

SECURITIES AND EXCHANGE COMMISSION

**FORM 8-K**

Current report filing

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**FILER**

**ACCREDITED HOME LENDERS HOLDING CO**

CIK: **1174735** | IRS No.: **043669482** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: **000-50179** | Film No.: **04968399**  
SIC: **6162** Mortgage bankers & loan correspondents

Mailing Address  
15030 AVENUE OF SCIENCE  
STE 100  
SAN DIEGO CA 92128

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## FORM 8-K

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### CURRENT REPORT

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

August 9, 2004

Date of Report (Date of earliest event reported)

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# Accredited Home Lenders Holding Co.

(Exact name of registrant as specified in its charter)

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

**000-50179**  
(Commission File Number)

**04-3669482**  
(IRS Employer  
Identification No.)

**15090 Avenue of Science**  
**San Diego, CA**  
(Address of principal executive offices)

**92128**  
(Zip code)

**(858) 676-2100**  
(Registrant's telephone number, including area code)

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**Item 5. Other Events and Regulation FD Disclosure.**

On August 9, 2004, Accredited Home Lenders Holding Co. (the “Company”) entered into an Underwriting Agreement (the “Underwriting Agreement”) with Accredited Mortgage Loan REIT Trust, an indirect subsidiary of the Company (“REIT”), and the underwriters named therein (the “Underwriters”), in connection with the issuance and sale by REIT of 3,400,000 of REIT’s 9.75% Series A Perpetual Cumulative Preferred Shares and the related guarantee of the Company. In addition, REIT granted to the Underwriters pursuant to the Underwriting Agreement an over-allotment option to purchase up to an additional 510,000 of REIT’s 9.75% Series A Perpetual Cumulative Preferred Shares.

The transfer agent, registrar and dividend disbursement agent for the 9.75% Series A Perpetual Cumulative Preferred Shares will be Mellon Investor Services LLC.

**Item 7. Financial Statements and Exhibits.**

The following documents are filed herewith and incorporated by reference into Amendment No. 2 to the Registration Statement (File Nos. 333-117484 and 333-117484-01) of the Company and REIT filed with the Securities and Exchange Commission on Form S-3 under the Securities Act of 1933, as amended:

- 1.1 Form of Underwriting Agreement among Accredited Home Lenders Holding Co., Accredited Mortgage Loan REIT Trust and the Underwriters named therein
- 4.1 Specimen certificate for Accredited Mortgage Loan REIT Trust’s Series A Cumulative Redeemable Perpetual Preferred Shares
- 4.2 Form of Articles Supplementary to Declaration of Trust of Accredited Mortgage Loan REIT Trust
- 4.3 Form of Guarantee Agreement of Accredited Home Lenders Holding Co.
- 5.1 Opinion of Venable LLP regarding the legality of Accredited Mortgage Loan REIT Trust’s Series A Cumulative Redeemable Perpetual Preferred Shares
- 5.2 Opinion of Dewey Ballantine LLP regarding the legality of Accredited Home Lenders Holding Co.’s guarantee of payments on Accredited Mortgage Loan REIT Trust’s Series A Cumulative Redeemable Perpetual Preferred Shares
- 23.2 Consent of Venable LLP (contained in exhibit 5.1)
- 23.3 Consent of Dewey Ballantine LLP (contained in exhibit 5.2)

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**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 hereunto duly authorized.

**Accredited Home Lenders Holding Co.**

Date: August 9, 2004

By:

/s/ RAY W. MCKEWON

Name: Ray W. McKewon

Title: Executive Vice President

**3,400,000 Shares**  
**9.75% Series A Perpetual Cumulative Preferred Shares**  
**of**  
**ACCREDITED MORTGAGE LOAN REIT TRUST**  
**(a Maryland real estate investment trust)**

**UNDERWRITING AGREEMENT**

August 9, 2004

Bear, Stearns & Co. Inc.  
383 Madison Avenue  
New York, New York 10179

Friedman, Billings, Ramsey & Co., Inc.  
1001 19<sup>th</sup> Street North  
Arlington, Virginia 22209

Ladies and Gentlemen:

Accredited Mortgage Loan REIT Trust, a real estate investment trust organized and existing under the laws of Maryland (the "Trust"), and Accredited Home Lenders Holding Co., a Delaware corporation (the "Company" and, together with the Trust, the "Offerors"), confirm their agreement with the Underwriters named in Schedule I hereto (the "Underwriters") for whom Friedman, Billings, Ramsey & Co., Inc. and Bear, Stearns & Co. Inc. are acting as representatives (in such capacity, the "Representatives"), with respect to the issuance and sale by the Trust and the purchase by the Underwriters, acting severally and not jointly, of the respective numbers of the 9.75% Series A Perpetual Cumulative Preferred Shares (par value \$1.00 per share, liquidation preference \$25.00 per share) of the Trust (the "Preferred Securities") set forth in Schedule I, and with respect to the grant by the Trust to the Underwriters, acting severally and not jointly, of the option described in Section 2(b) hereof to purchase all or any part of the additional Preferred Securities to cover over-allotments, if any. The aforesaid Preferred Securities (the "Initial Securities") to be purchased by the Underwriters, and all or any part of the 510,000 Preferred Securities subject to the option described in Section 2(b) herein (the "Option Securities"), which shall have the same rights and privileges including, without limitation, rights to dividends as the Initial Securities, are hereinafter called, collectively, the "Shares." The Shares will be guaranteed by the Company with respect to distributions and payments upon liquidation, redemption or otherwise (the "Preferred Securities Guarantee"), to be dated as of the first Delivery Date (as defined below). The Preferred Securities and the related Preferred Securities Guarantee are collectively referred to herein as the "Securities."

The Offerors understand that the Underwriters propose to make a public offering of the Securities as soon as the Representatives deem advisable after this Agreement has been executed and delivered. The Preferred Securities will be issued pursuant to the declaration of trust of the Trust, as amended and restated, and as supplemented by articles supplementary thereto (the "Declaration").

The Offerors have filed with the Securities and Exchange Commission (the "Commission") a shelf registration statement on Form S-3 (File Nos. 333-117484 and 333-117484-01) covering the registration of the Preferred Securities and the Preferred Securities Guarantee under the Securities Act of 1933, as amended (the "Securities Act"), which permits the delayed or continuous offering of securities pursuant to Rule 415 of the rules and regulations of the Commission under the Securities Act (the "Securities Act Regulations"). Promptly after execution and delivery of this Agreement, the Offerors will either (i) prepare and file a prospectus in accordance with the provisions of Rule 424(b) ("Rule 424(b)") of the Securities Act Regulations or (ii) if the Offerors have elected to rely upon Rule 434 ("Rule 434") of the Securities Act Regulations, prepare and file a term sheet (a "Term Sheet") in accordance with the provisions of Rule 434 and Rule 424(b). The information included in such Term Sheet that was omitted from such registration statement at the time it became effective but that is deemed to be part of such registration statement at the time it became effective is referred to as "Rule 434 Information." Each prospectus used before such Rule 424(b) prospectus has been filed and any prospectus that omitted the Rule 434 Information, in each case that was used prior to the execution and delivery of this Agreement, is herein called a "preliminary prospectus." Such registration statement, including the exhibits thereto, schedules thereto, if any, and the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, at the time it became effective and including the Rule 434 Information is herein called the "Registration Statement." Any registration statement filed pursuant to Rule 462(b) of the Securities Act Regulations is herein referred to as the "Rule 462(b) Registration Statement" and after such filing the term "Registration Statement" shall include the Rule 462(b) Registration Statement. The prospectus, including any documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, is herein called the "base prospectus." The base prospectus, together with any prospectus supplement in the form first furnished to the Underwriters on or after the date hereof for use in connection with the offering of the Securities and including any documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act, is herein called the "Prospectus." If Rule 434 is relied on, the term "Prospectus" shall refer to the preliminary prospectus together with the Term Sheet and all references in this Agreement to the date of the Prospectus shall mean the date of the Term Sheet. For purposes of this Agreement, all references to the Registration Statement, any preliminary prospectus, the Prospectus or any Term Sheet or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

All references in this Agreement to financial statements and schedules and other information which is "contained," "included" or "stated" in the Registration Statement, any preliminary prospectus or the Prospectus (or other references of like import) shall be deemed to

mean and include all such financial statements and schedules and other information which is incorporated by reference in the Registration Statement, any preliminary prospectus or the Prospectus, as the case may be; and all references in this Agreement to amendments or supplements to the Registration Statement, any preliminary prospectus or the Prospectus shall be deemed to mean and include the filing of any document under the Securities Exchange Act of 1934 (the "Exchange Act") which is incorporated by reference in the Registration Statement, such preliminary prospectus or the Prospectus, as the case may be.

It is understood that approximately 33,000 shares of the Initial Shares ("Directed Shares") initially will be reserved by the Underwriters for offer and sale to officers, directors and related persons ("Directed Share Participants") upon the terms and conditions set forth in the Prospectus and in accordance with the rules and regulations of the National Association of Securities Dealers, Inc. (the "Directed Share Program"). Under no circumstances will the Representatives or any Underwriter be liable to the Company or to any Directed Share Participant for any action taken or omitted to be taken in good faith in connection with such Directed Share Program. To the extent that any Directed Shares are not affirmatively reconfirmed for purchase by any Directed Share Participant on or immediately after the date of this Agreement, such Directed Shares may be offered to the public as part of the public offering contemplated herein.

1. Representations and Warranties. The Offerors jointly and severally represent and warrant to, and agree with, each of the Underwriters as of the date hereof and as of the applicable delivery date, if any, of Securities hereunder (each such date being hereinafter referred to as a "Delivery Date"), as follows:

(a) Each of the Company and the Trust meets the requirements for use of Form S-3 under the Securities Act. Each of the Registration Statement and any Rule 462(b) Registration Statement has become effective under the Securities Act. No stop order suspending the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with.

At the respective times the Registration Statement became effective and at the Delivery Date, the Registration Statement, any Rule 462(b) Registration Statement and any post-effective amendments and supplements thereto complied and will comply in all material respects with the requirements of the Securities Act and the Securities Act Regulations and did not and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. The Prospectus as amended or supplemented, if applicable, at the Delivery Date and at the Closing Time referred to in Section 2 hereof, will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that no representation and warranty is made in this subsection (a) with respect to any information contained in or omitted from the Registration Statement or the Prospectus or any related preliminary prospectus or any amendment thereof or supplement thereto in reliance upon and in conformity with information furnished in writing to the Offerors by or on behalf of any Underwriter through you specifically for use therein (the "Underwriters' Information"). The parties acknowledge and agree that the

Underwriters' Information consists solely of the information in (i) the seventh paragraph, (ii) the fourth sentence of the tenth paragraph, (iii) the eleventh paragraph, (iv) the twelfth paragraph, (v) the thirteenth paragraph and (vi) the second sentence of the fourteenth paragraph, in each case, under the caption "Underwriting" in the Prospectus constitute the only information relating to any Underwriter furnished in writing to the Company by the Underwriters specifically for inclusion in the Registration Statement, the Prospectus, any Preliminary Prospectus or the Prospectus Supplement.

Each preliminary prospectus and prospectus filed as part of the Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the applicable Securities Act Regulations and each preliminary prospectus and the Prospectus delivered to the Underwriters for use in connection with the offering of the Securities was, at the time of such delivery, identical to any electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(b) The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, when they became effective or at the time when they were or hereafter are filed with the Commission, complied and will comply, as the case may be, in all material respects with the requirements of the Exchange Act and the Exchange Act Regulations, as applicable, and, when read together with the other information in the Prospectus, at the time such documents became or hereafter become effective or were filed, did not or will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) Since the respective dates as of which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries (the "Subsidiaries") considered as one enterprise (a "Material Adverse Effect"), whether or not arising in the ordinary course of business, (B) there have been no transactions entered into by the Company or any of its Subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company and its subsidiaries considered as one enterprise, and (C) there has been no dividend or distribution of any kind declared, paid or made on any class of its capital stock.

