the Articles Supplementary is incorporated into this Item 5.03 by reference. The description of the terms of the Articles Supplementary in this Item 5.03 is qualified in its entirety by reference to Exhibit 3.1.

Item 8.01 Other Events.

On July 15, 2016, the Company issued a press release announcing the completion of the aforementioned acquisition, a copy of which is filed as Exhibit 99.1 hereto and is incorporated herein by reference.

Safe Harbor Statement

Certain items in this Current Report on Form 8-K may constitute forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These statements are based on management's current expectations and beliefs and are subject to a number of trends and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Arbor can give no assurance that its expectations will be attained. Factors that could cause actual results to differ materially from Arbor's expectations will be detailed in our SEC reports. Such forward-looking statements speak only as of the date of this filing. Arbor expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Arbor's expectations with regard thereto or change in events, conditions, or circumstances on which any such statement is based.

The following factors, among others, could cause our actual results and financial condition to differ materially from those expressed or implied in the forward-looking statements: (1) the inability to successfully integrate our business with the purchased business or to integrate the businesses within the anticipated timeframe; (2) the risk that the acquisition disrupts current plans and operations and increase operating costs; (3) the ability to recognize the anticipated benefits of the combination including the realization of accretion to our earnings and dividends and diversity, duration and stability to our earnings streams and to recognize such benefits within the anticipated timeframe; (4) the outcome of any legal proceedings that may be instituted against the Company or others following the acquisition; and (5) the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors.

Item 9.01 Financial Statements and Exhibits.

(a) The audited combined financial statements for the Carve-Out Agency Business of Arbor Commercial Mortgage, LLC and Subsidiaries as of December 31, 2015 and 2014 and for the three years ended December 31, 2015 have previously been filed in the Acquisition Proxy Statement and are hereby incorporated by reference herein.

(b) The Company's unaudited pro forma financial information reflecting the Acquisition has previously been filed in the Acquisition Proxy Statement. The information under the heading "Unaudited Pro Forma Financial Information" in the Acquisition Proxy Statement is hereby incorporated by reference herein.

(d) Exhibits

Exhibit Number	Exhibit
3.1	Articles Supplementary designating Special Voting Preferred Stock.
10.1	Option Agreement, dated as of July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc. and Arbor Commercial Mortgage, LLC.
10.2	Third Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated as of July 14, 2016, by and among Arbor Realty GPOP, Inc., Arbor Realty LPOP, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Trust, Inc.
10.3	Non-Competition Agreement, dated as of July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Commercial Mortgage, LLC and Ivan Kaufman.
10.4	Third Amended and Restated Management and Advisory Agreement, dated July 14, 2016, among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership, Arbor Realty SR, Inc., and Arbor Commercial Mortgage, LLC.
10.5	Pairing Agreement, dated July 14, 2016, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Arbor Commercial Mortgage, LLC.
10.6	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.
99.1	Press release dated July 15, 2016.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

ARBOR REALTY TRUST, INC.

By: /s/ PAUL ELENIO

Name: Paul Elenio
Title: Chief Financial Officer

Date: July 15, 2016

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Exhibit 3.1

ARBOR REALTY TRUST, INC.

ARTICLES SUPPLEMENTARY

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

FIRST: Under a power contained in Section 6.3 of Article VI of the charter of the Corporation (the "Charter"), the Board of Directors of the Corporation (the "Board of Directors"), by duly authorized resolutions, reclassified and designated (a) 5,000,000 authorized but unissued shares of Special Voting Preferred Stock, $0.01 par value per share, as previously classified by the Articles Supplementary accepted for record by the SDAT on July 1, 2003 and (b) 20,000,000 shares of Preferred Stock (as defined in the Charter) without further classification or designation, as 25,000,000 shares (the "Shares") of Special Voting Preferred Stock, $.01 par value per share, with the voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption as set forth as follows, which upon any restatement of the Charter shall be made part of Article VI of the Charter, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof.

1. *Designation and Amount.*

The shares of such class shall be designated as "Special Voting Preferred Stock" and the number of shares constituting such class shall be 25,000,000. Such number of shares may be increased or decreased by resolution of the Board of Directors and filing of articles supplementary in accordance with the Maryland General Corporation Law stating that such increase or decrease has been so authorized; provided, however, that no decrease shall reduce the number of shares of Special Voting Preferred Stock to a number less than the number of shares of Special Voting Preferred Stock then outstanding.

2. *Definitions.*

For purposes of the Special Voting Preferred Stock, the following terms shall have the meanings indicated:

"Adjustment Factor" shall have the meaning assigned to such term in the Partnership Agreement and initially shall be one.

"Affiliate" shall mean a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

"Board of Directors" shall mean the Board of Directors of the Corporation or any committee authorized by such Board of Directors to perform any of its responsibilities with respect to the Special Voting Preferred Stock.

"Common Stock" shall mean the Common Stock, $.01 par value per share, of the Corporation.

"Operating Partnership" shall mean Arbor Realty Limited Partnership, a Delaware limited partnership, and any successor thereof.

"Pairing Agreement" shall mean the Pairing Agreement, to be dated on or about July 13, 2016, by and among the Corporation, Arbor Commercial Mortgage, LLC, a New York limited liability company, and the Operating Partnership, as may be amended from time to time.

"Partnership Agreement" shall mean the Agreement of Limited Partnership of the Operating Partnership, as the same may be amended from time to time.

"Partnership Common Units" shall have the meaning set forth in the Partnership Agreement.

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

"Preferred Stock" shall mean the Preferred Stock, $.01 par value per share, of the Corporation.

"UPREIT Combination Transaction" shall mean any consolidation, merger, combination or other transaction consummated by the Corporation in connection with which the holders of Partnership Common Units will either (i) continue to hold Partnership Common Units or (ii) will have their Partnership Common Units converted or changed into or exchanged for partnership interests and/or other securities of another operating partnership in an UPREIT structure.

3. *Dividends and Distributions.*

Except as set forth in Section 7 hereof, the holders of shares of Special Voting Preferred Stock shall not be entitled to any regular or special dividend payments. Without limiting the foregoing, the holders of shares of Special Voting Preferred Stock shall not be entitled to any dividends or other distributions declared or paid with respect to the shares of Common Stock or any other stock of the Corporation.

4. *Voting Rights.*

With respect to all matters submitted to a vote of the stockholders of the Corporation, each share of Special Voting Preferred Stock shall entitle the holder thereof to a number of votes equal to the Adjustment Factor in effect on the record date for determining the holders of stock of the Corporation entitled to vote on such matter. The holders of shares of Special Voting Preferred Stock shall vote collectively with the holders of shares of Common Stock as one class on all matters submitted to a vote of stockholders of the Corporation, and, except as expressly set forth in Section 9 hereof, the holders of shares of Special Voting Preferred Stock shall have no other voting rights, as a separate class or other otherwise, including any rights to vote as a class with respect to any extraordinary corporate action such as a merger, consolidation, dissolution, conversion, liquidation or the like. The holders of the Special Voting Preferred Stock shall have the exclusive voting rights on any Charter amendment that would alter only the contract rights, as expressly set forth in the Charter, of the Special Voting Preferred Stock.

5. *Pairing.*

The Corporation shall not issue or agree to issue any shares of Special Voting Preferred Stock to any Person unless effective provision has been made for the simultaneous issuance by the Operating Partnership to the same Person of the same number of Partnership Common Units, and for the pairing of such shares of Special Voting Preferred Stock and Partnership Common Units in accordance with the Pairing Agreement. Until the limitation on transfer provided for in Section 1 of the Pairing Agreement shall be terminated in accordance with the terms of the Pairing Agreement:

(a) No share of Special Voting Preferred Stock shall be transferable, and no such share shall be transferred on the stock transfer books of the Corporation, except in accordance with the provisions of the Pairing Agreement.

(b) A legend shall be placed on the face of each certificate representing ownership of shares of Special Voting Preferred Stock referring to the restriction on transfer set forth herein and in the Pairing Agreement.

6. *Reacquired Shares.*

Any shares of Special Voting Preferred Stock redeemed, purchased or otherwise acquired by the Corporation in any manner whatsoever shall be cancelled automatically, shall cease to be outstanding and shall become authorized but unissued shares of Special Voting Preferred Stock, and the former holder or holders thereof shall have no further rights (hereunder or otherwise) with respect to such shares (except as provided in Section 8 hereof). Any shares of Special Voting Preferred Stock that are

cancelled in accordance with the preceding sentence may be reissued or reclassified by the Corporation in accordance with the applicable provisions of the Charter.

7. *Liquidation, Dissolution or Winding Up.*

In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, before any assets of the Corporation shall be distributed, paid or set aside for the holders of any equity securities ranking junior to the Special Voting Preferred Stock as to the distribution of assets upon liquidation, dissolution or winding up of the Corporation, the Corporation shall pay to the holders of shares of Special Voting Preferred Stock $.01 per share of Special Voting Preferred Stock. For the purposes of this Section 7, (i) a consolidation or merger of the Corporation with one or more entities, (ii) a sale or transfer of all or substantially all of the Corporation's assets, or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Corporation.

8. *Cancellation and Redemption.*

(a) In the event that the Operating Partnership is party to any consolidation, merger, combination or other transaction, other than in connection with an UPREIT Combination Transaction, pursuant to which the Partnership Common Units are converted or changed into or exchanged for stock and/or other securities of any other entity and/or cash or any other property, then in any such case the shares of Special Voting Preferred Stock shall be concurrently redeemed by the Corporation, out of assets legally available therefor from the distribution received by the Corporation pursuant to Section 4.a of the Pairing Agreement, at a redemption price payable in cash equal to $.01 per share of Special Voting Preferred Stock, shall be cancelled automatically and cease to be outstanding and shall become authorized but unissued shares of Special Voting Preferred Stock as contemplated by Section 6 above, and thereafter the former holders thereof shall have no further rights (hereunder or otherwise) with respect to such shares (except the rights to receive the cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required).

(b) If at any time any Qualifying Person (as defined in the Partnership Agreement) elects to have redeemed, pursuant to Section 8.6 of the Partnership Agreement, any Partnership Common Unit that is paired with a share of Special Voting Preferred Stock and such Partnership Common Unit is redeemed by the Operating Partnership under Section 8.6.A of the Partnership Agreement, then concurrently with the redemption by the Operating Partnership of any such Partnership Common Units in accordance with the terms and conditions of the Partnership Agreement, the shares of Special Voting Preferred Stock paired with the Partnership Common Units being so redeemed shall be concurrently redeemed by the Corporation, out of assets legally available therefor from the distribution received by the Corporation pursuant to Section 4.a of the Pairing Agreement, at a redemption price payable in cash equal to $.01 per share of Special Voting Preferred Stock, shall be cancelled automatically and cease to be outstanding and shall become authorized but unissued shares of Special Voting Preferred Stock as contemplated by Section 6 above, and thereafter the former holders thereof shall have no further rights (hereunder or otherwise) with respect to such shares (except the rights to receive the cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required).

(c) If at any time any Qualifying Person elects to have redeemed, pursuant to Section 8.6 of the Partnership Agreement, any Partnership Common Unit that is paired with a share of Special Voting Preferred Stock and the Corporation exercises its rights under Section 8.6.B of the Partnership Agreement to acquire any or all of such Partnership Common Units in exchange for shares of Common Stock, then concurrently with the acquisition by the Corporation of any such Partnership Common Units in exchange for shares of Common Stock in accordance with the terms and conditions of the Partnership Agreement, the shares of Special Voting Preferred Stock paired with the Partnership Common Units being so acquired shall be concurrently redeemed by the Corporation, out of assets legally available therefor from the distribution received by the Corporation pursuant to Section 4.a of the Pairing Agreement, at a redemption price payable in cash equal to $.01 per share of Special Voting

Preferred Stock, shall be cancelled automatically and cease to be outstanding and shall become authorized but unissued shares of Special Voting Preferred Stock as contemplated by Section 6 above, and thereafter the former holders thereof shall have no further rights (hereunder or otherwise) with respect to such shares (except the rights to receive the cash payable upon such redemption, without interest thereon, upon surrender and endorsement of their certificates if so required).

9. *Amendments and Mergers.*

The Charter shall not be amended in any manner that would materially alter or change the powers, preferences or special rights of the Special Voting Preferred Stock, as set forth herein, so as to affect them adversely without the affirmative vote of the holders of at least a majority of the outstanding shares of Special Voting Preferred Stock, voting separately as a class; provided, however, that the amendment of the provisions of the Charter so as to authorize or create, or to increase the authorized amount of, any equity securities of the Corporation shall not be deemed to materially and adversely affect the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the Special Voting Preferred Stock. The holders of the Special Voting Preferred Stock shall have no rights to vote on any amendment to the provisions of the Charter which do not materially and adversely affect the Special Voting Preferred Stock.

The Corporation shall not consummate any UPREIT Combination Transaction without the affirmative vote of the holders of at least a majority of the outstanding shares of Special Voting Preferred Stock, voting separately as a class, unless (i) the Corporation is the surviving entity, or (ii) in connection with any UPREIT Combination Transaction in which the Corporation is not the surviving entity if, as result of the merger or consolidation, the holders of Special Voting Preferred Stock 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.

10. *Fractional Shares.*

Special Voting Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional share, to exercise voting rights and to have the benefit of all other rights of holders of Special Voting Preferred Stock.

SECOND: The Shares have been reclassified and designated by the Board of Directors under the authority contained in the Charter.

THIRD: These Articles Supplementary have been approved by the Board of Directors in the manner and by the vote required by law.

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

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused these Articles Supplementary to be signed in its name and on its behalf by its Chief Financial Officer and attested to by its Secretary on this 13th day of July, 2016.

ATTEST:	ARBOR REALTY TRUST, INC.
/s/ JOHN J. BISHAR, JR.	By: /s/ PAUL ELENIO (SEAL)
Name: John J. Bishar, Jr. Title: *Secretary*	Name: Paul Elenio Title: *Chief Financial Officer*

QuickLinks

Exhibit 3.1

ARBOR REALTY TRUST, INC. ARTICLES SUPPLEMENTARY

Exhibit 10.1

Execution Version

Option Agreement

This Option Agreement (this "Agreement") is made and entered into as of the 14th day of July, 2016, by and among Arbor Realty Trust, Inc., a Maryland limited liability company (the "Parent REIT"), Arbor Realty Limited Partnership, a Delaware limited partnership (the "Operating Partnership"), Arbor Realty SR, Inc., a Maryland corporation (the "Sub-REIT" and together with Parent REIT and the Operating Partnership, the "Company"), and Arbor Commercial Mortgage, LLC, a New York limited liability company (the "Manager"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Asset Purchase Agreement (as defined below).

WHEREAS, the Parent REIT, the Operating Partnership and the Manager are party to that certain Asset Purchase Agreement (as amended, the "Asset Purchase Agreement") by and among the Parent REIT, the Operating Partnership, Arbor Multifamily Lending, LLC (f/k/a ARSR Acquisition Company, LLC), the Manager and Arbor Commercial Funding, LLC, a New York limited liability company, dated as of February 25, 2016;

WHEREAS, the Parent REIT, the Operating Partnership, the Sub-REIT and the Manager entered into that certain Third Amended and Restated Management and Advisory Agreement dated as of July 14, 2016 (as amended from time to time in accordance with its terms, the "Management Agreement");

WHEREAS, in consideration of the agreement of the Seller to sell, and the Buyer to purchase, the Included Business under the Asset Purchase Agreement, and in furtherance of the transactions contemplated thereby, the Manager desires to grant to the Operating Partnership the Option (as defined below);

WHEREAS, in the event the Option is exercised, Manager and the Company desire to terminate the Management Agreement and grant a mutual release of the obligations thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Option.

a. Grant. In consideration of the agreement of the Seller to sell, and the Buyer to purchase, the Included Business under the Asset Purchase Agreement, and in furtherance of the transactions contemplated thereby, the Manager hereby grants to the Operating Partnership an irrevocable, non-transferable right (the "Option") to (i) purchase all of the Management Business (as defined below) of the Manager and (ii) terminate the Management Agreement, subject to the terms and conditions of this Agreement. The "Management Business" shall mean those executive and administrative employees of the Manager that provide services to the Company pursuant to the Management Agreement.

b. Exercise Mechanics and Exercise Price. The Operating Partnership, upon the approval of the Special Committee, or if the Special Committee is no longer in existence, the Audit Committee of the Board, may exercise the Option by giving written notice thereof to the

Manager (the "Exercise Notice") at any time during the period commencing on the date hereof, and ending on the July 14, 2018 (the "Exercise Period"). The "Exercise Price" for the Option shall be (i) $25,000,000 if the Option is exercised on or prior to July 14, 2017, or (ii) $27,000,000 if the Option is exercised after such date. The Exercise Price shall be payable to the Manager as follows: (A) 50% of the Exercise Price in cash via a wire transfer of immediately available funds, to the account specified by the Manager at least three (3) Business Days prior to the Option Closing (as defined below) and (B) 50% of the Exercise Price through the issuance of Buyer OP Units. The number of Buyer OP Units issuable at the Option Closing shall be that number of Buyer OP Units which shall be convertible in accordance with the terms of the Partnership Agreement as of the Option Closing Date (as defined below) into the number of shares of Parent Common Stock calculated by dividing (X) 50% of the Exercise Price by (Y) the Reference Market Value of Parent Common Stock. "Reference Market Value" means the volume-weighted average closing sale price, as published in the Eastern Edition of The Wall Street Journal, of a share of Parent Common Stock on The New York Stock Exchange for the thirty (30) consecutive trading day period ending on the trading Day at the end of the close of business on the trading day three (3) days prior to the Option Closing Date.

c. Option Closing. The closing of the transactions contemplated by the Exercise Notice (the "Option Closing") shall take place at the offices of Dechert LLP 1095 Avenue of the Americas, New York, New York 10036 at 10:00 a.m. New York City time, as promptly as practicable, but in no event more than ten (10) Business Days following the date of the Exercise Notice, or at such other place or at such other time or on such other date as the Operating Partnership and the Manager mutually may agree in writing (the "Option Closing Date"). At the Option Closing, the Operating Partnership and the Manager shall execute and deliver any reasonable and necessary documents with which to memorialize the Operating Partnership's acquisition of the Management Business.

d. Termination of the Option. The Option shall expire and terminate after the final day of the Exercise Period. Upon such expiration and termination of the Option, neither party shall have any further obligation or liability to the other with respect to the Option or the transactions contemplated by this Agreement.

2. Management Agreement Termination and Mutual Release.

a. No later than three (3) Business Days prior to the Option Closing Date, the Manager shall deliver to the Parent REIT a statement setting forth its good faith estimate, as of the Option Closing Date, of (i) any accrued and unpaid compensation as of the Option Closing Date pursuant to Section 8 of the Management Agreement calculated in accordance with the principles set forth in Exhibit A and (ii) any unpaid Reimbursable Expenses (as defined in the Management Agreement) to which the Manager is entitled pursuant to Section 9 of the Management Agreement as of the Option Closing Date (the amounts in (i) and (ii) of this Section 1.a, collectively, the "Accrued Amounts"). Effective as of the Option Closing Date and conditioned on the Option Closing and immediately following the receipt by the Manager of the Exercise Price and the Accrued Amounts, notwithstanding anything in the Management Agreement to the contrary, the parties to the Management Agreement hereby terminate the Management Agreement, including, without limitation and subject to Section 2.b. contained herein, provisions of the Management Agreement which by their terms would otherwise have survived the termination of the Management Agreement, and the Management Agreement is of

no further force or effect as of that date and time ("Effective Time"). Except for payment of the Accrued Amounts and the Exercise Price and except as provided in the last sentence of Section 2.b. of this Agreement, as of the Effective Time, any and all obligations of the Parent REIT, the Operating Partnership, the Sub-REIT and the Manager arising from the Management Agreement are hereby discharged. Notwithstanding anything to the contrary contained in the Management Agreement, Parent REIT, the Operating Partnership, the Sub-REIT and the Manager agree that any obligation of the Parent REIT to pay the "Termination Fee" as contemplated by Section 13(b) of the Management Agreement shall not survive the Effective Time and no such Termination Fee shall be due and payable in connection with this Agreement. Effective as of the Effective Time, none of Parent REIT, the Operating Partnership, the Sub-REIT or the Manager shall have any liability or obligation to each other under the Management Agreement, including, without limitation, the payment of any termination fee.

b. Subject to the following sentence, effective as of the Option Closing Date and conditioned on the Option Closing and immediately following the receipt by the Manager of the Exercise Price and the Accrued Amounts, at the Effective Time and notwithstanding anything in the Management Agreement to the contrary, each of the Parent REIT, the Operating Partnership, the Sub-REIT and the Manager, each on behalf of itself and its respective members, affiliates, employees and agents, hereby waive and mutually release all obligations and liabilities of each other party to this Agreement and their affiliates arising under or related to the Management Agreement. Notwithstanding the foregoing, each of Parent REIT, the Operating Partnership, the Sub-REIT and the Manager agree that (i) the provisions of Section 6(b) of the Management Agreement (Confidentiality) shall remain in full force and effect indefinitely; (ii) the provisions of Sections 11(a) and 11(b) of the Management Agreement (Limits of Manager Responsibility; Indemnification by Company) shall remain in full force and effect until the expiration of the applicable statute of limitations and (iii) the provisions of Section 11(c) of the Management Agreement (Indemnification by Manager) shall remain in full force and effect until the date that is eighteen months following the Option Closing.

