

ARBOR REALTY TRUST INC

Form 424B3

December 22, 2004

Table of Contents

Filed Pursuant to Rule 424(b)(3)  
Registration No. 333-116223

---

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

(Amendment No. 1)

**Form 10-Q/A**

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

For the quarterly period ended September 30, 2004

or

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

For the transition period from            to

Commission file number: 001-32136

**Arbor Realty Trust, Inc.**

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

**Maryland**  
*(State or other jurisdiction of  
incorporation)*

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

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

**11553**  
*Zip Code*

**(516) 832-8002**

**(Registrant's telephone number, including area code)**

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

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act).    Yes     No .

**APPLICABLE ONLY TO CORPORATE ISSUERS:**

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the last practicable date. Common stock, \$0.01 par value per share: 16,389,657 outstanding as of November 10, 2004.

---

---

---

**Table of Contents**

**Explanatory Note**

We are filing this Amendment No. 1 to our Quarterly Report on Form 10-Q for the quarter ended September 30, 2004, as filed with the Securities and Exchange Commission on November 12, 2004, solely to include broker non-vote information in Item 4 of Part II. Except for the broker non-vote information in Item 4, no other information included in the original report on Form 10-Q is amended by this Form 10-Q/A.

---

**ARBOR REALTY TRUST, INC.**

**FORM 10-Q**

**INDEX**

<b><u>PART II. OTHER INFORMATION</u></b>	2
<u>Item 4.</u> <u>Submission of Matters to a Vote of Security Holders</u>	2
<u>Signatures</u>	3

**Table of Contents****PART II. OTHER INFORMATION****Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

The annual meeting of stockholders of the Company was held on July 29, 2004, for the purpose of considering and acting upon the following:

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

Nominees	Aggregate Votes	
	For	Withheld
Jonathan A. Bernstein	17,145,882	922,266
Joseph Martello	16,956,784	1,111,564

(2) Two matters were approved and the votes cast for or against and the abstentions were as follows:

**(a) Stock Incentive Plan.**

	Aggregate Votes			
	For	Against	Abstained	Broker Non-Votes
Approval of the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan (as amended and restated)	13,363,375	239,760	969,720	3,491,293

**(b) Ratification of Ernst & Young.**

	For Aggr	egatenVotes	Abstained
Ratification of Ernst & Young LLP as the Company's independent auditors for fiscal year 2004	18,063,248	3,500	1,400

The continuing directors of the Company are Ivan Kaufman, C. Michael Kojaian, Melvin F. Lazar, William Helmreich and Walter K. Horn.

**Table of Contents**

**SIGNATURES**

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

ARBOR REALTY TRUST, INC.  
(Registrant)

By: /s/ IVAN KAUFMAN

---

Name: Ivan Kaufman  
Title: Chief Executive Officer

By: /s/ FREDERICK C. HERBST

---

Name: Frederick C. Herbst  
Title: Chief Financial Officer

Date: November 17, 2004

Table of Contents

---

---

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

**Form 10-Q**

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

For the quarterly period ended September 30, 2004

or

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

For the transition period from        to

Commission file number: 001-32136

**Arbor Realty Trust, Inc.**

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

**Maryland**  
*(State or other jurisdiction of  
incorporation)*

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

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

**11553**  
*Zip Code*

**(516) 832-8002**

**(Registrant's telephone number, including area code)**

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

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act).    Yes         No .

**APPLICABLE ONLY TO CORPORATE ISSUERS:**

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the last practicable date. Common stock, \$0.01 par value per share: 16,389,657 outstanding as of November 10, 2004.

ARBOR REALTY TRUST, INC.

FORM 10-Q

INDEX

<b><u>PART I. FINANCIAL INFORMATION</u></b>	3
<u>Item 1.</u>	3
<u>Financial Statements</u>	3
<u>Arbor Realty Trust, Inc. and Subsidiaries</u>	3
Consolidated Balance Sheets at September 30, 2004 (Unaudited) and December 31, 2003	3
<u>Consolidated Income Statements (Unaudited) for the Three Months Ended September 30, 2004 and 2003, and for the Nine Months Ended September 30, 2004</u>	4
<u>Consolidated Statement of Stockholders' Equity for the Nine Months Ended September 30, 2004 (Unaudited)</u>	5
<u>Consolidated Statement of Cash Flows (Unaudited) for the Nine Months Ended September 30, 2004, and for the Three Months Ended September 30, 2003</u>	6
<u>Notes to Consolidated Financial Statements (Unaudited)</u>	7
Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries	15
<u>Consolidated Statement of Revenue and Direct Operating Expenses for the Six Months Ended June 30, 2003</u>	15
<u>Notes to Consolidated Financial Statement (Unaudited)</u>	16
<u>Item 2.</u>	20
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries</u>	20
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations of the Structured Finance Business of Arbor Commercial Mortgage, LLC and Subsidiaries</u>	29
<u>Item 3.</u>	32
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	32
<u>Item 4.</u>	34
<u>Controls and Procedures</u>	34
<b><u>PART II. OTHER INFORMATION</u></b>	34
<u>Item 1.</u>	34
<u>Legal Proceedings</u>	34
<u>Item 2.</u>	34
<u>Unregistered Sale of Equity Securities and Use of Proceeds</u>	34
<u>Item 3.</u>	34
<u>Defaults Upon Senior Securities</u>	34
<u>Item 4.</u>	34
<u>Submission of Matters to a Vote of Security Holders</u>	34
<u>Item 5.</u>	34
<u>Other Information</u>	34
<u>Item 6.</u>	35
<u>Exhibits and Reports on Form 8-K</u>	35
<u>Signatures</u>	37

**Table of Contents**

**CAUTIONARY STATEMENTS**

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

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

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

**Table of Contents****PART I. FINANCIAL INFORMATION****Item 1. FINANCIAL STATEMENTS****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****CONSOLIDATED BALANCE SHEETS**

	September 30, 2004	December 31, 2003
	(Unaudited)	
<b>Assets:</b>		
Cash	\$ 16,650,785	\$ 6,115,525
Loans and investments, net	766,902,095	286,036,610
Related party loans, net	24,353,569	35,940,881
Available-for-sale securities, at fair value	49,897,181	
Investment in equity affiliates	8,439,417	5,917,542
Other assets	11,738,861	4,153,874
	<hr/>	<hr/>
Total assets	\$877,981,908	\$338,164,432
	<hr/>	<hr/>
<b>Liabilities and Stockholders Equity:</b>		
Notes payable and repurchase agreements	\$561,379,488	\$172,528,471
Dividends payable	8,660,551	
Due to borrowers	7,088,108	8,409,945
Other liabilities	4,933,773	2,478,300
	<hr/>	<hr/>
Total liabilities	582,061,920	183,416,716
	<hr/>	<hr/>
Minority interest	48,575,265	43,631,602
Commitments and contingencies		
Stockholders equity:		
Preferred stock, \$0.01 par value: 100,000,000 shares authorized; 3,146,724 shares issued and outstanding	31,467	31,467
Common stock, \$0.01 par value: 500,000,000 shares authorized; 16,022,516 and 8,199,567 shares issued and outstanding at September 30, 2004 and December 31, 2003, respectively	160,225	81,996
Additional paid-in capital	247,968,777	112,215,649
Retained (distribution in excess of) earnings	258,703	(691,865)
Deferred compensation	(228,324)	(521,133)
Accumulated other comprehensive loss	(846,125)	
	<hr/>	<hr/>
Total stockholders equity	247,344,723	111,116,114
	<hr/>	<hr/>
Total liabilities and stockholders equity	\$877,981,908	\$338,164,432
	<hr/>	<hr/>

See notes to consolidated financial statements.



**Table of Contents****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****CONSOLIDATED INCOME STATEMENTS****(Unaudited)**

	Three Months Ended September 30,		Nine Months Ended September 30,
	2004	2003	2004
<b>Revenue:</b>			
Interest income	\$ 16,843,068	\$ 4,669,990	\$ 36,945,809
Other income	9,098	500	35,629
<b>Total revenue</b>	<b>16,852,166</b>	<b>4,670,490</b>	<b>36,981,438</b>
<b>Expenses:</b>			
Interest expense	5,592,059	721,854	11,526,496
Employee compensation and benefits	448,564	446,845	1,679,007
Stock based compensation	49,792	1,587,674	256,799
Selling and administrative	544,575	133,304	1,155,729
Management fee	1,058,845	293,501	1,892,902
<b>Total expenses</b>	<b>7,693,835</b>	<b>3,183,178</b>	<b>16,510,933</b>
Income before minority interest	9,158,331	1,487,312	20,470,505
Income allocated to minority interest	1,524,359	412,557	3,952,258
<b>Net income</b>	<b>\$ 7,633,972</b>	<b>\$ 1,074,755</b>	<b>\$ 16,518,247</b>
Basic earnings per common share	\$ .48	\$ 0.13	\$ 1.28
Diluted earnings per common share	\$ .47	\$ 0.13	\$ 1.25
Dividends declared per common share	\$ .43	\$ 0.25	\$ 1.16

See notes to consolidated financial statements.

**Table of Contents****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENT OF STOCKHOLDERS EQUITY**

**For the Nine Months Ended September 30, 2004**  
(Unaudited)

	<b>Comprehensive Loss</b>	<b>Preferred Stock Shares</b>	<b>Preferred Stock Par Value</b>	<b>Common Stock Shares</b>	<b>Common Stock Par Value</b>	<b>Additional Paid-in Capital</b>	<b>Retained (distributions in excess of) earnings</b>	<b>Deferred Compensation</b>	<b>Accumulated Other Comprehensive Loss</b>	<b>Total</b>
Balance at January 1, 2004		3,146,724	\$31,467	8,199,567	\$ 81,996	\$112,215,649	\$ (691,865)	\$(521,133)		\$ 111,116,114
Issuance of common stock, net				7,274,200	72,742	134,115,399				134,188,141
Issuance of common stock from warrant exercise				551,150	5,511	6,585,939				6,591,450
Stock based compensation								256,799		256,799
Distributions common stock							(15,567,679)			(15,567,679)
Forfeited unvested restricted stock				(2,401)	(24)	(35,986)		36,010		
Adjustment to minority interest from increased ownership in ARLP						(4,912,224)				(4,912,224)
Net income	\$ 16,518,247						16,518,247			16,518,247
Net unrealized loss on securities available for sale	(846,125)								(846,125)	(846,125)
Balance September 30, 2004	\$ 15,672,122	3,146,724	\$ 31,467	16,022,516	\$ 160,225	\$ 247,968,777	\$ 258,703	\$(228,324)	\$(846,125)	\$ 247,344,723

See notes to consolidated financial statements.