(d) The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the state of Delaware, with corporate power and authority to own its properties and conduct its business as described in the Prospectus, and has been duly qualified as a foreign corporation for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except as would not individually or in the aggregate have a Material Adverse Effect; and each Significant Subsidiary (as defined in Regulation S-X promulgated by the Commission) of the Company has been duly incorporated, chartered or organized and is validly existing as a corporation or trust in good standing under the laws of its jurisdiction of incorporation or organization.



(e) The authorized, issued and outstanding capital of the Trust as of May 4, 2004 is as set forth in the Prospectus Supplement in the column entitled “Actual” under the caption “Capitalization of REIT.”

(f) The Shares have been duly authorized for issuance in accordance with the Declaration and, when issued and paid for by the Underwriters, will be validly issued, fully paid and non-assessable shares of beneficial interest of the Trust.

(g) No personal liability will attach under the laws of the State of Maryland to holders of the Shares (the “Security Holders”) for any debt or obligation of the Trust solely as a result of their status as Security Holders, and the issuance of the Shares is not subject to the preemptive or other similar rights of any Security Holder of the Company.

(h) The description of the Shares and the common shares of the Trust in the Registration Statement and the Prospectus is accurate in all material respects and fairly presents the information purported to be shown.

(i) The Trust has been duly formed and is validly existing as a real estate investment trust in good standing under the laws of the State of Maryland with the power and authority to own, lease and operate its properties and conduct its business as described in the Prospectus; the Trust will conduct its business in the future in a manner consistent with the description of the Trust set forth in the Prospectus; the Trust is not a party to or bound by any material agreement or instrument other than this Agreement, the Declaration, the agreements and instruments contemplated by the Declaration or except as described in or contemplated by the Prospectus; and the Trust has no material liabilities or obligations other than those arising out of the transactions contemplated by this Agreement and the Declaration and described in the Prospectus.

(j) The issue and sale of the Shares by the Trust, the compliance by the Trust with the provisions of this Agreement and the consummation of the transactions herein contemplated (i) will not result in a breach of any of the terms or provisions of, or constitute a default under any indenture, loan agreement, mortgage, deed of trust or other agreement or instrument to which the Trust is a party or by which the Trust is bound or to which any of the property or assets of the Trust is subject except as would not individually or in the aggregate cause a material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Trust, and (ii) nor will such action result in any violation of the provisions of the Declaration or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Trust or any of its properties; and no consent, approval, authorization, order, license, certificate, permit, registration or qualification of or with any such court or other governmental agency or body is required to be obtained by the Trust for the issue and sale of the Shares by the Trust or the consummation by the Trust of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations, licenses, certificates, permits, registrations or qualifications as have already been obtained, or as may be required under the Securities Act or the Securities Act Regulations or state securities laws. The issuance by the Company of the Preferred Securities Guarantee, the compliance by the Company with the provisions of this Agreement, the execution, delivery and performance by the Company of the Preferred Securities Guarantee, and the consummation of the transactions herein and

therein contemplated will not result in a breach or violation of any of the terms or provisions of, or constitute a default under, (i) any indenture, loan agreement, mortgage, deed of trust, or other agreement or instrument to which the Company is a party or by which the Company is bound or to which any of the property or assets of the Company is subject, (ii) nor will such action result in any violation of the provisions of the Restated Certificate of Incorporation or by-laws of the Company or (iii) any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its properties, except in the case of (i) above as would not, individually or in the aggregate, have a Material Adverse Effect.

(k) The Preferred Securities Guarantee has been duly authorized and when validly executed and delivered by the Company and the Trust against payment for the Shares by the Underwriters in accordance with the terms of this Agreement will constitute valid and legally binding obligations of the Company enforceable in accordance with their respective terms, subject, as to enforcement, to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles (regardless of whether enforcement is sought in a proceeding at law or in equity); and the Preferred Securities Guarantee and the Declaration conform in all material respects to the descriptions thereof in the Prospectus.

(l) There are no contracts or documents which are required to be described in the Registration Statement, the Prospectus or the documents incorporated by reference therein or to be filed as exhibits thereto which have not been so described and filed as required.

(m) None of the Offerors is, and after giving effect to the offering and sale of any Shares will be, an "investment company," or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended (the "Investment Company Act").

(n) There are no legal or governmental proceedings pending or, to the Offerors' knowledge, threatened to which the Trust or the Company or any of its subsidiaries is a party or to which any of the properties of the Trust or the Company or any of its subsidiaries is subject that are required to be described in the Registration Statement or the Prospectus and are not so described.

(o) Except as contemplated herein, no person or entity holds a right to require or participate in the registration under the Securities Act of the Securities pursuant to the Registration Statement; no person or entity has a right of participation or first refusal with respect to the sale of the Securities; except as set forth in the Prospectus, there are no contracts, agreements or understandings between any Offeror and any person or entity granting such person or entity the right to require any Offeror to file a registration statement under the Securities Act with respect to any securities of any Offeror or to require any Offeror to include such securities with the Securities registered pursuant to the Registration Statement; the form of certificates evidencing the Shares comply in all material respects with applicable legal requirements and the applicable requirements of the Declaration and bylaws of the Trust and the requirements of the New York Stock Exchange ("NYSE").

(p) No approval, authorization, consent or order of or filing with any federal, state or local governmental or regulatory commission, board, body, authority or agency is required in connection with the execution, delivery and performance by the Company and the Trust of this Agreement, the consummation by them of the transactions contemplated hereby or the sale and delivery by them of the Securities as contemplated hereby other than (i) such as have been obtained, or will have been obtained at the Closing Time or the relevant Date of Delivery, as the case may be, under the Securities Act or the Exchange Act, (ii) such approvals as have been obtained in connection with the approval of the listing of the Shares on the NYSE, (iii) any necessary qualification under the securities or blue sky laws of the various jurisdictions in which the Shares are being offered by the Underwriters, and (iv) any approval of the National Association of Securities Dealers, Inc. (the "NASD") required with respect to the fairness and reasonableness of the underwriting terms and arrangements set forth herein.

(q) Each Offeror and their subsidiaries has all necessary licenses, authorizations, consents and approvals and has made all necessary filings required under any federal, state or local law, regulation or rule, and has obtained all necessary authorizations, consents and approvals from other persons required in order to conduct their respective businesses as described in the Registration Statement and Prospectus, except to the extent that any failure to have any such licenses, authorizations, consents or approvals, to make any such filings or to obtain any such authorizations, consents or approvals could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; neither the Company, the Trust nor any of their subsidiaries is in violation of, in default under, or has received any notice regarding a possible violation, default or revocation of any such license, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company, the Trust or any of their subsidiaries, the effect of which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; and no such license, authorization, consent or approval contains a materially burdensome restriction that is not adequately disclosed in the Registration Statement and the Prospectus.

(r) There are no actions, suits, proceedings, inquiries or investigations pending or, to the Offerors' knowledge, threatened against the Company or any of the Subsidiaries or any of their respective officers and directors or to which the properties, assets or rights of any such entity is subject, at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority, arbitration panel or agency which could reasonably be expected to result in a judgment, decree, award or order having, individually or in the aggregate, a Material Adverse Effect, or which could adversely affect the consummation of the transactions contemplated by this Agreement in any material respect.

(s) The Company has established and maintains and evaluates "disclosure controls and procedures" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's chief executive officer and its chief financial officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to

adversely affect the Company's ability to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a role in the Company's internal controls over financial reporting; since the date of the most recent evaluation of such disclosure controls and procedures, there have been no changes in internal controls over financial reporting that have materially affected or are reasonably likely to materially affect internal controls over financial reporting, including any corrective actions with regard to significant deficiencies and material weaknesses; the Company has taken actions reasonably necessary to ensure that the Company and its Subsidiaries and any of the officers and directors of the Company and its Subsidiaries, in their capacities as such, are in compliance with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder, except where the failure to be in compliance could not reasonably be expected to have a Material Adverse Effect; and the Company has taken actions intended to ensure that the Company and its Subsidiaries and any of the officers and directors of the Company and its Subsidiaries, in their capacities as such, will, following effectiveness of the Registration Statement, continue to be in compliance with the provisions of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder.

(t) The Company has filed in a timely manner all reports required to be filed pursuant to sections 13, 14 and 15(d) of the Exchange Act during the preceding twelve calendar months and, if during such period the Company has relied on Rule 12b-25(b) under the Exchange Act ("Rule 12b-25(b)") with respect to a report or a portion of a report, that report or portion of a report has actually been filed within the time period prescribed by Rule 12b-25(b).

(u) Deloitte & Touche LLP, whose reports on the audited financial statements of the Company and its subsidiaries, including, without limitation, the Trust are included as part of the Registration Statement and Prospectus or are incorporated by reference therein are and were during the periods covered by their reports independent public accountants within the meaning of the Securities Act, the Securities Act Regulations, and the requirements of the NYSE.

(v) The Company has not relied upon the Underwriters or legal counsel for the Underwriters for any legal, tax or accounting advice in connection with the offering and sale of the Securities.

(w) Any real property and buildings held under lease by any Offeror or any Subsidiary are held under valid, existing and enforceable leases, with such exceptions, liens, security interests, pledges, charges, encumbrances, mortgages and defects, as are disclosed in the Prospectus or are not material and do not interfere with the use made or proposed to be made of such property and buildings by any Offeror or such Subsidiary.

(x) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company, the Trust and each Subsidiary owns or possesses adequate license or other rights to use all patents, trademarks, service marks, trade names, copyrights, software and design licenses, trade secrets, manufacturing processes, other intangible property rights and know-how, if any (collectively "Intangibles"), necessary to entitle the Company, the Trust and each Subsidiary to conduct its business as described in the Prospectus, and neither the Company, the Trust nor any Subsidiary, has received notice of infringement of or conflict with (and knows of no such infringement of or conflict with) asserted rights of others with respect to any Intangibles which, individually or in the aggregate, could have a Material Adverse Effect.

(y) Except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, each of the Company, the Trust and the Subsidiaries has filed on a timely basis all necessary federal, state, local and foreign income and franchise tax returns, if any such returns were required to be filed, through the date hereof and, except as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, have paid all taxes shown as due thereon; and no tax deficiency has been asserted against the Company, the Trust or any of the Subsidiaries (except any such deficiencies which the Company, the Trust or any of the Subsidiaries is in good faith contesting in appropriate proceedings), nor does the Company, the Trust or any of the Subsidiaries know of any tax deficiency which is likely to be asserted against any such entity which, if determined adversely to any such entity, could reasonably be expected to have a Material Adverse Effect; all tax liabilities, if any, are adequately provided for on the respective books of such entities.

(z) Each of the Company, the Trust and the Subsidiaries maintains insurance (issued by insurers of recognized financial responsibility) of the types and in the amounts generally deemed adequate, if any, for their respective businesses and consistent with insurance coverage maintained by similar companies in similar businesses, including, but not limited to, insurance covering real and personal property owned or leased by the Company, the Trust and the Subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against, all of which insurance is in full force and effect.

(aa) There are no costs to or liabilities of the Company and the Subsidiaries associated with environmental laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which could, individually or in the aggregate, reasonably be deemed to have a Material Adverse Effect.

(bb) Except as disclosed in the Prospectus, there are no outstanding loans or advances or material guarantees of indebtedness by the Company, the Trust or any of the Subsidiaries to or for the benefit of any of the officers or directors of the Company, the trustees of the Trust or any of the Subsidiaries or any of the members of the families of any of them.