3. Other Obligations. To the extent applicable or as reasonably requested by the Parent REIT, Manager shall take all actions required to be taken upon a termination of the Management Agreement, including as set forth in Section 15 of the Management Agreement.

4. Further Assurances. Subject to the provisions of this Agreement, each of the parties hereto agrees to execute, acknowledge, deliver, file and record such further certificates, amendments, instruments and documents, and to do all such other acts and things, as may be reasonably requested by any other party in order to carry out the intent and purpose of this Agreement.

5. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. This Agreement may be executed by facsimile signature or other electronic signature and such signature shall constitute an original for all purposes.

6. Interpretation of Conflicts. In the event of any conflict between this Agreement and the Asset Purchase Agreement, the Asset Purchase Agreement shall govern and control.

7. Successors and Assigns. This Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns, but may not be assigned by any party without the prior written consent of the other parties hereto.

8. Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of New York (other than section 5 1401 of the New York General Obligations Law).

9. Entire Agreement. This Agreement constitutes the entire agreement, and supersedes all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the parties with respect to the subject matter hereof and thereof.

[Signatures begin on the following page]

This Agreement is executed and delivered by duly authorized persons as of the date first above written.

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Executive Vice President

[Signature Page to Option Agreement]

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc., its general partner

By: /s/ Ivan Kaufman
Name: Ivan Kaufman
Title: President

[Signature Page to Option Agreement]

ARBOR REALTY SR, INC.

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Executive Vice President

[Signature Page to Option Agreement]

ARBOR COMMERCIAL MORTGAGE, LLC

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

[Signature Page to Option Agreement]

Exhibit A

Exhibit 10.2

THIRD 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 July 14, 2016

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

THIS THIRD AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF ARBOR REALTY LIMITED PARTNERSHIP (the "Partnership"), dated as of July 14, 2016, 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; and

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 parties hereto desire to amend and restate the Second Amended Partnership Agreement and to admit ACM as a Limited Partner.

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 Third 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 General Partner for cash, the Partnership shall, immediately prior to such redemption of Preferred Shares, redeem an equal number of Partnership Preferred Units held by the General Partner, upon the same terms and for the same price per Partnership Preferred Unit, as such Preferred Shares are redeemed.

Section 4.7 Conversion or Redemption of Junior Shares.

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

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

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

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

Section 4.10 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 8.6F, 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 8.6F(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 for, magnetic tape, photographs, micrographics or any other information storage device, provided that the records so maintained are convertible into clearly legible written form within a reasonable period of time.

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

Partnership and the General Partner may operate with integrated or consolidated accounting records, operations and principles.

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

Section 9.3 Reports.

A. As soon as practicable, but in no event later than one hundred five (105) days after the close of each Partnership Year, the General Partner shall cause to be mailed to each Limited Partner of record as of the close of the Partnership Year an annual report containing financial statements of the Partnership, or of the General Partner if such statements are prepared 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

Exhibit A

PARTNERS AND PARTNERSHIP UNITS

Name and Address of Partners	Partnership Units (Type and Amount)	Percentage Interests
General Partner:		
ARBOR REALTY GPOP, INC. 333 Earle Ovington Boulevard, Suite 900 Uniondale, NY 11553	[ ] Common Units	[ ]%
Limited Partners:		
ARBOR REALTY LPOP, INC. 333 Earle Ovington Boulevard, Suite 900 Uniondale, NY 11553	[ ] Common Units 21,230,769 Special Preferred Units 1,551,500 Series A Preferred Units 1,260,000 Series B Preferred Units 900,000 Series C Preferred Units	[ ]%
ARBOR COMMERCIAL MORTGAGE, LLC [ ] [ ]	21,230,769 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 10.3

Execution Version

NON-COMPETITION AGREEMENT

This NON-COMPETITION AGREEMENT (this "Agreement") is made and entered into as of July 14, 2016, by and among Arbor Realty Trust, Inc., a Maryland corporation (the "REIT"), Arbor Realty Limited Partnership, a Delaware limited partnership (the "Operating Partnership"), Arbor Commercial Mortgage, LLC, a New York limited liability company ("ACM" and together with Arbor Commercial Funding, LLC, the "Seller") and Ivan Kaufman ("Kaufman"). Capitalized terms not defined herein shall have the meanings ascribed to them in that certain Asset Purchase Agreement, dated as of February 25, 2016, by and between Seller, the Operating Partnership, Arbor Multifamily Lending, LLC (f/k/a ARSR Acquisition Company, LLC) ("AML" and, together with the Operating Partnership, the "Purchaser") and the REIT (as amended, the "APA").

WHEREAS, pursuant to the APA the Seller is selling the Included Business to the Purchaser in return for the Purchaser paying to the Seller the Closing Purchase Price and assuming the Assumed Liabilities; and

WHEREAS, the Seller is retaining the Excluded Business and the Excluded Liabilities and shall continue to operate the Excluded Business; and

WHEREAS, the Company and the Seller desire to enter into this Agreement in order to delineate their respective spheres of business following the Closing.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Company and the Seller, the parties hereto agree as follows:

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

(a) "Board of Directors" means the independent members of the Board of Directors of the REIT.

(b) "Company" means the REIT and its Subsidiaries.

(c) "Company Target Investments" means the Included Business and commercial mortgage backed securities and permanent and bridge multifamily and commercial real estate mortgage loans, mezzanine loans on multifamily and commercial real estate, preferred equity investments in multifamily and commercial real estate (so long as the terms of such preferred equity investment is not convertible into, or sold as a unit with, common equity or instruments exercisable or convertible into common equity and provides only a return of the principal amount of investment plus a stated return and does not entitle the preferred holder to participate in an unlimited return on its investment in the residual assets of the issuer upon sale or liquidation), whether by origination or purchase.

(d) "Kaufman Business" means any business in which Kaufman owns, directly or indirectly, equity interests sufficient to control such business other than ACM and its Subsidiaries or the Company.

(e) "Seller Target Investments" means the Excluded Business and all other investments of any kind other than Company Target Investments.

(f) "Subsidiary" means, with respect to any Person, any other Person controlled by such first Person, directly or indirectly, through one or more intermediaries.

2. Non-Competition. During the term of this Agreement,

(a) Each of Kaufman and ACM and its Subsidiaries shall not, and Kaufman shall cause each Kaufman Business not to:

(i) directly or indirectly, on their own behalf or on behalf of any other Person, solicit, induce, encourage, recruit, hire or attempt to solicit, encourage or induce any employee of the REIT or its Subsidiaries (including any Transferred Employee) to terminate, alter or cease his, her or its relationship with the REIT or its Subsidiaries; provided, that the foregoing shall not prohibit (A) a general solicitation to the public of general advertising or similar methods of solicitation by search firms not specifically directed at such employees or (B) any solicitation, recruitment or hiring of any such employee who is not employed or retained by the REIT or its Subsidiaries for at least 12 months;

(ii) on their own behalf or on behalf of any other Person, (x) solicit, induce, divert, appropriate or attempt to solicit, induce, divert or appropriate to any Person (A) a Company Target Investment, or (B) a customer of the Company or its Subsidiaries, for the purpose of soliciting such customer for an investment which is a Company Target Investment or (y) refer Company Target Investments from any customer to any Person or be paid commissions based on Company Target Investment sales received from any customer by any Person; or

(iii) directly or indirectly, own, operate, join, render financial assistance to, receive any economic benefit from, exert any influence upon, participate in, engage in, consult or assist any third party in engaging in, manage, control or participate in or be connected with, as an officer, director, adviser, employee, consultant, partner or agent or perform management, executive or supervisory functions with respect to (whether paid or unpaid), render services or advice to, or allow any of its officers or employees to be connected as an officer, employee, partner, member, stockholder, consultant or otherwise with any Person, which is at the time engaged in a business which is, directly or indirectly, in competition with the business of the REIT, including with respect to Company Target Investments.

(b) The Company shall not:

(i) directly or indirectly, on their own behalf or on behalf of any other Person, solicit, induce, encourage, recruit, hire or attempt to solicit, encourage or induce

any employee of (x) the Excluded Business, (y) ACM or its Subsidiaries, or (z) any Kaufman Business (in each case of clauses (x), (y), and (z), other than any Transferred Employees) to terminate, alter or cease his, her or its relationship with the Excluded Business, ACM or its Subsidiaries or such Kaufman Business; provided, that the foregoing shall not prohibit (A) a general solicitation to the public of general advertising or similar methods of solicitation by search firms not specifically directed at such employees or (B) any solicitation, recruitment or hiring of any such employee who is not employed or retained by the Excluded Business or its Subsidiaries for at least 12 months;

(ii) on their own behalf or on behalf of any other Person, (x) solicit, induce, divert, appropriate or attempt to solicit, induce, divert or appropriate to any Person (A) a Seller Target Investment, or (B) a customer of the Excluded Business, ACM or its Subsidiaries or Kaufman or any Kaufman Business (other than the REIT and its Subsidiaries), for the purpose of soliciting such customer for an investment which is a Seller Target Investment or (y) refer Seller Target Investments from any customer to any Person or be paid commissions based on Seller Target Investment sales received from any customer by any Person; or

(iii) directly or indirectly, own, operate, join, render financial assistance to, receive any economic benefit from, exert any influence upon, participate in, engage in, consult or assist any third party in engaging in, manage, control or participate in or be connected with, as an officer, director, adviser, employee, consultant, partner or agent or perform management, executive or supervisory functions with respect to (whether paid or unpaid), render services or advice to, or allow any of its officers or employees to be connected as an officer, employee, partner, member, stockholder, consultant or otherwise with any Person, which is at the time engaged in a business which is, directly or indirectly, in competition with the business of the Excluded Business, ACM, Kaufman or any Kaufman Business with respect to Seller Target Investments.

(c) Nothing stated herein shall be interpreted to prohibit or preclude Kaufman from serving as a director or officer of the REIT and its Subsidiaries or limit Kaufman's authority and ability to manage the Company, ACM or any of their respective Subsidiaries and to supervise, review or terminate any employees of each of the Company, ACM, or any of their respective Subsidiaries. Subject to compliance with the terms of Section 2(a) herein, the parties agree that the Kaufman Businesses and the Seller Target Investments are outside the scope of the Company's sphere of business and therefore shall not be deemed to be a corporate opportunity of the Company.

(d) As of the date hereof, Kaufman and ACM represent and warrant to the REIT that the Excluded Business and the Kaufmann Businesses do not, directly or indirectly, compete with the business of the REIT as currently conducted and are not engaged in any actions that would violate Section 2(a)(iii) above.

3. Term. Subject to the provisions set forth below, this Agreement shall remain in full force and effect from the date hereof until two (2) years following the date that both (a) Kaufman is no longer the chief executive officer of the REIT and (b) the fully diluted beneficial ownership of the common stock of the REIT collectively held by ACM and Kaufman and their

respective Affiliates (including for the avoidance of doubt any OP Units of the Operating Partnership held by ACM and Kaufman and their respective Affiliates) falls below 10%.

4. Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any New York State or federal court sitting in the Borough of Manhattan in the City of New York (or, if such court lacks subject matter jurisdiction, in any appropriate New York State or federal court), this being in addition to any other remedy to which such party is entitled at law or in equity. Each of the parties hereby further waives (a) any defense in any action for specific performance that a remedy at law would be adequate and (b) any requirement under any law to post security as a prerequisite to obtaining equitable relief.

5. Amendment and Modification. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed on behalf of each party (including the Special Committee on behalf of the REIT or, if the Special Committee no longer exists, the Audit Committee of the Board of Directors).

6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, (b) on the first Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

a) if to ACM or Kaufman, to:

Arbor Commercial Mortgage, LLC
333 Earle Ovington Boulevard
Suite 900
Uniondale, NY 11553
Attention: Ivan Kaufman, CEO

with a copy (which shall not constitute notice) to:

Arbor Commercial Mortgage, LLC
333 Earle Ovington Boulevard
Suite 900
Uniondale, NY 11553
Attention: John Bishar, Esq.

and

Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Attention: Martin Nussbaum

b) if to the Company, to:

Arbor Realty Trust, Inc.
c/o The Special Committee of the Board of Directors
333 Earle Ovington Boulevard
Suite 900
Uniondale, NY 11553
Attention: William C. Green
Melvin F. Lazar
Karen K. Edwards
Stanley Kreitman

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Attention: Steven A. Seidman, Esq.
Sean M. Ewen, Esq.

7. Entire Agreement. This Agreement, the Asset Purchase Agreement (including the Exhibits and Schedules attached hereto), the other Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement, and supersede all prior written agreements, arrangements, communications and understandings and all prior and contemporaneous oral agreements, arrangements, communications and understandings between the parties with respect to the subject matter hereof and thereof. Notwithstanding any oral agreement or course of action of the parties or their Representatives to the contrary, no party to this Agreement shall be under any legal obligation to enter into or complete the transactions contemplated hereby unless and until this Agreement shall have been executed and delivered by each of the parties.

8. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the parties and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.

9. Governing Law. This Agreement and all disputes or controversies arising out of or relating to this Agreement or the transactions contemplated hereby shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of the State of New York (other than section 5 1401 of the New York General Obligations Law).

10. Submission to Jurisdiction. Each of the parties irrevocably agrees that any legal action or proceeding arising out of or relating to this Agreement brought by the other party or its successors or assigns shall be brought and determined in any New York State or federal court sitting in the Borough of Manhattan in The City of New York (or, if such court lacks subject matter jurisdiction, in any appropriate New York State or federal court), and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the aforesaid courts for itself and with respect to its property, generally and unconditionally, with regard to any such action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the parties agrees not to commence any action, suit or proceeding relating thereto except in the courts described above in New York, other than actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any such court in New York as described herein. Each of the parties further agrees that notice as provided herein shall constitute sufficient service of process and the parties further waive any argument that such service is insufficient. Each of the parties hereby irrevocably and unconditionally waives, and agrees not to assert, by way of motion or as a defense, counterclaim or otherwise, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (a) any claim that it is not personally subject to the jurisdiction of the courts in New York as described herein for any reason, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

11. Assignment; Successors. Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of law or otherwise, by any party without the prior written consent of the other parties (including the Special Committee or, if the Special Committee no longer exists, the Audit Committee of the Board of Directors), and any such assignment without such prior written consent shall be null and void; provided, however, that the REIT or the Operating Partnership may assign this Agreement to any Affiliate of the REIT without the prior consent of ACM or Kaufman; provided further that no assignment shall limit the assignor's obligations hereunder. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

12. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision; and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

13. Waiver of Jury Trial. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same instrument and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

15. Facsimile Signature. This Agreement may be executed by facsimile signature or other electronic signature and such signature shall constitute an original for all purposes

[NO FURTHER TEXT ON THIS PAGE]

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

Arbor Realty Trust, Inc.,
a Maryland corporation

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Executive Vice President

Arbor Realty Limited Partnership,
a Delaware limited liability partnership

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

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Executive Vice President

By: Arbor Commercial Mortgage, LLC
a New York limited liability company

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

/s/ Ivan Kaufman
Ivan Kaufman

Exhibit 10.4

THIRD AMENDED AND RESTATED
MANAGEMENT AND ADVISORY AGREEMENT

THIS THIRD AMENDED AND RESTATED MANAGEMENT AND ADVISORY AGREEMENT is made as of July 14, 2016 (the "Agreement") by and among ARBOR REALTY TRUST, INC., a Maryland corporation ("Parent REIT"), ARBOR REALTY LIMITED PARTNERSHIP, a Delaware limited partnership ("Operating Partnership"), ARBOR REALTY SR, INC., a Maryland corporation ("Sub-REIT" and together with the Parent REIT and the Operating Partnership, the "Company"), and ARBOR COMMERCIAL MORTGAGE, LLC, a New York limited liability company (together with its permitted assigns, "Manager").

W I T N E S S E T H :

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

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

WHEREAS, Parent REIT, Manager, the Operating Partnership and the Sub-REIT agreed to amend and restate the First Amended Management Agreement by entering into the Second Amended and Restated Management and Advisory Agreement, dated as of August 6, 2009, as amended as of January 1, 2015 (as amended, the "Second Amended Management Agreement");

WHEREAS, Parent REIT, the Operating Partnership, Arbor Multifamily Lending, LLC (formerly known as ARSR Acquisition Company, LLC), the Manager and Arbor Commercial Funding, LLC have entered into that certain Asset Purchase Agreement, dated February 25, 2016 (the "APA"), pursuant to which the Seller (as defined in the APA), in addition to other transactions contemplated by the APA, has agreed to sell the Included Business (as defined in the APA) to the Buyer (as defined in the APA);

WHEREAS, as part of the sale of the Included Business, certain of the Manager's employees will become employees of Parent REIT and/or one or more of Parent REIT's subsidiaries;

WHEREAS, as a result of the transactions contemplated by the APA, Parent REIT, Manager, Operating Partnership and Sub-REIT desire to amend and restate the Second Amended Management Agreement in its entirety on the terms and conditions hereinafter set forth.

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

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

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

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

(c) "Annual Incentive Agreement" means the Annual Incentive Agreement entered into between the Company and the Principal, as of January 1, 2015, as amended.

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

(e) "Audit Committee" means the Audit Committee of the Parent REIT.

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

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

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

(i) "Closing" means the closing of the transactions contemplated by the APA.

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

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

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

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

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

(a) "Company Target Investments" means, whether originated by the Company or purchased by the Company, any commercial mortgage backed securities and permanent and bridge multifamily and commercial real estate mortgage loans, mezzanine loans on multifamily and commercial real estate, preferred equity investments in multifamily and commercial real estate (so long as the terms of such preferred equity investment is not convertible into, or sold as a unit with, common equity or instruments exercisable or convertible into common equity and provides only a return of the principal amount of investment plus a stated return and does not entitle the preferred holder to participate in an unlimited return on its investment in the residual assets of the issuer upon sale or liquidation).

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

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

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

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

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

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

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

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

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

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

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

(z) "Funds from Operations" has the meaning assigned by the National Association of Real Estate Investment Trusts and means net income (computed in accordance with GAAP) excluding gains (or losses) from debt restructuring and sales of property, plus depreciation and amortization on real estate assets, and after adjustments for unconsolidated partnerships and joint ventures; provided, however, if an allowance for a loss or an impairment of an Investment that is a Company Target Investment is recognized in the Company's income statement prepared in accordance with GAAP, any subsequent recovery of such loss or impairment that is recorded in the Company's income statement prepared in accordance with GAAP shall be excluded from Funds from Operations, except as follows: (A) 20% of the amount of such subsequent recovery will be included in Funds from Operations for the remainder of the fiscal year in which such subsequent recovery occurs, applied proportionally for each remaining quarter in such fiscal year, (B) an additional 20% of such amount shall be included in Funds from Operations for the next succeeding year at the rate of one-fourth per calendar quarter, and (C) an additional 20% of such amount shall be included in Funds from Operations for the second succeeding year at the rate of one-fourth per calendar quarter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(pp) "Manager Target Investments" means the "Seller Target Investments as defined in the Non-Compete Agreement.

