

# SECURITIES AND EXCHANGE COMMISSION

## FORM S-3/A

Registration statement for specified transactions by certain issuers [amend]

Filing Date: **1994-03-02**  
SEC Accession No. **0000950109-94-000344**

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### FILER

#### **GREEN TREE FINANCIAL CORP**

CIK: **890175** | IRS No.: **411263905** | State of Incorporation: **MN** | Fiscal Year End: **1231**  
Type: **S-3/A** | Act: **33** | File No.: **033-51935** | Film No.: **94514377**  
SIC: **6189** Asset-backed securities

Business Address  
1100 LANDMARK TOWERS  
345 ST PETER ST  
SAINT PAUL MN 55102-1641  
6122933400

AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON MARCH 2, 1994

REGISTRATION NO. 33-51935

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
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AMENDMENT NO. 2  
TO  
FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

-----  
GREEN TREE FINANCIAL CORPORATION  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

-----  
MINNESOTA  
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)

41-1263905  
(I.R.S. EMPLOYER IDENTIFICATION NO.)

1100 LANDMARK TOWERS  
345 ST. PETER STREET  
SAINT PAUL, MINNESOTA 55102-1639  
(612) 293-3400  
(ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,  
INCLUDING AREA CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES)

-----  
DREW S. BACKSTRAND  
1100 LANDMARK TOWERS  
345 ST. PETER STREET  
SAINT PAUL, MINNESOTA 55102-1639  
(612) 293-3400  
(NAME, ADDRESS, INCLUDING ZIP CODE, AND TELEPHONE NUMBER,  
INCLUDING AREA CODE, OF AGENT FOR SERVICE)

COPIES TO:

CHARLES F. SAWYER  
DORSEY & WHITNEY  
220 SOUTH SIXTH STREET  
MINNEAPOLIS, MINNESOTA 55402

CATHY M. KAPLAN  
BROWN & WOOD  
ONE WORLD TRADE CENTER  
NEW YORK, NEW YORK 10048

-----

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE OF SECURITIES TO THE PUBLIC: As soon as practicable after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THE REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(A) OF THE SECURITIES ACT OF 1933, OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(A), MAY DETERMINE.

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PART II.

INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION

<TABLE>

<S>	<C>
SEC registration fee.....	\$ 185,862.06
Blue Sky fees and expenses.....	10,000.00
Accountant's fees and expenses.....	500,000.00*
Attorney's fees and expenses.....	100,000.00*
Trustee's fees and expenses.....	15,000.00
Printing and engraving expenses.....	150,000.00*
Rating Agency fees.....	150,000.00*
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Total.....	\$1,110,862.06
	=====

</TABLE>

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\* Estimated

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 302A.521 of the Minnesota Statutes requires Green Tree ("the

Company") to indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person with respect to the Company, against judgments, penalties, fines, including reasonable expenses, if such person (1) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including without limitations, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions; (2) acted in good faith; (3) received no improper personal benefit, and statutory procedure has been followed in the case of any conflict of interest by a director; (4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and (5) in the case of acts or omissions occurring in the person's performance in the official capacity of director or, for a person not a director, in the official capacity of officer, committee member, employee or agent, reasonably believed that the conduct was in the best interests of the Company, or, in the case of performance by a director, officer, employee or agent of the Company as a director, officer, partner, trustee, employee or agent of another organization or employee benefit plan, reasonably believed that the conduct was not opposed to be best interests of the Company, unless otherwise limited by the Articles of Incorporation or Bylaws of the Company. In addition, Section 302A.521, subd. 3, requires payment by the Company, upon written request, of reasonable expenses in advance of final disposition in certain instances, upon receipt of a written undertaking by the person to repay all amounts so paid if it is ultimately determined that the person is not entitled to indemnification, unless otherwise limited by the Articles of Incorporation or Bylaws of the Company. A decision as to required indemnification is made by a disinterested majority of the Board of Directors present at a meeting at which a disinterested quorum is present, or by a designated committee of the Board, by special legal counsel, by the shareholders, or by a court.

The Company's Articles of Incorporation provide that a director is not liable to the Company or its shareholders for monetary damages for a breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; (iii) under Sections 302A.559 or 80A.23 of the Minnesota Statutes; (iv) for any transaction from which the director derived an improper personal benefit; or (v) for any act or omission occurring prior to the date such indemnification provision became effective.