(cc) Neither the Company, the Trust nor any of the Subsidiaries nor, to the Company' s, or the Trust' s knowledge, any employee or agent of the Company, the Trust or any of the Subsidiaries, has made any payment of funds of the Company, the Trust or of any Subsidiary or received or retained any funds in violation of any law, rule or regulation and which is of a character required to be disclosed in the Prospectus.

(dd) The Company maintains a system of internal controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management' s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management' s

general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ee) The Company and each of the Subsidiaries are in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“ERISA”); no “reportable event” (as defined in ERISA) has occurred with respect to any “pension plan” (as defined in ERISA) for which the Company or any of the Subsidiaries would have any liability; the Company and each of the Subsidiaries have not incurred and do not expect to incur liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any “pension plan” or (ii) Section 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (“Code”); and each “pension plan” for which the Company and each of its Subsidiaries would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification.

(ff) Commencing with the Trust’s taxable year ended December 31, 2004, the Trust has been and upon sale of any Shares will continue to be organized and operated as a “real estate investment trust” (a “REIT”) under Sections 856 through 860 of the Code. The proposed method of operation of the Trust as described in the Prospectus will enable the Trust to continue to operate in a manner which would permit it to qualify as a REIT under the Code. Neither the Company nor the Trust has any present intention of changing the operations of the Trust or engaging in activities which would cause it to fail to qualify, or make economically undesirable its continued qualification, as a REIT.

(gg) There are no existing or, to the knowledge of the Company, threatened labor disputes with the employees of the Company or any of its Subsidiaries which are likely to have, individually or in the aggregate, a Material Adverse Effect.

(hh) No consent, approval, authorization or order of, or qualification with, any governmental body or agency, other than those obtained, is required to be obtained by the Company or REIT in connection with the offering of the Directed Shares in any jurisdiction where the Directed Shares are being offered. None of the Offerors have offered, nor caused the Representatives to offer, Preferred Securities to any person pursuant to the Directed Share Program with the specific intent to unlawfully influence (i) a customer or supplier of any Offeror to alter the customer’s or supplier’s level or type of business with the Company or (ii) a trade journalist or publication to write or publish favorable information about any Offeror or its products.

(ii) Any certificate signed by any officer of the Company or any Subsidiary delivered to the Underwriters or to counsel for the Underwriters pursuant to or in connection with this Agreement shall be deemed a representation and warranty by the Company to the Underwriters as to the matters covered thereby.

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## 2. Purchase, Sale and Delivery of the Securities.

(a) Initial Securities. On the basis of the representations, warranties, covenants and agreements herein contained, but subject to the terms and conditions herein set forth, the Trust agrees to sell to the Underwriters and the Underwriters, severally and not jointly, agree to purchase from the Trust, at a purchase price per Share of \$24.2125, the number of Initial Securities set forth opposite the respective names of the Underwriters on Schedule I hereto plus any additional number of Securities which such Underwriter may become obligated to purchase pursuant to the provisions of Section 11 hereof.

(b) Option Securities. In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions set forth, the Trust hereby grants an option to the Underwriters, severally and not jointly, to purchase up to an additional 510,000 Preferred Securities at the price per Share of \$24.2125. The option hereby granted will expire thirty calendar days after the date hereof and may be exercised in whole or in part from time to time only for the purpose of covering over-allotments which may be made in connection with the offering and distribution of the Initial Securities upon notice by the Representatives setting forth the number of Option Securities as to which the several Underwriters are then exercising the option and the time and date of payment and delivery for such Option Securities. Any such time and a Delivery Date shall be determined by the Representatives, but shall not be earlier than two full business days nor later than seven full business days after the exercise of said option, nor in any event prior to the Closing Time, as hereinafter defined. If the option is exercised as to all or any portion of the Option Securities, each of the Underwriters, acting severally and not jointly, will purchase that proportion of the total number of Option Securities then being purchased which the number of Initial Securities set forth in Schedule I opposite the name of such Underwriter bears to the total number of Initial Securities, subject in each case to such adjustments as the Representatives in their discretion shall make to eliminate any sales or purchases of fractional Shares.

(c) Payment. Payment of the purchase price for, and delivery of certificates for the Initial Securities shall be made at the office of Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022 (“Underwriters’ Counsel”), or at such other place as shall be agreed upon by the Representatives and the Offerors, at 10:00 A.M., New York City time, on the third or fourth business day (as permitted under Rule 15c6-1 under the Exchange Act) (unless postponed in accordance with the provisions of Section 11 hereof) after the determination of the initial public offering price of the Securities, or such other time not later than ten business days after such date as shall be agreed upon by the Representatives and the Offerors (such time and date of payment and delivery being herein called the “Closing Time”).

In addition, in the event that any or all of the Option Securities are purchased by the Underwriters, payment of the purchase price for, and delivery of certificates for, such Option Securities shall be made at the above-mentioned offices, or at such other place as shall be agreed upon by the Representatives, the Company and the Trust, on each Delivery Date as specified in the notice from the Representatives.

Payment for the Securities shall be made to or upon the order of the Trust of the purchase price by wire transfer in Federal (same day) funds to the Trust upon delivery of certificates for

the Securities to the Representatives through the facilities of the Depository Trust Company for the respective accounts of the several Underwriters against receipt therefor signed by the Representatives.

(d) Denominations; Registration. Certificates for the Initial Securities and the Option Securities, if any, shall be in such denominations and registered in such name or names and shall be in such denominations as the Representatives may request at least one business day before the Closing Time or the relevant Delivery Date, as the case may be. The Trust will permit you to examine and package such certificates for delivery at least one full business day prior to the Closing Time or the relevant Delivery Date, as the case may be.

3. Offering. Upon your authorization of the release of the Initial Securities, the Underwriters propose to offer the Securities for sale to the public upon the terms and conditions set forth in the Prospectus.

4. Covenants of the Offerors. Each of the Offerors jointly and severally covenants and agrees with each Underwriters as follows:

(a) Compliance with Securities Regulations and Commission Requests. The Offerors, subject to Section 4(b), will comply with the requirements of Rule 434 and will notify the Representatives immediately, and confirm the notice in writing, (i) when any post-effective amendment to the Registration Statement shall become effective, or any supplement to the Prospectus or any amended Prospectus shall have been filed, (ii) of the receipt of any comments from the Commission, (iii) of any request by the Commission for any amendment to the Registration Statement or any amendment or supplement to the Prospectus or for additional information, and (iv) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any order preventing or suspending the use of any preliminary prospectus, or of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, or of the initiation or threatening of any proceedings for any of such purposes. The Offerors will promptly effect the filings necessary pursuant to Rule 424(b) and will take such steps as they deem necessary to ascertain promptly whether the form of prospectus transmitted for filing under Rule 424(b) was received for filing by the Commission and, in the event that it was not, it will promptly file such prospectus. The Offerors will make every reasonable effort to prevent the issuance of any stop order and, if any stop order is issued, to obtain the lifting thereof at the earliest possible moment.

(b) Filing of Amendments. The Offerors will give the Representatives notice of their intention to file or prepare any amendment to the Registration Statement (including any filing under Rule 462(b)), any Term Sheet or any amendment, supplement or revision to either the prospectus included in the Registration Statement at the time it became effective or to the Prospectus, whether pursuant to the Securities Act, the Exchange Act or otherwise, will furnish the Representatives with copies of any such documents a reasonable amount of time prior to such proposed filing or use, as the case may be, and will not file or use any such document to which the Representatives or counsel for the Underwriters shall reasonably object.

(c) Delivery of Registration Statements. The Offerors have furnished or will deliver to the Representatives and counsel for the Underwriters, without charge, signed copies of the



Registration Statement as originally filed and of each amendment thereto (including exhibits filed therewith or incorporated by reference therein and documents incorporated or deemed to be incorporated by reference therein) and signed copies of all consents and certificates of experts, and will also deliver to the Representatives, without charge, a conformed copy of the Registration Statement as originally filed and of each amendment thereto (without exhibits) for each of the Underwriters. The copies of the Registration Statement and each amendment thereto furnished to the Underwriters will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) Continued Compliance with Securities Laws. The Offerors will comply with the Securities Act and the Securities Act Regulations and the Exchange Act and the Exchange Act Regulations so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and in the Prospectus. If at any time when a prospectus is required by the Securities Act to be delivered in connection with sales of the Securities, any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Underwriters or the Offerors, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the Securities Act or the Securities Act Regulations, the Offerors will promptly prepare and file with the Commission, subject to Section 3(b), such amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement or the Prospectus comply with such requirements, and the Offerors will furnish to the Underwriters such number of copies of such amendment or supplement as the Underwriters may reasonably request.

(e) Blue Sky Qualifications. The Offerors will use their best efforts, in cooperation with the Underwriters, to qualify the Shares for offering and sale under the applicable securities laws of such states and other jurisdictions as the Representatives may designate and to maintain such qualifications in effect for a period of not less than one year from the later of the effective date of the Registration Statement and any Rule 462(b) Registration Statement; provided, however, that each of the Offerors shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Securities have been so qualified, the Offerors will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification in effect for a period of not less than one year from the effective date of the Registration Statement and any Rule 462(b) Registration Statement.

(f) Rule 158. The Trust and the Company will make generally available to their Security holders as soon as practicable an earnings statement for the purposes of, and to provide the benefits contemplated by, the last paragraph of Section 10(a) of the Securities Act.

(g) Restriction on Sale of Securities. During a period of ninety (90) days from the date hereof, neither the Trust nor the Company will, without the prior written consent of the

Underwriters, directly or indirectly, offer, sell, offer to sell or otherwise dispose of any Shares, any other beneficial interests in the assets of the Trust, or any preferred securities or other securities of the Trust or the Company which are substantially similar to the Preferred Securities, including any guarantee of such securities. The foregoing sentence shall not apply to any of the Securities to be sold hereunder.

(h) Reporting Requirements. The Company, during the period when the Prospectus is required to be delivered under the Securities Act or the Exchange Act, will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act and the Exchange Act Regulations. If applicable, the Trust will disclose or cause to be disclosed in each annual report distributed to investors pursuant to Section 13(a) of the Exchange Act, a per share estimated value of the Preferred Securities, the method by which it was developed, and the date of the data used to develop the estimated value pursuant to Conduct Rule 2710(f)(2)(M) of the National Association of Securities Dealers, Inc.

(i) NYSE. The Offerors will use their best efforts to effect and maintain the listing of the Shares on the NYSE.

(j) Directed Share Program. Each Offeror will comply with all applicable securities and other applicable laws, rules and regulations, including without limitation, the rules and regulations of the NASD, in each jurisdiction in which the Directed Shares are offered in connection with the Directed Share Program and (ii) will pay all reasonable fees and disbursements of counsel incurred by the Underwriters in connection with the Directed Share Program and any stamp duties, similar taxes or duties or other taxes, if any, incurred by the Underwriters in connection with the Directed Share Program.

#### 5. Payment of Expenses.

(a) Expenses. The Company and the Trust jointly and severally agree to pay all expenses incident to the performance of each Offeror's obligations under this Agreement, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment thereto, (ii) the preparation, printing and delivery to the Underwriters of this Agreement, any Agreement among Underwriters and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Securities, (iii) the preparation, issuance and delivery of the certificates for the Preferred Securities to the Underwriters, (iv) the fees and disbursements of the Company's and the Trust's counsel, accountants and other advisors, other than the Underwriters, except to the extent otherwise specifically provided in this Agreement, (v) the qualification of the Securities under securities laws in accordance with the provisions of Section 3(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplement thereto, (vi) the printing and delivery to the Underwriters of copies of each preliminary prospectus, any Term Sheets and of the Prospectus and any amendments or supplements thereto, (vii) the preparation, printing and delivery to the Underwriters of copies of the Blue Sky Survey and any supplement thereto, (viii) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Underwriters in connection with, the review, if any, by the NASD of the terms of the sale of the Securities, (ix) any fees charged by securities rating

services for rating the Securities, (x) the fees and expenses of any transfer agent or registrar for the Securities, (xi) the cost of qualifying the Shares with The Depository Trust Company and (xii) the fees and expenses incurred in connection with the listing of the Shares.