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

(rr) "Non-Compete Agreement" means that certain Non-Compete Agreement, dated as of July , 2016, among Parent REIT, Operating Partnership, Manager and Principal.

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

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

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

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

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

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

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

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

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

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

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

(ddd) "Ten Year U.S. Treasury Rate" means the arithmetic average of the weekly average yield to maturity for actively traded current coupon U.S. Treasury fixed interest rate securities (adjusted to constant maturities of ten (10) years) published by the Federal Reserve Board during a fiscal year, or, if such rate is not published by the Federal Reserve

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

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

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

2. Appointment and Duties of Manager.

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

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

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

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

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

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

(v) providing executive, management and administrative personnel required to render services to the Company;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Subcontracts. Manager may enter into agreements with other parties, including its affiliates, for the purpose of engaging one or more property and/or asset managers for and on behalf, and at the sole cost and expense, of the Company to provide property

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

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

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

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

(g) Excess Funds. Notwithstanding anything contained in this Agreement to the contrary, except to the extent that the payment of additional moneys is proven by the Company to have been required as a direct result of Manager's acts or omissions which result in the right of the Company to terminate this Agreement pursuant to Section 13(c) and except as

expressly provided in Section 11(c), Manager shall not be required to expend money ("Excess Funds") in excess of that contained in any applicable Company Account or otherwise made available by the Company to be expended by Manager hereunder.

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

3. Dedication; Exclusivity..

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

(b) Additional Activities. Except to the extent set forth in Section 3(a) and subject to the provisions of this Section 3(b), Manager and any of its affiliates, and any of the officers and employees of any of the foregoing (the "Manager Parties"), may engage in any other businesses and render services of any kind to any other Person, including investment in, or advisory service to others investing in, any other real estate and real estate-related transactions other than Company Target Investments.

(c) Manager Exclusivity Rights. Manager and any other Manager Party may, and the Company agrees not to, pursue any investment opportunities consisting of Manager Target Investments.

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

4. Agency. Manager shall act as agent of the Company in making, acquiring, financing and disposing of Investments, disbursing and collecting the Company's funds, paying

the debts and fulfilling the obligations of the Company, supervising the performance of professionals engaged by or on behalf of the Company and handling, prosecuting and settling any claims of or against the Company, the Board of Directors, holders of Parent REIT, the Operating Partnership, Sub-REIT or any other Subsidiary's securities or the Company's representatives or properties.

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

6. Records; Confidentiality.

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

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

7. Obligations of Manager; Restrictions.

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

(b) Restrictions. Manager shall refrain from any action that, in its sole judgment made in good faith, (i) is not in compliance with the Guidelines, (ii) would adversely affect the status of Parent REIT or Sub-REIT as REITs, or (iii) would violate any law, rule or

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

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

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

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

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

8. Compensation.

(a) Cost Reimbursement.

(i) General. Subject to the provisions of this Section 8(a), the Company shall reimburse the Manager for the costs incurred by the Manager in performing the duties set forth in Section 2 (other than any Expenses incurred on behalf

of the Company which shall be reimbursed pursuant to Section 9) pursuant to the following procedures and guidelines.

(A) With respect to the Closing, on or prior to a day which is at least days prior to the Closing, and thereafter, on or prior to December 31st of each fiscal year (beginning on December 31, 2016), the Manager shall submit to the Audit Committee a proposed annual budget of Manager to perform the duties set forth in Section 2 in the immediately following fiscal year (the "Proposed Manager Budget"). For the year in which the Closing occurs, the Proposed Manager Budget shall apply to the period beginning on the date of the Closing and ending on the next December 31st. The Proposed Manager Budget should include a reasonably detailed description of each type and amount of cost expected to be incurred by Manager in performing such duties. Such costs may include pro rata allocations of Manager's costs for (1) the property and services of Manager expected to be utilized by the Company and (2) the base salaries and "annual bonus potential," if any, of each employee of the Manager expected to perform services on behalf of both the Company and Manager (a "Covered Manager Employee"). As soon as practicable after the Proposed Manager Budget is provided to the Audit Committee, the Audit Committee shall review the amount and type of costs included in the Proposed Manager Budget.

(B) On or prior to the Closing, and thereafter on or prior to February 28th of each fiscal year (beginning on February 28, 2017), Manager and the Company each agree to use commercially reasonable efforts to agree upon the amount and type of each cost expected to be incurred by Manager in performing the duties set forth in Section 2 in the immediately following year that will be reimbursed by the Company (the "Agreed-Upon Manager Budget").

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

(1) If the total cost incurred by Manager to perform the duties set forth in Section 2 in any given quarter exceeds the amount set forth in the Agreed-Upon Manager Budget allocable to such quarter, excluding any annual bonus potential amounts for any Covered Manager Employee (the "Excess Quarterly Costs"), the Company shall reimburse the Manager for such Excess Quarterly Costs upon receipt of Manager's written request therefor. Such request shall describe the type and amount of such excess costs and Manager's business reasons for such excess costs. The Company shall reimburse Manager for such Excess Quarterly Costs if

(i) such Excess Quarterly Costs represent types of costs contemplated in the Agreed-Upon Manager Budget, and (ii) the Audit Committee determines, in its reasonable discretion, that Manager's business reason for the incurrence of the Excess Quarterly Costs is reasonable in the context of the performance of Manager's duties set forth in Section 2.

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

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

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

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

(iii) Cost Reimbursement Credits.

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

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

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

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

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

(C) Within fifteen (15) days after the approval contemplated in clause (B) above, the Company shall pay Manager (1) the Approved Bonus Amount for each Discretionary Bonus Recipient, and (2) the Company's allocable portion of the total bonus amount to be paid by the Manager to each other Covered Manager Employee, subject to such amounts not exceeding the Covered

Manager Employees' aggregate annual bonus potential set forth in the Agreed-Upon Manager Budget for the applicable year.

(v) For so long as the Principal is employed by the Company and serves as its Chief Executive Officer, the Manager shall have no obligation under Section 3 of this Agreement to devote the time of its Chief Executive Officer to the Company's activities. For so long as the Principal's Annual Incentive Agreement is in effect, (a) all salary and bonus amounts payable by the Company to the Principal shall be determined solely pursuant to the terms of the Kaufman Annual Incentive Agreement and not the terms of Section 8 of this Agreement, and (b) the Principal shall not be considered a Covered Manager Employee (as defined in the Original Agreement) or a Discretionary Bonus Recipient.

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

(c) Incentive Fee.

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

(ii) The Incentive Fee shall be payable annually in arrears; provided, however, Manager shall receive quarterly installments thereof in advance, and Manager shall calculate each such installment based on the period of twelve (12) months ending on the last day of the fiscal quarter with respect to which such installment is payable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Limits of Manager Responsibility; Indemnification.

(a) Limits of Manager Responsibility. Manager assumes no responsibility under this Agreement other than to render the services set forth herein in good faith and shall not be responsible for any action of the Board of Directors in following or declining to follow any

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

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

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

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

13. Term; Termination.

(a) Term. This Agreement shall remain in full force and effect until December 31, 2018 unless earlier terminated by the Company or Manager as set forth below. This Agreement shall be renewed automatically for successive one (1) year periods after December 31, 2018, until this Agreement is terminated in accordance with the terms hereof.

(b) Non-Renewal/Termination Without Company Cause by Company. The Company may (i) elect not to renew this Agreement at the expiration of any one-year term

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

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

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

(ii) Manager misappropriates or embezzles Company funds;

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

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

(v) a Manager Change of Control occurs;

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

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

Termination of this Agreement pursuant to this Section 13(c) shall become effective, in case of the foregoing (A) clauses (i) through (iv), upon seven (7) days' prior written notice to

Manager, (B) clauses (v) and (vi), upon thirty (30) days' prior written notice to Manager, and (C) clause (vii), in the event of Manager's failure to cure and provided the Company has delivered to Manager a termination notice, upon the expiration of the applicable cure period.

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

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

14. Assignment.

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

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

REIT, in which case such successor organization shall be bound under this Agreement and by the terms of such assignment in the same manner as Parent REIT is bound by the terms of this Agreement.

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

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

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

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

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

16. Survival

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

17. Release of Money or other Property Upon Written Request. Manager agrees that any money or other property of the Company held by Manager under this Agreement shall be held by Manager as custodian for the Company, and Manager's records shall be clearly and appropriately marked to reflect the ownership of such money or other property by the Company. Upon the receipt by Manager of a written request signed by a duly authorized officer of the

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

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

If to Parent REIT, Sub-REIT
or the Operating Partnership: Arbor Realty Trust, Inc.
333 Earle Ovington Boulevard, Suite 900
Uniondale, New York 11553
Attention: Chief Financial Officer
Facsimile: (516) 832-6422

If to Manager: Arbor Commercial Mortgage, LLC
333 Earle Ovington Boulevard
Uniondale, New York 11553
Attention: Chief Financial Officer
Facsimile: (516) 832-6422

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

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

20. Entire Agreement. This Agreement contains the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter of this Agreement. The express terms of this Agreement control and supersede any course of

performance and/or usage of the trade inconsistent with any of the terms of this Agreement. This Agreement may not be modified or amended other than by an agreement in writing signed by the parties hereto.

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

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

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

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

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

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

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

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

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

[NO FURTHER TEXT ON THIS PAGE]

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

Manager:

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

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

Parent REIT:

ARBOR REALTY TRUST, INC.,
a Maryland corporation

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

Operating Partnership:

ARBOR REALTY LIMITED PARTNERSHIP,
a Delaware limited partnership

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

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

Sub-REIT:

ARBOR REALTY SR, INC.,
a Maryland corporation

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

Exhibit 10.5

PAIRING AGREEMENT

THIS PAIRING AGREEMENT (this "Agreement") is made and entered into as of July 14, 2016, by and among Arbor Realty Trust, Inc., a Maryland corporation (the "REIT"), Arbor Commercial Mortgage, LLC, a New York limited liability company ("ACM") and Arbor Realty Limited Partnership, a Delaware limited partnership (the "OP").

WHEREAS, the REIT has filed Articles Supplementary (the "Articles Supplementary") to its charter (as supplemented by the Articles Supplementary, the "REIT Charter") with the State Department of Assessments and Taxation of Maryland whereby the REIT reclassified and designated 25,000,000 shares of its Preferred Stock as shares of Special Voting Preferred Stock, par value $0.01 per share (the "Special Voting Stock");

WHEREAS, on February 25, 2016, ACM, Arbor Commercial Funding, LLC, a New York limited liability company ("ACF"), the REIT, the OP and ARSR Acquisition Company, LLC entered into an Asset Purchase Agreement pursuant to which the OP will acquire from ACM and ACF assets and liabilities related to the agency mortgage business of ACM (as further described therein) in exchange for the payment to ACM and ACF of cash and the issuance to ACM of the number of newly issued units of limited partnership interest in the OP ("OP Units") determined in accordance with the Asset Purchase Agreement (the "Acquisition OP Units");

WHEREAS, concurrently with the execution of this Agreement, the REIT, the OP, Arbor Realty SR, Inc. and ACM will enter into an Option Agreement (the "Option Agreement") pursuant to which ACM will grant the OP an Option (as defined in the Option Agreement) pursuant to which, upon exercise, the OP will acquire from ACM its management business (as further described therein) in exchange for the issuance to ACM of the number of newly issued OP Units determined in accordance with the Option Agreement (the "Option OP Units" and, together with the Acquisition OP Units, the "Paired OP Units");

WHEREAS, concurrently with the issuance of the Acquisition OP Units, the REIT will issue to ACM an equivalent number of shares of Special Voting Stock and, upon the exercise of the Option, the REIT will issue to ACM a number of shares

of Special Voting Stock equal to the number of Option OP Units issued by the OP in connection with the exercise of the Option;

WHEREAS, the REIT Charter provides that the REIT shall not issue or agree to issue any shares of Special Voting Stock unless effective provision has been made for the simultaneous issuance by the OP of the same number of OP Units of the OP, and for the pairing of such shares of Special Voting Stock and OP Units;

WHEREAS, the OP and the REIT wish to enter into this Agreement for the purpose of further effectuating the pairing of shares of Special Voting Stock and the Paired OP Units (the "Pairing"), including the establishment of the terms and conditions which will govern the issuance and the transfer of the shares of Special Voting Stock and the OP Units.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, the parties hereto agree as follows:

1. Transfer of Shares. Commencing on the date hereof and continuing until such time as this Agreement shall have been terminated in the manner provided herein:

   a. No share of Special Voting Stock shall be transferable, and no such share shall be transferred on the stock transfer books of the REIT, unless a simultaneous transfer is made by the same transferor to the same transferee of the corresponding Paired OP Unit.

   b. No Paired OP Unit shall be transferable, and no Paired OP Unit shall be transferred on the books of the OP, unless a simultaneous transfer is made by the same transferor to the same transferee of the corresponding share of Special Voting Stock.

   c. Notwithstanding anything to the contrary contained herein, upon any acquisition by the OP, the General Partner of the OP, the Special Limited Partner (as defined in the Partnership Agreement) or the REIT of any Paired OP Units and any shares of Special Voting Stock (whether pursuant to Section 8.6 of the OP Agreement or otherwise), all restrictions on transfer set forth in this Agreement with respect to such Paired OP Units so acquired shall terminate, and the corresponding shares of Special Voting Stock shall be redeemed and cancelled in accordance with the terms of the Articles Supplementary.

   d. In the event that any shares of Special Voting Stock are transferred to a trust pursuant to the provisions of Section 7.2(b) of the REIT Charter, all of the corresponding Paired OP Units shall be automatically transferred to such trust concurrently therewith and shall be subject to all the provisions of Section 7.3 of the REIT Charter to the same extent that the attached shares of Special Voting Stock are so subject.

2. Issuance of Securities. Commencing on the date hereof and continuing until such time as this Agreement shall have been terminated in the manner provided herein:

   a. The REIT shall not issue or agree to issue any share of Special Voting Stock to any person unless effective provision has been made for the simultaneous issuance or transfer to the same person of the corresponding Paired OP Unit and for the pairing of such share of Special Voting Stock and Paired OP Unit.

b. The OP shall not issue or agree to issue any Paired OP Unit to any person unless effective provision has been made for the simultaneous issuance or transfer to the same person of the corresponding share of Special Voting Stock and for the pairing of such Paired OP Unit and share of Special Voting Stock.

c. Upon the issuance by the REIT of a share of Special Voting Stock to any person, the REIT shall contribute any cash proceeds or other consideration received from the issuance of such share (the "Per Share REIT Consideration") to the LP, which, in turn, shall contribute such Per Share REIT Consideration to the OP in exchange for one Class A Preferred Unit of the OP (a "Class A Preferred Unit").

3. Stock Certificates. Commencing on the date hereof and continuing until such time as this Agreement shall have been terminated in the manner provided herein:

a. Each certificate issued representing a share of Special Voting Stock shall be affixed to a certificate evidencing the corresponding Paired OP Unit and shall bear a conspicuous legend (on the face thereof) referring to the restrictions on transfer set forth in Section 5 of the Articles Supplementary and this Agreement.

b. Each certificate evidencing a Paired OP Unit shall be affixed to a certificate representing the corresponding share of Special Voting Stock and shall bear a conspicuous legend (on the face thereof) referring to the restrictions on transfer set forth in this Agreement.

4. Redemption of Special Votiong Stock and Class A Preferred Units. Commencing on the date hereof and continuing until such time as this Agreement shall have been terminated in the manner provided herein:

a. Prior to the redemption of any shares of Special Voting Stock (the "Redemption Shares") pursuant to Section 8 of the Articles Supplementary:

i. The OP shall redeem a number of Class A Preferred Units equal to the number of Redemption Shares for $0.01 per Class A Preferred Unit, payable to the OP, pursuant to Section 4.11 of the partnership agreement of the OP (the "Unit Redemption

Amount").

ii. Immediately following the payment to the OP of the Unit Redemption Amount, the OP shall distribute the proceeds of such payment to the REIT in immediately available funds, which amount shall be set aside by the REIT, separate and apart from its other funds, to redeem the Redemption Shares pursuant to Section 8 of the Articles Supplementary.

b. All shares of Special Voting Stock redeemed by the REIT pursuant to Section 8 of the Articles Supplementary shall be cancelled automatically and shall become authorized but unissued shares of Special Voting Stock in accordance with the Articles Supplementary, and all certificates representing such shares held by the OP shall be delivered to the REIT for cancellation promptly following the effectiveness of such redemption.

5. Stock Dividends, Reclassifications, etc. Commencing on the date hereof and continuing until such time as this Agreement shall have been terminated in the manner provided herein:

a. The REIT shall not (i) declare or pay any dividend in respect of the outstanding shares of Special Voting Stock consisting in whole or in part of shares of Special Voting Stock, or (ii) subdivide, combine or otherwise reclassify the outstanding shares of Special Voting Stock.

b. The OP shall not (i) declare or pay any dividend in respect of Paired OP Units consisting in whole or in part of OP Units paired with shares of Special Voting Stock, or (ii) subdivide, combine or otherwise reclassify the outstanding Paired OP Units.

6. Termination. This Agreement and the Pairing may be terminated by mutual consent of the parties hereto.

7. Transfers. No Transfer of shares of Special Voting Stock or the corresponding Paired OP Units may be made to any person, unless in each case prior to such Transfer any such transferee agrees in writing to be bound by the terms and conditions of this Agreement pursuant to a supplementary agreement reasonably satisfactory in form and substance to the REIT and the OP. For purposes of this Section 7, the term "Transfer" shall mean any direct

or indirect sale, assignment, mortgage, transfer, pledge, gift, hypothecation or other disposition or transfer of, or any act creating a trust (voting or otherwise) with respect to shares of Special Voting Stock or the corresponding Paired OP Units.

8. No Restrictions on Issuances of Unpaired OP Units. This Agreement shall not be deemed to impose any restrictions or limitations on the ability of the OP to issue OP Units (other than the Paired OP Units or Preferred Units) that are not paired with shares of Special Voting Stock.

9. Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

10. Counterparts. This Agreement may be executed in counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Maryland.

12. Entire Agreement. This Agreement contains the entire understanding and agreement between the parties with respect to its subject matter, and any and all conflicting or inconsistent discussions, agreements, promises, representations and statements, if any, between the parties or their representatives that are not incorporated in this Agreement shall be merged into this Agreement.

13. Headings. The various section headings are inserted for the purposes of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

14. Severability. The provisions of this Agreement shall be severable, and any invalidity, unenforceability or illegality of any provision or provisions of this Agreement shall not affect any other provision or provisions of this Agreement, and each term and provision of this Agreement shall be construed to be valid and enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf as of the date first written above.

ARBOR REALTY TRUST, INC.

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer

ARBOR REALTY LIMITED PARTNERSHIP

By: Arbor Realty GPOP, Inc., its general partner

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer

ARBOR COMMERCIAL MORTGAGE, LLC

By: /s/ Paul Elenio
Name: Paul Elenio
Title: Chief Financial Officer

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Exhibit 10.6

ARSR PE, LLC

AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT

Dated as of July 14, 2016

THE LIMITED LIABILITY COMPANY MEMBERSHIP INTERESTS OF ARSR PE, LLC ("*UNITS*") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), THE SECURITIES LAWS OF ANY STATE OR ANY OTHER APPLICABLE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH UNITS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (A) THE SECURITIES ACT, (B) ANY APPLICABLE STATE SECURITIES LAWS, (C) ANY OTHER APPLICABLE SECURITIES LAWS, AND (D) THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT.