The Company maintains a directors' and officers' insurance policy.

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Pursuant to the form of Underwriting Agreement, a copy of which is included as Exhibit 1.1 hereto, the Underwriters will agree, subject to certain conditions, to indemnify the Company, its directors, certain of its officers and persons who control the Company within the meaning of the Securities Act of 1933, as amended (the "Securities Act"), against certain liabilities.

ITEM 16. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial Statements:

Not Applicable

(b) Exhibits:

<TABLE>

<C>	<S>
*1.1	Proposed form of Underwriting Agreement
**3.1	Articles of Incorporation of Green Tree Financial Corporation
**3.2	Bylaws of Green Tree Financial Corporation
*4.1	Form of Trust Agreement
*4.2	Form of Assignment made by Green Tree Financial Corporation in favor of Finance I
*4.3	Form of Assignment made by Green Tree Financial Corporation in favor of Finance I and Finance II
*4.4	Form of Transfer Agreement among Finance I, Finance II and the Trust
*4.5	Form of Finance I Note
*4.6	Form of Servicing Agreement between Green Tree Financial Corporation and the Trust
*4.7	Form of Security Agreement between Finance I and the Trust
*4.8	Form of Administration Agreement among the Trust, the Administrator and the Trustee
*5.1	Opinion and consent of Dorsey & Whitney as to legality
8.1	Opinion of Dorsey & Whitney as to tax matters
***21.1	Subsidiaries of the Registrant
*23.1	Consent of Dorsey & Whitney (included as part of Exhibit 5.1)
24.1	Power of attorney from officers and directors of the Registrant signed by an attorney-in-fact (included on page II-4)

</TABLE>

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- \* Previously filed.
- \*\* Incorporated by reference to the similarly numbered exhibit to the Registrant's Registration Statement on Form S-11 (File No. 33-50236), as amended, which became effective on September 11, 1992.
- \*\*\* Incorporated by reference to Exhibit 22.1 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 1992.

ITEM 17. UNDERTAKINGS

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that, in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is

asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as a part of this registration statement in reliance upon Rule

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430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

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

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

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#### SIGNATURES

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT OF 1933, THE REGISTRANT CERTIFIES THAT IT HAS REASONABLE GROUNDS TO BELIEVE THAT IT MEETS ALL OF THE REQUIREMENTS FOR FILING ON FORM S-3 AND HAS DULY CAUSED THIS AMENDMENT NO. 2 TO THE REGISTRATION STATEMENT TO BE SIGNED ON ITS BEHALF BY THE UNDERSIGNED, THEREUNTO DULY AUTHORIZED, IN THE CITY OF SAINT PAUL, STATE OF MINNESOTA, ON MARCH 2, 1994.

Green Tree Financial Corporation

/s/ John W. Brink

By:

-----  
JOHN W. BRINK  
EXECUTIVE VICE PRESIDENT,  
TREASURER AND CHIEF FINANCIAL  
OFFICER

POWER OF ATTORNEY

PURSUANT TO THE REQUIREMENTS OF THE SECURITIES ACT, THIS AMENDMENT NO. 2 TO THE REGISTRATION STATEMENT HAS BEEN SIGNED BY THE FOLLOWING PERSONS IN THE CAPACITIES AND ON THE DATE INDICATED.

<TABLE>  
<CAPTION>

SIGNATURE -----	TITLE -----	DATE -----
<S>	<C>	<C>
*	Chairman of the Board and Chief Executive Officer (Principal Executive Officer) and Director	March 2, 1994
----- LAWRENCE M. COSS		
/s/ John W. Brink	Executive Vice President, Treasurer and Chief Financial Officer (Principal Financial Officer)	March 2, 1994
----- JOHN W. BRINK		
*	Vice President and Controller (Principal Accounting Officer)	March 2, 1994
----- ROBLEY D. EVANS		
*	Director	March 2, 1994
----- RICHARD G. EVANS		

</TABLE>

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<TABLE>  
<CAPTION>

SIGNATURE -----	TITLE -----	DATE -----
<S>	<C>	<C>

\* Director March 2, 1994

-----  
C. THOMAS MAY, JR.