**Table of Contents****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENT OF CASH FLOWS****(Unaudited)**

	<b>Nine Months Ended September 30, 2004</b>	<b>Three Months Ended September 30, 2003</b>
<b>Operating activities:</b>		
Net income	\$ 16,518,247	\$ 1,074,755
Adjustments to reconcile net income to cash provided by operating activities		
Stock based compensation	256,799	1,587,674
Minority interest	3,952,258	412,557
Amortization of premium on securities held for sale	247,920	
Changes in operating assets and liabilities:		
Other assets	(7,584,987)	(3,941,194)
Other liabilities	968,764	4,408,187
Net cash provided by operating activities	<u>14,359,001</u>	<u>3,541,979</u>
<b>Investing activities:</b>		
Loans and investments originated and purchased, net	(550,660,216)	(38,387,740)
Payoffs and paydowns of loans and investments	81,382,043	11,226,923
Due to borrowers	(1,321,837)	762,986
Securities available for sale	(57,228,552)	
Prepayments on securities available for sale	6,237,327	
Contributions to equity affiliates	(5,521,875)	(817,542)
Distributions from equity affiliates	3,000,000	
Net cash used in investing activities	<u>(524,113,110)</u>	<u>(27,215,373)</u>
<b>Financing activities:</b>		
Proceeds from notes payable and repurchase agreements	485,110,793	
Payoffs and paydowns of notes payable and repurchase agreements	(96,259,776)	(77,266,033)
Issuance of common stock	152,075,450	112,555,145
Issuance of preferred stock		31,467
Offering expenses paid	(9,809,151)	(1,253,573)
Distributions paid to minority interest	(2,297,109)	
Distributions paid on common stock	(8,530,838)	
Net cash provided by financing activities	<u>520,289,369</u>	<u>34,067,006</u>
Net increase in cash	10,535,260	10,393,612
Cash at beginning of period	6,115,525	
Cash at end of period	<u>\$ 16,650,785</u>	<u>\$ 10,393,612</u>
<b>Supplemental cash flow information:</b>		
Cash used to pay interest	<u>\$ 10,889,308</u>	<u>\$ 483,370</u>
<b>Supplemental schedule of non-cash financing and investing activities:</b>		
Common stock dividends declared but not paid	\$ 7,036,841	\$ 2,049,892

Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

Distributions declared on operating partnership units but not paid	\$ 1,623,710	\$ 786,681
Accrued offering expenses	\$ 1,486,709	\$ 746,427
Conversion of investment in equity affiliates to loan	\$ 3,500,000	\$
Loans and investments, net contributed	\$	\$213,076,639
Notes payable and repurchase agreements contributed	\$	\$169,179,843

See notes to consolidated financial statements.

**Table of Contents**

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**September 30, 2004**

**(Unaudited)**

**Note 1 Description of Business and Basis of Presentation**

Arbor Realty Trust, Inc. (the Company) is a Maryland corporation that was formed in June 2003 to invest in real estate related bridge and mezzanine loans, preferred equity and, in limited cases, mortgage backed securities, discounted mortgage notes and other real estate related assets. The Company has not invested in any discounted mortgage notes for the period presented. The Company conducts substantially all of its operations through its operating partnership, Arbor Realty Limited Partnership (ARLP).

On April 13, 2004 the Company sold 6,750,000 shares of its common stock in a public offering at a price to the public of \$20.00 per share, for net proceeds of approximately \$124.4 million after deducting the underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down indebtedness. After giving effect to this offering, the Company had 14,949,567 shares of common stock outstanding. In addition, on May 6, 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. The Company received net proceeds of approximately \$9.8 million after deducting the underwriting discount. On June 11, 2004, 2,334 shares of unvested restricted stock were forfeited. After giving effect to these transactions, the Company had 15,471,433 shares issued and outstanding as of June 30, 2004. On September 15, 2004, 67 shares of unvested restricted stock were forfeited. Additionally, for the three months ended September 30, 2004, the Company issued 551,150 shares of common stock from the exercise of warrants under its Warrant Agreement dated July 1, 2003, the Warrant Agreement. After giving effect to this, the Company had 16,022,516 shares issued and outstanding.

The Company is organized and conducts its operations to qualify as a real estate investment trust (REIT) and to comply with the provisions of the Internal Revenue Code with respect thereto. A REIT is generally not subject to federal income tax on that portion of its REIT taxable income (Taxable Income) which is distributed to its stockholders, provided that at least 90% of Taxable Income is distributed and provided that certain other requirements are met. Certain assets of the Company that produce non-qualifying income may be held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to Federal and state income taxes. As the taxable REIT subsidiaries of the Company have had minimal activity since their inception, the Company has determined that no provision for income taxes is necessary at this time.

The accompanying unaudited consolidated interim financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q and rule 10-01 of regulation S-X. Accordingly, they do not include all of the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements, although management believes that the disclosures presented herein are adequate to make the information presented not misleading. The accompanying unaudited consolidated interim financial statements should be read in conjunction with the financial statements and the related management's discussion and analysis of financial condition and results of operations included in the form S-11 of Arbor Realty Trust, Inc. (File No. 333-110472) for the period ended December 31, 2003. In the opinion of management, all adjustments (consisting only of normal recurring accruals) considered necessary for a fair presentation have been included. The results of operations for the three and nine months ended September 30, 2004 are not necessarily indicative of results that may be expected for the entire year ending December 31, 2004.

**Table of Contents**

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**September 30, 2004**

**(Unaudited)**

**Note 2 Summary of Significant Accounting Policies**

***Use of Estimates***

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

***Reclassifications***

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

***Available-For-Sale Securities***

The Company invests in agency-sponsored whole pool mortgage related securities. Pools of Federal National Mortgage Association, or FNMA, and Federal Home Loan Mortgage Corporation, or FHLMC, adjustable rate residential mortgage loans underlie these mortgage related securities. The Company will receive payments from the payments that are made on these underlying mortgage loans, which have a fixed rate of interest for three years and adjust annually thereafter. These securities are carried at their estimated fair value with unrealized gains and losses excluded from earnings and reported in other comprehensive income pursuant to SFAS No. 115 Accounting for Certain Investments in Debt and Equity Securities. Unrealized losses other than temporary losses are recognized currently in income.

***Revenue Recognition***

*Interest income available-for-sale securities* Discounts or premiums are accreted into interest income on an effective yield or interest method over the remaining fixed rate term of the securities, adjusted for actual prepayment activity.

***Recently Issued Accounting Pronouncements***

In January 2003, the Financial Accounting Standards Board ( FASB ) issued FASB Interpretation No. 46, Consolidation of Variable Interest Entities ( FIN 46 ), which requires a variable interest entity ( VIE ) to be consolidated by its primary beneficiary ( PB ). The PB is the party that absorbs a majority of the VIE s anticipated losses and/or a majority of the expected returns.

In adopting FIN 46 and FIN 46-R, the Company has evaluated its loans and investments and investments in equity affiliates to determine whether they are VIE s. This evaluation resulted in the Company determining that its mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, the Company has evaluated (1) the sufficiency of the fair value of the entities equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or indirectly, (c) the right to receive the expected residual return of the entity and their rights are not capped, (3) the voting rights of some of these investors are proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the equity, or both, and (4) that substantially all of the entities activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights. Of the 58 loans and investments the Company has entered into, the Company has identified one loan of \$26.5 million originated in July 2004, of which was made to an entity determined to be a VIE. This entity owns real property located in New York. For this VIE, the Company has determined that it is not the primary beneficiary and as such the VIE should not be consolidated

**Table of Contents****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****September 30, 2004****(Unaudited)****Note 2 Summary of Significant Accounting Policies (Continued)**

in the Company's financial statements. For all other investments the Company has determined that the entities have sufficient equity at risk and, accordingly, they are not VIEs. As such, the Company has continued to account for these mezzanine loans and preferred equity investments and investments in equity investments as a loan, joint venture or real estate, as appropriate.

**Note 3 Loans and Investments**

	September 30, 2004	December 31, 2003
Bridge loans	\$ 297,963,804	\$ 127,971,220
Mezzanine loans	434,796,397	124,210,000
Preferred equity investments	34,791,298	33,428,173
Other	1,939,473	1,967,867
	<u>769,490,972</u>	<u>287,577,260</u>
Unearned revenue	(2,588,877)	(1,540,650)
	<u>766,902,095</u>	<u>\$ 286,036,610</u>

*Concentration of Borrower Risk*

The Company is subject to concentration risk in that, as of September 30, 2004, the unpaid principal balance related to 13 loans with five unrelated borrowers represented approximately 33.7% of total assets. The Company had 58 loans and investments as of September 30, 2004. As of September 30, 2004, 50%, 15% and 9% of the outstanding balance of the Company's loans and investments portfolio had underlying properties in New York, Florida and Maryland, respectively.

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

The following is a summary of the Company's available-for-sale securities at September 30, 2004.

	Amortized Cost	Unrealized Loss	Estimated Fair Value
Federal Home Loan Mortgage Corporation, variable rate security, fixed rate of interest for three years at 3.797% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of \$538,496)	\$ 22,419,900	\$(374,385)	\$ 22,045,515
Federal Home Loan Mortgage Corporation, variable rate security, fixed rate of interest for three years at 3.758% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of \$237,412)	10,106,988	(163,390)	9,943,598
	18,216,418	(308,350)	17,908,068

Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

Federal National Mortgage Association, variable rate security, fixed rate of interest for three years at 3.800% and adjustable rate interest thereafter, due March 2034 (including unamortized premium of \$463,687)

\$50,743,306

\$(846,125)

\$49,897,181

As of September 30, 2004, all available-for-sale securities were carried at their estimated fair market value based on current market quotes received from financial sources that trade such securities.

**Table of Contents****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****September 30, 2004****(Unaudited)**

During the quarter ended September 30, 2004, the Company received prepayments of \$4.6 million on these securities and amortized \$124,000 of the premium paid for these securities against interest income.