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AMENDED AND RESTATED LIMITED LIABILITY COMPANY
OPERATING AGREEMENT
OF
ARSR PE, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT (the "*Agreement*") of ARSR PE, LLC (the "*Company*") shall be effective as of 12:01 a.m. of this 14th day of July, 2016, and is entered into by Arbor Multifamily Lending, LLC (formerly known as ARSR Acquisition Company, LLC), a Delaware limited liability company ("*AML*" or the "*Common Member*") and Arbor Commercial Mortgage, LLC, a New York limited liability company ("*ACM*" or the "*Preferred Member*," and together with AML, the "*Members*"). This Agreement amends and restates, in its entirety, that certain Limited Liability Company Agreement of the Company, dated as of April 29, 2016 (the "Original Agreement").

RECITALS

WHEREAS, the Company was formed as a limited liability company under the laws of the State of New York on April 20, 2016 pursuant to articles of organization filed with the Secretary of State of the State of New York; and

WHEREAS, ACM and AML are parties to that certain asset purchase agreement, dated as of February 25, 2016, among Arbor Realty Limited Partnership, Arbor Realty Trust, Inc., AML, ACM, and Arbor Commercial Funding, LLC (as amended, the "*Asset Purchase Agreement*");

WHEREAS, pursuant to Section 2.6 of the Asset Purchase Agreement and *Section 1.12* hereof, ACM shall sell a percentage interest in the Purchased Assets (as defined in the Asset Purchase Agreement) that it owns other than the Excess Servicing Strip and the Freddie Mac I/O Strip (each as defined in the Asset Purchase Agreement) to AML for cash (the "*AML Assets*") and, concurrent with the effectiveness of this Agreement, shall contribute the remaining percentage interest in the Purchased Assets that it owns other than the Excess Servicing Strip and the Freddie Mac I/O Strip to the Company in exchange for 50,000 Preferred Units and the other consideration set forth herein; and

WHEREAS, AML is disregarded as an entity separate from ARSR Alpine, LLC for federal income tax purposes; and

WHEREAS, pursuant to *Section 1.12* hereof, concurrent with the effectiveness of this Agreement, AML shall contribute and assign the AML Assets to the Company, and the Company shall acquire and assume the same (the "*AML Contribution*"), and AML shall receive 88,000 Common Units and the other consideration set forth herein in exchange for the AML Contribution; and

WHEREAS, the Members desire to enter into this Agreement to amend and restate the Original Agreement and to provide for the regulation of the affairs and the conduct of the business of the Company on the terms set forth in this Agreement.

ARTICLE I

THE LIMITED LIABILITY COMPANY

1.1. *Definitions*. Capitalized terms used herein shall have the meanings assigned to such terms in *Exhibit A* hereto.

1.2. *Formation*. The Company was formed as a limited liability company under and pursuant to the provisions of the Act by the execution, delivery and filing of Articles of Organization described in Section 203 of the Act (the "*Articles of Organization*") with the Office of the Secretary of State of New York. The rights and liabilities of the Members shall be as provided under the Act, the Articles of Organization and this Agreement.

1.3. *Name*. The name of the Company shall be "ARSR PE, LLC" and its business shall be carried on in such name with such variations and changes as the Managing Member (as hereinafter

defined) shall determine or deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

1.4. *Purpose; Powers.*

(a) The purposes of the Company are (i) to conduct or promote any lawful business, purpose or activity permitted for a limited liability company of the State of New York under the Act, (ii) subject to clause (i), to make such investments and engage in such activities as the Managing Member may approve, and (iii) to engage in any and all activities related or incidental to the purposes set forth in clauses (i) and (ii); *provided*, however, that, except if the Managing Member determines otherwise, such activities shall be limited to and conducted in such a manner as to not require the Company to be registered as an investment company under the Investment Company Act of 1940, as amended (the "*Investment Company Act*") or to cause the Company to be treated as an association or publicly traded partnership taxable as a corporation for U.S. federal (and applicable state) income tax purposes.

(b) The Company has the power to do any and all acts necessary, appropriate, proper, advisable, incidental or convenient to or in furtherance of the purposes of the Company set forth in this *Section 1.4* and has, without limitation, any and all powers that may be exercised on behalf of the Company by the Managing Member pursuant to *Article III* hereof.

1.5. *Term.* Except if the Company is sooner dissolved as provided herein, the term of the Company shall commence on the date of filing of the Articles of Organization and shall continue in full force and effect until the Company is dissolved and liquidated pursuant to the terms and conditions of *Article VII* and *Article VIII* of this Agreement and the Articles of Organization are canceled as provided in the Act.

1.6. *Principal Business Office*. The principal business office of the Company shall be located at c/o Arbor Realty Trust, Inc., 333 Earle Ovington Boulevard, Suite 900, Uniondale, NY 11553, or at such other location as may hereafter be determined by the Managing Member. The Company may maintain such other offices at such other places as the Managing Member deems advisable.

1.7. *Registered Office*. The address of the registered office of the Company in the State of New York is c/o Corporation Service Company, 80 State Street, Albany, New York, 12207-2543. At any time, the Managing Member may designate another registered office for the Company.

1.8. *Registered Agent*. The name of the registered agent of the Company for service of process on the Company in the State of New York is Corporation Service Company, 80 State Street, Albany, New York, 12207-2543. At any time, the Managing Member may designate another registered agent for the Company.

1.9. *Title to Company Property*. Legal title to all property of the Company shall be held and vested and conveyed in the name of the Company and no real or other property of the Company shall be deemed to be owned by the Members individually. The membership Units of the Members shall constitute personal property. The Members hereby waive any rights under the Act or other Applicable Law for partition of any Company property.

1.10. *Fiscal Year*. The fiscal year of the Company (the "*Fiscal Year*") for financial statement purposes shall be fixed by the Managing Member.

1.11. *Power of Attorney*. Each Member by execution of this Agreement, directly or through execution by power of attorney or other consent, irrevocably appoints the Managing Member its true and lawful attorney-in-fact, who may act for each Member and in its name, place and stead, and for its use and benefit, to sign, acknowledge, swear to, deliver, file or record, at the appropriate public offices, any and all documents, certificates and instruments, including without limitation, any and all amendments and restatements of this Agreement as may be deemed necessary or desirable by the

Managing Member to carry out fully the provisions of this Agreement and the Act in accordance with their terms, which power of attorney is coupled with an interest and shall survive the death, dissolution or legal incapacity of the Member, or the Transfer by the Member of any part or all of its Membership Interest.

1.12. *Contributions*. Concurrent with the effectiveness of this Agreement, AML hereby contributes, transfers and assigns the AML Assets to the Company, and the Company hereby accepts transfer of and assumes the AML Assets from AML. In exchange for the AML Contribution, AML shall receive 88,000 Common Units and the other consideration set forth herein. Concurrent with the effectiveness of this Agreement, ACM hereby contributes, transfers and assigns its remaining interest in the Purchased Assets to the Company (the "ACM Contribution"), and the Company hereby accepts transfer of and assumes such assets from ACM. In exchange for the ACM Contribution, ACM shall receive 50,000 Preferred Units and the other consideration set forth herein. For federal income tax purposes, the transactions described herein shall be treated as the purchase by AML of a percentage interest in each of the Purchased Assets owned by ACM (other than the Excess Servicing Strip and the Freddie Mac I/O Strip) for cash followed by the contribution by AML and ACM of their respective percentage interests in such assets to the Company in exchange for their respective ownership interests in the Company as contemplated by Revenue Ruling 99-5, 1999-1 C.B. 434.

1.13. *No Partnership under State Law*. The Members intend that the Company shall not be a partnership (whether general or limited) or joint venture and that no Member shall be a partner or joint venturer of any other Member for any purposes other than federal income tax purposes and, if applicable, state income or franchise tax purposes. The Members intend that the Company be treated as a partnership for United States federal and state income tax purposes unless otherwise decided by the Members, and the Members and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with this *Section 1.13*. No Member or any other Person shall make an election to have the Company treated as a corporation or other association taxable as a corporation for any tax purpose and no Member or other Person shall allow any equity interest in the Company to be traded on an established securities market or the substantial equivalent thereof.

ARTICLE II

THE MEMBERS

2.1. *The Members*. As of the effective date of this Agreement, the Company shall have two classes of Units entitled "*Common Units*" and "*Preferred Units*," which shall be issued to the Members in the amounts set forth opposite such Member's name on *Schedule A* hereto. As of the date hereof, the Members (including the Common Members) are those listed on *Schedule A* attached hereto, which includes the addresses of such Members and the Units owned by each of them. The Units issued to the Members shall represent valid Membership Interests in the Company. The Units are subject to the restrictions on Transfer set forth in *Article X* and, except as set forth in a written agreement between the Managing Member or the Company and a Member with respect to Units held by such Member, no Members will have registration rights with respect to their Units.

2.2. *Admission of New Members*. New members shall be admitted only upon approval of the Managing Member, subject in all cases to *Article X* and the other terms and conditions of this Agreement, and upon execution of a counterpart signature page to this Agreement. The Managing Member shall have the authority to amend and update *Schedule A* from time to time to reflect changes in the Members.

2.3. *Liability of Members*. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Members shall not be obligated personally for any such debt, obligation or liability of the Company

solely by reason of being a Member. If, notwithstanding the terms of this Agreement, it is determined under applicable Law that any Member has received a distribution which is required to be returned to or for the account of the Company or Company creditors, then the obligation under applicable Law of any Member to return all or part of a distribution made to such Member shall be the obligation of such Member and not of any other Member. To the fullest extent permitted by Law, no Member shall have any fiduciary duty, or any other duty or liability (except as expressly provided herein), to the Company or any other Member; *provided*, however that each Member shall be subject to the implied contractual covenant of good faith and fair dealing.

ARTICLE III

MANAGEMENT BY THE MANAGING MEMBER; COMPANY OBLIGATIONS

3.1. *Managing Member.* The management of the Company is fully reserved to the Managing Member, who is AML. Subject to *Sections 3.2* and *3.4* hereof, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Managing Member, who shall make all decisions and take all actions for the Company. Decisions or actions taken by the Managing Member in accordance with this Agreement shall constitute decisions or actions by the Company and shall be binding on the Company. Except as expressly provided for herein, including *Section 3.2* hereof, the Members (other than the Managing Member) shall not participate in, or take part in the control of, the business of the Company, and shall have no right or authority to act for or bind the Company.

3.2. *Officers and Related Persons.* The Managing Member shall have the authority to (i) appoint and terminate officers of the Company, including, but not limited to, a chief executive officer, a president, one or more chief investment officers, a chief financial officer, one or more vice presidents (each of whom may be designated as an executive vice president, a senior vice president or a vice president with a particular area of responsibility), a treasurer, one or more assistant treasurers, a secretary and one or more assistant secretaries, each of which shall have such rights, powers and authority as the Managing Member may, in its sole discretion, from time to time delegate to any such officer, and (ii) retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such officers, employees, agents and consultants as the Managing Member deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties.

3.3. *Company Obligations.*

(a) Except as provided in this *Section 3.3* and elsewhere in this Agreement (including the provisions of *Articles V* and *IX* hereof regarding distributions, payments and allocations to which it may be entitled), the Managing Member shall not be compensated for its services as Managing Member of the Company.

(b) All Administrative Expenses shall be obligations of the Company, and the Managing Member shall be entitled to reimbursement by the Company for any expenditure (including Administrative Expenses) incurred by it that has been made other than out of the funds of the Company. All reimbursements hereunder shall be characterized for federal income tax purposes as expenses of the Company incurred on its behalf, and not as expenses of the Managing Member.

3.4. *Major Decisions.* Except as otherwise expressly provided in this Agreement, or as otherwise approved by the Common Member and the Preferred Member, the consent of the holders of more than 50% of the Percentage Interests of the outstanding Preferred Units (the "Required Holders") shall be required for any action that, either directly or by amendment, merger, consolidation, or otherwise:

(a) Amends, alters or repeals any provision of the organizational documents in a manner adverse to the rights, preferences, privileges or powers of the Preferred Units;

(b) Changes the authorized number of Preferred Units or any other series of preferred equity;

(c) Authorizes the creation of, creates or issues any other security convertible into or exercisable for any equity security having rights, preferences or privileges senior to or on a parity with the Preferred Units or having voting rights other than those granted to the preferred equity generally;

(d) Approves any merger, acquisition, consolidation, sale of assets, corporate reorganization of the Company or any other Deemed Liquidation (which excludes, for the avoidance of doubt, a Parent Change in Control);

(e) Approves the purchase, redemption or other acquisition of any equity interests of the Company (other than Preferred Units in accordance with the put and call rights set forth in this Agreement);

(f) Declares or pays any dividend or distribution with respect to any equity securities of the Company (other than the Preferred Units in accordance with this Agreement):

(g) Incurs debt or grants guaranties; or

(h) Approves the liquidation, dissolution or winding-up of the Company.

ARTICLE IV

CAPITAL CONTRIBUTIONS AND ACCOUNTS

4.1. *Capital Contributions.* Each Member has made a capital contribution to the Company in exchange for the Units set forth opposite such Member's name on *Schedule A* hereto, as it may be amended or restated from time to time by the Managing Member to the extent necessary to reflect accurately sales, exchanges or other Transfers, redemptions, Capital Contributions, the issuance of additional Units or similar events having an effect on a Member's ownership of Units.

4.2. *Additional Capital Contributions and Issuances of Additional Units.* Except as provided in this *Section 4.2* or in *Section 4.3* hereof, the Members shall have no right or obligation to make any additional Capital Contributions or loans to the Company. The Managing Member may contribute additional capital to the Company, from time to time, and receive additional Membership Interests, in the form of Units, in respect thereof, in the manner contemplated in this *Section 4.2*.

(a) *Issuances of Additional Units.*

(i) *General.* As of the effective date of this Agreement, the Company shall have two classes of Units, entitled "Common Units" and "Preferred Units." Subject to *Section 3.4*, the Managing Member is hereby authorized to cause the Company to issue such additional Membership Interests, in the form of Units, for any Company purpose at any time or from time to time to the Members (including the Managing Member) or to other Persons for such consideration and on such terms and conditions as shall be established by the Managing Member in its sole and absolute discretion, all without the approval of any other Members. The Managing Member's determination that consideration is adequate shall be conclusive insofar as the adequacy of consideration relates to whether the Units are validly issued and fully paid. Any additional Units issued thereby 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, including rights, powers and duties senior to the then-outstanding Units held by the Members, all as shall be determined by the Managing Member in its sole and absolute discretion and without the approval of any other Member, subject to New York law that cannot be preempted by the terms hereof and as

set forth in a written document hereafter attached to and made an exhibit to this Agreement (each, a "*Unit Designation*"), including, without limitation, (i) the allocations of items of Company income, gain, loss, deduction and credit to each such class or series of Units; (ii) the right of each such class or series of Units to share in the Company's distributions; and (iii) the rights of each such class or series of Units upon dissolution and liquidation of the Company.

4.3. *Additional Funding*.

(a) Subject to *Section 3.4*, if the Managing Member determines that it is in the best interests of the Company to provide for additional Company funds ("*Additional Funds*") for any Company purpose, the Managing Member may (i) cause the Company to obtain such funds from outside borrowings, or (ii) elect to have the Managing Member or any of its Affiliates provide such Additional Funds to the Company through loans or otherwise.

4.4. *Capital Accounts.* A separate capital account (a "*Capital Account*") shall be established and maintained for each Member in accordance with Regulations Section 1.704-1(b)(2)(iv). When the Gross Asset Value of the Company's property is revalued by the Managing Member, the Capital Accounts of the Members shall be adjusted in accordance with Regulations Sections 1.704-1(b)(2)(iv)(f) and (g), which generally require such Capital Accounts to be adjusted to reflect the manner in which the unrealized gain or loss inherent in such property (that has not been reflected in the Capital Accounts previously) would be allocated among the Members pursuant to *Section 5.1* hereof if there were a taxable disposition of such property for its fair market value (as determined by the Managing Member, in its sole and absolute discretion, and taking into account Section 7701(g) of the Code) on the date of the revaluation.

4.5. *Percentage Interests.* If the number of outstanding Common Units or Preferred Units increases or decreases during a taxable year, each Member's Percentage Interest shall be adjusted by the Managing Member effective as of the effective date of each such increase or decrease to a percentage equal to the number of Common Units and Preferred Units held by such Member divided by the aggregate number of Common Units and Preferred Units, as applicable, outstanding after giving effect to such increase or decrease. If the Members' Percentage Interests are adjusted pursuant to this *Section 4.5*, the Profits and Losses for the taxable year in which the adjustment occurs shall be allocated between the part of the year ending on the day when that adjustment occurs and the part of the year beginning on the following day either (i) as if the taxable year had ended on the date of the adjustment or (ii) based on the number of days in each part. The Managing Member, in its sole and absolute discretion, shall determine which method shall be used to allocate Profits and Losses for the taxable year in which the adjustment occurs. The allocation of Profits and Losses for the earlier part of the year shall be based on the Percentage Interests before adjustment, and the allocation of Profits and Losses for the later part shall be based on the adjusted Percentage Interests. In the event that there is an increase or decrease in the number of outstanding Units (other than Common Units and Preferred Units) during a taxable year, the Managing Member shall have similar discretion, as provided in the preceding sentences of this *Section 4.5*, to allocate items of Profit and Loss between the part of the year ending on the day when that increase or decrease occurs and the part of the year beginning on the following day, and that allocation shall take into account the Members' relative interests in those items of Profit and Loss before and after such increase or decrease.

4.6. *No Interest on Contributions.* No Member shall be entitled to interest on its Capital Contribution.

4.7. *Return of Capital Contributions.* No Member shall be entitled to withdraw any part of its Capital Contribution or its Capital Account or to receive any distribution from the Company, except as specifically provided in this Agreement. Except as otherwise provided herein, there shall be no obligation to return to any Member or former Member any part of such Member's (or former Member's) Capital Contribution for so long as the Company continues in existence.

4.8. *No Third-Party Beneficiary.* No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at Law or in equity, it being understood and agreed that the provisions of this Agreement, except as provided in *Article IX* hereof, shall be solely for the benefit of, and may be enforced solely by, the parties to this Agreement and their respective permitted successors and assigns. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party, nor may such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or of any of the Members. In addition, it is the intent of the parties hereto that no distribution to any Member shall be deemed a return of money or other property in violation of the Act. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, a Member is obligated to return such money or property, such obligation shall be the obligation of such Member and not of any other Member. Without limiting the generality of the foregoing, a deficit Capital Account of a Member shall not be deemed to be a liability of such Member nor an asset or property of the Company.

4.9. *Preferred Units.* A series of Units, designated as the Preferred Units, is hereby established. The number of Preferred Units shall be 50,000.

(a) *Ranking.* The Preferred Units will rank, with respect to rights to the payment of distributions and the distribution of assets upon the liquidation, dissolution or winding up of the Company, (i) senior to the Common Units and to all other classes or series of Units, other than Units referred to in clauses (ii) and (iii) of this *Section 4.9*; (ii) on a parity with all classes or series of Units issued by the Company with terms specifically providing that those Units rank on parity with the Preferred Units with respect to rights to the payment of distributions and the distribution of assets in the event of any liquidation, dissolution or winding up of the Company; (iii) junior to all classes or series of Units issued by the Company with terms specifically providing that those Units rank senior to the Preferred Units with respect to rights to the payment of distributions and the distribution of assets in the event of any liquidation, dissolution or winding up of the Company and (iv) junior to all existing and future indebtedness of the Company. The term "Units" shall not include convertible or exchangeable debt securities of the Company.

(b) *Preference Return*.

(i) Holders of Preferred Units are entitled to receive, when, as and if authorized by the Managing Member, and declared by the Company, out of funds legally available for payment of distributions, cumulative preferential cash distributions at an annual rate equal to the applicable Preference Return for such period applied to the applicable Base Preference Amount for such period. Such distributions shall accumulate on a daily basis.

(ii) No distributions on Preferred Units shall be authorized by the Managing Member or paid or set apart for payment by the Company at any time when the terms and provisions of any agreement of the Company, including any agreement relating to any indebtedness of the Company, prohibits such authorization, payment or setting apart for payment thereof or provides that the authorization, payment or setting apart for payment thereof would constitute a breach of the agreement or a default under the agreement, or if the authorization, payment or setting apart for payment shall be restricted or prohibited by law, or if the Company is insolvent or would be made insolvent by making such distribution or payment.