\* Director March 2, 1994

-----  
W. MAX MCGEE

\* Director March 2, 1994

-----  
ROBERT S. NICKOLOFF

\* Director March 2, 1994

-----  
KENNETH S. ROBERTS

/s/ John W. Brink

\* By

-----  
JOHN W. BRINK  
AS ATTORNEY-IN-FACT

</TABLE>

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EXHIBIT INDEX

<TABLE>

<C>	<S>	<C>
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Green Tree Financial Corporation  
1100 Landmark Towers  
345 St. Peter Street  
St. Paul, Minnesota 55102-1639

Re: Registration Statement on Form S-3  
File No. 33-51935  
Tax Characterization Issues

Gentlemen and Ladies:

We have acted as counsel to Green Tree Financial Corporation, a Minnesota corporation ("Green Tree"), in connection with the preparation of a Registration Statement on Form S-3, File No. 33-51935, filed with the Securities and Exchange Commission on January 18, 1994, as amended by Amendment No. 1 thereto filed on February 25, 1994 (the "Registration Statement"), relating to the registration of \$508,000,000 of \_\_\_% Securitized Net Interest Margin Certificates (the "Senior Certificates"). The Senior Certificates are to be issued under a Trust Agreement (the "Trust Agreement") substantially in the form filed as Exhibit 4.1 to the Registration Statement, among Green Tree Manufactured Housing Net Interest Margin Finance Corp. I, a Delaware corporation ("Finance I"), Green Tree Manufactured Housing Net Interest Margin Finance Corp. II, a Delaware corporation ("Finance II"), and Wilmington Trust Company, as trustee (the "Trustee").

You have requested our opinion with respect to the federal income tax characterization of the Trust and the Senior Certificates. For purposes of rendering our opinion we have examined the Registration Statement, the Trust Agreement and the related documents and agreements contemplated therein (collectively, the "Transaction Documents") and we have reviewed such questions of law as we have considered necessary and appropriate. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Trust Agreement.

Our opinion is based upon the existing provisions of the Internal Revenue Code of 1986, as amended (the "Code"), currently applicable Treasury Department regulations issued thereunder, current published administrative positions of the Internal Revenue Service (the "Service") contained in revenue rulings and revenue procedures, and judicial decisions, all of which are subject to

change, either prospectively or retroactively, and to possibly differing interpretations. Any change in such authorities may affect the opinions rendered herein. Our opinion is also based on the projections, representations, warranties, covenants and agreements set forth in the Transaction Documents and the assumption that Green Tree, the Senior Certificateholders, the Subordinated Certificateholders and the Trustee will at all times comply with the requirements of the Transaction Documents. We

have also relied in part on various factual representations made to us by the Subordinated Certificateholders, including the following:

1. There are and will be during the life of the Trust no contracts or other agreements between the Subordinated Certificateholders and the Senior Certificateholders other than as set forth in the Transaction Documents.
2. The Senior Certificateholders will not control the Subordinated Certificateholders or otherwise cause the Subordinated Certificateholders to act as their agent, and will not use the Subordinated Certificateholders to conceal their own active involvement in the conduct of the business of the Trust.
3. The net worth of each Subordinated Certificateholder shall be not less than the Minimum Net Worth.

Although we have not undertaken an independent investigation of any factual matters, nothing contrary to any of these representations has come to our attention in the course of our consideration of these matters. Any alteration of such factual representations may adversely affect our opinion.

An opinion of counsel is predicated on all the facts and conditions set forth in the opinion and is based upon counsel's analysis of the statutes, regulatory interpretations and case law in effect as of the date of the opinion. It is not a guarantee of the current status of the law and should not be accepted as a guarantee that a court of law or an administrative agency will concur in the opinion.

1. Federal Tax Characterization of the Trust. Based principally on  
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currently applicable Treasury Regulations issued under Section 7701 of the Code, which Regulations we believe to be controlling, it is our opinion that the Trust will not be treated as an "association" taxable as a corporation for federal income tax purposes. In two significant cases regarding the classification of limited partnerships for tax purposes, the opinions of the Court of Claims and the United States Tax Court closely followed the tests set forth in these regulations. See Zuckman v.