(b) Termination of Agreement. If this Agreement is terminated by the Representatives in accordance with the provisions of Section 6 or Section 10(a)(i) hereof, the Company shall reimburse the Underwriters for all of their out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Underwriters.

6. Conditions of Underwriters' Obligations. The obligations of the several Underwriters hereunder to purchase and pay for the Initial Securities and the Option Securities, as provided herein, shall be subject to the accuracy of the representations and warranties of the Offerors contained herein, as of the date hereof and as of the Closing Time (for purposes of this Section 6 "Closing Time" shall refer to the Closing Time for the Initial Securities and any Additional Closing Time, if different, for the Option Securities), to the absence from any certificates, opinions, written statements or letters furnished to you or to Underwriters' Counsel pursuant to this Section 6 of any material misstatement or omission, to the performance by the Trust and the Company of their respective obligations hereunder, and to each of the following additional terms and conditions:

(a) Effectiveness of Registration Statement. The Registration Statement, including any Rule 462(b) Registration Statement, has become effective and at Closing Time or the relevant Delivery Date, as the case may be, no stop order suspending the effectiveness of the Registration Statement shall have been issued under the Securities Act or proceedings therefor initiated or threatened by the Commission, and any request on the part of the Commission for additional information shall have been complied with to the reasonable satisfaction of counsel to the Underwriters. The Prospectus shall have been filed with the Commission in accordance with Rule 424(b) or, if the Offerors have elected to rely upon Rule 434, a Term Sheet shall have been filed with the Commission in accordance with Rule 424(b).

(b) Opinion of Counsel. At the Closing Time or the relevant Delivery Date, the Representatives shall have received,

(i) an opinion of Dewey Ballantine LLP, counsel for the Company dated the Closing Time, addressed to the Underwriters substantially in the form attached hereto as Annex I. Such opinion shall be reasonably satisfactory to the Representatives.

(ii) an opinion of David E. Hertz, General Counsel to the Company, dated the Closing Time, addressed to the Underwriters substantially in the form attached hereto as Annex II. Such opinion shall be reasonably satisfactory to the Representatives.

(iii) an opinion of Venable LLP, special Maryland counsel to the Company, dated the Closing Time, addressed to the Underwriters substantially in the form attached hereto as Annex III. Such opinion shall be reasonably satisfactory to the Representatives.

(iv) the favorable opinion of Kirkland & Ellis LLP, special counsel to the Underwriters, dated as of the Closing Time, in form and substance satisfactory to the Underwriters.

(c) Officers' Certificate. At the Closing Time the Representatives shall have received a certificate from each of (i) two principal executive officers of the Company and (ii) two principal executive officers of the Trust, dated as of the Closing Time to the effect that (v) the condition set forth in subsection (a) of this Section 6 has been satisfied, (w) the representations and warranties of the Offerors set forth in Section 1 hereof are accurate as of the date hereof and as of the Closing Time or the relevant Delivery Date, as the case may be, (x) the Company or the Trust, as the case may be, has complied with all agreements and satisfied all conditions on its part to be performed or satisfied at or prior to the Closing Time or the relevant Delivery Date, as the case may be, (y) subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, neither the Company, the Trust nor any of their subsidiaries has sustained any material loss or interference with their respective businesses or properties from fire, flood, hurricane, accident or other calamity, whether or not covered by insurance, or from any labor dispute or any legal or governmental proceeding, and there has not been any material adverse change, or any development involving a material adverse change, in the business prospects, properties, operations, condition (financial or otherwise), or results of operations of the Company or the Trust, as the case may be, except in each case as described in or contemplated by the Prospectus and (z) no stop order suspending the effectiveness of the Registration Statement, any preliminary prospectus or the Prospectus has been issued and no proceedings for that purpose have been instituted or are pending or are threatened by the Commission.

(d) Accountant's Comfort Letter. At the time this Agreement is executed, the Representatives shall have received a comfort letter from Deloitte & Touche LLP, independent public accountants for the Company and the Trust, dated, respectively, as of the date of this Agreement and as of the Closing Time addressed to the Underwriters and in form and substance satisfactory to the Underwriters and Underwriters' Counsel.

(e) Bring-down Comfort Letter. At the Closing Time or the relevant Delivery Date, as the case may be, the Representatives shall have received from Deloitte & Touche LLP a letter, dated as of Closing Time or the relevant Delivery Date, as the case may be, to the effect that they reaffirm the statements made in their letter furnished pursuant to subsection (d) of this Section, except that the specified date referred to shall be a date not more than three business days prior to Closing Time or the relevant Delivery Date, as the case may be.

(f) Additional Documents. The Offerors shall have furnished the Underwriters and Underwriters' Counsel with such other certificates, opinions or other documents as they may have reasonably requested.

(g) Subsequent to the execution and delivery of this Agreement or, if earlier, the dates as of which information is given in the Registration Statement (exclusive of any amendment thereof) and the Prospectus (exclusive of any supplement thereto), there shall not have been any material change in the capital stock or long-term debt of the Company or any of the Subsidiaries or any change in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and the Subsidiaries taken as a whole, the effect of which, in any such case described above, is, in the judgment of the Underwriters, so material and adverse as to make it impracticable or inadvisable to proceed with the public offering or the delivery of the Securities on the terms and in the manner contemplated in the Prospectus (exclusive of any supplement).

(h) Approval of Listing. At the Closing Time, the Preferred Securities shall have been approved for listing on the NYSE subject only to official notice of issuance.

(i) Termination of Agreement. If any of the conditions specified in this Section 6 shall not have been fulfilled when and as required by this Agreement, or if any of the certificates, opinions, written statements or letters furnished to you or to Underwriters' Counsel pursuant to this Section 6 shall not be in all material respects reasonably satisfactory in form and substance to you and to Underwriters' Counsel, all obligations of the Underwriters hereunder may be cancelled by you at, or at any time prior to, the Closing Time and the obligations of the Underwriters to purchase the Option Securities may be cancelled by you at, or at any time prior to, the Additional Closing Time. Notice of such cancellation shall be given to the Company in writing or by telephone. Any such telephone notice shall be confirmed promptly thereafter in writing.

(j) NASD. The NASD shall not have raised any objection with respect to the fairness and reasonableness of the underwriting terms and arrangements.

## 7. Indemnification.

(a) The Offerors, jointly and severally, shall indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any and all losses, liabilities, claims, damages and expenses whatsoever as incurred (including but not limited to attorneys' fees and any and all expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, as originally filed or any amendment thereof, or any related Preliminary Prospectus or the Prospectus, or in any supplement thereto or amendment thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; provided, that no Offeror shall be liable in any such case to the extent but only to the extent that any such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through you expressly for use therein, and the parties agree that such information provided by or on behalf of any Underwriter through you consists solely of the material referred to in the last sentence of the second paragraph of Section 1(a) hereof; provided, further that with respect to any untrue statement or omission of material fact made in any preliminary prospectus, the indemnity agreement contained in this Section 7(a) shall not (i) inure to the benefit of any Underwriter from whom the person asserting any such loss, claim, damage or liability of such Underwriter occurs under the circumstance where it shall have been

determined by a court of competent jurisdiction by final and nonappealable judgment that (w) the Company had previously furnished copies of the Prospectus to the Representatives, (x) delivery of the Prospectus was required by the Securities Act to be made to such person, (y) the untrue statement or omission of a material fact contained in the preliminary prospectus was corrected in the Prospectus and (z) there was not sent or given to such person, at or prior to the written confirmation of the sale of such securities to such person, a copy of the Prospectus. This indemnity agreement will be in addition to any liability which any Offeror may otherwise have including under this Agreement.

(b) Each Underwriter, severally and not jointly, shall indemnify and hold harmless the Company, each of the directors of the Offerors, each of the officers of the Offerors who shall have signed the Registration Statement, and each other person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, liabilities, claims, damages and expenses whatsoever as incurred (including but not limited to attorneys' fees and any and all expenses whatsoever incurred in investigating, preparing or defending against any litigation, commenced or threatened, or any claim whatsoever, and any and all amounts paid in settlement of any claim or litigation), joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or otherwise, insofar as such losses, liabilities, claims, damages or expenses (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, as originally filed or any amendment thereof, or any related Preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that any such loss, liability, claim, damage or expense arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of any Underwriter through you expressly for use therein. The parties agree that such information provided by or on behalf of any Underwriter through you consists solely of the material referred to in the last sentence of the second paragraph of Section 1(a) hereof. This indemnity agreement will be in addition to any liability which any Underwriter may otherwise have including under this Agreement.

(c) The Offerors, jointly and severally, shall indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (i) caused by any untrue statement or alleged untrue statement of a material fact contained in any material prepared by or with the consent of the Company for distribution to participants in connection with the Directed Share Program, or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) as a result of the failure of any participant to pay for and accept delivery of Directed Shares that the participant has agreed to purchase; or (iii) related to, arising out of, or in connection with the Directed Share Program.

(d) Promptly after receipt by an indemnified party under subsection (a), (b) or (c) above of notice of any claims or the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify each party against whom indemnification is to be sought in writing of the claim or the commencement thereof (but the failure so to notify an indemnifying party shall not relieve it from any liability which it may have under this Section 7 to the extent that it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability that such indemnifying party may have otherwise than on account of the indemnity agreement hereunder). In case any such claim or action is brought against any indemnified party, and it notifies an indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate at its own expense in the defense of such action, and to the extent it may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party; provided, however, that such counsel to the indemnifying party shall not (except with the written consent of the indemnified party) also be counsel to the indemnified party. Notwithstanding the foregoing, the indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless (i) the employment of such counsel shall have been authorized in writing by one of the indemnifying parties in connection with the defense of such action, (ii) the indemnifying parties shall not have employed counsel to have charge of the defense of such action within a reasonable time after notice of commencement of the action or (iii) such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to those available to one or all of the indemnifying parties (in which case the indemnifying parties shall not have the right to direct the defense of such action on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by the indemnifying parties. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement or compromise of, or consent to the entry of judgment with respect to, any pending or threatened action in respect of which the indemnified party is or reasonably could have been a party and indemnity or contribution may be or could have been sought hereunder by the indemnified party, unless (x) such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability on claims that are or reasonably could have been the subject matter of such action and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of the indemnified party and (y) the indemnifying party confirms in writing its indemnification obligations hereunder with respect to such settlement, compromise or judgment.

8. Contribution. In order to provide for contribution in circumstances in which the indemnification provided for in Section 7 hereof is for any reason held to be unavailable from any indemnifying party or is insufficient to hold harmless a party indemnified thereunder, the Offerors, jointly and severally, and the Underwriters shall contribute to the aggregate losses, claims, damages, liabilities and expenses of the nature contemplated by such indemnification provision (including any investigation, legal and other expenses incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claims asserted, but after deducting in the case of losses, claims, damages, liabilities and expenses suffered by the Offerors, any contribution received by the Offerors from persons, other than the Underwriters, who may also be liable for contribution, including persons who control the Offerors within the

meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, officers of the Offerors who signed the Registration Statement and directors of the Offerors) as incurred to which the Offerors and one or more of the Underwriters may be subject, in such proportions as is appropriate to reflect the relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, from the offering of the Securities or, if such allocation is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to above but also the relative fault of the Offerors, on the one hand, and the Underwriters, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, liabilities or expenses, as well as any other relevant equitable considerations. The relative benefits received by the Offerors, on the one hand, and the Underwriters, on the other hand, shall be deemed to be in the same proportion as (x) the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Offerors and (y) the underwriting discount received by the Underwriters, respectively, in each case as set forth in the table on the cover page of the Prospectus. The relative fault of the Offerors, on the one hand, and of the Underwriters, on the other hand, shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Offerors, on the one hand, or the Underwriters, on the other hand, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Offerors and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 8. Notwithstanding the provisions of this Section 8, (i) no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Securities are underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 8, each person, if any, who controls an Underwriter within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as such Underwriter, and each person, if any, who controls the Offerors within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each officer of the Offerors who shall have signed the Registration Statement and each director of the Offerors shall have the same rights to contribution as the Offerors, subject in each case to clauses (i) and (ii) of the immediately preceding sentence. Any party entitled to contribution will, promptly after receipt of notice of commencement of any action, suit or proceeding against such party in respect of which a claim for contribution may be made against another party or parties, notify each party or parties from whom contribution may be sought, but the omission to so notify such party or parties shall not relieve the party or parties from whom contribution may be sought from any obligation it or they may have under this Section 8 or otherwise, except to the extent the party entitled to such notice is materially prejudiced thereby. The obligations of the Underwriters to contribute pursuant to this Section 8 are several in proportion to the respective number of Securities purchased by each of the Underwriters hereunder and not joint.