These securities are pledged as collateral for borrowings under a repurchase agreement See Note 6.

**Note 5 Investment in Equity Affiliates**

During the second quarter, the Company invested \$1.5 million in exchange for a preferred interest in a joint venture that owns a commercial property for the purpose of stabilizing occupancy and maximizing property value. In addition, as of September 30, 2004, the Company had two mezzanine loans totaling \$45.0 million outstanding to this joint venture. The loans require monthly interest payments based on LIBOR and both mature in January 2006. Additionally, the Company owns a participating profits interest in several affiliates of the borrower aggregating approximately 24%.

In May 2004, the Company invested \$3.5 million in exchange for a preferred interest in a joint venture, which purchased a commercial property for the purpose of converting it into condominium units for sale. The property was acquired in July 2004 at which time the Company's equity interest was converted to a loan as part of a \$26.5 million mezzanine loan funding by the Company. The loan requires monthly interest payments based on LIBOR and matures in February 2007.

**Note 6 Notes Payable and Repurchase Agreements**

The Company utilizes warehouse lines of credit and repurchase agreements to finance its loans and investments. Borrowings underlying these arrangements are secured by substantially all the Company's loans and investments.

	<b>September 30, 2004</b>	<b>December 31, 2003</b>
Structured transaction facility, financial institution, \$250 million committed line, expiration June 2006, interest rate variable based on one-month LIBOR; the weighted average note rate was 4.15% and 3.54%, respectively	\$ 194,668,807	\$ 58,630,626
Repurchase agreement, financial institution, \$100 million committed line, expiration December 2004, interest is variable based on one-month LIBOR; the weighted average note rate was 4.18% and 3.41%, respectively	46,559,172	63,722,845
Repurchase agreement, financial institution, \$350 million committed line, expiration December 2006 and July 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 3.77% and 3.71%, respectively	251,676,666	50,175,000
Repurchase agreement, financial institution, \$100 million committed line, expiration July 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 1.99% as of September 30, 2004	47,474,843	
Repurchase agreement, financial institution, \$50 million committed line, expiration November 2005, interest rate variable based on one-month LIBOR	21,000,000	

## Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

Repurchase agreement, financial institution, \$21 million committed line, expiration April 2005, interest is variable based on one-month LIBOR; the weighted average note rate was 3.14% as of September 30, 2004

Notes payable and repurchase agreements	<u>\$561,379,488</u>	<u>\$172,528,471</u>
---	----------------------	----------------------

**Table of Contents**

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**September 30, 2004**

**(Unaudited)**

**Note 6 Notes Payable and Repurchase Agreements (Continued)**

In July 2004, the Company amended the \$350 million repurchase agreement increasing the amount of available financing by \$100 million and amending certain terms of this agreement, which are generally more favorable to us. This financing line increase has a one year expiration date of July 2005 with a one year extension option. Additionally, in July 2004, the Company entered into a new \$100 million repurchase agreement with the aforementioned financial institution to finance our securities available for sale. The current borrowings equate to 97% of the estimated fair value of the securities (net of principal payment receivables of \$860,000) and bear interest at a rate of one month LIBOR plus .15%. This agreement has a term of one year and will expire in July 2005. If the estimated fair value of the securities decreases, the Company may be required to pay down borrowings from the repurchase agreement due to such a decline in the estimated fair value of the securities collateralizing the repurchase agreement.

In July, the Company entered into a new repurchase agreement with a fifth financial institution for the sole purpose of financing a newly originated \$30 million mezzanine loan. This agreement constitutes a 70% advance rate of the loan balance, interest to be paid monthly based on pricing over LIBOR, and will expire in April 2005.

The \$250 million structured transaction facility contains profit-sharing arrangements between the Company and the lender, which provide for profit sharing percentages ranging from 17.5% to 45.0% of net interest income of the loans and investments financed. This cost is included in interest expense.

Each of the credit facilities contains various financial covenants and restrictions, including minimum net worth and debt-to-equity ratios. The Company is in compliance with all covenants and restrictions for the period presented.

**Note 7 Minority Interest**

On July 1, 2003, Arbor Commercial Mortgage, LLC (ACM) contributed \$213.1 million of structured finance assets and \$169.2 million of borrowings supported by \$43.9 million of equity in exchange for a commensurate equity ownership in ARLP, the Company's operating partnership. This transaction was accounted for as minority interest and entitled ACM to a 28% profits interest in the Company, which is recorded under the equity method. On April 13, 2004, the Company sold 6,750,000 shares of its common stock in an initial public offering and a concurrent offering to one of the Company's directors. On May 6, 2004, the underwriters of the initial public offering exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. In addition, the Company issued 551,150 shares of common stock from the exercise of warrants under the Warrant Agreement during the three months ended September 30, 2004. These transactions resulted in ACM's profits interest in the Company being reduced to 16%. As of September 30, 2004, minority interest was adjusted by \$4.9 million to properly reflect ACM's 16% limited partnership interest in ARLP. On October 12, 2004 ACM exercised warrants for 629,345 operating partnership units which increased ACM's limited partnership interest to 19%.

**Note 8 Commitments and Contingencies**

***Litigation***

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

**Note 9 Stockholders Equity**

***Common Stock***

## Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

The Company's charter provides for the issuance of up to 500 million shares of common stock, par value \$0.01 per share, and 100 million shares of preferred stock, par value \$0.01 per share.

**Table of Contents**

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**September 30, 2004**

**(Unaudited)**

**Note 9 Stockholders Equity (Continued)**

The Company was incorporated in June 2003 and was initially capitalized through the sale of 67 shares of common stock for \$1,005.

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

On April 13, 2004, the Company sold 6,750,000 shares of its common stock in a public offering at a price to the public of \$20.00 per share, for net proceeds of approximately \$125.4 million after deducting the underwriting discount and the other estimated offering expenses. The Company used the proceeds to pay down indebtedness. After giving effect to this offering, the Company had 14,949,567 shares of common stock outstanding. In addition, on May 6, 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. The Company received net proceeds of approximately \$9.8 million after deducting the underwriting discount. On June 11, 2004, 2,334 shares of unvested restricted stock were forfeited. After giving effect to these transactions, the Company had 15,471,433 shares issued and outstanding.

For the three months ended September 30, 2004, the Company issued 551,150 shares of common stock from the exercise of warrants under the Warrant Agreement and received net proceeds of \$6.6 million. On September 15, 2004, 67 shares of unvested restricted stock were forfeited. After giving effect to these transactions, the Company had 16,022,516 shares issued and outstanding.

***Warrants***

In connection with the private placement of units by the Company on July 1, 2003, the Company issued warrants to acquire 1,610,000 shares of common stock, as adjusted for dilution, at \$15.00 per share. Concurrently, ACM was issued warrants to purchase 629,345 operating partnership units. In July 2004, these warrants became eligible for exercise through a cash payment or by surrendering additional warrants or shares of common stock in a cashless transaction. For the quarter ended September 30, 2004, 891,959 common stock warrants were exercised for a total amount of \$6.6 million and 551,150 common shares were issued. Of these totals, 111,720 common shares were issued from 452,529 warrants from a cashless exercise. As of September 30, 2004, there were 718,041 common stock warrants outstanding. Additionally, as of September 30, 2004, there were 629,345 operating partnership units of ARLP outstanding. Subsequent to September 30, 2004, ACM exercised all of its warrants on October 12, 2004 for a total of 629,345 operating partnership units of ARLP.

**Note 10 Net Earnings Per Share**

Earnings per share is computed in accordance with SFAS No. 128, Earnings Per Share. Basic earnings per share (EPS) is calculated by dividing net income by the weighted average number of shares of common stock outstanding during each period inclusive of unvested restricted stock which participate fully in dividends. Diluted EPS is calculated by dividing income before minority interest by the weighted average number of shares of common stock outstanding plus the additional dilutive effect of common stock equivalents during each period. The Company's common stock equivalents are its operating partnership units, warrants to purchase additional shares of common stock and warrants to purchase additional operating partnership units. The dilutive effect of the warrants is calculated using the treasury stock method.

Additionally, ACM, the manager of our Company, earned an incentive management fee for the quarter ended September 30, 2004 totaling \$499,000. Based on the terms of the management agreement, ACM

**Table of Contents****ARBOR REALTY TRUST, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****September 30, 2004****(Unaudited)****Note 10 Net Earnings Per Share (Continued)**

elected to be paid its incentive management fee in common shares totaling 22,498. These shares are anti-dilutive and have been excluded from the calculation of diluted EPS.

The following is a reconciliation of the numerator and denominator of the basic and diluted net earnings per share computations for the three month periods ended September 30, 2004 and 2003, and for the nine month period ended September 30, 2004.

	Three Months Ended September 30, 2004		Three Months Ended September 30, 2003		Nine Months Ended September 30, 2004	
	Basic	Diluted	Basic	Diluted	Basic	Diluted
Net income	\$ 7,633,972	\$ 7,633,972	\$ 1,074,755	\$ 1,074,755	\$ 16,518,247	\$ 16,518,247
Add: Income allocated to minority interest		1,524,359		412,557		3,952,258
Earnings per EPS calculation	\$ 7,633,972	\$ 9,158,331	\$ 1,074,755	\$ 1,487,312	\$ 16,518,247	\$ 20,470,505
Weighted average number of common shares outstanding	15,775,029	15,775,029	8,197,567	8,197,567	12,951,875	12,951,875
Operating partnership units		3,146,724		3,146,724		3,146,724
Dilutive effect of warrants		422,572				315,788
Total weighted average common shares outstanding	15,775,029	19,344,325	8,197,567	11,344,291	12,951,875	16,414,387
Earnings per common share	\$ 0.48	\$ 0.47	\$ 0.13	\$ 0.13	\$ 1.28	\$ 1.25

**Note 11 Related Party Transactions**

Related Party Loans:

	September 30, 2004	December 31, 2003
Bridge loans	\$ 17,535,471	\$ 30,809,391
Mezzanine loans	6,818,098	5,131,490

## Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

Related party loans, net	<u>\$24,353,569</u>	<u>\$35,940,881</u>
--------------------------	---------------------	---------------------

ACM, the manager of the Company, has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. At September 30, 2004, ACM's investment in this joint venture was approximately \$2.6 million. At September 30, 2004, the Company had a \$2.6 million bridge loan outstanding to the joint venture, which is collateralized by a first lien position on a commercial real estate property. There is a limited guarantee on the loan of 50% by the chief executive officer of the Company and 50% by the key principal of the joint venture. The loan requires monthly interest payments based on one month LIBOR and matures in May 2006. The Company agreed to provide the borrower with additional mezzanine financing in the amount of up to \$8.0 million, of which \$6.8 million was outstanding as of September 30, 2004. The mezzanine financing requires interest payments based on one month LIBOR and

**Table of Contents**

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

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**September 30, 2004**

**(Unaudited)**

**Note 11 Related Party Transactions (Continued)**

matures in May 2006. This additional financing is secured by a second mortgage lien on the property. Interest income recorded from these loans was approximately \$224,000 and \$793,000 for the three and nine months ended September 30, 2004, respectively.