United States, 524 F.2d 79 (Ct. Cl. 1975); Larson v. Commissioner, 66 T.C. 159 (1976), acq., 1979-1 C.B. 1; see also Rev. Rul. 79-106, 1979-1 C.B. 448, Rev. Rul. 93-50, 1993-25 I.R.B. 13, and Rev. Proc. 89-12, 1989-1 C.B. 798. Furthermore, in Revenue Ruling 88-79, 1988-2 C.B. 361, the Service ruled that the tests set forth in these regulations to distinguish a partnership from an association should also be applied to determine the tax characterization of a business trust.

Section 301.7701-2(a)(1) of the Treasury Regulations lists six major characteristics ordinarily found in a corporation which distinguish a corporation from other forms of organizations. Section 301.7701-2(a)(2) of the

Treasury Regulations provides that since two of these factors (associates and an objective to carry on business and divide the gains therefrom) are generally common to both corporations and partnerships, the determination of whether an organization that has such characteristics is to be treated for tax purposes as a partnership or as an association taxable as a corporation depends upon an analysis of the remaining factors: continuity of life, free transferability of interests, centralization of management and limited liability.

Section 301.7701-2(a)(3) of the Treasury Regulations specifies that an unincorporated organization shall not be classified as an association taxable as a corporation unless such organization has more corporate characteristics than noncorporate characteristics, excluding characteristics common to both types of organizations. Under Section 301.7701-2(a)(3) of the Treasury Regulations, each of the four above-described characteristics is assigned equal weight in determining whether an organization has more corporate characteristics than noncorporate characteristics. See Larson and Rev. Rul. 93-50, 1993-25 I.R.B. 13, each of which applied equal weight to each of the four characteristics.

We conclude that under the Treasury Regulations' tests and relevant judicial authorities, the Trust lacks continuity of life and limited liability and that the Trust therefore will not be treated as an association taxable as a corporation for federal income tax purposes. The basis for this conclusion is discussed in more detail below.

(a) Continuity of Life. Under Section 301.7701-2(b)(1) of the Treasury  
-----  
Regulations, an organization is deemed to lack the corporate characteristic of continuity of life if the death, insanity, bankruptcy, retirement, resignation or expulsion of any member will cause a dissolution of the organization. Section 301.7701-2(b)(1) of the Treasury Regulations further provides that a limited partnership will not have continuity of life if such an event of withdrawal of a general partner causes a dissolution of the partnership, notwithstanding the fact that a dissolution upon such an event may be avoided by the remaining general partners

or at least a majority in interest of all remaining partners agreeing to continue the partnership.

Section 10.2 of the Trust Agreement provides that if (A) both of the Subordinated Certificateholders experience a Dissolution Event (consisting of the withdrawal or expulsion of such Subordinated Certificateholder as a Subordinated Certificateholder of the Trust, the termination or dissolution of such Subordinated Certificateholder, or the occurrence of an Insolvency Event with respect to such Subordinated Certificateholder), or (B) one of the Subordinated Certificateholders experiences a Dissolution Event and the remaining Subordinated Certificateholder is unable, within 90 days of such Dissolution Event, to locate a successor Subordinated Certificateholder and to obtain a satisfactory opinion of counsel to the effect that the Trust will not thereafter be an association (or publicly traded partnership) taxable as a corporation for federal income tax purposes, the Trust shall terminate. Based

on this provision and the foregoing authorities, we conclude that the Trust lacks the corporate characteristic of continuity of life.

(b) Limited Liability. Section 301.7701-2(d)(1) of the Treasury

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Regulations provides that an organization has the corporate characteristic of limited liability if there is no member who is personally liable for the debts of the organization. Section 301.7701-2(d)(1) of the Treasury Regulations further provides that in the case of a corporate general partner of a limited partnership, personal liability exists with respect to such general partner if the general partner has "substantial assets" (in addition to its interest in the partnership) which could be reached by a creditor of the partnership or if the general partner is not merely a "dummy" acting as the agent for the limited partners. For advance ruling purposes, a limited partnership generally will be deemed to lack limited liability where the net worth of its corporate general partners at the time of the ruling request equals at least 10% of the total contributions to the partnership, and such net worth is expected to continue to equal at least 10% of the total contributions throughout the life of the partnership. Rev. Proc. 89-12 at (S) 4.07. In Larson, the Tax Court held that, in the case of corporate general partners, if (1) the persons controlling the general partners are independent from, and unrelated to, the limited partners, and (2) the general partners are not being used by the limited partners "as a screen to conceal their own active involvement in the conduct of the business" of the partnership, then the general partner or partners will not be considered as agents of the limited partners.