9. Representations, Warranties and Agreements to Survive Delivery. All representations, warranties and agreements contained in this Agreement or in certificates of officers or trustees of the Offerors submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any Underwriter or controlling person, or by or on behalf of the Offerors, and shall survive delivery of the Shares to the Underwriters.

10. Termination of Agreement.

(a) Termination; General. The Representatives may terminate this Agreement, by notice to the Offerors, at any time at or prior to Closing Time (i) if there has been, since the date of this Agreement or since the respective dates as of which information is given in the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Representatives, impracticable to market the Shares or to enforce contracts for the sale of the Shares, or (iii) if trading in any securities of the Company has been suspended by the Commission or the Nasdaq National Market System, or if trading generally on the American Stock Exchange or the NYSE or in the Nasdaq National Market System has been suspended or limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the NASD or any other governmental authority, or (iv) if a banking moratorium has been declared by either Federal or New York State authorities.

(b) Liabilities. If this Agreement is terminated pursuant to this Section, such termination shall be without liability of any party to any other party except as provided in section 5 hereof, and provided further that Sections 1, 7, 8 and 9 shall survive such termination and remain in full force and effect.

11. Default by One or More of the Underwriters.

(a) If one or more of the Underwriters shall fail at Closing Time or a Delivery Date to purchase the Shares which it or they are obligated to purchase under this Agreement (the "Defaulted Securities"), the Representatives shall have the right, within 24 hours thereafter, to make arrangements for one or more of the non-defaulting Underwriters, or any other underwriters, to purchase all, but not less than all, of the Defaulted Securities in such amounts as may be agreed upon and upon the terms herein set forth; if, however, the Representatives shall not have completed such arrangements within such 24-hour period, then:

(i) if the number of Defaulted Securities does not exceed 10% of the number of Shares, each of the non-defaulting Underwriters shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective underwriting obligations hereunder bear to the underwriting obligations of all non-defaulting Underwriters, or

(ii) if the number of Defaulted Securities exceeds 10% of the number of Shares, this Agreement or, with respect to any Delivery Date which occurs after the Closing Time, the obligation of the Underwriters to purchase and of the Offerors to sell the Option Securities shall terminate without liability on the part of any non-defaulting Underwriter.

No action taken pursuant to this Section shall relieve any defaulting Underwriter from liability in respect of its default.

In the event of any such default which does not result in a termination of this Agreement, or, in the case of a Delivery Date which is after the Closing Time, which does not result in a termination of the obligation of the Underwriters to purchase and the Trust to sell the relevant Option Securities, as the case may be, either the Representatives or the Offerors shall have the right to postpone Closing Time or the relevant Delivery Date, as the case may be, for a period not exceeding seven days in order to effect any required changes in the Registration Statement or Prospectus or in any other documents or arrangements. As used herein, the term "Underwriter" includes any person substituted for an Underwriter under this Section 11.

12. Notices. All communications hereunder, except as may be otherwise specifically provided herein, shall be in writing, and:

(a) if sent to any Underwriter, shall be mailed, delivered, or faxed and confirmed in writing, to such Underwriter c/o Bear, Stearns & Co. Inc., 383 Madison Avenue, New York, New York 10179, Attention: Equity Capital Markets and c/o Friedman, Billings, Ramsey & Co., Inc., 1001 19<sup>th</sup> Street North, Arlington, Virginia 22209, Attention: Syndicate Department, with a copy to Kirkland & Ellis LLP, 153 East 53rd Street, New York, New York 10022, Attention: Vincent J. Pisano, Esq.;

(b) if sent to the Trust or the Company, shall be mailed, delivered, or faxed and confirmed in writing c/o Accredited Home Lenders Holding Co., 15090 Avenue of Science, San Diego, California 92128, Attention: David E. Hertz, Esq., with a copy to Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, New York 10019-6092, Attention: Christopher J. DiAngelo, Esq.; provided, however, that any notice to an Underwriter pursuant to Section 7 shall be delivered or sent by mail or facsimile transmission to such Underwriter at its address set forth in its acceptance facsimile to you, which address will be supplied to any other party hereto by you upon request. Any such statements, requests, notices or agreements shall take effect at the time of receipt thereof.

13. Parties. This Agreement shall insure solely to the benefit of, and shall be binding upon, the Underwriters, the Trust and the Company and the controlling persons, directors, officers, employees and agents referred to in Section 7 and 8, and their respective successors and assigns, and no other person shall have or be construed to have any legal or equitable right, remedy or claim under or in respect of or by virtue of this Agreement or any provision herein contained. The term "successors and assigns" shall not include a purchaser, in its capacity as such, of Securities from any of the Underwriters.

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14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, but without regard to principles of conflicts of law that would apply the laws of another jurisdiction.

15. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

16. Headings. The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

17. Time is of the Essence. Time shall be of the essence of this Agreement. As used herein, the term “business day” shall mean any day when the Commission’s office in Washington, D.C. is open for business.

**[signature page follows]**

If the foregoing correctly sets forth the understanding between you, on the one hand, and the Trust and the Company, on the other hand, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement among us.

Very truly yours,

ACCREDITED MORTGAGE LOAN REIT TRUST

By: \_\_\_\_\_

Name: John Buchanan

Title: Chief Financial Officer

ACCREDITED HOME LENDERS HOLDING CO.

By: \_\_\_\_\_

Name: Ray W. McKewon

Title: Executive Vice President

Accepted as of the date first above written

BEAR, STEARNS & CO. INC.

By: Bear, Stearns & Co. Inc.

By: \_\_\_\_\_

Name: Chris O' Connor

Title: Managing Director

FRIEDMAN, BILLINGS, RAMSEY & CO., INC.

By: Friedman, Billings, Ramsey & Co., Inc.

By: \_\_\_\_\_

Name: James Kleeblatt

Title: Managing Director

As representatives of the Underwriters

**SCHEDULE I**

Name of Underwriter	Total Number of Initial Securities to be Purchased	Number of Option Securities to be Purchased if Maximum Option Exercised
Bear, Stearns & Co. Inc.	1,190,000	178,500
Friedman, Billings, Ramsey & Co., Inc.	1,190,000	178,500
Stifel, Nicolaus & Company, Incorporated	510,000	76,500
Advest, Inc.	170,000	25,500
Flagstone Securities, LLC	170,000	25,500
JMP Securities LLC	170,000	25,500
<b>Total</b>	<b>3,400,000</b>	<b>510,000</b>

Number:

Shares

CUSIP NO.: 00438G 20 5

**9.75% Series A Perpetual Cumulative Preferred Shares**

**(par value \$1.00 per share)**

**(liquidation preference \$25.00 per share)**

**of**

**Accredited Mortgage Loan REIT Trust**

FACE OF SECURITY

**UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.**

**TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE DECLARATION OF TRUST REFERRED TO BELOW.**

**The preferred shares evidenced by this certificate are subject to restrictions on transfer for the purpose of the Trust’s maintenance of its status as a real estate investment trust (a “REIT”) under the Internal Revenue Code of 1986, as amended (the “Code”). Subject to certain further restrictions and except as provided in the Declaration of Trust (as defined below), no Person may (i) Beneficially Own Shares in excess of 9.8% of the value of all outstanding Shares, (ii) Beneficially Own Shares that would result in the Shares being Beneficially Owned by fewer than 100 Persons (determined without reference to any rules of attribution), (iii) Beneficially Own Shares that would result in the Trust being “closely held” under Section 856(h) of the Code or otherwise cause the Trust to fail to qualify as a REIT, or (iv) Constructively Own Shares that would cause the Trust to Constructively Own 10% or more of the ownership interests in a tenant of the Trust’s real**

**property, within the meaning of Section 856(d)(2)(B) of the Code. Any Person who attempts to Beneficially or Constructively Own Shares in excess of the above limitations must immediately notify the Trust in writing. If any restrictions above are violated, the Shares evidenced hereby will be transferred automatically to a Share Trust and shall be designated Shares-in-Trust for the benefit of one or more charitable beneficiaries. In addition, upon the occurrence of certain events, attempted transfers in violation of the restrictions described above may be void ab initio. A copy of the Declaration of Trust, including the restrictions on transfer, will be sent without charge to each Shareholder who so requests. Such request must be made to the Secretary of the Trust at its principal office or to the Transfer Agent.**

The Trust will furnish to any shareholder, on request and without charge, a full statement of the information required by Section 8-203(d) of the Corporations and Associations Article of the Annotated Code of Maryland with respect to the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption of the shares of each class of beneficial interest which the Trust has authority to issue and, if the Trust is authorized to issue any preferred or special class in series, (i) the differences in the relative rights and preferences between the shares of each series to the extent set, and (ii) the authority of the Board of Trustees to set such rights and preferences of subsequent series. The foregoing summary does not purport to be complete and is subject to and qualified in its entirety by reference to the Trust's Declaration of Trust, as amended and restated, and as supplemented by the Articles Supplementary relating to the preferred shares evidenced hereby, as the same may be further amended and supplemented from time to time.

Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies that (the "Holder") is the registered owner of fully paid and non-assessable preferred shares of the Trust designated the 9.75% Series A Perpetual Cumulative Preferred Shares, par value \$1.00 per share and liquidation preference \$25.00 per share (the "Series A Preferred Shares"). The Series A Preferred Shares are transferable on the books and records of the Registrar, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the preferred shares evidenced hereby are issued and shall in all respects be subject to the provisions of the Declaration of Trust and Amended and Restated Bylaws of the Trust. Capitalized terms used but not defined herein shall have the respective meanings given to them in the Declaration of Trust.

This Certificate and the Series A Preferred Shares evidenced hereby are issued and shall be held subject to all of the provisions of the Declaration of Trust and Bylaws of the Trust and any amendments thereto.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, the Holder of the preferred shares evidenced hereby shall not be entitled to any benefit under the Declaration of Trust and this certificate shall not be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, Accredited Mortgage Loan REIT Trust has executed this certificate as of the date set forth below.

ACCREDITED MORTGAGE LOAN REIT TRUST

By: \_\_\_\_\_

Name: John S. Buchanan

Title: Chief Financial Officer

Dated: \_\_\_\_\_



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TRANSFER AGENT' S CERTIFICATE OF AUTHENTICATION

This is one of the certificates evidencing Series A Preferred Shares referred to in the within mentioned Articles Supplementary.

By: \_\_\_\_\_

Name: John Castellanos

Title: Vice President

Dated: \_\_\_\_\_

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ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Series A Preferred Shares evidenced hereby to:

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(Insert assignee' s social security or tax identification number)

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(Insert address and zip code of assignee)

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and irrevocably appoints:

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as agent to transfer the Preferred Shares evidenced hereby on the books of the Transfer Agent and Registrar. The agent may substitute another to act for him or her.