As of September 30, 2004, the Company had a \$13.75 million first mortgage loan and a \$1.2 million second mortgage loan, each of which bears interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2005, outstanding to a not-for-profit corporation that holds and manages investment property from the endowment of a private academic institution. Two of the Company's directors are members of the board of trustees of the borrower and that institution. Interest income recorded from these loans was approximately \$218,000 and \$622,000 for the three and nine months ended September 30, 2004, respectively.

In addition, as of September 30, 2004, approximately \$155,000 of interest payments from borrowers due from ACM was included in other assets. These payments were remitted in October 2004. As of December 31, 2003, approximately \$152,000 of structuring fees due from ACM related to one of the Company's loan fundings was included in other assets. These fees were paid in January 2004.

**Note 12 Distributions**

On September 30, 2004, the Company declared distributions of \$0.43 per share of common stock, payable with respect to the three months ended September 30, 2004 to stockholders of record at the close of business on October 15, 2004. These distributions were paid on October 29, 2004.

Subsequent to September 30, 2004 and through the date of record, 344,598 common stock warrants were exercised for 342,231 shares of common stock. In addition, ACM exercised all of its 629,345 warrants for 629,345 operating partnership units of ARLP.

**Note 13 Management Agreement**

The Company and ARLP have entered into a management agreement with ACM, which provides that for performing services under the management agreement, the Company will pay ACM a base management fee and incentive compensation fee. For the quarter ended September 30, 2004, ACM earned an incentive compensation installment for fiscal year 2004 totaling \$499,000, which was included in other liabilities. The incentive compensation fee is calculated as 25% of the amount by which ARLP's funds from operations exceeds 9.5% return on invested funds, as described in the management agreement. As provided for in the management agreement, ACM elected to receive the entire incentive compensation fee for the quarter in common stock. This fee was paid in November 2004 in common shares totaling 22,498 and is subject to recalculation and reconciliation at fiscal year end in accordance with the management agreement. As of September 30, 2004, approximately \$188,000 of base management fees due to ACM for the month ended September 30, 2004 were included in other liabilities and paid in October 2004.

**Note 14 Due to Borrowers**

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

Table of Contents

**THE STRUCTURED FINANCE BUSINESS OF  
ARBOR COMMERCIAL MORTGAGE, LLC  
AND SUBSIDIARIES**

**CONSOLIDATED STATEMENT OF REVENUE AND DIRECT OPERATING EXPENSES**

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

See notes to consolidated financial statement.

**Table of Contents**

**THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC  
AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENT  
June 30, 2003  
(Unaudited)**

**Note 1 Description of Business and Basis of Presentation**

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

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

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

The statement of revenue and direct operating expenses do not purport to be a complete presentation of the historical results of operations of the *SF Business*. The historical operating results of the *SF Business* may not be indicative of the future operating results of *ART*. The accompanying consolidated interim financial statements were prepared for inclusion in the Form 10-Q of *ART* and do not purport to reflect the results of operations that would have resulted if the *SF Business* had operated as an unaffiliated independent company.

**Note 2 Summary of Significant Accounting Policies**

***Use of Estimates***

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

***Revenue Recognition***

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

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

**Table of Contents**

**THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC  
AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENT**

**June 30, 2003  
(Unaudited)**

**Note 2 Summary of Significant Accounting Policies (Continued)**

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

*Other income* Other income includes several types of income, which are recorded upon receipt. Certain of the loans and investments of the SF Business provide for additional payments based on the borrower's operating cash flow, appreciation of the underlying collateral, payments calculated based on the timing of when the loan pays off and changes in interest rates. Such amounts are not readily determinable and are recorded as other income upon receipt.

***Gain on Sale of Loans and Real Estate***

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

***Income Taxes***

No provision or benefit for income taxes has been provided in the accompanying consolidated financial statements due to the fact that the SF Business was not operated as a stand-alone unit and no allocation of ACM's income tax provision/benefit has been made to the SF Business. ACM is a limited liability company (which is taxed as a partnership), and accordingly, the taxable income or loss of ACM is included in the federal and state income tax returns of ACM's individual members.

**Note 3 Commitments and Contingencies**

***Litigation***

In the normal course of business, ACM is subject to various legal proceedings and claims, the resolution of which, in management's opinion, will not have a material adverse effect on the financial position or the results of operations of ACM or the SF Business.

**Note 4 Subsequent Events**

In June 2003 ART, a real estate investment trust, was formed to invest in structured finance assets, particularly real estate related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate related assets. On July 1, 2003, in exchange for a commensurate equity ownership in ART's operating partnership ARLP, ACM contributed \$213.1 million of structured finance assets and \$169.2 million of borrowings supported by \$43.9 million of equity. In addition, certain employees of ACM were transferred to ARLP. These assets, liabilities and employees represent the substantial portion of the SF Business.

**Table of Contents**

**THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC  
AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENT**

**June 30, 2003  
(Unaudited)**

**Note 4 Subsequent Events (Continued)**

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

**Note 5 Unaudited Pro Forma Consolidated Financial Information**

In June, 2003 ACM formed ART, a real estate investment trust, to operate and expand its SF Business. On July 1, 2003, ACM contributed a portfolio of structured finance investments and related debt to ARLP, the operating partnership of ART. In addition, certain employees of ACM were transferred to ARLP. These assets, liabilities and employees represent a substantial portion of the SF Business.

ART is externally managed and advised by ACM and pays ACM a management fee in accordance with the terms of the management agreement among ACM, ART and ARLP. ACM also sources originations, provides underwriting services and services all structured finance assets on behalf of ARLP. As a result, the operating expenses as presented in the historical consolidated interim financial statement would have been affected had ART been formed at an earlier time. Employee compensation and benefits expense would have decreased by \$1.3 million for the six months ended June 30, 2003, because these costs would have been borne by ACM under terms of the management agreement. Similarly, selling and administrative expense would have decreased by \$95,000 for the six months ended June 30, 2003.

In accordance with the terms of the management agreement, ACM receives a management fee, composed of a base management fee and incentive compensation. At least 25% of this incentive compensation is paid to ACM in shares of ART's common stock, subject to ownership limitations in ART's charter. ART has also agreed to share with ACM a portion of the origination fees that it receives on loans it originates through ACM.

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

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

The financial statements of the SF Business include the results of operations of the structured finance business segment of ACM and are not limited to the results of the structured finance assets that were

**Table of Contents**

**THE STRUCTURED FINANCE BUSINESS OF ARBOR COMMERCIAL MORTGAGE, LLC  
AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENT**

**June 30, 2003  
(Unaudited)**

**Note 5 Unaudited Pro Forma Consolidated Financial Information (Continued)**

transferred to ART. In addition, ACM retained certain transactions in its structured finance portfolio, primarily because they were not deemed to be suitable investments for ART. Had these retained assets been excluded from the financial statements of the SF Business, additional adjustments to the expense base would have been necessary to estimate what expenses would have been had these assets not been in the portfolio. Such adjustments would have been speculative. Lastly, operating results for assets that matured before the contribution of structured finance assets to ART, but were in the portfolio of assets of the SF Business during the reporting period are also included in these statements.

**Table of Contents**

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF ARBOR REALTY TRUST, INC. AND SUBSIDIARIES**

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

**Overview**

We are a Maryland corporation that was formed in June 2003 to invest in real estate-related bridge and mezzanine loans, preferred equity and, in limited cases, discounted mortgage notes and other real estate-related assets. We also invest in mortgage-related securities. We conduct substantially all of our operations through our operating partnership.

Our operating performance is primarily driven by several factors:

*Net interest income earned on our investments* Net interest income represents the amount by which the interest income earned on our assets exceeds the interest expense incurred on our borrowings. If the yield earned on our assets increases, this will have a positive impact on earnings. Similarly, if the cost of borrowings decreases, this will have a positive impact on earnings. Conversely, if the yield earned on our assets decreases, or the cost of our borrowings increases, this will have a negative impact on earnings. Net interest income is also directly impacted by the size of our asset portfolio.

*Credit quality of our assets* Effective asset and portfolio management is essential to maximizing the performance and value of a real estate/mortgage investment. Maintaining the credit quality of our loans and investments is of critical importance. Loans that do not perform in accordance with their terms may have a negative impact on earnings.

*Cost control* We seek to minimize our operating costs, which consist primarily of employee compensation and related costs and other general and administrative expenses. As the size of the portfolio increases, certain of these expenses, particularly employee compensation expenses, may increase.

We are organized and conduct our operations to qualify as a real estate investment trust ( REIT ) and to comply with the provisions of the Internal Revenue Code with respect thereto. A REIT is generally not subject to federal income tax on that portion of its REIT taxable income ( Taxable Income ) which is distributed to its stockholders provided that at least 90% of Taxable Income is distributed and provided that certain other requirements are met. Certain assets of the Company that produce non-qualifying income may be held in taxable REIT subsidiaries. Unlike other subsidiaries of a REIT, the income of a taxable REIT subsidiary is subject to Federal and state income taxes. As the taxable REIT subsidiaries of the Company have had minimal activity since their inception, the Company has determined that no provision for income taxes is necessary at this time.