Although the Subordinated Certificateholders have represented that each of them will have a net worth at least equal to the Minimum Net Worth, we have not determined if the Subordinated Certificateholders have "substantial assets" within the meaning of the Treasury Regulations. Consistent with the

discussion below, if the Senior Certificates are treated as debt of the Trust, it would appear, however, that the Subordinated Certificateholders may satisfy the 10% net worth condition to an advance ruling discussed above. Moreover, if the Senior Certificates are treated as debt of the Trust, the Subordinated Certificateholders will be the only parties who can be treated as partners in the Trust, and thus the Subordinated Certificateholders could not be considered to be "dummies" acting as agents for any other partners.

In addition, the Subordinated Certificateholders have represented that the Senior Certificateholders will not control the Subordinated Certificateholders or otherwise cause the Subordinated Certificateholders to act as their agent, and that the Senior Certificateholders will not use the Subordinated Certificateholders to conceal their own active involvement in the conduct of the business of the Trust. Thus, even if the Senior Certificates were recharacterized as equity interests in the Trust, the Subordinated Certificateholders would not be "dummies" acting as the agents of the Senior Certificateholders. Therefore, based on the foregoing authorities and the representations of the Subordinated Certificateholders, we conclude that the Trust lacks the corporate characteristic of limited liability.

Thus, we conclude that under the tests of the applicable Treasury Regulations, the Trust lacks the corporate characteristics of continuity of life and limited liability. Under the Treasury Regulations, the absence of any two of the four principal characteristics which distinguish a partnership from an association is sufficient to establish that the Trust will not be treated as an association for federal income tax purposes. Therefore, it is our opinion that pursuant to Section 7701 of the Code, the Trust will not be treated as an association taxable as a corporation for federal income tax purposes. It is not necessary to determine and we do not express any opinion regarding whether the Trust will possess the characteristics of free transferability or centralized management.

(c) Publicly Traded Partnership. Under Section 7704 of the Code, certain

publicly traded partnerships are treated as corporations for federal income tax purposes. This treatment does not apply, however, to any publicly traded partnership if 90% or more of the gross income of the partnership constitutes "qualifying income." For purposes of Section 7704, "qualifying income" generally includes interest, dividends and certain other types of passive income.

(i) Certain Qualifying Income. Pursuant to the Transaction Documents, the

sole sources of income for the Trust will be the Residual Assets (and the related obligation of Green Tree to make Inside Refinancing Payments and Repurchase Payments pursuant to the Residual Assets Assignment), the Finance I Note and possibly income generated by the Reserve Fund from Eligible

Investments. Based, in part, on the representations made in the documents creating the REMICs in which the Residual Assets represent an ownership interest, we conclude that the income of the Trust from the Residual Assets will be considered qualifying income within Section 7704 of the Code. Furthermore, we believe that the interest payments on the Finance I Note, as well as income generated by the Reserve Fund, will also be treated as qualifying income.

(ii) Status of the Finance I Note. In general, for federal income tax

purposes, the characterization of a transaction as a sale of property or a secured loan is a question of fact, the resolution of which is based upon a determination of who will receive the benefits of, and bear the burdens relating to, the property. Thus, the determination of whether an instrument arising from such a transaction will be treated as debt for federal income tax purposes, or instead will be treated as a sale of the assets which secure such debt, depends on all the facts and circumstances in each case. See generally, Plumb, The Federal Income Tax Significance of Corporate Debt: A Critical Analysis and a Proposal, 26 Tax L. Rev. 369 (1971). In any such determination, several factors must be considered, and debt characterization may be indicated by, among other things, the independence of the debt holders and equity holders, the intention of the parties to create a debt, the creation of a formal debt instrument, the

provision of a fixed maturity date, the safety of the principal amount, the debt to equity ratio of the issuer, the nature of the assets serving as security for the obligation, and various other factors.