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Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Preferred Shares Certificate)

Signature Guarantee: \_\_\_\_\_ 1 \_\_\_\_\_

1. Signature must be guaranteed by an “eligible guarantor institution” (i.e., a bank, stockbroker, savings and loan association or credit union) meeting the requirements of the Registrar, which requirements include

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**SCHEDULE OF EXCHANGES FOR GLOBAL SECURITY**

The initial number of Series A Preferred Shares evidenced by this Global Preferred Share shall be \_\_\_\_\_. The following exchanges of a part of this Global Preferred Share have been made:

<b>Date of Exchange</b> _____	<b>Amount of increase in the number of shares evidenced by this Global Preferred Share</b> _____	<b>Number of shares evidenced by this Global Preferred Share following such increase or decrease</b> _____	<b>Signature of authorized officer of Registrar</b> _____
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## GUARANTEE

For value received, Accredited Home Lenders Holding Co., a Delaware corporation (the "Guarantor") hereby fully and unconditionally guarantees to each Holder the due and punctual payment of the Guarantee Payments, as and to the extent applicable (without duplication of amounts theretofore paid by Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust ("the Issuer")), when and as the same shall become due and payable, according to the terms of the 9.75% Series A Perpetual Cumulative Preferred Shares, par value \$1.00 per share and liquidation preference \$25.00 per share (the "Series A Preferred Shares") as set forth in the Issuer's Declaration of Trust, as amended and restated and as supplemented by the Articles Supplementary relating to the Series A Preferred Shares, as amended and supplemented from time to time, regardless of any defense, right of set-off or counterclaim which the Issuer or the Guarantor may have or assert. In case of the failure of the Issuer or any successor thereto punctually to pay any such Guarantee Payments, as and to the extent applicable, the Guarantor hereby agrees to cause any such payment to be made punctually when and as the same shall become due and payable, as if such payment were made by the Issuer. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to or for the benefit of the Holders or by payment by the Issuer of such amounts to or for the benefit of the Holders. All terms used in this Guarantee that are defined in the Preferred Shares Guarantee Agreement to which this Guarantee relates shall have the meanings assigned to them in such Preferred Shares Guarantee Agreement, dated as of August 12, 2004, from the Guarantor to the Holders of the Series A Preferred Shares.

The Guarantor hereby waives notice of acceptance of the Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

The Guarantor hereby agrees that its obligations under the Guarantee Agreement shall be as if it were a principal obligor and not merely a surety and shall be full and unconditional, irrespective of the validity, regularity or enforceability of any provision of the Series A Preferred Shares, the absence of any action to enforce the same, any waiver or consent by the Holder of any Series A Preferred Shares with respect to any terms thereof, the recovery of any judgment against the Issuer or any action to enforce the same, or any circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Series A Preferred Shares and that the Guarantor shall be liable as a principal obligor hereunder to make Guarantee Payments pursuant to the terms of the Guarantee Agreement notwithstanding the occurrence of any event referred to in Section 2.03 of the Guarantee Agreement.

Any Holder of Series A Preferred Shares may institute a legal proceeding directly against the Guarantor to enforce its rights under the Guarantee Agreement, without first instituting a legal proceeding against the Issuer or any other Person.

The Guarantee Agreement creates a guarantee of payment and not merely of collection. The Guarantee Agreement will not be discharged except (i) by payment of the Dividend

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Payments, the Redemption Price or the Liquidation Distribution, if and as applicable, in full by the Issuer, (ii) by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) by the Guarantor or (iii) upon termination of the Guarantee Agreement pursuant to Section 5.01 thereof.

The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid by the Guarantor to the Holders by the Guarantor under the Guarantee Agreement; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under the Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under the Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the applicable Holders and to pay over such amount to or for the applicable Holders.

If any Holder of Series A Preferred Shares is required by any court or otherwise to return to the Issuer or the Guarantor, or any custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official acting in relation to the Issuer or the Guarantor, any amount paid to such Holder in respect of such Guarantee Payments, the Guarantee issued under the Guarantee Agreement, to the extent theretofore discharged, shall be reinstated in full force and effect.

This Guarantee shall not be valid or obligatory for any purpose unless and until the Series A Preferred Shares to which this Guarantee relates are duly authorized, issued and outstanding.

Reference is made to the Preferred Shares Guarantee Agreement for further provisions with respect to this Guarantee.

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THE GUARANTEE AGREEMENT AND THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREUNDER, THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

Accredited Home Lenders Holding Co.  
as Guarantor

By: \_\_\_\_\_

Name: Ray W. McKewon

Title: Executive Vice President

## ACCREDITED MORTGAGE LOAN REIT TRUST

## ARTICLES SUPPLEMENTARY

Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland as follows:

FIRST: Under a power set forth in Article VII of the declaration of trust of the Trust, as amended and restated (which, as hereinafter amended, restated or supplemented from time to time is herein called the "Declaration of Trust"), the Board of Trustees of the Trust (the "Board of Trustees"), or a duly authorized committee thereof, by resolution duly adopted classified and designated 3,910,000 authorized but unissued preferred shares, par value \$1.00 per share, of the Trust as the 9.75% Series A Perpetual Cumulative Preferred Shares.

SECOND: The preferences, conversions and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the 9.75% Series A Perpetual Cumulative Preferred Shares are as follows, and upon any restatement of the Declaration of Trust, shall become part of Article VII of the Declaration of Trust, with any necessary or appropriate renumbering or relettering of the sections or subsections hereof:

## 9.75% Series A Perpetual Cumulative Preferred Shares

- (1) Designation and Number. A series of preferred shares of beneficial interest, \$1.00 par value per share, of the Trust, designated as the 9.75% Series A Perpetual Cumulative Preferred Shares (the "Series A Preferred Shares"), is hereby established. The number of Series A Preferred Shares shall be 3,910,000 shares.
- (2) Rank. The Series A Preferred Shares will, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Trust, rank (i) senior to all classes or series of common shares of the Trust, and to all equity securities ranking junior to such Series A Preferred Shares with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Trust; (ii) on parity with all equity securities issued by the Trust, the terms of which specifically provide that such equity securities rank on parity with the Series A Preferred Shares with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Trust; and (iii) junior to any equity securities issued by the Trust, the terms of which specifically provide that such equity securities rank senior to the Series A Preferred Shares with respect to dividend rights or rights upon liquidation, dissolution or winding up of the Trust.



(3) Dividends.

- (a) Holders of Series A Preferred Shares shall be entitled to receive, when, as and if authorized by the Board of Trustees and declared by the Trust, out of the Trust's legally available funds, cumulative preferential cash dividends at the rate of 9.75% of the Initial Liquidation Preference (as defined hereinafter) per Series A Preferred Share per annum (which is equivalent to a fixed annual amount of \$2.4375 per Series A Preferred Share). Such dividends shall accrue and cumulate from the date of original issuance and shall be payable quarterly in arrears on the last calendar day of each March, June, September and December or, if not a business day, the next succeeding business day, commencing September 30, 2004 (each a "Dividend Payment Date"). Any dividend payable on the Series A Preferred Shares for any partial dividend period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends shall be payable to holders of record as they appear in the share register of the Trust on such date as designated by the Board of Trustees for the payment of dividends that is not more than 45 calendar days immediately preceding such Dividend Payment Date (each, a "Dividend Record Date").
- (b) No dividends on the Series A Preferred Shares shall be declared by the Trust or paid or set apart for payment by the Trust at such time as the terms and provisions of any of the Trust's agreements, including any agreement relating to the Trust's indebtedness, prohibit such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach of, or a default under, any agreement or if such declaration or payment shall be restricted or prohibited by law.
- (c) Notwithstanding anything to the contrary contained herein, dividends on the Series A Preferred Shares shall accrue and cumulate whether or not current payment of dividends is prohibited, whether or not the Trust has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared by the Trust. Accumulated but unpaid dividends on the Series A Preferred Shares shall cumulate as of the Dividend Payment Date on which they first become payable.
- (d) Except as set forth in section 3(e), unless full cumulative dividends on the Series A Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for their payment is set apart for payment for all past dividend periods and the then-current dividend period (it being understood that a payment by Accredited Home Lenders Holding Co. ("Accredited") under its guarantee of the Series A Preferred Shares will be sufficient for this purpose):
  - (i) no dividends upon the Trust's common or preferred shares that the Trust may issue ranking junior to or on parity with the Series A Preferred Shares as to the payment of distributions and the distribution of assets upon liquidation (other than in common shares or in shares of any series of preferred shares that the Trust may issue ranking junior to the Series A Preferred Shares as to the payment of distributions and the distribution of assets upon liquidation) shall be declared or paid or set aside for payment;

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- (ii) no distribution shall be declared or made upon the Trust' s common shares or preferred shares that the Trust may issue ranking junior to or on parity with the Series A Preferred Shares as to the payment of distributions and the distribution of assets upon liquidation; and
  - (iii) no common or preferred shares that the Trust may issue ranking junior to or on parity with its Series A Preferred Shares as to the payment of distributions and the distribution of assets upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Trust (except by conversion into or in exchange for other shares of beneficial interest that the Trust may issue ranking junior to its Series A Preferred Shares as to the payment of distributions and the distribution of assets upon liquidation and except for transfers made pursuant to the provisions of the Declaration of Trust relating to restrictions on ownership and transfers of its shares of beneficial interest designed to ensure that it remains qualified as a real estate investment trust for United States federal income tax purposes).
- (e) When dividends are not paid in full (or a sum sufficient for such full payment is not set apart) upon the Series A Preferred Shares and any other series of shares of beneficial interest ranking on parity as to dividends with the Series A Preferred Shares:
- (i) all dividends declared upon the Series A Preferred Shares and any other series of shares of beneficial interest ranking on parity as to dividends with the Series A Preferred Shares shall be declared pro rata so that the amount of dividends declared per share on the Series A Preferred Shares and such other series of shares of beneficial interest shall in all cases bear to each other the same ratio that full dividends per share on the Series A Preferred Shares and full dividends, including required or permitted accumulations, if any, on such other series of shares of beneficial interest bear to each other;
  - (ii) no interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series A Preferred Shares which may be in arrears; and
  - (iii) any dividend payment made on the Series A Preferred Shares shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable.
- (f) Holders of Series A Preferred Shares shall not be entitled to any dividend, whether payable in cash, property or shares, in excess of full cumulative dividends on the Series A Preferred Shares as provided above.

- (4) Liquidation Preference. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Trust (referred to herein sometimes as a “liquidation”), the holders of Series A Preferred Shares then outstanding shall be entitled to receive out of the assets of the Trust legally available for distribution to shareholders the sum of (a) the liquidation preference of \$25.00 per share, (b) the applicable premium (expressed in dollar amount) as set forth in the table below and (c) an amount equal to any accrued and unpaid dividends (whether or not declared) to the date of payment, before any distribution of assets is made to holders of the Trust’s common shares or any series of the Trust’s preferred shares that may be issued that ranks junior to Series A Preferred Shares as to liquidation rights.

<b>Period</b>	<b>Applicable Premium</b>
August 12, 2004 through August 11, 2005	\$ 2.00
August 12, 2005 through August 11, 2006	\$ 1.75
August 12, 2006 through August 11, 2007	\$ 1.50
August 12, 2007 through August 11, 2008	\$ 1.00
August 12, 2008 through August 11, 2009	\$ 0.50
August 12, 2009 and thereafter	\$ 0.00

- (a) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the Trust’s available assets are insufficient to pay the amount of the liquidating distributions on all outstanding Series A Preferred Shares and the corresponding amounts payable on all shares of other classes or series of the Trust’s shares of beneficial interest that the Trust may issue ranking on parity with Series A Preferred Shares in the distribution of assets, then the holders of Series A Preferred Shares and all other such classes or series of shares of beneficial interest shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.
- (b) Written notice of any such liquidation, dissolution or winding up of the Trust, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 calendar days immediately preceding the payment date stated therein, to each record holder of the Series A Preferred Shares at the respective addresses of such holders as the same shall appear on the share transfer records of the Trust.
- (c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series A Preferred Shares shall have no right or claim to any of the remaining assets of the Trust.
- (d) None of a consolidation or merger of the Trust with or into another entity, the merger of another entity with or into the Trust, a statutory share exchange by the Trust or a sale, lease, transfer or conveyance of all or substantially all of the Trust’s property or business shall be considered a liquidation, dissolution or winding up of the Trust.