On April 13, 2004, we sold 6,750,000 shares of our common stock in a public offering at a price to the public of \$20.00 per share, for net proceeds of approximately \$124.4 million after deducting the underwriting discount and the other estimated offering expenses. We used the proceeds to pay down indebtedness. After giving effect to this offering, we had 14,949,567 shares of common stock outstanding. In addition, on May 6, 2004, the underwriters exercised a portion of their over-allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. We received net proceeds of approximately \$9.8 million after deducting the underwriting discount. On June 11, 2004, 2,334 shares of unvested restricted stock were forfeited. After giving effect to these transactions, the Company had 15,471,433 shares issued and outstanding as of June 30, 2004. For the three months ended September 30, 2004, the Company issued 551,150 shares of common stock from the exercise of warrants under the Warrant Agreement. On September 15, 2004, 67 shares of unvested restricted stock were forfeited. After giving effect to these transactions, the Company had 16,022,516 shares issued and outstanding.

## **Table of Contents**

### ***Changes in Financial Condition***

During the quarter, we originated nine loans and investments totaling \$167.0 million, of which \$150.5 million was funded. Of the new loans and investments, five were mezzanine loans totaling \$117.0 million, three were bridge loans totaling \$32.0 million, and one was a direct equity investment totaling \$1.5 million. We have received full satisfaction of three loans totaling \$10.6 million and partial repayment on three loans totaling \$6.8 million.

Our loan portfolio balance at September 30, 2004 was \$791.3 million, with a weighted average current interest pay rate of 7.49%, as compared to \$323.5 million with a weighted average interest pay rate of 7.49% at December 31, 2003. At September 30, 2004, advances on financing facilities totaled \$513.9 million, with a weighted average funding cost of 3.84% as compared to \$172.5 million, with a weighted average funding cost of 3.40%, at December 31, 2003.

In addition, in March 2004, we purchased \$57.4 million (including \$0.1 million of purchased interest) of agency-sponsored whole pool mortgage related securities. Pools of FNMA and FHLMC adjustable rate residential mortgage loans underlie these mortgage related securities. We will receive payments from the payments that are made on these underlying mortgage loans. The loans have a fixed rate of interest for three years and adjust annually thereafter. These loans have a weighted average coupon rate of 3.7%. Of these mortgage-related securities, \$20.6 million were issued by FNMA and \$36.7 million were issued by FHLMC. At September 30, 2004, these securities were financed under a new \$100 million repurchase agreement at a rate of one month LIBOR plus 0.15%. At September 30, 2004, the amortized cost of these securities was \$50.7 million. We are carrying these securities at their estimated fair value of \$49.9 million, which resulted in a \$846,000 unrealized loss that was recorded in other comprehensive loss. At September 30, 2004 the outstanding debt balance on the financing of these securities was \$47.5 million.

### ***Sources of Operating Revenues***

We derive our operating revenues primarily through interest received from making real estate-related bridge and mezzanine loans and preferred equity investments. For the quarter ended September 30, 2004, interest on these loans and investments represented approximately 98% of our total revenues. Included in interest on loans and investments was a participation interest earned and received representing approximately 4% of our total revenues. We provide bridge loans secured by first lien mortgages on the property to borrowers who are typically seeking short term capital to be used in an acquisition of property. The bridge loans we make typically range in size from \$1 million to \$30 million and have terms of up to seven years. We provide real property owners with mezzanine loans that are secured by pledges of ownership interests in entities that directly or indirectly control the real property or second mortgages. These loans typically range in size from \$2 million to \$30 million and have terms of up to seven years. We also make preferred equity investments in entities that directly or indirectly own real property.

We will also derive interest income from our investments in mortgage related securities. For the quarter ended September 30, 2004, interest on these investments represented approximately 2% of our total revenues.

We also derive operating revenues from other income that represents miscellaneous asset management fees associated with our loans and investments portfolio. For the quarter ended September 30, 2004, revenue from other income was approximately \$9,000.

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

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

We may also derive income from equity affiliates relating to joint ventures that were formed with equity partners to acquire, develop and/or sell real estate assets. Such investments are recorded under the equity method. We record our share of net income from the underlying properties in which we invest through these joint ventures.

## **Table of Contents**

### **Critical Accounting Policies**

Refer to the section of our Registration Statement on Form S-11 (No. 333-110472) declared effective on April 6, 2004 by the SEC (the Registration Statement ) entitled Management's Discussion and Analysis of Financial Condition and Results of Operations of Arbor Realty Trust and Subsidiaries Significant Accounting Estimates and Critical Accounting Policies for a discussion of our critical accounting policies. During the three months ended March 31, 2004, there was one new critical accounting policy, which is listed in Recently Issued Accounting Pronouncements below. In addition there were no material changes to critical accounting policies disclosed in the Registration Statement.

#### ***Available-For-Sale Securities***

We invest in agency-sponsored whole pool mortgage related securities. Pools of FNMA and FHLMC adjustable rate residential mortgage loans underlie these mortgage related securities. We will receive payments from the payments that are made on these underlying mortgage loans, which have a fixed rate of interest for three years and adjust annually thereafter. These securities are carried at their estimated fair value with unrealized gains and losses excluded from earnings and reported in other comprehensive income pursuant to SFAS No. 115 Accounting for Certain Investments in Debt and Equity Securities. Losses other-than-temporary losses are recognized currently in income. These available for sale securities are pledged as collateral for borrowings under a repurchase agreement See Liquidity and Capital Resources.

#### ***Revenue Recognition***

*Interest income available-for-sale securities* Discounts or premiums are accreted into interest income on an effective yield or interest method adjusted for actual prepayment activity.

#### ***Recently Issued Accounting Pronouncements***

In January 2003, the Financial Accounting Standards Board ( FASB ) issued FASB Interpretation No. 46, Consolidation of Variable Interest Entities ( FIN 46 ), which requires a variable interest entity ( VIE ) to be consolidated by its primary beneficiary ( PB ). The PB is the party that absorbs a majority of the VIE's anticipated losses and/or a majority of the expected returns.

In adopting FIN 46 and FIN 46-R, we have evaluated our loans and investments and investments in equity affiliates to determine whether they are VIE's. This evaluation resulted in us determining that our mezzanine loans, preferred equity investments and investments in equity affiliates were potential variable interests. For each of these investments, we have evaluated (1) the sufficiency of the fair value of the entities equity investments at risk to absorb losses, (2) that as a group the holders of the equity investments at risk have (a) the direct or indirect ability through voting rights to make decisions about the entities significant activities, (b) the obligation to absorb the expected losses of the entity and their obligations are not protected directly or indirectly, (c) the right to receive the expected residual return of the entity and their rights are not capped, (3) the voting rights of some of these investors are proportional to their obligations to absorb the expected losses of the entity, their rights to receive the expected returns of the equity, or both, and (4) that substantially all of the entities activities do not involve or are not conducted on behalf of an investor that has disproportionately few voting rights. Of the 58 loans and investments the Company has entered into, the Company has identified one loan of \$26.5 million originated in July 2004, of which was made to an entity determined to be a VIE. This entity owns real property located in New York. For this VIE, the Company has determined that it is not the primary beneficiary and as such the VIE should not be consolidated in the Company's financial statements. For all other investments, we have determined that the entities have sufficient equity at risk and, accordingly, they are not VIE's. As such, we have continued to account for these mezzanine loans and preferred equity investments and investments in equity investments as a loan, joint venture or real estate, as appropriate.

**Table of Contents****Results of Operations***For the Three Months Ended September 30, 2004 and 2003*

The following table sets forth our results of operations for the three months ended September 30, 2004 and 2003:

	Three Months Ended September 30,		Increase/(Decrease)	
	2004	2003	Amount	Percent
<b>Revenue:</b>				
Interest income	\$ 16,843,068	\$ 4,669,990	\$ 12,173,078	261%
Other income	9,098	500	8,598	1720%
<b>Total revenue</b>	<b>16,852,166</b>	<b>4,670,490</b>	<b>12,181,676</b>	<b>261%</b>
<b>Expenses:</b>				
Interest expense	5,592,059	721,854	4,870,205	675%
Employee compensation and benefits	448,564	446,845	1,719	0%
Stock based compensation	49,792	1,587,674	(1,537,882)	(97)%
Selling and administrative	544,575	133,304	411,271	309%
Management fee	1,058,845	293,501	765,344	261%
<b>Total expenses</b>	<b>7,693,835</b>	<b>3,183,178</b>	<b>4,510,657</b>	<b>142%</b>
Income before minority interest	9,158,331	1,487,312	7,671,019	516%
Income allocated to minority interest	1,524,359	412,557	1,111,802	269%
<b>Net income</b>	<b>\$ 7,633,972</b>	<b>\$ 1,074,755</b>	<b>\$ 6,559,217</b>	<b>610%</b>

The following discussion compares our results of operations for the three months ended September 30, 2004 to the comparable period in 2003:

*Revenue.* Interest income increased \$12.2 million, or 261%, to \$16.8 million for the quarter ended September 30, 2004 from \$4.7 million for the quarter ended September 30, 2003. This increase was primarily due to a 209% increase in the weighted average balance of loans and investments combined with a 14% increase in the weighted average interest rate of the loans and investments portfolio as a result of new originations and increased market interest rates. Interest income was \$16.8 million for the quarter ended September 30, 2004 of which \$16.5 million was from our loans and investments portfolio, including a \$667,000 participation interest earned and received on one of our loans.

Other income increased \$8,600, or 1720% to \$9,100 for the quarter ended September 30, 2004 from \$500 for the quarter ended September 30, 2003. This was primarily due to increased asset management fees directly related to a larger loans and investments portfolio in the quarter ended September 30, 2004.

*Expenses.* Interest expense increased \$4.9 million, or 675%, to \$5.6 million for the quarter ended September 30, 2004 from \$722,000 for the quarter ended September 30, 2003. This increase was primarily due to a 471% increase in the weighted average borrowings combined with a 31% increase in the average cost of these borrowings as a result of an increase in market interest rates.

Employee compensation and benefits expense remained relatively unchanged.

Stock-based compensation expense decreased by \$1.5 million, or 97%, to \$50,000 for the quarter ended September 30, 2004 from \$1.59 million for the quarter ended September 30, 2003. These expenses represent the cost of restricted stock granted to certain of our

## Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

employees, executive officers and directors of our manager. Of the total shares granted, two-thirds of the shares granted vested immediately and the remaining one-third will vest over three years. The decrease was entirely due to the initial two-thirds shares granted vesting in this period in 2003 as compared with only a ratable portion of the unvested shares recorded as expense in 2004.