(iii) Notwithstanding anything to the contrary contained herein, distributions on the Preferred Units will accumulate whether or not the terms and provisions of any laws or agreements referred to in this *Section 4.9(b)(iii)* hereof at any time prohibit the current payment of distributions, whether or not the Company has earnings, whether or not there are

funds legally available for the payment of such distributions and whether or not such distributions are authorized or declared. No interest, or sum in lieu of interest, will be payable in respect of any distribution on the Preferred Units which may be in arrears, and holders of the Preferred Units will not be entitled to any distributions in excess of full cumulative distributions described in *Section 4.9(b)(i)* hereof (other than pursuant to *Section 5.2(a)(ii)* upon a liquidation or winding up of the Company or upon a Deemed Liquidation). Any distribution made on the Preferred Units will first be credited against the earliest accumulated but unpaid distribution due with respect to the Preferred Units.

(c) *Preference Amount*.

(i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, or upon a Deemed Liquidation, the holders of Preferred Units will be entitled to be paid out of the assets the Company has legally available for distribution to its Members subject to the preferential rights of the holders of any class or series of Units ranking senior to the Preferred Units with respect to the distribution of assets upon liquidation, dissolution or winding up or Deemed Liquidation, a liquidation preference equal to (x) the Base Preference Amount per Preferred Unit as of the date of the consummation of such event plus (y) all accrued and unpaid Preference Return thereon (whether or not such distributions are authorized or declared) to, but not including, the date of payment (the sum of (x) and (y), the "*Preference Amount*"), before any distribution of assets is made to holders of Common Units or any other class or series of Units that rank junior to the Preferred Units with respect to liquidation rights and such holders of Preferred Units shall not be entitled to any further payment.

(ii) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Preferred Units will have no right or claim to any of the remaining assets of the Company.

(d) *Preferred Unit Call Right.* For so long as any Preferred Units are outstanding, the Special Committee shall have the right to require the Managing Member, exercisable at any time in accordance with this *Section 4.9(d)*, to cause the Company to repurchase all or a portion of the then outstanding Preferred Units at a purchase price per Preferred Unit equal to the Preference Amount thereof. To exercise the call right, the Company shall deliver written notice to the holder(s) of the Preferred Units so called for repurchase setting forth (i) the number of Preferred Units to be repurchased, (ii) the purchase price per Preferred Unit and the aggregate purchase price for all Preferred Units being purchased (the "Call Purchase Price") and (iii) the closing date for the repurchase, which shall be no earlier than ten (10) business days after delivery of the written notice and no later than thirty (30) business days after such delivery. At the closing of the repurchase of any Preferred Unit in accordance with this *Section 4.9(d)*, the Company shall pay the Call Purchase Price to the holder(s) of the Preferred Unit(s) being purchased in cash by wire transfer of immediately available funds. The only document that a holder of Preferred Units shall be required to sign in connection with any such closing shall be an agreement conveying the Preferred Units owned thereby to the Company free and clear of all liens with customary representations concerning such holder's ability to give good title to such Preferred Units free from any liens. For the avoidance of doubt, the Managing Member shall not be entitled to exercise the call rights set forth in this *Section 4.9(d)* without the consent of the Special Committee.

(e) *Preferred Unit Put Right.*

(i) At any time upon the earlier to occur of (x) a Deemed Liquidation or Parent Change of Control or (y) any date on or after June 30, 2021, the Required Holders shall have the right, exercisable at any time in accordance with this *Section 4.9(e)*, to require the Company to repurchase all or any portion of the then outstanding Preferred Units at a purchase price per

Preferred Unit equal to the Preference Amount thereof. To exercise the put right, the Required Holders shall deliver written notice to the Company setting forth (i) the number of Preferred Units to be repurchased, (ii) the purchase price per Preferred Unit and the aggregate purchase price for all Preferred Units being purchased (the "*Put Purchase Price*") and (iii) the closing date for the repurchase, which, except in the case of a Deemed Liquidation or Parent Change of Control, shall be no earlier than sixty (60) business days after delivery of the written notice and no later than ninety (90) business days after such delivery and, in the case of a Deemed Liquidation or Parent Change of Control, shall be a date, as determined by the Company, concurrently with or within the five (5) business days following the consummation of such Deemed Liquidation or Parent Change of Control, as applicable.

(ii) At the closing of the repurchase of any Preferred Unit in accordance with this *Section 4.9(e)*, the Company shall pay the Put Purchase Price to the holder(s) of the Preferred Unit(s) being purchased in cash by wire transfer of immediately available funds. The only document that a holder of Preferred Units shall be required to sign in connection with any such closing shall be an agreement conveying the Preferred Units owned thereby to the Company free and clear of all liens with customary representations concerning such holder's ability to give good title to such Preferred Units free from any liens.

(f) Notwithstanding the foregoing, in no event shall the Company be required to repurchase any Preferred Units pursuant to this *Section 4.9(e)* if, in the determination of the Managing Member, the Company is insolvent or would be made insolvent by repurchasing such Preferred Units.

ARTICLE V

PROFITS AND LOSSES; DISTRIBUTIONS

5.1. *Allocation of Profit and Loss*.

(a) Profits (and items thereof) and Losses (and items thereof) for any fiscal period shall be allocated to the Members in such a manner as to reduce or eliminate, to the extent possible, any difference, as of the end of such fiscal period, between (a) the sum of (i) the Capital Account of each Member, (ii) such Member's share of Company Minimum Gain and (iii) such Member Nonrecourse Debt Minimum Gain and (b) the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under this Agreement and the Act, determined as if the Company were to (1) sell its assets for an amount equal to its Gross Asset Value, (2) satisfy its outstanding liabilities in full (limited with respect to any nonrecourse liability to the Gross Asset Value of the assets securing or otherwise subject to such liabilities) and (3) distribute the proceeds of such sale pursuant to *Section 5.2*.

(b) *Minimum Gain Chargeback.* Notwithstanding any provision to the contrary, (i) any expense of the Company that is a "nonrecourse deduction" within the meaning of Regulations Section 1.704-2(b)(1) shall be allocated in accordance with the Members' respective Percentage Interests, (ii) any expense of the Company that is a "partner nonrecourse deduction" within the meaning of Regulations Section 1.704-2(i)(2) shall be allocated to the Member that bears the "economic risk of loss" of such deduction in accordance with Regulations Section 1.704-2(i)(1), (iii) if there is a net decrease in Company Minimum Gain within the meaning of Regulations Section 1.704-2(f)(1) for any Company taxable year, then, subject to the exceptions set forth in Regulations Section 1.704-2(f)(2),(3), (4) and (5), items of gain and income shall be allocated among the Members in accordance with Regulations Section 1.704-2(f) and the ordering rules contained in Regulations Section 1.704-2(j), and (iv) if there is a net decrease in Member Nonrecourse Debt Minimum Gain within the meaning of Regulations Section 1.704-2(i)(4) for any Company taxable year, then, subject to the exceptions set forth in Regulations Section 1.704(2)(g),

items of gain and income shall be allocated among the Members in accordance with Regulations Section 1.704-2(i)(4) and the ordering rules contained in Regulations Section 1.704-2(j). The manner in which it is reasonably expected that the deductions attributable to nonrecourse liabilities will be allocated for purposes of determining a Member's share of the nonrecourse liabilities of the Company within the meaning of Regulations Section 1.752-3(a)(3) shall be in accordance with a Common Member's Percentage Interest.

(c) *Qualified Income Offset*. If a Member receives in any taxable year an adjustment, allocation or distribution described in subparagraphs (4), (5) or (6) of Regulations Section 1.704-1(b)(2)(ii)(d) that causes or increases a deficit balance in such Member's Capital Account that exceeds the sum of such Member's shares of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, as determined in accordance with Regulations Sections 1.704-2(g) and 1.704-2(i), such Member shall be allocated specially for such taxable year (and, if necessary, later taxable years) items of income and gain in an amount and manner sufficient to eliminate such deficit Capital Account balance as quickly as possible as provided in Regulations Section 1.704-1(b)(2)(ii)(d). After the occurrence of an allocation of income or gain to a Member in accordance with this *Section 5.1(c)*, to the extent permitted by Regulations Section 1.704-1(b), items of expense or loss shall be allocated to such Member in an amount necessary to offset the income or gain previously allocated to such Member under this *Section 5.1(c)*.

(d) *Capital Account Deficits*. Loss shall not be allocated to a Member to the extent that such allocation would cause a deficit in such Member's Capital Account (after reduction to reflect the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6)) to exceed the sum of such Member's shares of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain. Any Loss in excess of that limitation shall be allocated to the other Members. After the occurrence of an allocation of Loss to the other Members in accordance with this *Section 5.1(d)*, to the extent permitted by Regulations Section 1.704-1(b), Profit first shall be allocated to the other Members in an amount necessary to offset the Loss previously allocated to the other Members under this *Section 5.1(d)*.

(e) *Allocations Between Transferor and Transferee*. If a Member Transfers any part or all of its Membership Interest, the distributive shares of the various items of Profit and Loss allocable among the Members during such fiscal year of the Company shall be allocated between the transferor and the transferee Member either (i) as if the Company's fiscal year had ended on the date of the Transfer or (ii) based on the number of days of such fiscal year that each was a Member without regard to the results of Company activities in the respective portions of such fiscal year in which the transferor and the transferee were Members. The Managing Member, in its sole and absolute discretion, shall determine which method shall be used to allocate the distributive shares of the various items of Profit and Loss between the transferor and the transferee Member.

(f) *Definition of Profit and Loss*. "Profit" and "Loss" and any items of income, gain, expense or loss referred to in this Agreement shall be determined in accordance with federal income tax accounting principles, as modified by Regulations Section 1.704-1(b)(2)(iv), except that Profit and Loss shall not include items of income, gain and expense that are specially allocated pursuant to *Sections 5.1(b)*, *5.1(c)* or *5.1(d)* hereof. All allocations of income, Profit, gain, Loss and expense (and all items contained therein) for federal income tax purposes shall be identical to all allocations of such items set forth in this *Section 5.1*, except as otherwise required by Section 704(c) of the Code and Regulations Section 1.704-1(b)(4). With respect to properties acquired by the Company, the Company shall elect the "traditional method" for allocating items of income, gain and expense as required by Section 704(c) of the Code with respect to such properties, and such election shall be binding on all Members.

5.2. *Distribution of Cash*.

(a) Subject to *Section 5.2(b)* hereof and to the terms of any Unit Designation, the Company shall distribute cash at such times and in such amounts as are determined by the Managing Member in its sole and absolute discretion, to the Members who are Members on the distribution date with respect to such quarter (or other distribution period) in the following priority:

(i) First, to the Preferred Units pro rata based on Percentage Interest, up to the accrued and unpaid Preference Return;

(ii) Second, solely upon a liquidation or winding up of the Company or upon a Deemed Liquidation, to the Preferred Units pro rata based on Percentage Interest, up to (together with the distributions pursuant to clause (i)) the Preference Amount;

(iii) Third, any remaining amounts to the Common Units pro rata based on Percentage Interest.

Upon a Deemed Liquidation in which the Preferred Units are not otherwise cancelled or purchased, the Preferred Units shall be deemed automatically cancelled upon the completion of the distribution pursuant to this Section 5.2(a) in connection with such Deemed Liquidation.

(b) Notwithstanding any other provision of this Agreement, the Managing Member is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any withholding requirements established under the Code or any other federal, state or local law including, without limitation, pursuant to Sections 1441, 1442, 1445, 1446, and 1471 through 1474 of the Code and pay over to any federal, state, local or foreign government any tax payments (e.g. amounts required to be so withheld pursuant to federal, state, local or foreign law) ("*Tax Payments*"), or if the Company determines to make an Imputed Tax Underpayment as set forth under *Section 6.2(c)* the amount of such Imputed Tax Underpayment with respect to any Member shall be treated as a Tax Payment, and the Company may withhold such amounts and make such Tax Payments as so required. To the extent that the Company is required to withhold and pay over to any taxing authority any amount resulting from the allocation or distribution of income to a Member or assignee (including by reason of Section 1446 of the Code), either (i) if the actual amount to be distributed to the Member (the "*Distributable Amount*") equals or exceeds the Withheld Amount, the entire Distributable Amount shall be treated as a distribution of cash to such Member, or (ii) if the Distributable Amount is less than the Withheld Amount, the excess of the Withheld Amount over the Distributable Amount shall be treated as a Company Loan from the Company to the Member on the day the Company pays over such amount to a taxing authority. A Company Loan shall be repaid upon the demand of the Company or, alternatively, through withholding by the Company with respect to subsequent distributions to the applicable Member or assignee and any such distributions so withheld shall be deemed first to have been distributed to the applicable Member or assignee and then immediately repaid to the Company.

Any amounts treated as a Company Loan pursuant to this *Section 5.2(b)* shall bear interest at the lesser of (i) 300 basis points above the rate of interest per annum publicly announced from time to time by Bank of America, N.A. as its prime rate in effect at its principal office in New York City, or (ii) the maximum lawful rate of interest on such obligation, such interest to accrue from the date the Company or the Managing Member, as applicable, is deemed to extend the loan until such loan is repaid in full.

5.3. *No Right to Distributions in Kind.* No Member shall be entitled to demand property other than cash in connection with any distributions by the Company.

5.4. *Limitations on Distributions.* Notwithstanding any of the provisions of this *Article V*, the Company shall not be required to make distributions from the Company to any Member to the extent such distribution is inconsistent with, or in violation of, the Act or any provision of this Agreement or other applicable law.

5.5. *Distributions Upon Liquidation*.

(a) Upon liquidation of the Company, after payment of, or adequate provision for, debts and obligations of the Company, including any Member loans, any remaining assets of the Company shall be distributed to all Members with positive Capital Accounts in accordance with their respective positive Capital Account balances.

(b) For purposes of *Section 5.5(a)* hereof, the Capital Account of each Member shall be determined after all adjustments made in accordance with *Section 5.1* hereof resulting from Company operations and from all sales and dispositions of all or any part of the Company's assets. It is the intent of the Members that the allocations of income, gain, and loss pursuant to this *Section 5.5* shall result in the Capital Account balances of the Members being such that all distributions upon dissolution would be made in accordance with the amount that would be distributed to the Members if such distributions were made pursuant to *Section 5.2*; *provided, however*, that in the event that the Managing Member shall determine that there is a reasonable possibility that the allocations to be made pursuant to *Section 5.1* would not result in the distributions to be made to the Members upon a dissolution of the Company being made in the manner contemplated in *Section 5.2*, the Managing Member is authorized and directed to adjust the allocations of income, gain, loss, and deduction (or items thereof) otherwise provided for in *Section 5.1* in such manner as the Managing Member concludes is more likely to result in the distributions to be made to the Members upon dissolution being made in the manner contemplated in *Section 5.2*, subject to the condition that tax counsel to the Company shall have determined that such adjusted allocations would be considered to have substantial economic effect under Section 704(b) of the Code.

(c) Any distributions pursuant to this *Section 5.5* shall be made by the end of the Company's taxable year in which the liquidation occurs (or, if later, within 90 days after the date of the liquidation). To the extent deemed advisable by the Managing Member, appropriate arrangements (including the use of a liquidating trust) may be made to assure that adequate funds are available to pay any contingent debts or obligations.

5.6. *Substantial Economic Effect.* It is the intent of the Members that the allocations of Profit and Loss under the Agreement have substantial economic effect (or be consistent with the Members' interests in the Company in the case of the allocation of losses attributable to nonrecourse debt) within the meaning of Section 704(b) of the Code as interpreted by the Regulations promulgated pursuant thereto. This *Article V* and other relevant provisions of this Agreement shall be interpreted in a manner consistent with such intent.

ARTICLE VI

TAX MATTERS

6.1. *Company for Tax Purposes.* It is the intention of the Members that the Company be treated as a partnership for U.S. federal income tax purposes. By executing this Agreement, each of the Members hereby consents to any election made by the Managing Member on behalf of the Company to be treated as a partnership for U.S. federal income tax purposes (and any applicable state and local tax purposes).

6.2. *Tax Matters Member and Audits.*

(a) The Managing Member is hereby designated as the "tax matters partner," as such term is defined in Section 6231(a)(7) of the Code (and any similar capacity under state, local or foreign law) as in effect prior to the enactment of the Bipartisan Budget Act of 2015, and the "partnership representative" as such term is defined in Section 6223(a) of the Code and in any similar capacity under state or local tax law (the "*Tax Matters Member*"). The Tax Matters Member is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees to cooperate with the Tax Matters Member and to do or refrain from doing any or all things reasonably required by the Tax Matters Member to conduct such proceedings.

(b) For Company taxable years beginning after December 31, 2017 (or any earlier year, if the Tax Matters Member, on behalf of the Company, so elects), (i) the Tax Matters Member shall act as the "partnership representative" under Section 6223 of the Code, as amended by the 2015 Act (or any successor thereto) and in any similar capacity under state, local or non-U.S. law, as applicable; and (ii) notwithstanding anything else to the contrary in this Agreement, the Tax Matters Member shall apply the provisions of subchapter C of chapter 63 of the Code, as amended by the 2015 Act (or any successor rules thereto), or similar provisions of state, local or non-U.S. tax law, with respect to any audit, imputed underpayment, other adjustment, or any such decision or action by the IRS (or other tax authority) with respect to the Company or the Members for such taxable years, in the manner determined by the Tax Matters Member in its sole discretion. The Members shall have no claim against the Company or the Tax Matters Member for any form of damages or liability as a result of actions taken or remedies pursued by or on behalf of the Company in order to comply with the rules under subchapter C of chapter 63 of the Code, as amended by the 2015 Act (or any successor rules thereto) or similar provisions of state, local or non-U.S. law. The Tax Matters Member shall reasonably notify the Members of any tax deficiencies assessed or proposed to be assessed (of which the Tax Matters Member is actually aware) by any taxing authority against the Company or the Members. Each Member authorizes the Tax Matters Member to amend this Agreement to the extent necessary in order for the Company to comply with any changes in the rules for U.S. federal, state, local or non-U.S. tax audits, examinations, assessments or collection of taxes of the Company or its Members including amendments that affect each Member's past or present interest in the Company. By entering into this Agreement, each Member acknowledges that it has knowledge of, or been advised of, changes to rules regarding U.S. federal income tax audits, examinations, assessments and collections that resulted from the 2015 Act, including additional economic burdens from taxation that may in some cases be imposed on partners in a partnership as a result of such changes when compared to prior law.

(c) Under Section 6225 of the Code as enacted under the 2015 Act, in the case of any adjustment by the IRS in the amount of any item of income, gain, loss, deduction, or credit of the Company or any Member's distributive share thereof (an "*IRS Adjustment*"), the Company may pay an imputed underpayment as calculated under Section 6225(b) of the Code with respect to the IRS Adjustment, including interest and penalties (an "*Imputed Tax Underpayment*") in the Adjustment Year or otherwise take the IRS Adjustment into account in the Adjustment Year. Each Member agrees to amend its U.S. federal income tax return(s) to include (or reduce) its allocable share of the Company's income (or losses) resulting from an IRS Adjustment and pay any tax due with such return as required under Section 6225(c)(2) of the Code even if an Imputed Tax Underpayment liability of the Company or IRS Adjustment occurs after the Member's withdrawal from the Company. Each Member does hereby agree to indemnify and hold harmless the

Company and the Tax Matters Member from and against any liability with respect to the Member's proportionate share of any Imputed Tax Underpayment or other IRS Adjustment resulting in liability of the Company, regardless of whether such Member is a Member in the Company in an Adjustment Year, with such proportionate share as reasonably determined by the Tax Matters Member, including the Tax Matters Member's reasonable discretion to consider each Member's interest in the Company in the Reviewed Year and a Member's timely provision of information necessary to reduce the amount of Imputed Tax Underpayment set forth in Section 6225(c) of the Code. This obligation shall survive a Member's ceasing to be a Member of the Company and/or the termination, dissolution, liquidation and winding up of the Company.