With respect to the Finance I Note, we note that the Trust, as the holder of the Finance I Note, may be considered independent from Green Tree, the sole owner of the equity interests in Finance I. Finance I and the Trust have evidenced their intention to create a debt, and the Finance I Note is in form a debt instrument which includes an unconditional promise to pay a sum certain, together with interest on the unpaid balance thereof, by a reasonably close, fixed maturity date. The Finance I Note's maturity date is February 15, 2004, which is less than ten years from its date of issue, and it includes default provisions which appear to be commercially reasonable and consistent with debt characterization. With respect to the safety of the principal amount of the Finance I Note, the debt to equity ratio of Finance I, evidenced by a substantial retained interest accruing to the benefit of Finance I as measured by the excess of the value of the Fee Assets over the face amount of the Finance I Note, is within the range of commonly accepted debt to equity ratios. In addition, the interest rate payable with respect to the unpaid principal of the Finance I Note appears to be consistent with an investor's determination that such note is a debt instrument. Finally, we note that the Fee Assets, which serve as security for the Finance I Note, represent income for services yet to be performed by Green Tree. Several cases have held that similar types of service income streams cannot be sold, and that any attempted sale of such income

should be treated as a loan for federal income tax purposes. See, e.g. *Hydrometals, Inc. v. Commissioner*, 31 T.C.M. 1250 (1972). Based on these considerations and certain others, we conclude that the Finance I Note will be treated as debt for federal income tax purposes and that the interest thereon will be qualifying income within Section 7704 of the Code.

Thus, we conclude that if the Trust is treated as a partnership for federal income tax purposes, 90% or more of the Trust's gross income will constitute "qualifying income" within the meaning of Section 7704 of the Code. Therefore, it is our opinion that the Trust will not be taxed as a corporation under the publicly traded partnership rules of Section 7704 of the Code.

## 2. Federal Tax Characterization of the Senior Certificates. As discussed

-----  
above, the characterization of an instrument as debt or equity for federal income tax purposes depends on all of the facts and circumstances in each case. In analyzing the federal income tax characterization of the Senior Certificates, we note that the Senior Certificateholders will be independent from Finance I and Finance II, the holders of the equity interests in the Trust. We also note that, while the Senior Certificates are not clearly designated as notes or debt obligations, the terms of the Senior Certificates and the Trust Agreement contains an unconditional promise by the Trust to pay to Senior Certificateholders a sum certain, together with interest on the unpaid balance thereof, by a reasonably close fixed maturity date (February 15, 2004), and an

agreement by all parties to treat the Senior Certificates as debt for federal income tax purposes. The Senior Certificates also include default provisions which appear to be commercially reasonable and consistent with debt characterization. With respect to the safety of the principal amount of the Senior Certificates, we note that the debt to equity ratio of the Trust, as evidenced by a substantial retained interest accruing to the benefit of the Trust (and Subordinated Certificateholders) measured by the excess of the value of the assets of the Trust (including the Reserve Fund and certain reserve funds associated with the Trust's Residual Assets) over the outstanding principal amount of the Senior Certificates, is within the range of commonly accepted debt to equity ratios. As a result, the Senior Certificates have received one of the four highest, i.e. investment grade, ratings from two nationally recognized statistical rating organization. Furthermore, the interest rate payable with respect to the unpaid principal of the Senior Certificates appears to be consistent with a Senior Certificateholder's determination that the Senior Certificates are debt instruments.

Based on the factors listed above and certain other considerations, although there are no regulations, published rulings or judicial decisions involving the characterization for federal income tax purposes of interests with the same terms as the Senior Certificates, and although the result is not free from doubt in view of

the treatment of the transactions contemplated by the Transaction Documents by Green Tree for purposes of its financial statements and certain other features of the Senior Certificates, on balance, it is our opinion that the Senior Certificates will be treated as debt for federal income tax purposes.

We express no opinion about the tax treatment of any features of the Trust's activities or an investment therein other than those expressly set forth above.

Except as provided below, the foregoing opinions are being furnished to you solely for your benefit and may not be relied upon by, nor may copies be delivered to, any other person without our prior written consent.

We hereby consent to the inclusion of this opinion as an exhibit to the Registration Statement and to the use of our name under the heading "Certain Federal Income Tax Consequences" in the prospectus forming a part of the Registration Statement, and we hereby confirm that the discussion under such heading accurately sets forth our advice as to the likely outcome of material issues under the federal income tax laws.

Dated: March 2, 1994

Very truly yours,