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- (e) In determining whether a distribution (other than upon voluntary or involuntary dissolution) by dividend, redemption or other acquisition of shares of the Trust or otherwise is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series A Preferred Shares will not be added to the Trust's total liabilities.

(5) Redemption.

- (a) Series A Preferred Shares are not redeemable prior to September 30, 2009, except upon the occurrence of a Tax Event or an Investment Company Event, each as defined below. On or after September 30, 2009, Series A Preferred Shares will be redeemable at the option of the Trust, in whole or in part, at any time or from time to time on not less than 30 nor more than 60 days' notice by mail, for cash at \$25.00 per share plus accrued and unpaid dividends (whether or not declared), if any, to, but excluding, the date of redemption (except when the redemption date falls after the dividend record date and before the corresponding dividend payment date) (the "Redemption Right"). Holders of Series A Preferred Shares to be redeemed shall surrender such Series A Preferred Shares at the place designated in such notice and shall be entitled to the redemption price and any accrued and unpaid dividends payable upon such redemption following such surrender. If notice of redemption of any of the Series A Preferred Shares has been given and if the funds necessary for such redemption have been set aside by the Trust in trust for the benefit of the holders of any of such Series A Preferred Shares so called for redemption, then, from and after the redemption date, dividends will cease to accrue on such Series A Preferred Shares, such Series A Preferred Shares shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price and any such accrued and unpaid dividends.
- (b) If fewer than all of the outstanding Series A Preferred Shares are to be redeemed pursuant to the Redemption Right, the shares to be redeemed shall be selected pro rata (as nearly as practicable without creating fractional shares) or by any other equitable method determined by the Board of Trustees. If such redemption is to be by lot and, as a result of such redemption, any holder of Series A Preferred Shares would become a holder of a number of Series A Preferred Shares in excess of the Ownership Limit (as defined in Article V of the Declaration of Trust) because such holder's Series A Preferred Shares were not redeemed, or were only redeemed in part, then, except as otherwise provided in the Declaration of Trust, the Trust shall redeem the requisite number of Series A Preferred Shares of such holder such that no holder will hold preferred shares in excess of the Ownership Limit subsequent to such redemption.

- (c) Notwithstanding anything to the contrary contained herein, unless full cumulative dividends on all Series A Preferred Shares have been or contemporaneously are declared and paid, or declared and a sum sufficient for the payment thereof has been set apart for payment for all past dividend periods and the then-current dividend period, no Series A Preferred Shares shall be redeemed unless all outstanding Series A Preferred Shares are simultaneously redeemed; provided, however that the trust may purchase or acquire Series A Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series A Preferred Shares. In addition, unless full cumulative dividends on all Series A Preferred Shares have been or contemporaneously are declared and paid, or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then-current dividend period, the Trust shall not purchase or otherwise acquire directly or indirectly any Series A Preferred Shares or any other shares of equity securities of the Trust ranking junior to or on parity with the Series A Preferred Shares as to dividends or upon liquidation (except by conversion into or exchange for shares of equity securities of the Trust ranking junior to or on parity with the Series A Preferred Shares as to dividends and upon liquidation). The restrictions in this Section 5 on redemptions, purchases and other acquisitions shall not prevent the redemption, purchase or acquisition by the Trust of preferred shares of any class or series pursuant to Article VIII of the Declaration of Trust or otherwise in order to ensure that, among other things, the Trust remains qualified as a real estate investment trust for United States federal income tax purposes, or the redemption, purchase or acquisition of Series A Preferred Shares pursuant to a purchase or exchange offer made on the same terms to all holders of the Series A Preferred Shares.
- (d) Immediately prior to or concurrently with any redemption of Series A Preferred Shares, the Trust shall pay, in cash, any accumulated and unpaid dividends to, but excluding, the redemption date, whether or not declared, unless a redemption date falls after a Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case each record holder of Series A Preferred Shares at the close of business on such Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares before the Dividend Payment Date. Except as provided in the previous sentence, the Trust shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series A Preferred Shares for which a notice of redemption has been given.
- (e) The following are the procedures for redemption:
- (i) Notice of redemption will be mailed by the Trust, postage prepaid, not less than 30 nor more than 60 calendar days immediately preceding the redemption date, addressed to the respective holders of record of the Series A Preferred Shares to be redeemed at their respective addresses as they appear on the register of the Trust. No failure to give such notice or any defect in, or in the mailing of, the notice shall affect the validity of the proceedings for the redemption of any Series A Preferred Shares except as to the specific holder to whom notice was defective or not given.

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- (ii) In addition to any information required by law or by the applicable rules of any exchange upon which the Series A Preferred Shares may be listed or admitted to trading, each notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of Series A Preferred Shares to be redeemed; (D) the place or places where the holders of Series A Preferred Shares may surrender certificates for payment of the redemption price; and (E) that dividends on the Series A Preferred Shares to be redeemed will cease to accumulate on the redemption date. If less than all of the outstanding Series A Preferred Shares held by any holder are to be redeemed, the notice mailed to each holder shall also specify the number of Series A Preferred Shares held by such holder to be redeemed or the method for determining the same.
- (iii) On or after the redemption date, each holder of Series A Preferred Shares to be redeemed shall present and surrender the certificates evidencing his Series A Preferred Shares to the Trust at the place designated in the notice of redemption and thereupon the redemption price of such shares (including all accumulated and unpaid dividends up to the redemption date) shall be paid to or on the order of the person whose name appears on such certificate evidencing Series A Preferred Shares as the owner thereof and each surrendered certificate shall be canceled. If fewer than all the shares evidenced by any such certificate evidencing Series A Preferred Shares are to be redeemed, a new certificate shall be issued evidencing the unredeemed shares.
- (iv) From and after the redemption date (unless the Trust defaults in payment of the redemption price), all dividends on the Series A Preferred Shares designated for redemption and all rights of the holders thereof, except the right to receive the redemption price thereof and all accumulated and unpaid dividends up to the redemption date, shall terminate with respect to such shares and such shares shall not thereafter be transferred (except with the consent of the Trust) on the Trust's register, and such shares shall not be deemed to be outstanding for any purpose whatsoever. At its election, the Trust, prior to a redemption date, may irrevocably deposit the redemption price (including accumulated and unpaid dividends to the redemption date) of the Series A Preferred Shares so called for redemption in trust for the holders thereof with a bank or trust company, in which case the redemption notice to holders of the Series A Preferred Shares to be redeemed shall (A) state the date of such deposit, (B) specify the office of such bank or trust company as the place of payment of the redemption price and (C) require such holders to surrender the certificates evidencing such shares at such place on or about the date fixed in such redemption notice (which may not be later than the redemption date) against payment of the redemption price (including all accumulated and unpaid dividends

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to the redemption date). Any monies so deposited which remain unclaimed by the holders of the Series A Preferred Shares at the end of two years after the redemption date shall be returned by such bank or trust company to the Trust.

- (f) Series A Preferred Shares have no stated maturity and will not be subject to any sinking fund or mandatory redemption.
- (g) The Trust will also have the right at any time, upon the occurrence of a Tax Event or an Investment Company Event to redeem the Series A Preferred Shares, in whole (but not in part) at a redemption price of \$25.00 per share, plus accrued and unpaid dividends, if any, to, but excluding, the date of redemption.
  - (i) A “Tax Event” means the receipt by the Trust of an opinion of a nationally recognized law firm experienced in such matters to the effect that, as a result of (i) any amendment to, clarification of, or change (including any announced prospective change) in, the laws or treaties or regulations of the United States or any of its political subdivisions or taxing authority affecting taxation, (ii) any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (i.e., an administrative action) or (iii) any amendment to, clarification of, or change in the official position or the interpretation of such administrative action or any interpretation or pronouncement that provides for a position with respect to such administrative action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification or change is made known, which amendment, clarification or change is effective or such pronouncement or decision is announced on or after the date of initial issuance of the Series A Preferred Shares, there is more than an insubstantial risk that (a) dividends paid or to be paid by REIT with respect to the shares of beneficial interest of the Trust are not, or will not be, fully deductible by the Trust for United States federal income tax purposes or (b) the Trust is, or will be, subject to more than a de minimis amount of other taxes, duties or other governmental charges.
  - (ii) An “Investment Company Event” means the receipt by the Trust of an opinion of a nationally recognized law firm experienced in such matters to the effect that there is more than an insubstantial risk that the Trust is or will be considered an “investment company” within the meaning of the Investment Company Act of 1940 as a result of any judicial decision, any pronouncement or interpretation (irrespective of the manner made known), the adoption or amendment of any law, rule or regulation, any notice or announcement (including any notice or announcement of intent to adopt such rule or regulation) by any U.S. legislative body, court, governmental agency, or regulatory authority, in each case after the initial issuance of Series A Preferred Shares.

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- (6) Covenants of the Trust. If the Trust is not in compliance with any of the following covenants as of the end of any quarter and shall remain in default on one or more covenants as of the end of the following quarter, then no dividends shall be payable on the Trust's common shares until it is in compliance with all of the covenants as of the end of two successive quarters:
- (a) Commencing with the quarter ending December 31, 2004, the Trust will be required to have on its balance sheet total shareholders' equity, as of the end of each quarter and determined in accordance with accounting principles generally accepted in the United States of America, equal to at least \$50 million;
  - (b) Commencing with the quarter ending December 31, 2004, the Trust will be required to have on its balance sheet loans held for investment (defined as securitized loans and loans held for securitization), as of the end of each quarter and determined in accordance with accounting principles generally accepted in the United States of America, greater than or equal to \$2 billion; and
  - (c) Commencing with the quarter ending December 31, 2005, the Trust will be required, for the four fiscal quarters most recently ended, to have cumulative unencumbered cash flow (defined as earnings before interest expense, income tax expense, depreciation and amortization adjusted to exclude extraordinary gains or losses, gains (but not losses) from sales of assets outside the ordinary course of business and income from subsidiaries of the Trust to the extent that such subsidiaries are restricted by law or agreement from distributing such income to the Trust, except to the extent such income is actually distributed in a period) greater than or equal to six times the cumulative dividend required to be distributed to holders of Series A Preferred Shares in those four quarters.
- (7) Voting Rights.
- (a) The holders of all outstanding preferred shares of all classes or series of the Trust (including the Series A Preferred Shares), unless otherwise provided in the terms of the articles supplementary establishing such class or series, shall vote as a single class with the holders of common shares of the Trust on all matters submitted to shareholders generally for a vote ("Voting Preferred Shares"). In such case, each Voting Preferred Share shall have a number of votes per share such that, in the aggregate, the Voting Preferred Shares will have 15 percent of the voting power of all classes or series of shares of beneficial interest of the Trust entitled to vote on any matter, which votes shall be allocated among all outstanding Voting Preferred Shares in proportion to their liquidation preference. Assuming the Trust has 100,000 common shares outstanding as of the date of these Articles Supplementary, each Series A Preferred Share will initially be entitled to approximately 0.00519 votes. In the event that a matter requires a vote of the preferred shares voting as a class, unless otherwise provided in the terms of



the articles supplementary establishing such class or series, each preferred share shall be entitled to vote proportionately with all other preferred shares having similar voting rights as determined by reference to its liquidation preference (each preferred share having one vote per each \$25.00 of liquidation preference). The voting rights described in this clause 7(a) may, at the election of the Trust, be rescinded concurrently with any merger, reorganization or business combination involving the Trust and (i) Accredited or (ii) a third party acquiror of Accredited or substantially all of the assets of Accredited.