**Table of Contents**

Selling and administrative expense increased by \$411,000, or 309%, to \$545,000 for the quarter ended September 30, 2004 from \$133,000 for the quarter ended September 30, 2003. This increase is directly attributable to professional fees, including legal and accounting services, insurance expense and director's fees associated with operating a public company since our filing in April 2004.

Management fees increased \$765,000, or 261%, to \$1.1 million for the quarter ended September 30, 2004 from \$294,000 for the quarter ended September 30, 2003. These amounts represent base management fees and incentive management fees as provided for in the management agreement with our manager. The base management fees increased by \$266,000 mainly due to increased stockholder's equity directly attributable to greater profits and contributed capital over the same period in 2003. Additionally, for the period ending September 30, 2004, our manager earned its first incentive management fees of \$499,000.

*Income allocated to Minority Interest.* Income allocated to minority interest increased by \$1.1 million, or 269%, to \$1.5 million for the quarter ended September 30, 2004 from \$413,000 for the quarter ended September 30, 2003. These amounts represent the portion of our income allocated to our manager, which owns a 16% limited partnership interest in our operating partnership for the period ending September 30, 2004. This increase is primarily due to a growth of 516% in income before minority interest partially offset by a decrease in ownership percentage from 28% to 16%, which was primarily attributable to the initial public offering in April 2004.

***For the Nine Months Ended September 30, 2004***

The following table sets forth our results of operations for the nine months ended September 30, 2004:

	<b>Nine Months Ended September 30, 2004</b>
Revenue:	
Interest income	\$ 36,945,809
Other income	35,629
	<hr/>
Total revenue	36,981,438
	<hr/>
Expenses:	
Interest expense	11,526,496
Employee compensation and benefits	1,679,007
Stock based compensation	256,799
Selling and administrative	1,155,729
Management fee	1,892,902
	<hr/>
Total expenses	16,510,933
	<hr/>
Income before minority interest	20,470,505
Income allocated to minority interest	3,952,258
	<hr/>
Net income	\$ 16,518,247
	<hr/>

*Revenue.* Interest income was \$36.9 million for the nine months ended September 30, 2004 of which \$36.2 million was from our loan and investment portfolio. The average balance of the loan and investment portfolio was \$572.7 million during the nine months ended September 30, 2004 and the average yield on those assets was 8.3%.

Other income was approximately \$36,000 for the nine months ended September 30, 2004. This income represents miscellaneous asset management fees associated with our loans and investments portfolio.

## Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

*Expenses.* Interest expense was \$11.5 million for the nine months ended September 30, 2004 of which \$11.1 million was from the debt financing of our loan and investment portfolio. The average balance of debt

## **Table of Contents**

financing on our loan and investment portfolio was \$338.0 million during the nine months ended September 30, 2004 and the average cost of these borrowings was 4.3%.

Employee compensation and benefits expense was \$1.7 million for the nine months ended September 30, 2004, which represents salaries, benefits and incentive compensation for the 16 employees employed by us during this period.

Stock-based compensation expense was approximately \$257,000 for the nine months ended September 30, 2004. These expenses represent the cost of restricted stock granted to certain of our employees, executive officers and directors and certain executive officers and employees of our manager. Of the total shares granted, two-thirds of the shares granted vested immediately and the remaining one-third will vest over three years. The amount of compensation expense recorded for the nine months ended September 30, 2004 represents a ratable portion of the expense of the unvested shares.

Selling and administrative expense was \$1.2 million for the nine months ended September 30, 2004. This amount is comprised primarily of professional fees, including legal and accounting services, insurance expense and director's fees.

Management fees were \$1.9 million for the nine months ended September 30, 2004. This amount represents \$1.4 million of base management fees and \$0.5 million of incentive compensation fees as provided for in the management agreement with our manager.

*Income Allocated to Minority Interest.* Income allocated to minority interest was \$4.0 million for the nine months ended September 30, 2004. This amount represents the portion of our income allocated to our manager, which owns a 16% limited partnership interest in our operating partnership at September 30, 2004 and was allocated a percentage of our income for the nine months ended September 30, 2004.

## **Liquidity and Capital Resources**

### ***Sources of Liquidity***

Liquidity is a measurement of the ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain loans and investments and other general business needs. Our primary sources of funds for liquidity consist of funds raised from our private equity offering in July 2003, net proceeds from our initial public offering in April 2004, borrowings under credit agreements, net cash provided by operating activities, repayments of outstanding loans and investments and the issuance of common, convertible and/or preferred equity securities.

On April 13, 2004, we sold 6,750,000 shares of our common stock in a public offering at a price to the public of \$20.00 per share for net proceeds of approximately \$125.4 million after deducting the underwriting discount and the other estimated offering expenses. We used the proceeds to pay down indebtedness. In addition, on May 6, 2004 the underwriters exercised a portion of their over allotment option, which resulted in the issuance of 524,200 additional shares on May 11, 2004. We received net proceeds of approximately \$9.8 million after deducting the underwriting discount. For the quarter ended September 30, 2004, 891,959 common stock warrants were exercised which resulted in the issuance of 551,150 shares and proceeds of \$6.6 million. Subsequent to September 30, 2004 and as of November 10, 2004, additional proceeds from exercised warrants totaled \$14.6 million.

We also maintain liquidity through one warehouse credit agreement and five master repurchase agreements with five different financial institutions.

We have a \$250.0 million warehouse credit agreement with a financial institution, dated as of July 1, 2003, with a term of three years. In the event this facility is not renewed, we have nine months to repay all outstanding advances. In addition to LIBOR-based interest obligations, this warehouse credit facility includes a profit sharing agreement, whereby the institution shares in the net interest spread of the assets financed. The profit sharing component represents the percentage of the net profits earned over the life of a loan that are payable to the lender upon repayment of the underlying investment. Net profits are based on interest income,

**Table of Contents**

interest expense and deferred interest payable at repayment of an investment. On September 30, 2004, the outstanding balance under this facility was \$194.7 million.

We have a \$100.0 million master repurchase agreement with a second financial institution, dated as of November 18, 2002, which matures in December 2004. On September 30, 2004, the outstanding balance under this facility was \$46.6 million.

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

We have a \$350.0 million master repurchase agreement with a fourth financial institution, dated as of December 23, 2003, with a term of three years and an interest rate based on LIBOR. In July 2004 this repurchase agreement was amended increasing the amount of available financing from \$250 million to \$350 million and amending certain terms of this agreement, which are generally more favorable to us. The \$100 million increase to the facility has a term of one year with a one year extension option. On September 30, 2004, the outstanding balance under this facility was \$251.7 million. In addition we entered into a new \$100 million repurchase agreement with the same financial institution to finance our securities held for sale. This facility has a term of one year and an interest rate of LIBOR plus .15%. On September 30, 2004, the outstanding balance of this new facility was \$47.5 million. These borrowings equal 97% of the estimated fair value of the securities (net of principal payment receivables of \$860,000). If the estimated fair value of the securities decreases, we may be required to pay down borrowings from the repurchase agreement due to such a decline in the estimated fair value of the securities collateralizing the repurchase agreement.

Additionally, we entered into a new repurchase agreement with a fifth financial institution, dated July 30, 2004 for the sole purpose of financing a newly originated \$30 million mezzanine loan which was purchased from this institution. The agreement constitutes a 70% advance rate of the current loan balance, interest to be paid monthly based on pricing over LIBOR, and will expire in April 2005. On September 30, 2004, the outstanding balance under this facility was \$21 million.

The warehouse credit agreement and the five master repurchase agreements require that we pay interest monthly, based on our pricing over LIBOR. The amount of our pricing over LIBOR varies depending upon the structure of the loan or investment financed pursuant to the warehouse credit agreement or the master repurchase agreement. Our pricing over LIBOR is summarized in the table on the following page.

The warehouse credit agreement and the five master repurchase agreements require that we pay down borrowings under these facilities pro-rata as principal payments on our loans and investments are received. In addition, if upon maturity of a loan or investment we decide to grant the borrower an extension option, the financial institutions have the option to extend the borrowings or request payment in full on the outstanding borrowings of the loan or investment extended. The financial institutions also have the right to request immediate payment of any outstanding borrowings on any loan or investment that is at least 60 days delinquent.

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

Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

**Table of Contents**

The maximum borrowing capacities, advance rates and other principal terms of our credit facilities are listed below (LIBOR refers to one-month LIBOR). These facilities have an aggregate capacity of \$871.0 million and as of September 30, 2004, borrowings were approximately \$561.4 million.

	Warehouse Facility	Repurchase Agreement	Repurchase Agreement	Repurchase Agreement	Repurchase Agreement	Repurchase Agreement
Total facility amount	\$ 250,000,000	\$ 100,000,000	\$ 50,000,000	\$ 350,000,000	\$ 100,000,000	\$ 21,000,000
Sub-facility amount(10)				\$ 100,000,000		
Maximum advance rate				27%-50%		
Pricing over LIBOR				.9375%- 3.225%		
Sublimits based on investment type						
Bridge loan sublimit amount	\$ 135,000,000	N/A	\$ 50,000,000	N/A		
Maximum advance rate(1)	85%(2)	80%	80%	80%-90%(3)		
Pricing over LIBOR	2.00%	2.00%	2.00%	1.30%- 2.40%(3)		
Profit share(4)	20.0%					
Junior Interests sub limit amount				\$ 187,500,000		
Maximum advance rate				60%-75%		
Pricing over LIBOR				2.00%-3.00%		
Mezzanine loans/preferred equity sublimit amount	\$ 165,000,000	\$ 25,000,000	\$ 50,000,000	\$ 150,000,000(11)		N/A
Maximum advance rate(1)	80%(5)	65%	75%	20%-70%(3)		70%
Pricing over LIBOR	2.75%	2.75%	2.75%	2.225%- 3.65%(3)		1.5%
Profit share(4)	20.0%					
Note acquisitions sublimit amount	\$ 125,000,000					
Maximum advance rate(5)	80%(6)					
Pricing over LIBOR	2.50%					
Property acquisitions total line	\$ 125,000,000					
Maximum advance rate	80%					
Pricing over LIBOR	2.50%					
Mortgage-backed securities						97%

Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

Maximum advance rate				
Pricing over LIBOR				0.15%
Financial covenants:				
Minimum net worth	\$ 115,000,000(7)	\$ 45,000,000(7)	(8)	\$ 75,000,000(7)
Leverage (debt to net worth) ratio must not exceed	6 to 1	8 to 1	6 to 1	4 to 1
Minimum liquidity(9)	\$ 3,000,000	N/A	N/A	\$ 5,000,000

- (1) Advance rates for certain investments funded under the credit facilities are negotiated on an individual basis and may differ from the maximum advance rate listed.
- (2) Maximum loan amount advanced per bridge loan equal to \$20.0 million.
- (3) Advance rates and pricing over LIBOR vary due to the type of asset financed.
- (4) Certain investments are financed under prior profit sharing agreements between the financial institution and Arbor Commercial Mortgage with profit sharing percentages ranging from 17.5% to 45.0% of net interest income of the loans and investments financed.