(d) The Tax Matters Member may in its sole discretion elect under Section 6226 of the Code as implemented under the 2015 Act to cause the Company to issue adjusted Internal Revenue Service Schedules K-1 (or such other form as applicable) reflecting a Member's shares of any IRS Adjustment for the Adjustment Year as an alternative to the Company's payment of an Imputed Tax Underpayment for any tax year. Without the permission of the tax matters partner or partnership representative, no Member shall take a position on any tax return or other filing with any tax authority (or court) with respect to an item of income, gain, loss, deduction or credit attributable to the Company that is inconsistent with the Company's treatment of such item on its tax return, file a petition under Section 6226 of the Code or claim in court with respect to such item of the Company or request an administrative adjustment under Section 6227 of the Code with respect to such item, including under Section 6222(c) of the Code as enacted by the 2015 Act.

6.3. *Tax Elections.* The determinations of the Managing Member with respect to the Company's treatment of any item or its allocation for U.S. federal, state or local tax purposes shall be binding upon all of the Members so long as such determination shall not be inconsistent with any express term hereof. The Managing Member shall make (or refrain from making, as applicable) all appropriate elections and take (or refrain from taking, as applicable) all other appropriate actions to the extent required pursuant to Section 7701 of the Code (and the Regulations thereunder) for the Company to be classified as a "partnership" for U.S. federal income tax purposes and any applicable state and local tax purposes. The Managing Member may, in its sole discretion, make or revoke any tax election which the Managing Member deems appropriate, including without limitation, an election pursuant to Section 754 of the Code.

ARTICLE VII

EVENTS OF DISSOLUTION

7.1. *Events.* The Company shall be dissolved upon the occurrence of any of the following events (each, an "*Event of Dissolution*"):

(a) Determination by the Managing Member to dissolve the Company following the sale, Transfer or other disposition of all or substantially all of the assets of the Company, provided that any such determination that is not in connection with a Deemed Liquidation and is undertaken for the primary purpose of triggering a payment of the Preference Amount to the Preferred Units shall require the consent of the Special Committee;

(b) The unanimous vote of the Members to dissolve, wind up, and liquidate the Company, provided that any such determination that is not in connection with a Deemed Liquidation and is undertaken for the primary purpose of triggering a payment of the Preference Amount to the Preferred Units shall require the consent of the Special Committee; or

(c) A judicial dissolution of the Company under Section 702 of the Act.

7.2. *Continuation.* No other events shall cause the dissolution of the Company.

ARTICLE VIII

LIQUIDATION AND TERMINATION

8.1. *Liquidation and Termination.*

(a) In the event that an Event of Dissolution shall occur, then the Company shall be liquidated and its affairs shall be wound up in an orderly fashion under the direction of the Managing Member or its designee. All proceeds from such Event of Dissolution shall be distributed in accordance with the provisions of *Section 5.5*.

(b) Upon the completion of the distribution of the Company's assets following liquidation, the Company shall be terminated and articles of dissolution shall be executed and filed by the Company in accordance with Section 705 of the Act.

ARTICLE IX

INDEMNIFICATION

9.1. *Indemnification and Advances.*

(a) Subject to other applicable provisions of this *Article IX*, each Person that is or was a Member, director, officer, employee, Tax Matters Member or agent of the Company shall not be liable to the Company, any Subsidiary of the Company, any director of the Company, any Member or any holder of any equity interest in any Subsidiary of the Company for any acts or omissions by any such Person arising from the performance of their duties and obligations in connection with the Company or this Agreement, including with respect to any acts or omissions made while serving at the request of the Company as an officer, director, member, partner, Tax Matters Member, fiduciary or trustee of another corporation, partnership, joint venture, trust or other enterprise, except (i) for any breach of such Person's duty of loyalty to the Company or the Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of Law or (iii) for any transaction from which such Person derived an improper personal benefit. The Company may indemnify, to the fullest extent permitted by Law, each Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company), by reason of the fact that the Person is or was a Member, director, officer, employee, Tax Matters Member or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee, Tax Matters Member or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the Person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Person did not act in good faith and in a manner which the Person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the Person's conduct was unlawful.

(b) The Company may indemnify, to the fullest extent permitted by Law, any Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor by reason of the fact

that the Person is or was a Member, director, officer, employee, Tax Matters Member or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by the Person in connection with the defense or settlement of such action or suit if the Person acted in good faith and in a manner the Person reasonably believed to be in or not opposed to the best interests of the Company and except that no indemnification shall be made in respect of any claim, issue or matter as to which such Person shall have been adjudged to be liable to the Company unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(c) To the extent that a present or former Member, director or officer of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in *Section 9.1(a)*, or in defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith.

(d) Each of the Persons entitled to be indemnified for expenses and liabilities as contemplated above may, in the performance of his, her or its duties, consult with legal counsel and accountants, and any act or omission by such Person on behalf of the Company in furtherance of the interests of the Company in good faith in reliance upon, and in accordance with, the advice of such legal counsel or accountants will be full justification for any such act or omission, and such Person will be fully protected for such acts and omissions; provided, that such legal counsel or accountants were selected with reasonable care by or on behalf of the Company.

(e) Any indemnification of a present or former Member, director, officer, employee, Tax Matters Member or agent of the Company under *Sections 9.1(a)* or *9.1(c)* shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the present or former Member, director, officer, employee, Tax Matters Member or agent of the Company is proper in the circumstances because the Person has met the applicable standard of conduct set forth in *Section 9.1(a)* or pursuant to *Section 9.1(c)*, as the case may be. Such determination shall be made, with respect to a Person who is a Member, director, officer, employee or agent of the Company at the time of such determination, (1) by a majority vote of the members of the board of directors of the Managing Member or its parent, ARSR Alpine, LLC, who are not parties to any such action, suit or proceeding, even though less than a quorum, (2) by a committee of such board of directors designated by a majority vote of such board of directors, even though less than a quorum, (3) if there are no such members of the board of directors, or if a majority, even though less than a quorum, of such members of the board of directors so direct, by independent legal counsel in a written opinion, or (4) by the Members. The indemnification, and the advancement of expenses incurred in defending an action, suit or proceeding prior to its final disposition, provided by or granted pursuant to this Agreement shall not be exclusive of any other right which any Person may have or hereafter acquire under any statute, other provision of this Agreement, vote of Members or otherwise. No repeal, modification or amendment of, or adoption of any provision inconsistent with, this *Section 9.1*, nor, to the fullest extent permitted by applicable Law, any modification of Law, shall adversely affect any right or protection of any Person granted pursuant hereto existing at, or with respect to any events that occurred prior to, the time of such repeal, amendment, adoption or modification. The indemnification and advancement of expenses provided by, or granted pursuant to, this Agreement shall, unless otherwise provided when authorized or ratified, continue as to a Person who has

ceased to be a Member, director, officer, employee or agent of the Company and shall inure to the benefit of the heirs, executors and administrators of such a Person.

(f) The Company may, to the extent authorized from time to time by the Managing Member, grant rights to indemnification, and rights to be paid by the Company the expenses incurred in defending any such action, suit or proceeding in advance of its final disposition, to any Person who is or was an employee or agent of the Company or any Subsidiary of the Company (other than those Persons indemnified pursuant to clause (a) of this *Section 9.1*) and to any Person who is or was serving at the request of the Company or a Subsidiary of the Company as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, including service with respect to employee benefit plans maintained or sponsored by the Company or a Subsidiary of the Company, to the fullest extent of the provisions of this Agreement with respect to the indemnification and advancement of expenses of Members, directors, officers, employees. Tax Matters Member and agents of the Company. The payment of any amount to any Person pursuant to this clause (f) shall subrogate the Company to any right such Person may have against any other Person.

(g) To the fullest extent permitted by Law, expenses (including attorneys' fees) incurred by a Member, director, officer, employee, Tax Matters Member or agent of the Company in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Person to repay such amount if it shall ultimately be determined that such Person is not entitled to be indemnified by the Company as authorized in this *Section 9.1*.

(h) With respect to any Person who is a present or former Member, director, officer, employee, Tax Matters Member or agent of the Company, any undertaking required by *Section 9.1(g)* shall be an unlimited general obligation but need not be secured and shall be accepted without reference to financial ability to make repayment; provided, however, that such present or former Member, director, officer, employee or agent of the Company does not transfer assets with the intent of avoiding such repayment.

(i) The indemnification and advancement provided in this *Section 9.1* is intended to comply with the requirements of, and provide indemnification and advancement rights substantially similar to those that may be available to directors, officers, employees and agents of the Parent and, as such (except to the extent greater rights are expressly provided in this Agreement), the parties intend that they should be interpreted consistently with the provisions of the Parent's Bylaws.

(j) Any notice, request or other communications required or permitted to be given to the Company under this *Section 9.1* shall be in writing and either delivered in person or sent by facsimile, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Managing Member and shall be effective only upon receipt by the Managing Member, as the case may be.

9.2. *Insurance.* The Company may maintain insurance, at its expense, to protect itself and any Person who is or was a director, officer, partner, manager, Member (or member), employee or agent of the Company or a Subsidiary of the Company or of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under the New York Business Corporation Law (if the Company were a corporation incorporated thereunder) or the Act.

ARTICLE X

TRANSFER OF MEMBERSHIP INTERESTS IN THE COMPANY

10.1. *Purchase for Investment.* Subject to the provisions of *Section 10.2* hereof, each Member agrees that such Member will not sell, assign or otherwise Transfer such Member's Units or any fraction thereof, whether voluntarily or by operation of Law or at judicial sale or otherwise, to any Person who does not make the representations and warranties to the Managing Member set forth in *Section 14.2* hereof.

10.2. *Restrictions on Transfer of Units.*

(a) Notwithstanding the provisions of Section 10.1, but subject to the provisions of *Sections 10.2(b)* and *10.2(c)*, hereof, the Preferred Member may Transfer directly or indirectly its Units.

(b) No Member may withdraw from the Company other than as a result of a permitted Transfer (*i.e.*, a Transfer consented to as contemplated by clause (a) above or a Transfer pursuant to *Section 10.5* hereof) of all of such Member's Units pursuant to this *Article X* hereof. Upon the permitted Transfer or redemption of all of a Member's Common Units and Preferred Units, such Member shall cease to be a Member.

(c) No Member may effect a Transfer of its Units, in whole or in part, if (A) the transferee is a Person that is competitor of Parent or any of its Subsidiaries, as reasonably determined by the Managing Member or (B) in the opinion of legal counsel for the Company, such proposed Transfer (i) would require the registration of the Units under the Securities Act or would otherwise violate any applicable federal or state securities or blue sky law (including investment suitability standards); (ii) result in the Company being treated as a publicly traded partnership or otherwise becoming taxable as an association taxable as a corporation for U.S. federal income tax purposes (unless such taxation is elected by the Company prior to such Transfer); (iii) result in the Company's assets being deemed "plan assets" pursuant to Section 3(42) of ERISA or the Plan Asset Regulations for the purposes of Section 4975 of the Code or ERISA; or (iv) result in a violation of applicable law or otherwise have any adverse effect on the Company.

(d) Any purported Transfer in contravention of any of the provisions of this *Article X* shall be void *ab initio* and ineffectual and shall not be binding upon, or recognized by, the Managing Member or the Company.

(e) A Transfer otherwise permitted under this *Article X* shall be void *ab initio* and ineffectual and shall not be binding on, or recognized the Managing Member or the Company unless and until the following conditions are satisfied:

(i) in the case of a Transfer of a direct interest in the Company, the transferor and transferee shall execute such documents and instruments of conveyance and assumption as may be necessary or appropriate in the opinion of counsel to the Company to effect such Transfer and to confirm the permitted transferee's agreement to be bound by the provisions of this Agreement and to assume all monetary obligations of the transferor Member with respect to the interest being transferred; and

(ii) if required by the non-transferring Members, the Company shall receive, prior to such Transfer, an opinion of counsel satisfactory to the Company confirming that such Transfer shall not terminate the Company for federal income tax purposes or violate any applicable securities law; and

(iii) the permitted transferee shall pay all reasonable costs and expenses incurred by the Company in connection with such Transfer.

10.3. *Admission of Substitute Member*.

(a) Other than pursuant to *Section 10.7* hereto, subject to the other provisions of this *Article X*, an assignee of the Units of a Member (which shall be understood to include any purchaser, transferee, donee or other recipient of any disposition of such Units) shall be deemed admitted as a Member of the Company only with the consent of the Managing Member, which consent may be given or withheld by the Managing Member in its sole and absolute discretion, and upon the satisfactory completion of the following:

(i) The assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart or an amendment thereof, including a revised *Schedule A*, and such other documents or instruments as the Managing Member may require in order to effect the admission of such Person as a Member.

(ii) The assignee shall have delivered a letter containing the representations and warranties set forth in *Section 14.2* hereof.

(iii) If the assignee is a corporation, partnership, limited liability company or trust, the assignee shall have provided the Managing Member with evidence satisfactory to counsel for the Company of the assignee's authority to become a Member under the terms and provisions of this Agreement.

(iv) The assignee shall have executed a power of attorney containing the terms and provisions set forth in *Section 1.11* hereof.

(v) The assignee shall have paid all legal fees and other expenses of the Company and the Managing Member and filing and publication costs in connection with its substitution as a Member.

(vi) The assignee shall have obtained the prior written consent of the Managing Member to its admission as a Substitute Member, which consent may be given or denied in the exercise of the Managing Member's sole and absolute discretion.

(b) For the purpose of allocating Profits and Losses and distributing cash received by the Company, a Substitute Member shall be treated as having become, and appearing in the records of the Company as, a Member on the later of the date specified in the Transfer documents or the date on which the Managing Member has received all necessary instruments of Transfer and substitution.

(c) The Managing Member and the Substitute Member shall cooperate with each other by preparing the documentation required by this *Section 10.3* and making all official filings and publications. The Company shall take all such action as promptly as practicable after the satisfaction of the conditions in this *Article X* to the admission of such Person as a Member of the Company.

10.4. *Rights of Assignees of Units*.

(a) Subject to the provisions of *Sections 10.1* and *10.2* hereof, except as required by operation of Law, the Company shall not be obligated for any purposes whatsoever to recognize the assignment by any Member of its Units until the Company has received notice thereof.

(b) Any Person who is the assignee of all or any portion of a Member's Units, but does not become a Substitute Member and desires to make a further assignment of such Units, shall be subject to all the provisions of this *Article X* to the same extent and in the same manner as any Member desiring to make an assignment of its Units.

10.5. *Effect of Bankruptcy, Death, Incompetence or Termination of a Member.* The occurrence of an Event of Bankruptcy as to a Member, the death of a Member or a final adjudication that a Member is incompetent (which term shall include, but not be limited to, insanity) shall not cause the termination or dissolution of the Company, and the business of the Company shall continue if an order for relief in a bankruptcy proceeding is entered against a Member, the trustee or receiver of his estate or, if such Member dies, such Member's executor, administrator or trustee, or, if such Member is finally adjudicated incompetent, such Member's committee, guardian or conservator, shall have the rights of such Member for the purpose of settling or managing such Member's estate property and such power as the bankrupt, deceased or incompetent Member possessed to assign all or any part of such Member's Units and to join with the assignee in satisfying conditions precedent to the admission of the assignee as a Substitute Member.

10.6. *Joint Ownership of Units.* A Unit may be acquired by two individuals as joint tenants with right of survivorship, *provided* that such individuals either are married or are related and share the same home as tenants in common. The written consent or vote of both owners of any such jointly held Unit shall be required to constitute the action of the owners of such Unit; *provided*, that the written consent of only one joint owner will be required if the Company has been provided with evidence satisfactory to the counsel for the Company that the actions of a single joint owner can bind both owners under the applicable Laws of the state of residence of such joint owners. Upon the death of one owner of a Unit held in a joint tenancy with a right of survivorship, the Unit shall become owned solely by the survivor as a Member and not as an assignee. The Company need not recognize the death of one of the owners of a jointly-held Unit until it shall have received certificated notice of such death. Upon notice to the Managing Member from either owner, the Managing Member shall cause the Unit to be divided into two equal Units, which shall thereafter be owned separately by each of the former owners.

10.7. *Transfer of Interests to Secured Party*

(a) On July 14, 2016, each Common Member and Preferred Member shall pledge its membership interest in the Company to Bank of America, N.A., as agent for certain lenders (the "*Secured Party*") pursuant to the terms of the Pledge and Security Agreements, respectively dated July 14, 2016, between such Member as the Secured Party (collectively, the "*Pledge and Security Agreement*"). Subject to the terms of the Pledge and Security Agreement and the Uniform Commercial Code, the Secured Party may transfer any or all of such pledged membership interests in accordance with the terms of this *Article X*.

(b) Notwithstanding the other provisions of this Article X or any other provision to the contrary, the Secured Party (or any nominee or assignee thereof) shall, at its option upon the occurrence of an "Event of Default" (as such term is defined under the Pledge and Security Agreement) and the exercise of its rights and remedies under the Pledge and Security Agreement, be deemed admitted as a Member of the Company without the consent of the Managing Member; provided that prior the occurrence of an "Event of Default" (as such term is defined under the Pledge and Security Agreement), each Member who pledged its membership interest to the Secured Party under the Pledge and Security Agreement as the holder of such membership interest, shall exercise all voting and member rights with respect to the Company pursuant to *Article XII* hereto. Notwithstanding any other provision hereof, the Secured Party shall not have any obligations or duties hereunder, including any fiduciary duty to the Company or any other Member and shall be entitled to consider only the interests of itself.

ARTICLE XI

AMENDMENTS; MERGER

11.1. *Amendment of Agreement.* The Managing Member's consent shall be required for any amendment to this Agreement and the consent of the Special Committee shall be required for any amendment to this Agreement that amends or modifies the rights of the Preferred Units. The Managing Member, without the consent of the other Members, may amend this Agreement in any respect; *provided*, that the following amendments shall require the consent of a Majority in Interest (other than the Managing Member or any Subsidiary of the Managing Member):

(a) any amendment that would adversely affect the rights of the other Members to receive the distributions payable to them hereunder, other than with respect to the issuance of additional Units pursuant to *Section 4.2* hereof;

(b) any amendment that would alter the Company's allocations of Profit and Loss to the other Members, other than with respect to the issuance of additional Units pursuant to *Section 4.2* hereof;

(c) any amendment to *Section 3.4*; or

(d) any amendment to this *Article XI*.

Notwithstanding the foregoing, for as long as any interest is pledged pursuant to the Pledge and Security Agreement, this Agreement shall not be amended, modified or terminated, without the prior written consent of the Secured Party.

11.2. *Amendment of Articles of Organization.* In the event this Agreement shall be amended pursuant to this *Article XI*, the Managing Member shall amend the Articles of Organization of the Company to reflect such change if such amendment is required or if the Managing Member deems such amendment to be desirable and shall make any other filings or publications required or desirable to reflect such amendment, including any required filing for recordation of any Articles of Organization or other instrument or similar document.

ARTICLE XII

CONSENTS, VOTING AND MEETINGS

12.1. *Voting.* The Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles of Organization or this Agreement vest in the Members the right to so vote or otherwise participate. Common Members shall have the exclusive right to vote, approve or consent to matters relating to the Company, except as otherwise specifically set forth in this Agreement.

12.2. *Method of Giving Consent.* The Common Members may vote, approve a matter or take any action by the unanimous vote of the Common Members, unless specified otherwise in this Agreement. Any consent, vote or approval required by this Agreement ("*Consent*") may be given by a written Consent given by the approving Member or by the affirmative vote by the approving Member at any meeting. A copy of the Consent shall be filed with the records of the Company.

12.3. *Meetings.* Meetings of the Company shall be held at the principal place of business of the Company, or at any place stated in a notice of meeting. Meetings shall be held only when called by the Managing Member.

12.4. *Record Dates.* The Managing Member may set in advance a date for determining the Members entitled to notice of and to vote at any meeting. All record dates shall not be more than sixty (60) days prior to the date of the meeting to which such record date relates.