**Table of Contents**

- (5) Maximum loan amount advanced per mezzanine loan equal to \$20.0 million.
- (6) Maximum loan amount advanced per acquisition equal to \$20.0 million.
- (7) Minimum net worth is defined as net worth of our operating partnership.
- (8) Minimum net worth is equal to 75% of the highest level reached over the preceding twelve consecutive calendar months.
- (9) Minimum liquidity is defined as cash and cash equivalents plus any excess margin.
- (10) \$100,000,000 of the total facility amount is available for financing bridge loans, junior interests or mezzanine loans wherein the underlying property is not stabilized or is being repositioned. In the case of junior interests and mezzanine loans, the senior loan must also be owned by the Company.
- (11) Mezzanine loans limited to \$150,000,000 and preferred equity interests shall not exceed 15% of the total outstanding balance under the facility.

In addition to the financial covenants presented in the table above, our warehouse credit agreement and master repurchase agreements contain covenants that prohibit us from effecting a change in control or disposing of or encumbering assets being financed and restrict us from making any material amendment to our underwriting guidelines without approval of the lender. Furthermore, the credit facilities include various covenants not deemed to be restrictive including preservation of company existence, conduct of business, compliance with applicable laws, financial statement reporting requirements, maintenance of paper records and files and loan performance and servicing date reporting requirements. If we violate these covenants in any of these agreements, we could be required to repay all or a portion of our indebtedness before maturity at a time when we might be unable to arrange financing for such repayment on attractive terms, if at all. Violations of these covenants may result in our being unable to borrow unused amounts under a line of credit, even if repayment of some or all borrowings is not required. As of September 30, 2004, we are in compliance with all covenants and restrictions.

**Related Party Transactions**

Arbor Commercial Mortgage, LLC ( ACM ), our manager, has a 50% non-controlling interest in a joint venture, which was formed to acquire, develop and/or sell real estate assets. At September 30, 2004, ACM s investment in this joint venture was approximately \$2.6 million. At September 30, 2004, we had a \$2.6 million bridge loan outstanding to the joint venture, which is collateralized by a first lien position on a commercial real estate property. There is a limited guarantee on the loan of 50% by our chief executive officer and 50% by the key principal of the joint venture. The loan requires monthly interest payments based on one month LIBOR and matures in May 2006. We agreed to provide the borrower with additional mezzanine financing in the amount of up to \$8.0 million, of which \$6.8 million was outstanding as of September 30, 2004. The mezzanine financing requires interest payments based on one month LIBOR and matures in May 2006. This additional financing is secured by a second mortgage lien on the property. Interest income recorded from these loans was approximately \$224,000 and \$793,000 for the three and nine months ended September 30, 2004.

As of September 30, 2004, we had a \$13.75 million first mortgage loan and a \$1.2 million second mortgage loan, each of which bears interest at a variable rate of one month LIBOR plus 4.25% and matures in March 2005, outstanding to a not-for-profit corporation that holds and manages investment property from the endowment of a private academic institution. Two of our directors are members of the board of trustees of the borrower and that institution. Interest income recorded from these loans was approximately \$218,000 and \$622,000 for the three and nine months ended September 30, 2004.

**Table of Contents**

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

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

**Overview and Basis of Presentation**

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

The SF Business is not a separate legal entity and the assets and liabilities associated with ACM's structured finance business are components of a larger business. We obtained the information in the consolidated financial statements included elsewhere in this 10-Q from ACM's consolidated historical accounting records.

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

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

The statement of revenue and direct operating expenses do not purport to be a complete presentation of the historical results of operations of the SF Business. The historical operating results of the SF Business may not be indicative of our future operating results. The accompanying unaudited consolidated interim financial statements were prepared for inclusion in this Form 10-Q and do not purport to reflect the results of operations that would have resulted if the SF Business had operated as an unaffiliated independent company.

***Sources of Operating Revenues***

ACM derives its operating revenues primarily from interest received from making real estate related bridge and mezzanine loans and preferred equity investments. ACM provides bridge loans secured by first lien mortgages on the property to borrowers who are typically seeking short term capital to be used in an acquisition of property. The bridge loans ACM makes typically range in size from \$1 million to \$25 million and have terms of up to seven years. ACM provides real property owners with mezzanine loans that are secured by pledges of ownership interests in entities that directly or indirectly control the real property or second mortgages. These loans typically range in size from \$2 million to \$15 million and have terms of up to seven years. ACM also makes preferred equity investments in entities that directly or indirectly own real property. Interest represented 83% of total revenue for the six months ended June 30, 2003.

ACM also derives operating revenue from other income that includes several types of income that are recorded upon receipt. Certain of ACM's loans and investments provide for additional payments based on the

**Table of Contents**

borrower's operating cash flow, appreciation of the underlying collateral, payments calculated based on timing of when the loan pays off and changes in interest rates. Such amounts are not readily determinable and are recorded as other income upon receipt. Other income also includes the recognition of deferred revenue on loans that prepay, asset management fees related to our loans and investment portfolio and satisfactions on impaired loans in excess of carrying values. Other income represented 17% of total revenue for the six months ended June 30, 2003.

**Significant Accounting Estimates and Critical Accounting Policies**

Set forth below is a summary of the accounting policies that management believes are critical to the preparation of the consolidated financial statements included in this Form 10-Q. Certain of the accounting policies used in the preparation of these consolidated financial statements are particularly important for an understanding of the financial position and results of operations presented in the historical consolidated financial statements included in this Form 10-Q and require the application of significant judgment by management and, as a result, are subject to a degree of uncertainty.

**Revenue Recognition**

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

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

**Results of Operations**

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



## **Table of Contents**

Interest income was \$7.7 million for the six months ended June 30, 2003. The average balance of the loan and investment portfolio was \$213.1 million and the average yield on these assets was 7.22%.

Other income was \$1.6 million for the six months ended June 30, 2003, which represents (a) increased funds received on paid off loans of \$539,000 (b) the partial satisfaction of an impaired loan for an amount \$350,000 in excess of the loan's carrying value resulting in the recognition of other income for this amount (c) increased accelerated amortization of revenue of \$467,000 on loans with early payoffs and (d) asset management fees of \$197,000 earned on our loan and investment portfolio.

Interest expense was \$3.5 million for the six months ended June 30, 2003. The average balance of debt financing was \$152.4 million and the average cost of these borrowings was 4.55%.

Employee compensation and benefits was \$1.8 million for the six months ended June 30, 2003, which represents salaries, benefits and incentive compensation for the employees related to the origination and asset management of our loans and investments.

Selling and administrative expenses was \$458,000 for the six months ended June 30, 2003, which represents legal, travel, meals and entertainment and marketing expenses associated with our lending and investment activities, and operating expenses incurred for a real estate owned asset.

Provision for loan losses was \$60,000 for the six months ended June 30, 2003, which represents provisions to reflect certain loans at their estimated fair values.

Gain on sale of loans and real estate was \$1.0 million for the six months ended June 30, 2003, which represents a partial liquidation of a joint venture interest in 2003.

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

We were formed in June 30, 2003 by ACM to operate and expand the SF Business. On July 1, 2003, ACM contributed a portfolio of structured finance investments and related debt to Arbor Realty Limited Partnership (ARLP), our operating partnership. In addition, certain employees of ACM were transferred to ARLP. These assets, liabilities and employees represent a substantial portion of the SF Business.

We are externally managed and advised by ACM and pay ACM a management fee in accordance with the terms of the management agreement among us. ACM also sources originations, provides underwriting services and services all structured finance assets on behalf of ARLP. As a result, the operating expenses as presented in the historical consolidated interim financial statements would have been affected had we been formed at an earlier time. Employee compensation and benefits expense would have decreased by \$1.3 million for the six months ended June 30, 2003, because these costs would have been borne by ACM under terms of the management agreement. Similarly, selling and administrative expense would have decreased by \$95,000 for the six months ended June 30, 2003.

In accordance with the terms of the management agreement, ACM receives a management fee, composed of a base management fee and incentive compensation. At least 25% of this incentive compensation is paid to ACM in shares of our common stock, subject to ownership limitations in ART's charter. We have also agreed to share with ACM a portion of the origination fees that we receive on loans we originate through ACM.

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

The pro forma consolidated interim financial information is limited to adjustments that are directly attributable to the private placement, expected to have a continuing impact on us and are factually supportable. These adjustments are based on the assumption that certain compensation and benefits expenses and certain selling and administrative expenses incurred by the SF Business would not have been incurred if we had been in operation during the periods presented. The pro forma financial results do not include what the

## **Table of Contents**

impact would have been had the gross proceeds from the private financing been available to ACM during the entire period. Had these proceeds been available to ACM during the entire period, there would have been an impact on certain revenues and expenses, including the management fees payable pursuant to the management agreement. The management fees are calculated based on such factors as funds from operations and the equity of ARLP, each as defined in the management agreement. Such amounts represent speculative and forward-looking information that is not factually supportable.

The financial statements of the SF Business include the results of operations of the structured finance business segment of ACM and are not limited to the results of the structured finance assets that were transferred to us. In addition, ACM retained certain transactions in its structured finance portfolio, primarily because they were not deemed to be suitable investments for us. Had these retained assets been excluded from the financial statements of the SF Business, additional adjustments to the expense base would have been necessary to estimate what expenses would have been had these assets not been in the portfolio. Such adjustments would have been speculative. Lastly, operating results for assets that matured before the contribution of structured finance assets to us, but were in the portfolio of assets of the SF Business during the reporting period are also included in these statements.