12.5. *Submissions to Members; Deemed Consent.* The Managing Member shall give all of the Members written notice of any proposal or other matter required by any provision of this Agreement or by Law to be submitted for the consideration and approval of the Members. Such written notice shall include any information required by the relevant provisions of this Agreement or by Law. A Member shall be deemed, for all purposes under this Agreement, to have Consented to or approved a particular matter submitted in writing for the approval by such Member if (a) the written notice requesting approval by such Member of such matter prominently discloses that such Member shall be deemed to Consent to or approve such matter if it fails to object to such matter within a reasonable period, but in any case not less than ten Business Days, after such Member's receipt of written notice, and (b) such Member fails to object to such matter within such reasonable period.

ARTICLE XIII

RECORDS AND ACCOUNTING; FISCAL AFFAIRS

13.1. *Records and Accounting*.

(a) Proper and complete records and books of account of the business of the Company, including a list of the names, addresses and Units of all Members, shall be maintained at the Company's principal place of business until six years following the termination of the Company.

(b) The books and records of the Company shall be maintained in accordance with generally accepted accounting principles.

13.2. *Reports to Members and Former Members.* The Company shall prepare and mail (or otherwise make available), or cause its independent accountants to prepare and mail, to each Member and, to the extent necessary, to each former Member (or its legal representatives), an IRS Form K-1 (and any applicable equivalent state and local tax form) setting forth in sufficient detail such information as shall enable such Member or former Member (or such Member's legal representatives) to prepare its U.S. federal income tax returns in accordance with the Laws, rules and regulations then prevailing, (i) in draft form on or before March 15 of each year for the preceding year; *provided* that the Company shall provide each Member with any corrections to the draft within a commercially reasonable timeframe after identifying the need to correct such draft, and (ii) in final form thereafter, subject to commercially reasonable efforts to make such final form available by April 1.

13.3. *Member Information.* Upon the reasonable request of the Managing Member, each Member agrees to provide the Company with such non-confidential information concerning the Member and its business so that the Company can comply, or determine its compliance, with any Laws or regulations applicable to it (including, without limitation, the Investment Company Act). Notwithstanding anything in this *Article XIII* to the contrary, a Member shall have access to books and records of the Company during normal business hours and the right to receive copies of Company documents at such Member's expense only for a purpose reasonably related to the Member's interest as a Member of the Company.

ARTICLE XIV

REPRESENTATIONS AND WARRANTIES

14.1. *Representations and Warranties of the Company.* The Company hereby represents and warrants to, and agrees with, each of the Members that, as of the date hereof:

(a) the Company is a New York limited liability company, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation with all requisite corporate or other power and authority to carry on its business as currently conducted in all material respects. The Company is duly qualified to do business and in good standing as a foreign entity in the

jurisdictions where the nature of the property owned or leased by it, or the nature of the business conducted by it, makes such qualification necessary, in all material respects. True and complete copies of the Articles of Organization and limited liability company agreement of the Company, each as amended to date, have heretofore been made available to the Members;

(b) the Company has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery, and performance by the Company of this Agreement have been duly authorized by all necessary action;

(c) this Agreement has been duly and validly executed and delivered by the Company and constitutes the binding obligation of the Company enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency or other similar Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(d) the Units have been duly authorized by the Company and, when delivered, will have been duly authorized, validly issued, fully paid and nonassessable. Following the consummation of the transactions contemplated by this Agreement and except as set forth herein and in the Articles of Organization, each Member will acquire the Units free and clear of any preemptive rights, restrictions on Transfer, liens, encumbrances, claims or demands, other than liens or encumbrances Consented to by the Members in accordance with this Agreement or created by such Member and any such restrictions under applicable federal and state securities Laws. As of immediately following the consummation of the transactions contemplated by this Agreement, all of the outstanding membership interests of the Company are set forth on *Schedule A*. Except for this Agreement, there are no outstanding warrants, options, subscriptions, convertible or exchangeable securities or other agreements, rights or forms of profit participation pursuant to which the Company is obligated to issue or sell any Units, other equity interests or other Units of the Company. Except for this Agreement and except as Consented to by the Members in accordance with this Agreement, there are no contracts relating to the issuance, sale, repurchase, or Transfer of any Units by the Company;

(e) the execution, delivery, and performance by the Company of this Agreement, including the issue and sale of the Units, will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of Law to which the Company is subject, (ii) violate any order, judgment, or decree applicable to the Company or (iii) conflict with, or result in a breach or default under, any agreement or instrument to which the Company is a party or any term or condition of its Articles of Organization, except where such conflict, breach or default would not reasonably be expected to, individually or in the aggregate, have an adverse effect on the Company's ability to satisfy its obligations hereunder;

(f) no consent, approval, permit, license, order or authorization of, filing with, or notice or other action to, with or by any Governmental Authority or any other Person, is necessary, on the part of the Company to perform its obligations hereunder or to authorize the execution, delivery and performance by the Company of its obligations hereunder, except where such consent, approval, permit, license, order, authorization, filing or notice would not reasonably be expected to, individually or in the aggregate, have an adverse effect on the Company's ability to satisfy its obligations hereunder or under any agreement or other instrument to which the Company is a party; and

(g) the Company is not, and upon consummation of the issuance and sale of the Units will not be, an "investment company," a company controlled by an "investment company" or an "affiliated person" of, or "promoter" or "principal underwriter" of, an "investment company," as such terms are defined in the Investment Company Act.

14.2. *Representations and Warranties of each Member.* Each Member (severally and not jointly, as to itself) hereby represents and warrants to, and agrees with, the Company and the other Members that, as of the date hereof:

(a) such Member has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution, delivery, and performance by such Member of this Agreement have been duly authorized by all necessary action;

(b) this Agreement has been duly and validly executed and delivered by such Member and constitutes the binding obligation of such Member enforceable against such Member in accordance with its terms, subject to applicable bankruptcy, insolvency or other similar Laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity;

(c) the execution, delivery, and performance by such Member of this Agreement will not, with or without the giving of notice or the lapse of time, or both, (i) violate any provision of Law, rule or regulation to which such Member is subject, (ii) violate any order, judgment, or decree applicable to such Member or (iii) conflict with, or result in a breach or default under, any agreement or instrument to which such Member is a party or any term or condition of its certificate of incorporation or bylaws, certificate of limited partnership or partnership agreement, or certificate of formation, articles of organization or limited liability company agreement, as applicable, except where such conflict, breach or default would not reasonably be expected to, individually or in the aggregate, have an adverse effect on such Member's ability to satisfy its obligations hereunder;

(d) no consent, approval, permit, license, order or authorization of, filing with, or notice or other action to, with or by any Governmental Authority or any other Person, is necessary, on the part of such Member to perform its obligations hereunder or to authorize the execution, delivery and performance by such Member of its obligations hereunder, except where such consent, approval, permit, license, order, authorization, filing or notice would not reasonably be expected to, individually or in the aggregate, have an adverse effect on such Member's ability to satisfy its obligations hereunder or under any agreement or other instrument to which such Member is a party;

(e) such Member is an "accredited investor" as that term is defined in the Securities Act and rules and regulations promulgated pursuant thereto;

(f) such Member is acquiring the Units for investment and not with a view toward any resale or distribution thereof except in compliance with the Securities Act; such Member acknowledges that the Units have not been registered pursuant to the Securities Act and may not be transferred in the absence of such registration or an exemption therefrom under the Securities Act; and such Member has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the risks of its investment in the Units and is capable of bearing the economic risks of the transactions contemplated by this Agreement; and

(g) such Member is an informed and sophisticated participant in the transactions contemplated hereby and has undertaken such investigation, and has been provided with and has evaluated such documents and information, as it has deemed necessary in connection with the execution, delivery and performance of this Agreement and the investment in the Company; such Member acknowledges that it is relying on its own investigation and analysis in entering into the transactions contemplated hereby and has consulted its own legal, tax, financial and accounting advisors to determine the merits and risks thereof; and the Member has not relied on any due diligence investigation of any other Member or its advisors and their respective Affiliates, or on any oral or written materials prepared or presented by any other Member or its advisors, including

any projections, forecasts, return on investment or other future cash flow illustrations prepared by any such Member or its advisors or their respective Affiliates.

ARTICLE XV

INTERESTS AND CERTIFICATES OF MEMBERS

15.1. *Interests and Certificates*

(a) *Interests.* Each Member's Membership Interest in the Company shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of New York and (ii) the corresponding provisions of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

(b) *Certificates*.

(i) Upon the issuance of Membership Interests in the Company to any Member in accordance with the provisions of this Agreement, without any further act, vote or approval of the Members or any person, the Company shall issue one or more certificates in the name of such person substantially in the form of *Exhibit B* hereto (a "*Certificate*"), which evidences the ownership of the limited liability company interests in the Company of such Member. Each such Certificate shall be denominated in terms of the percentage of the limited liability company interests in the Company evidenced by such Certificate and shall be signed by an officer on behalf of the Company.

(ii) Without any further act, vote or approval of the Members or any person, the Company shall issue a new Certificate in place of any Certificate previously issued if the holder of the Membership Interests in the Company represented by such Certificate, as reflected on the books and records of the Company:

(1) makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Certificate has been lost, stolen or destroyed;

(2) requests the issuance of a new Certificate before the Company has notice that such previously issued Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(3) if requested by the Company, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Certificate; and

(4) satisfies any other reasonable requirements imposed by the Company.

(iii) Upon a Member's transfer in accordance with the provisions of this Agreement of any or all Membership Interests in the Company represented by a Certificate, the transferee of such Membership Interests in the Company shall deliver such Certificate to the Company for cancellation (executed by such transferee on the reverse side thereof), and the Company shall thereupon issue a new Certificate to such transferee for the Percentage Interest in the Company being transferred and, if applicable, cause to be issued to such Member a new Certificate for the Percentage Interest that was represented by the canceled Certificate and that is not being transferred.

(c) *Registration of Membership Interests.* The Company shall maintain books for the purpose of registering the transfer of Membership Interests. Notwithstanding any provision of this Agreement to the contrary, a transfer of limited liability company interests requires delivery of an endorsed Certificate and shall be effective on the date stated in the Certificate or to the extent, if any, it is necessary to register such transfer in the books of the Company, shall be effective upon registration of such transfer in the books of the Company.

ARTICLE XVI

GENERAL PROVISIONS

16.1. *Other Business.* The Members and any person or entity affiliated with the Members may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

16.2. *Notices.* All notices, requests or approvals that any party hereto is required or desires to give to any Member or to the Company shall be in writing signed by or on behalf of the party giving the same and shall be deemed to be duly given if personally delivered, sent via facsimile or electronic mail and confirmed, or mailed by certified mail, return receipt requested, or sent by nationally recognized overnight delivery service with proof of receipt maintained, at the following addresses (or any other address that any such party may designate by written notice to the other parties):

(a) if given to the Company, to:

ARSR PE, LLC
333 Earle Ovington Boulevard
Suite 900
Uniondale, NY 11553
Email: pelenio@arbor.com

(b) if given to any Member, to the person and at the address (and, if applicable, fax number or electronic mail address) set forth under or opposite its name on *Schedule A*, or at such other address (and, if applicable, fax number or electronic mail address) as such Member may hereafter designate by written notice to the Company.

(c) All such notices shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered by confirmed facsimile or electronic mail, (ii) on the delivery date if delivered personally to the party to whom the same is directed, (iii) one Business Day after deposit with a commercial overnight carrier, with written verification of receipt or (iv) five Business Days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available addressed to the receiving party as specified on the signature page of this Agreement. Changes of the person to receive notices or the place of notification shall be effectuated pursuant to a notice given under this *Section 16.2*.

16.3. *Governing Law; Jurisdiction; Waiver of Jury Trial; Severability.*

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without giving effect to any choice or conflict of Laws, provisions or rules that would cause the application of Laws of any jurisdiction other than the State of New York. Each party to this Agreement hereby consents to the exclusive jurisdiction of the United States District Court for the Eastern District of New York and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement or the transactions contemplated hereby (whether such actions or proceedings are based in statute, tort, contract or otherwise), shall be litigated in such

court. Each party hereto (i) consents to submit itself to the personal jurisdiction of such court for such actions or proceedings, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any such action or proceeding in any court other than such court. Each party hereto accepts for itself and in connection with its properties, generally and unconditionally, the exclusive and irrevocable jurisdiction and venue of the aforesaid court and waives any defense of *forum non conveniens*, and irrevocably agrees to be bound by any non-appealable judgment rendered thereby in connection with such actions or proceedings. A copy of any service of process served upon the parties hereto shall be mailed by registered mail to the respective party except that, unless otherwise provided by applicable Law, any failure to mail such copy shall not affect the validity of service of process. If any agent appointed by a party hereto refuses to accept service, each party hereto agrees that service upon the appropriate party by registered mail shall constitute sufficient service. Nothing herein shall affect the right of a party hereto to serve process in any other manner permitted by law. Each party acknowledges that any controversy which may arise under this agreement is likely to involve complicated and difficult issues, and therefore it hereby irrevocably waives any right it may have to a trial by jury in respect of any action arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement. EACH PARTY ACKNOWLEDGES, AGREES AND CERTIFIES THAT: (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD, IN THE EVENT OF LITIGATION, SEEK TO PREVENT OR DELAY ENFORCEMENT OF SUCH WAIVER; (II) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER; (III) IT MAKES SUCH WAIVER VOLUNTARILY; AND (IV) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS *SECTION 16.3*.

(b) If it shall be determined by a court of competent jurisdiction that any provisions or wording of this Agreement shall be invalid or unenforceable under the Act or other applicable Law, such invalidity or unenforceability shall not invalidate the entire Agreement. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it enforceable or valid within the requirements of applicable Law, and, in the event such term or provisions cannot be so limited, this Agreement shall be construed to omit such invalid or unenforceable terms or provisions. If it shall be determined by a court of competent jurisdiction that any provision relating to the distributions and allocations of the Company or to any expenses payable by the Company is invalid or unenforceable, this Agreement shall be construed or interpreted so as (a) to make it enforceable or valid and (b) to make the distributions and allocations as closely equivalent to those set forth in this Agreement as is permissible under applicable Law.

16.4. *Entire Agreement; Binding Effect.* This Agreement sets forth the entire understanding of the parties hereto. This Agreement shall be binding upon, and inure to the benefit of, the Members.

16.5. *Successors, Assigns and Transferees.* Subject to the restrictions on Transfers set forth in this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns; and by their signatures hereto, each party intends to and does hereby become bound. Any assignment of rights or obligations in violation of this *Section 16.5* shall be null and void. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any Person any legal or equitable right, remedy or claim under, in or in respect of this Agreement or any provision herein contained other than the parties hereto and their respective permitted successors and assigns, all of whom are intended to be third party beneficiaries thereof.

16.6. *Waiver.* Failure or delay by any party hereto to enforce any covenant, duty, agreement, term or condition of this Agreement, or to exercise any right hereunder, shall not be construed as

thereafter waiving such covenant, duty, term, condition or right. The waiver by any party or parties hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach hereunder. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

16.7. *Additional Documents.* Each Member agrees to perform all further acts and execute, acknowledge and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement.

16.8. *No Third-Party Beneficiary.* This Agreement is made solely for the benefit of the Members and no other Persons shall have any rights, interest, or claims hereunder or otherwise be entitled to any benefits under or on accounts of this Agreement as a third-party beneficiary otherwise.

16.9. *Waiver of Partition.* Except as may otherwise be required by law in connection with the winding up, liquidation and dissolution of the Company, each Member hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any of the Company's property.

16.10. *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute but one instrument.

16.11. *Headings.* The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to limit or affect in any way the meaning or interpretation of any of the terms or provisions herein.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Amended and Restated Limited Liability Company Operating Agreement of ARSR PE, LLC as of the date first set forth above.

ARSR PE, LLC

By: /s/ PAUL ELENIO

Name: Paul Elenio
Title: Chief Financial Officer

COMMON MEMBER:

ARBOR MULTIFAMILY LENDING, LLC

By: /s/ PAUL ELENIO

Name: Paul Elenio
Title: Chief Financial Officer

PREFERRED MEMBER:

ARBOR COMMERCIAL MORTGAGE, LLC

By: /s/ IVAN KAUFMAN

Name: Ivan Kaufman
Title: Chief Executive Officer

SCHEDULE A

Common Member

Common Members	Cash Contribution	Agreed Value of Capital Contribution	Agreed Value of Common Units	Common Units	Percentage Interest of Common Units
Arbor Multifamily Lending, LLC c/o Arbor Realty Trust 333 Earle Ovington Boulevard, Suite 900 Uniondale, New York 11553	$ 0	$ 88,000,000	$ 1,000	88,000	100%
TOTALS	$ 0	$ 88,000,000		88,000	100%

Preferred Member

Preferred Members	Cash Contribution	Agreed Value of Capital Contribution	Agreed Value of Preferred Units	Preferred Units	Percentage Interest of Preferred Units
Arbor Commercial Mortgage, LLC 333 Earle Ovington Boulevard, Suite 900 Uniondale, New York 11553	$ 0	$ 50,000,000	$ 1,000	50,000	100%
TOTALS	$ 0	$ 50,000,000		50,000	100%

EXHIBIT A

DEFINITIONS

For purposes of this Agreement, unless the context otherwise requires:

"*2015 Act*" shall mean The Bipartisan Budget Act of 2015.

"*Act*" means the Limited Liability Company Law of the State of New York (N.Y. Limited Liability Company Law §101 *et seq*.), as amended from time to time.

"*Adjustment Year*" shall have the meaning set forth in Section 6225(d)(2) of the Code as implemented under the 2015 Act (or successor provision) or comparable provisions of state, local or non-U.S. law.

"*Administrative Expenses*" means (i) all administrative and operating costs and expenses incurred by the Company, and (ii) administrative costs and expenses of the Managing Member, including, without limitation, any salaries or other payments to directors, trustees, officers or employees of the Managing Member, and any accounting and legal expenses of the Managing Member, which expenses, the Members hereby agree, are expenses of the Company and not the Managing Member; *provided*, that Administrative Expenses shall not include any administrative costs and expenses incurred by the Managing Member that are attributable to Assets or interests in a Subsidiary that are owned by the Managing Member other than through its ownership interest in the Company.

"*Affiliate*" shall mean, as to any specified Person, (i) any Person who is an "affiliate" as that term is defined in Rule 12b-2 of the general rules and regulations under the Exchange Act, (ii) any executive officer, director, trustee, managing member or general partner of such Person and (iii) any legal entity for which such Person acts as an executive officer, director, trustee, manager, managing member or general partner.

"*Agreed Value*" means the fair market value of a Member's non-cash Capital Contribution as of the date of contribution as agreed to by such Member and the Managing Member. The names and addresses of the Members, number of Units issued to each Member, and the Agreed Value of non-cash Capital Contributions as of the date of contribution is set forth on *Schedule A*, as it may be amended or restated from time to time.

"*Agreement*" shall mean this Amended and Restated Limited Liability Company Operating Agreement (including the schedules and exhibits attached hereto) as originally executed and as amended, modified, supplemented or restated from time to time, as the context requires.

"*Articles of Organization*" shall have the meaning set forth in *Section 1.2*.

"*Asset*" means any asset or other investment in which the Company, directly or indirectly, holds an ownership interest.

"*Base Preference Amount*" shall initially mean $1,000 per Preferred Unit, and shall increase as follows:

From January 1, 2018 - June 30, 2018	$ 1,060
From July 1, 2018 - December 31, 2018	$ 1,120
From January 1, 2019 - December 31, 2019	$ 1,180
From January 1, 2020 - December 31, 2020	$ 1,200
From January 1, 2021	$ 1,250

"*Business Day*" shall mean any day except a Saturday, Sunday or day on which banking institutions in New York, New York are not required to be open.

"*Call Purchase Price*" shall have the meaning set forth in *Section 4.9(d)*.

"*Capital Account*" shall have the meaning set forth in *Section 4.4*.

"*Capital Contribution*" means the total amount of cash, cash equivalents and the Agreed Value of any Asset or other asset contributed or agreed to be contributed, as the context requires, to the Company by each Member pursuant to the terms of this Agreement. Any reference to the Capital Contribution of a Member shall include the Capital Contribution made by a predecessor holder of the Membership Interest of such Member.

"*Certificate*" shall have the meaning set forth in Section 15.2(b)(i).

"*Code*" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time, or any successor U.S. federal income tax code.