## **Liquidity and Capital Resources**

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

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

Subsequent to and as a result of the private placement, substantially all of the operations of the SF Business have been conducted by us. Therefore, a description of the liquidity and capital resources of the SF Business is not presented. A description of our liquidity and capital resources is presented in the section of this Form 10-Q entitled "Management's Discussion & Analysis of Financial Condition and Results of Operations of Arbor Realty Trust, Inc. and Subsidiaries - Liquidity and Capital Resources."

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

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

### **Real Estate Risk**

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

## **Table of Contents**

### **Interest Rate Risk**

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

Our operating results will depend in large part on differences between the income from our loans and our borrowing costs. Most of our loans and borrowings are variable-rate instruments, based on LIBOR. The objective of this strategy is to minimize the impact of interest rate changes on our net interest income. Many of our loans and borrowings are subject to various interest rate floors. As a result, the impact of a change in interest rates may be different on our interest income than it is on our interest expense. Based on the loans and liabilities as of September 30, 2004, and assuming the balances of these loans and liabilities remain unchanged for the subsequent months, a 1% increase in LIBOR would increase our annual net income and cash flows by approximately \$2.0 million because the principal amount of loans that would be subject to an interest rate adjustment under this scenario is greater than the amount of liabilities that would subject to an interest rate adjustment. A 1% decrease in LIBOR would decrease our annual net income and cash flows by approximately \$231,000 because the principal amount of loans exceeds the amount of liabilities partially offset by the fact that the principal amount of loans currently subject to interest rate floors (and, therefore, would not be subject to a downward interest rate adjustment) exceeds the amount of liabilities currently subject to interest rate floors. As the size of the portfolio increases, a decline in interest rates may have a negative impact on our net income.

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

We invest in securities, which are designated as available-for-sale. These securities are adjustable rate securities that have a fixed component for three years and, thereafter, generally reset annually. These securities are financed with a repurchase agreement that bears interest at a rate of one month LIBOR plus .15%. Since the repricing of the debt obligations occurs more quickly than the repricing of the securities, on average our cost of borrowings will rise more quickly in response to an increase in market interest rates than the earnings rate on the securities. This will result in a reduction our net interest income and cash flows related to these securities. Based on the securities and borrowings as of September 30, 2004, and assuming the balances of these securities and borrowings remain unchanged for the subsequent months, a 1% increase in LIBOR would reduce our annual net income and cash flows by approximately \$475,000. A 1% decrease in LIBOR would increase our annual net income and cash flows by approximately \$475,000.

### **Market Value Risk**

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

### **Prepayment Risk**

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

**Table of Contents**

**Item 4. CONTROLS AND PROCEDURES**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Securities Exchange Act of 1934 reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our chief executive officer and chief financial officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls procedures, our management recognized that any controls and procedures no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Under the supervision and with the participation of our management, including our chief executive officer and chief financial officer, we have evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this report. Based upon that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are effective in providing reasonable assurance that information requiring disclosure is recorded, processed, summarized and reported within the time frame specified by the SEC's rules and forms.

There have been no significant changes in our internal controls over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting during our most recent fiscal quarter.

**PART II. OTHER INFORMATION**

**Item 1. LEGAL PROCEEDINGS**

Not applicable.

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

During the period covered by this report, the Company issued a total of 551,150 shares of its common stock upon the exercise of 891,959 warrants that were originally issued pursuant to the terms of the Warrant Agreement on July 1, 2003. Pursuant to the Warrant Agreement, each of the warrants are exercisable from July 13, 2004 to July 1, 2005 for one share of common stock at an exercise price of \$15 in cash or a number of shares of common stock or warrants deemed to have a fair market value equivalent to the cash exercise price. The Company issued each of the warrants as a component of the Company's units, each consisting of five shares of common stock and a warrant, in a private placement of the units on July 1, 2003.

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

The Company received a total of \$6,591,450 in proceeds as a result of the exercise of the 891,959 warrants. Of the total number of shares of common stock issued upon the exercise of such warrants, 439,430 shares were issued in consideration of the payment of the cash exercise price and 111,720 shares were issued in consideration of the holder of the related warrant surrendering shares of common stock or additional warrants in lieu of the cash exercise price.

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

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

The annual meeting of stockholders of the Company was held on July 29, 2004, for the purpose of considering and acting upon the following:

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

Nominees	Aggregate Votes	
	For	Withheld
Jonathan A. Bernstein	17,145,882	922,266
Joseph Martello	16,956,784	1,111,564

(2) Two matters were approved and the votes cast for or against and the abstentions were as follows:

**(a) Stock Incentive Plan.**

	Aggregate Votes			
	For	Against	Abstained	Broker Non-Votes
Approval of the Arbor Realty Trust, Inc. 2003 Omnibus Stock Incentive Plan (as amended and restated)	13,363,375	239,760	969,720	

**(3) Ratification of Ernst & Young.**

	Aggregate Votes			
	For	Against	Abstained	Broker Non-Votes
Ratification of Ernst & Young LLP as the Company's independent auditors for fiscal year 2004	18,063,248	3,500	1,400	

The continuing directors of the Company are Ivan Kaufman, C. Michael Kojaian, Melvin F. Lazar, William Helmreich and Walter K. Horn.

**Item 5. OTHER INFORMATION**

Not applicable.

**Table of Contents****Item 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) Exhibits filed with this Form 10-Q:

Exhibit Number	Description
3.1	Articles of Incorporation of the Registrant*
3.2	Bylaws of the Registrant*
4.1	Form of Certificate for Common Stock*
4.2	Form of Global Units Certificate*
4.3	Form of Warrant Certificate (included as Exhibit A to Exhibit 4.4)*
4.4	Warrant Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and American Stock Transfer & Trust Company*
4.5	Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and JMP Securities, LLC*
10.1	Management Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
10.2	Services Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
10.3	Non-Competition Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Realty Limited Partnership and Ivan Kaufman*
10.4	Amended and Restated Agreement of Limited Partnership of Arbor Realty Limited Partnership, dated July 1, 2003, by and among Arbor Commercial Mortgage, LLC, Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc. and Arbor Realty GPOP, Inc.*
10.5	Warrant Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership, Arbor Realty Trust, Inc. and Arbor Commercial Mortgage Commercial Mortgage, LLC*
10.6	Registration Rights Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Commercial Mortgage, LLC*
10.7	Pairing Agreement, dated July 1, 2003, by and among Arbor Realty Trust, Inc., Arbor Commercial Mortgage, LLC Arbor Realty Limited Partnership, Arbor Realty LPOP, Inc. and Arbor Realty GPOP, Inc.*
10.8	Amended and Restated 2003 Omnibus Stock Incentive Plan**
10.9	Form of Restricted Stock Agreement*
10.10	Benefits Participation Agreement, dated July 1, 2003, between Arbor Realty Trust, Inc. and Arbor Management, LLC*
10.11	Form of Indemnification Agreement*
10.12	Structured Facility Warehousing Credit and Security Agreement, dated July 1, 2003, between Arbor Realty Limited Partnership and Residential Funding Corporation*
10.13	Master Repurchase Agreement, dated as of November 18, 2002, by and between Nomura Credit and Capital, Inc. and Arbor Commercial Mortgage, LLC*
10.14	Assignment and Assumption Agreement, dated as of July 1, 2003, by and between Arbor Commercial Mortgage, LLC and Arbor Realty Limited Partnership*
10.15	First Amended and Restated Loan Repurchase and Repurchase Agreement, dated July 12, 2004, by and among Arbor Realty Funding LLC, as seller, Wachovia Bank, National Association, as purchaser, and Arbor Realty Trust, Inc. and Arbor Realty Limited Partnership, as guarantors.
31.1	Certification of Chief Executive Officer pursuant to Exchange Act Rule 13a-14
31.2	Certification of Chief Financial Officer pursuant to Exchange Act Rule 13a-14

**Table of Contents**

<b>Exhibit Number</b>	<b>Description</b>
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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

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

**Table of Contents**

**SIGNATURES**

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

ARBOR REALTY TRUST, INC.  
(Registrant)

By: /s/ IVAN KAUFMAN

---

Name: Ivan Kaufman  
Title: Chief Executive Officer

By: /s/ FREDERICK C. HERBST

---

Name: Frederick C. Herbst  
Title: Chief Financial Officer

Date: November 12, 2004

## Edgar Filing: ARBOR REALTY TRUST INC - Form 424B3

### Table of Contents

#### ARBOR REALTY TRUST CLOSES \$50 MILLION UNSECURED REVOLVING CREDIT FACILITY

Uniondale, NY, December 13, 2004 -- Arbor Realty Trust, Inc. (NYSE: ABR), a real estate investment trust focused on the business of investing in real estate related bridge and mezzanine loans, preferred equity investments, mortgage-related securities and other real estate related assets, announced today that on December 7, 2004 it closed a \$50 million unsecured revolving credit facility with affiliates of Watershed Asset Management, LLC. Watershed is a San Francisco based asset management firm focused on value-driven investments. The facility has a term of one-year with two one-year renewal options and bears interest at a spread over LIBOR of 700 basis points over the initial term.

Ivan Kaufman, CEO of Arbor Realty Trust commented, "We are excited to have closed on this new credit facility with Watershed. This transaction adds additional diversification to our financing sources and is a reflection of the successful execution of our business strategy. It gives Arbor flexibility to increase our lending capacity and grow the portfolio. Our primary goal is to maximize our return on equity for shareholders, and we believe this facility will assist us in achieving that objective."

#### ABOUT ARBOR REALTY TRUST, INC.

Arbor Realty Trust, Inc. is a real estate investment trust, which invests in a diversified portfolio of multi-family and commercial real estate related bridge and mezzanine loans, preferred equity investments, mortgage related securities and other real estate related assets. Arbor commenced operations in July 2003 and conducts substantially all of its operations through its operating partnership, Arbor Realty Limited Partnership. Arbor is externally managed and advised by Arbor Commercial Mortgage, LLC, a national commercial real estate finance company operating through 15 offices in the US that specializes in debt and equity financing for multi-family and commercial real estate.

#### 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 include, but are not limited to, continued ability to source new investments, changes in interest rates and/or credit spreads, changes in the real estate markets, and other risks detailed from time to time in the Arbor's periodic and other reports filed with the SEC. Such forward-looking statements speak

---

**Table of Contents**

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.