"*Common Member*" shall mean each Person identified on *Schedule A* as a holder of a Common Unit or any successor or assignee who becomes a substitute Common Member in accordance with the terms of this Agreement, and any Person admitted as an additional Common Member in accordance with the terms of this Agreement.

"*Common Unit*" shall mean a Unit which has been designated as a Common Unit of the Company. The initial value of a Common Unit shall be $1,000.

"*Company*" shall mean ARSR PE, LLC, a New York limited liability company governed hereby.

"*Company Loan*" means a loan from the Company to the Member on the day the Company pays over the excess of the Withheld Amount over the Distributable Amount to a taxing authority.

"*Company Minimum Gain*" shall have the meaning set forth in Regulations Section 1.704-2(d). In accordance with Regulations Section 1.704-2(d), the amount of Company Minimum Gain is determined by first computing, for each nonrecourse liability of the Company, any gain the Company would realize if it disposed of the property subject to that liability for no consideration, other than full satisfaction of the liability, and then aggregating the separately computed gains. A Member's share of Company Minimum Gain shall be determined in accordance with Regulations Section 1.704-2(g)(1).

"*Consent*" shall have the meaning set forth in *Section 12.2*.

"*Control*" including the correlative terms "Controlling", "Controlled by" and "Under Common Control with" means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person. For the purposes of the preceding sentence, control shall be deemed to exist when a Person possesses, directly or indirectly, through one or more intermediaries (i) in the case of a corporation, more than 50% of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or venture, the right to more than 50% of the distributions therefrom (including liquidating distributions); or (iii) in the case of any other Person, more than 50% of the economic or beneficial interest therein.

"*Deemed Liquidation*" shall mean, unless the Required Holders elect otherwise by written notice sent to the Company at least ten (10) days prior to the effective date of any such event: (i) a merger or consolidation in which the Company is a constituent party, except any such merger or consolidation with an Affiliate of the Company or a controlled Affiliate of Ivan Kaufman; (ii) the sale, transfer or other disposition, in a single transaction or series of related transactions, by the Managing Member of its Common Units (together with its rights as Managing Member hereunder), except where such sale, transfer or other disposition is to an Affiliate of the Company or a controlled Affiliate of Ivan Kaufman or (iii) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company of all or substantially all the assets of the Company, except where such sale, lease, transfer, exclusive license or other disposition is to an Affiliate of the Company or a controlled Affiliate of Ivan Kaufman. For the avoidance of doubt, a Parent Change of Control shall not constitute a Deemed Liquidation.

"*Distributable Amount*" shall have the meaning set forth in *Section 5.2(b)*.

"*Event of Bankruptcy*" as to any Person means (i) the filing of a petition for relief as to such Person as debtor or bankrupt under the U.S. Bankruptcy Code of 1978, as amended, or similar provision of Law of any jurisdiction (except if such petition is contested by such Person and has been dismissed within 90 days); (ii) the insolvency or bankruptcy of such Person as finally determined by a court proceeding; (iii) the filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of his assets; or (iv) the commencement of any proceedings relating to such Person as a debtor under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation Law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, *provided* that if such proceeding is commenced by another, such Person indicates his approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within 90 days.

"*Event of Dissolution*" shall have the meaning set forth in *Section 7.1*.

"*Fiscal Year*" shall have the meaning set forth in *Section 1.10*.

"*Governmental Authority*" means: (i) any nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (ii) the United States and other federal, state, local, municipal, foreign or other government or (iii) any governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or entity and any court or other tribunal).

"*Gross Asset Value*" shall mean, 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 Member to the Company shall be the gross fair market value of such asset at the time of such contribution, as agreed to between the Managing Member and such Member;

(b) the Gross Asset Values of all Company assets may, in the sole and absolute discretion of the Managing Member, be adjusted to equal their respective gross fair market values, as determined by the Managing Member, as of the following times: (i) the acquisition of additional Units by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for Units; (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); and (iv) in connection with the issuance of Units in the Company (other than *de minimis* Units) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a member capacity or in anticipation of being a member;

(c) the Gross Asset Value of any Company asset distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as determined by the Managing Member; and

(d) the Gross Asset Values of Company 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 Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations and Article IV hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (d) to the extent the General Partner determines that an adjustment pursuant to

clause (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (d).

"*Imputed Tax Underpayment*" shall have the meaning set forth in *Section 6.2(c)*.

"*Investment Company Act*" shall have the meaning set forth in *Section 1.4(a)*.

"*IRS*" means the U.S. Internal Revenue Service.

"*IRS Adjustment*" shall have the meaning set forth in *Section 6.2(c)*.

"*Law*" means any applicable constitutional provision, statute, act, code, law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision, declaration, or interpretative or advisory opinion or letter of a Governmental Authority.

"*Loss*" has the meaning set forth in *Section 5.1(f)* hereof.

"*Majority in Interest*" means Members holding more than 50% of the Percentage Interests of each class of the Members.

"*Managing Member*" shall mean Arbor Multifamily Lending, LLC, a Delaware limited liability company and/or any successor or additional managing member, each in its capacity as a managing member of the Company.

"*Member Nonrecourse Debt Minimum Gain*" shall have the meaning set forth in Regulations Section 1.704-2(i). A Member's share of Member Nonrecourse Debt Minimum Gain shall be determined in accordance with Regulations Section 1.704-2(i)(5).

"*Members*" shall mean the Managing Member, the Common Members, the Preferred Members, and any new members admitted from time to time upon approval of the Managing Member.

"*Membership Interest*" means a limited liability company interest of the Company held by a Member at any particular time representing a fractional part of the limited liability company interests of the Company of all Members, and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement and in the Act, together with the obligations of such Member to comply with all the provisions of this Agreement and of the Act. Membership Interests may be expressed as a number of Common Units, Preferred Units, or other Units.

"*Member Nonrecourse Debt Minimum Gain*" has the meaning set forth in Regulations Section 1.704-2(i). A Member's share of Member Nonrecourse Debt Minimum Gain shall be determined in accordance with Regulations Section 1.704-2(i)(5).

"*Parent*" means Arbor Realty Trust, Inc.

"*Parent Change of Control*" means, with respect to Parent or any of its Subsidiaries that Controls the Company (each, a "*Parent Entity*"), the closing of the transfer (whether by merger, acquisition, sale, consolidation or otherwise), in one transaction or a series of related transactions, to a Person or group of affiliated Persons (other than an Affiliate of the Company or a controlled Affiliate of Ivan Kaufman) in which the holders of the voting power of outstanding capital stock of Parent or the applicable Parent Entity, immediately prior to consummation of such applicable transaction, own less than 50% in voting power of the outstanding capital stock of Parent or the applicable Parent Entity (or the resulting entity from the transaction) immediately following the consummation of such transaction; *provided*, *however*, that such event shall not constitute a Parent Change of Control hereunder if the holders of the voting power of outstanding capital stock of Parent or the applicable Parent Entity, immediately prior to consummation of such applicable transaction, retain directly or indirectly (including through ownership of one or more holding companies) immediately following such transaction, shares of capital stock of Parent or the applicable Parent Entity representing at least 50% in voting power of the outstanding

capital stock of Parent or the applicable Parent Entity immediately following the consummation of such transaction.

"*Percentage Interest*" of a Member shall mean the percentage interest of such Member in the Common Units or Preferred Units, as determined by dividing the number of Common Units or Preferred Units held by such Member by the total Common Units or Preferred Units, as applicable, then outstanding. The Percentage Interests shall be as set forth on *Schedule A*.

"*Person*" shall mean an individual, partnership, corporation, trust, limited liability company, unincorporated organization, government or agency or political subdivision thereof, or any other legal entity.

"*Pledge and Security Agreement*" shall have the meaning set forth in *Section 10.7*.

"*Preference Amount*" has the meaning set forth in *Section 4.9(c)(i)*.

"*Preference Return*" shall initially mean with respect to each Preferred Unit, a return of 7% per annum, on a cumulative basis on the Base Preference Amount, and such percentage increase as follows:

From January 1, 2017 - December 31, 2017	8%
From January 1, 2018 - December 31, 2018	9%
From January 1, 2019 - December 31, 2019	10%
From January 1, 2020 - December 31, 2020	11%
From January 1, 2021	12%

"*Preferred Unit*" shall mean a Unit which has been designated as a Preferred Unit of the Company.

"*Profit*" has the meaning set forth in *Section 5.1(f)* hereof.

"*Put Purchase Price*" shall have the meaning set forth in *Section 4.9(e)(i)*.

"*Regulations*" shall mean the Treasury regulations promulgated under the Code.

"*Required Holders*" has the meaning set forth in *Section 3.4*.

"*Reviewed Year*" shall mean a Partnership taxable year to which an item being adjusted by the IRS relates, as defined in Section 6225(d)(1) of the Code as implemented under the 2015 Act (or successor provision) or comparable provisions of state, local or non-U.S. law.

"*Secured Party*" shall have the meaning set forth in *Section 10.7*.

"*Securities Act*" shall mean the United States Securities Act of 1933, as amended.

"*Special Committee*" has the meaning set forth in the Asset Purchase Agreement.

"*Subsidiary*" means with respect to any Person, (i) any corporation or other entity a majority of the capital stock of which having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is at the time owned, directly or indirectly, with power to vote, by such initial Person or (ii) a partnership in which such initial Person or any direct or indirect Subsidiary of such initial Person is a general partner.

"*Substitute Member*" means any Person admitted to the Company as a Member pursuant to *Section 10.3* hereof.

"*Tax Matters Member*" shall have the meaning set forth in *Section 6.2*.

"*Tax Payments*" shall have the meaning set forth in *Section 5.2(b)*.

"*Trading Day*" means a day on which the principal national securities exchange on which a security is listed or admitted to trading is open for the transaction of business or, if a security is not listed or admitted to trading on any national securities exchange, shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by Law or executive order to close.

"*Transfer*" shall mean any sale, exchange, transfer (including any mortgage, hypothecation or pledge), assignment, distribution or other disposition, direct or indirect, whether voluntarily or by operation of Law or at judicial sale or otherwise.

"*Unit*" shall mean a fractional, undivided share of the Membership Interests of all Members issued hereunder, and includes Common Units, Preferred Units and any other class or series of Units that may be established after the date hereof in accordance with the terms hereof. The number of Units outstanding and the Percentage Interests represented by such Units are set forth on *Schedule A* hereto, as it may be amended or restated from time to time.

"*Unit Designation*" shall have the meaning set forth in *Section 4.2(a)*.

"*Value*" means, with respect to any security, the average of the daily market prices of such security for the ten consecutive Trading Days immediately preceding the date of such valuation. The market price for each such Trading Day shall be: (i) if the security is listed or admitted to trading on the New York Stock Exchange or any other national securities exchange, the last reported sale price, regular way, on such day, or if no such sale takes place on such day, the average of the closing bid and asked prices, regular way, on such day, (ii) if the security is not listed or admitted to trading on the New York Stock Exchange or any other national securities exchange, the last reported sale price on such day or, if no sale takes place on such day, the average of the closing bid and asked prices on such day, as reported by a reliable quotation source designated by the Managing Member, or (iii) if the security is not listed or admitted to trading on the New York Stock Exchange or any national securities exchange and no such last reported sale price or closing bid and asked prices are available, the average of the reported high bid and low asked prices on such day, as reported by a reliable quotation source designated by the Managing Member, or if there shall be no bid and asked prices on such day, the average of the high bid and low asked prices, as so reported, on the most recent day (not more than ten days prior to the date in question) for which prices have been so reported; *provided* that if there are no bid and asked prices reported during the ten days prior to the date in question, the value of the security shall be determined by the Board of Directors acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate. In the event the security includes any additional rights (including any Rights), then the value of such rights shall be determined by the Board of Directors acting in good faith on the basis of such quotations and other information as it considers, in its reasonable judgment, appropriate.

"*Withheld Amount*" means any amount required to be withheld by the Company to pay over to any taxing authority as a result of any allocation or distribution of income to a Member.

EXHIBIT B
MEMBERSHIP INTEREST CERTIFICATE

CERTIFICATE FOR
ARSR PE, LLC

Certificate Number [ ] [Common Units] [Preferred Units]

ARSR PE, LLC, a New York limited liability company (the "*Company*"), hereby certifies that ARBOR MULTIFAMILY LENDING, LLC or, to the fullest extent permitted by applicable law and in all events subject to the Agreement (as defined below), any successors and assigns (the "*Holder*") is the registered owner of 100% of the [common units] [preferred units] of the Company (the "*Interests*"). THE RIGHTS, POWERS, PREFERENCES, RESTRICTIONS (INCLUDING TRANSFER RESTRICTIONS) AND LIMITATIONS OF THE INTERESTS ARE SET FORTH IN, AND THIS CERTIFICATE AND THE INTERESTS REPRESENTED HEREBY ARE ISSUED AND SHALL IN ALL RESPECTS BE SUBJECT TO THE TERMS AND PROVISIONS OF THE ARTICLES OF ORGANIZATION DATED AS OF APRIL 20, 2016 AND THE AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF THE COMPANY, DATED AS OF July [ ], 2016, AS THE SAME HAVE BEEN OR MAY SUBSEQUENTLY BE AMENDED OR AMENDED AND RESTATED FROM TIME TO TIME (THE "*AGREEMENT*"). THE TRANSFER OF THIS CERTIFICATE AND THE INTERESTS REPRESENTED HEREBY IS RESTRICTED AS DESCRIBED IN THE AGREEMENT. By acceptance of this Certificate, and as a condition to being entitled to any rights and/or benefits with respect to the Interests evidenced hereby, the Holder is deemed to have agreed to comply with and be bound by all of the terms and conditions of the Agreement. The Company will furnish a copy of the Agreement to the Holder without charge upon written request to the Company at its principal place of business. The Company maintains books for the purpose or registering the transfer of Interests. In all events subject to the Agreement, transfer of any or all Interests can be effected only after compliance with all the relevant restrictions in the Agreement and the delivery of an endorsed Certificate to the Company, accompanied by an assignment in the form appearing on the reverse side of this Certificate, duly completed and executed by and on behalf of the transferor in such transfer, and an applicable for transfer in the form appearing on the reverse side of this Certificate, duly completed and executed by and on behalf of the transferee in such transfer.

The Interests shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of New York, and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995.

This Certificate shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflict of laws.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed by its as of the date set forth below.

Dated: , 2016

ARSR PE, LLC,
a New York limited liability company

By: _____

Name:
Title:

REVERSE SIDE OF CERTIFICATE
REPRESENTING INTERESTS OF
ARSR PE, LLC

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto [print or typewrite the name of the transferee], [insert Social Security Number or other taxpayer identification number of transferee], the following specified percentage of Interests: [ ] [insert percentage being transferred], and irrevocably constitutes and appoints as attorney-in-fact to transfer the same on the books and records of the Company, with full power of substitution in the premises.

Dated:

Signature: _____

(Transferor)

Address: _____

APPLICATION FOR TRANSFER OF INTERESTS

The undersigned applicant (the "*Applicant*") hereby (a) applies for a transfer of the percentage of Membership Interests in the Company described above (the "*Transfer*") and applies to be admitted to the Company as a substitute member of the Company in accordance with the Agreement (as defined on the front side hereof), (b) agrees to comply with and be bound by all of the terms and provisions of the Agreement, (c) represents that the Transfer complies with the terms and conditions of the Agreement, (d) represents that the Transfer does not violate any applicable laws and regulations, and (e) agrees to execute and acknowledge such instruments (including, without limitation, a counterpart of the Agreement), in form and substance satisfactory to the Company, as the Company reasonably deems necessary or desirable to effect the Applicant's admission to the Company as a substitute member of the Company in accordance with the Agreement and to confirm the agreement of the Applicant to be bound by all the terms and provisions of the Agreement with respect to the Membership Interests in the Company described above. Initially capitalized terms used herein and not otherwise defined herein are used as defined in the Agreement.

Subject to the Agreement, the Act and Article 8 of the Uniform Commercial Code, the Company (a) has determined that the Transfer described above is permitted by the Agreement, (b) hereby agrees to effect such Transfer and the admission of the Applicant as a substitute member of the Company, effective as of the date and time directed above, (c) agrees to record, as promptly as possible, in the books and records of the Company, the admission of the Applicant as a substitute member of the Company.

IN WITNESS WHEREOF, the Transferee has caused this Certificate to be executed by its as of the date set forth below.

Dated: , 2016

By: _____

Name:
Title:

Exhibit 99.1

Contacts:
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Arbor Realty Trust Completes the Acquisition of Arbor Commercial Mortgage's Agency Platform

Uniondale, NY, July 15, 2016 — Arbor Realty Trust, Inc. (NYSE: ABR) (the "Company") announced today that it has completed the previously announced acquisition of Arbor Commercial Mortgage's ("ACM's") agency platform for $276 million. The purchase price was paid with $138 million in stock, $88 million in cash and with the issuance of a $50 million seller financing instrument. The stock component was paid with 21.23 million Operating Partnership Units, which was based on a stock price of $6.50 per share. All of the ACM employees directly related to the agency business acquired are part of the Company as of the closing.

"We are extremely excited to have completed the purchase of ACM's significant agency platform," said Ivan Kaufman, the Company's Chief Executive Officer. "We believe this will be a transformational event for our franchise that will benefit our shareholders greatly, and we expect the acquisition to be immediately accretive to our earnings and dividends and add significant diversity, duration and stability to our earnings streams."

The acquisition includes a leading national multifamily agency loan origination and servicing platform with over 200 direct employees, including 20 originators in eight states. The agency business originated over $3 billion in loans in 2015, the vast majority of which were government sponsored loans through Fannie Mae Delegated Underwriting and Servicing (DUS ®) program, Federal Home Loan Mortgage Corporation (Freddie Mac) and Government National Mortgage Association (Ginnie Mae). The acquired agency business also includes a servicing portfolio of approximately $12 billion of unpaid principal balance as of June 30, 2016.

In addition, the Company has obtained a two year option to purchase for $25 million the existing management contract and fully internalize the management structure. The exercise of this option is at the discretion of the Special Committee of the Board of Directors of Arbor Realty Trust, which has no obligation to exercise its option.

The Special Committee of the Board of Directors retained J.P. Morgan Securities, LLC as financial advisor and Willkie Farr & Gallagher LLP as legal advisor with respect to the acquisition. Skadden, Arps, Slate, Meagher & Flom LLP acted as legal advisor to Arbor Realty Trust, Inc. Wells Fargo Securities, LLC and Dechert LLP acted as ACM's financial and legal advisors.

About Arbor Realty Trust, Inc.

Arbor Realty Trust, Inc. is a real estate investment trust, which invests in a diversified portfolio of multifamily and commercial real estate related bridge and mezzanine loans, preferred equity investments, mortgage related securities and other real estate related assets. Arbor is externally managed and advised by Arbor Commercial Mortgage, LLC, a national commercial real estate finance company specializing in debt and equity financing for multi-family and commercial real estate. For more information about Arbor Realty Trust, Inc., visit www.arborrealtytrust.com.

Safe Harbor Statement

Certain items in this press release may constitute forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These statements are based on management's current expectations and beliefs and are subject to a number of trends and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. Arbor can give no assurance that its expectations will be attained. Factors that could cause actual results to differ materially from Arbor's expectations will be detailed in our SEC reports. Such forward-looking statements speak only as of the date of this press release. Arbor expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in Arbor's expectations with regard thereto or change in events, conditions, or circumstances on which any such statement is based.

The following factors, among others, could cause our actual results and financial condition to differ materially from those expressed or implied in the forward-looking statements: (1) the inability to successfully integrate our business with the purchased business or to integrate the businesses within the anticipated timeframe; (2) the risk that the acquisition disrupts current plans and operations and increase operating costs; (3) the ability to recognize the anticipated benefits of the combination including the realization of accretion to our earnings and dividends and diversity, duration and stability to our earnings streams and to recognize such benefits within the anticipated timeframe; (4) the outcome of any legal proceedings that may be instituted against the Company or others following the acquisition; and (5) the possibility that the Company may be adversely affected by other economic, business, and/or competitive factors.