- (b) Whenever dividends on any of the Trust's Series A Preferred Shares or any series of preferred shares ranking on parity as to the payment of dividends with the Series A Preferred Shares shall be in arrears for six or more quarterly periods, whether or not consecutive (a "Preferred Dividend Default"), the holders of such Series A Preferred Shares (voting separately as a class with all other series of the Trust's preferred shares ranking on parity with the Series A Preferred Shares as to the payment of distributions and the distribution of assets upon liquidation upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of a total of two additional members of the Board of Trustees (the "Preferred Shares Trustees"), provided that any such trustees, if elected, shall not cause the Trust to violate any applicable corporate governance requirement of the New York Stock Exchange that listed companies must have a majority of independent directors/trustees, or any other similar requirement then applicable to the Trust, and the number of trustees on the board of trustees shall increase by two at a special meeting called by the holders of record of at least 20% of the Trust's Series A Preferred Shares or any other series of preferred shares ranking on parity with the Series A Preferred Shares so in arrears, unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the shareholders, in which event such election shall be held at such next annual or special meeting of shareholders, and at each subsequent annual meeting until all dividends accumulated on such of Series A Preferred Shares and any series of preferred shares ranking on parity as to the payment of dividends with the Series A Preferred Shares for the past dividend periods and the dividend for the then-current dividend period shall have been fully paid or declared and a sum sufficient for their payment set aside for payment.
- (c) If and when all accumulated dividends and the dividend for the then-current dividend period on the Series A Preferred Shares and any series of preferred shares ranking on parity as to the payment of dividends with the Series A Preferred Shares shall have been paid in full or set aside for payment in full, the holders of the shares shall be divested of the foregoing voting rights (subject to revesting in the event of each and every subsequent Preferred Dividend Default) and, if all accumulated dividends and the dividend for the then-current period have been paid in full or set aside for payment in full on all series of preferred shares ranking on parity with the Series A Preferred Shares upon which like voting rights have been conferred and are exercisable, the term of office of each Preferred Shares Trustee so elected shall terminate and the number of trustees on the Board of Trustees shall decrease by two. Any Preferred Shares Trustee may be

removed at any time with or without cause by, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding Series A Preferred Shares when they have the voting rights described above (voting separately as a class with all series of preferred shares ranking on parity with the Series A Preferred Shares that the Trust may issue upon which like voting rights have been conferred and are exercisable). So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Shares Trustee may be filled by the written consent of the Preferred Shares Trustees remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the votes entitled to be cast by the outstanding Series A Preferred Shares when they have the voting rights described above (voting separately as a class with all series of preferred shares ranking on parity with the Series A Preferred Shares that the Trust may issue upon which like voting rights have been conferred and are exercisable). The Preferred Shares Trustees shall each be entitled to one vote per trustee on any matter.

- (d) So long as any Series A Preferred Shares remain outstanding, the Trust shall not, without the affirmative vote of the holders of at least two-thirds of the votes entitled to be cast by the Series A Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class with all series of preferred shares ranking on parity with the Series A Preferred Shares that the Trust may issue upon which like voting rights have been conferred and are exercisable), which votes shall be allocated among all such voting preferred shares in proportion to their liquidation preference:
- (i) authorize, create or increase the authorized or issued amount of any class or series of shares of beneficial interest ranking prior to the outstanding Series A Preferred Shares with respect to the payment of distributions and the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up of the Trust or reclassify any authorized shares of beneficial interest of the Trust into any such shares, or create, authorize or issue any obligation, or any security, convertible into or evidencing the right to purchase any such shares;
  - (ii) amend, alter or repeal any of the provisions of the Declaration of Trust (including these Articles Supplementary) so as to materially and adversely affect the covenants in section (6) of these Articles Supplementary or any preferences, conversion, exchange or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series A Preferred Shares, provided that any increase or decrease in the amount of the authorized preferred shares (subject to the limitation that the number of authorized preferred shares shall not be decreased below the number issued and outstanding at such time), including the Series A Preferred Shares (subject to the limitation that the number of authorized Series A Preferred Shares shall not be decreased below the number issued and outstanding at such time), or the creation or issuance of any additional

Series A Preferred Shares or other series of preferred shares that the Trust may issue, or any increase in the amount of authorized shares of such series, in each case ranking on parity with or junior to the Series A Preferred Shares that the Trust may issue with respect to the payment of distributions and the distribution of assets upon liquidation, dissolution or winding up, shall be deemed not to materially and adversely affect such preferences, conversion, exchange or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption; or

- (iii) enter into, approve or otherwise facilitate a binding share exchange or reclassification involving the Series A Preferred Shares that materially and adversely affects any of the preferences, conversion, exchange or other rights, voting powers (except as contemplated in the last sentence of 7(a) above in connection with the transactions specified therein), restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series A Preferred Shares or a consolidation, merger or similar transaction unless in the case of a binding share exchange, reclassification, consolidation, merger or other similar transactions the Series A Preferred Shares remain outstanding with preferences, conversion, exchange or other rights, voting powers (except as contemplated in the last sentence of 7(a) above in connection with the transactions specified therein), restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption materially unchanged or, in the case of any such merger or consolidation with respect to which the Trust is not the surviving or resulting entity, the shares are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, in each case with preferences, conversion, exchange or other rights, voting powers (except as contemplated in the last sentence of 7(a) above in connection with the transactions specified therein), restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series A Preferred Shares that are not individually or in the aggregate materially less favorable to the holders of the Series A Preferred Shares than the preferences, conversion, exchange or other rights, voting powers (except as contemplated in the last sentence of 7(a) above in connection with the transactions specified therein), restrictions, limitation as to dividends or other distributions, qualifications, or terms or conditions of redemption of the Series A Preferred Shares.
- (e) The foregoing voting provisions shall not apply if, at or prior to the time when the action with respect to which such vote would otherwise be required shall be effected, all outstanding Series A Preferred Shares shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

- (8) Independent Trustee Approval. As long as any Series A Preferred Shares are outstanding, certain actions by the Trust must be approved by a majority of the Independent Trustees. In order to be considered “independent,” a trustee must not be a current officer or employee of the Trust or a current officer or employee of Accredited or of any affiliate of Accredited. In addition, any members of the Board of Trustees elected by holders of preferred shares, including the Series A Preferred Shares, will be deemed to be Independent Trustees for purposes of approving actions requiring the approval of a majority of the Independent Trustees. The following actions are the only actions that require approval of a majority of the Independent Trustees: the issuance of additional preferred shares ranking on parity with the Series A Preferred Shares; the redemption of any common shares; any dissolution, liquidation or termination of the Trust prior to September 30, 2009; and the determination to revoke the Trust’s real estate investment trust status. In assessing the benefits to the Trust of any proposed action requiring their consent, the Independent Trustees take into account the interests of holders of both the common shares and the preferred shares, including, without limitation, holders of the Series A Preferred Shares. In considering the interests of the holders of the preferred shares, including, without limitation, holders of the Series A Preferred Shares, the Independent Trustees shall owe the same duties that the Independent Trustees owe to holders of common shares.
- (9) Conversion. The Series A Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust.
- (10) Form. Certificates Evidencing Series A Preferred Shares. Except as may be otherwise provided by the Board of Trustees, holders of Series A Preferred Shares are not entitled to certificates evidencing the Series A Preferred Shares held by them.
- (11) Declaration of Trust and Bylaws. The rights of all holders of the Series A Preferred Shares and the terms of the Series A Preferred Shares are subject to the provisions of the Declaration of Trust, as supplemented by the terms of the Series A Preferred Shares set forth herein, and the Bylaws of the Trust, including, but not limited to, the restrictions on ownership and transfer of shares of beneficial interest of the Trust contained in Article VIII of the Declaration of Trust.
- (12) Status of Acquired Shares. Series A Preferred Shares redeemed or otherwise acquired by the Trust shall be returned to the status of authorized but unissued preferred shares, without further designation as to class or series.
- (13) Exclusion of Other Rights. The Series A Preferred Shares shall not have any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption other than those specifically set forth in these Articles Supplementary. The Series A Preferred Shares shall have no preemptive or subscription rights.
- (14) Headings of Subdivisions. The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

(15) Severability of Provisions. If any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Series A Preferred Shares set forth in the Declaration of Trust is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of Series A Preferred Shares set forth in the Declaration of Trust which can be given effect without the invalid, unlawful or unenforceable provision thereof shall, nevertheless, remain in full force and effect, and no preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of Series A Preferred Shares herein set forth shall be deemed dependent upon any other provision thereof unless so expressed therein.

THIRD: The Series A Preferred Shares have been classified and designated by the Board of Trustees under the authority contained in the Declaration of Trust.

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

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

IN WITNESS WHEREOF, the Trust has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its Chief Executive Officer and attested to by its Executive Vice President and Secretary on this 11th day of August, 2004.

ATTEST

ACCREDITED MORTGAGE LOAN REIT TRUST

\_\_\_\_\_  
Ray W. McKewon,  
Executive Vice President and Secretary

By: \_\_\_\_\_  
James A. Konrath,  
Chief Executive Officer

**PREFERRED SHARES GUARANTEE AGREEMENT**

**from**

**ACCREDITED HOME LENDERS HOLDING CO.**

**to**

**Holder of**

**Accredited Mortgage Loan REIT Trust**

**9.75% Series A Perpetual Cumulative Preferred Shares**

**Dated as of August 12, 2004**

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## PREFERRED SHARES GUARANTEE AGREEMENT

This PREFERRED SHARES GUARANTEE AGREEMENT (“Guarantee Agreement”), dated as of August 12, 2004 is executed and delivered by Accredited Home Lenders Holding Co., a Delaware corporation (the “Guarantor”), for the benefit of the Holders (as defined herein) from time to time of the Series A Preferred Shares (as defined herein) of Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust (the “Issuer”);

WHEREAS, pursuant to its Articles Supplementary, dated as of August 12, 2004, the Issuer is authorized to issue its 9.75% Series A Perpetual Cumulative Preferred Shares, \$1.00 par value per share (the “Series A Preferred Shares”); and

WHEREAS, as incentive for the Holders to purchase Series A Preferred Shares, the Guarantor irrevocably and unconditionally agrees, to the extent set forth herein, to, among other things, pay to the Holders of the Series A Preferred Shares the Guarantee Payments (as defined herein) on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the purchase of Series A Preferred Shares, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time.

### ARTICLE I

#### DEFINITIONS

SECTION 1.01 DEFINITIONS. As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings.

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

“Articles Supplementary” refers to the articles supplementary to the Declaration of Trust of the Issuer filed by the Issuer with the State Department of Assessments and Taxation of Maryland which sets forth the designation, preferences and relative rights and other terms of the Series A Preferred Shares with respect to which a Guarantee is granted hereunder.

“Common Stock” means the common stock, \$.001 par value, of the Guarantor.

“Dividends” means the periodic dividends payable to Holders of Series A Preferred Shares in accordance with the terms of the Series A Preferred Shares set forth in the Articles Supplementary.

“Dividend Payments” means any accrued and unpaid Dividends (whether or not declared).

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“Exchange Act” means the Securities and Exchange Act of 1934, as amended.

“Guarantee” means the guarantee relating to the Series A Preferred Shares to be issued by the Guarantor as provided in this Guarantee Agreement.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Series A Preferred Shares then outstanding, to the extent provided for in the Articles Supplementary and to the extent not paid when payable by the Issuer: (i) any Dividend Payments, (ii) the Redemption Price, (iii) the Liquidation Distribution and any other payments due by the Issuer with respect to the Series A Preferred Shares.

“Holder” means any holder, as registered on the books and records of the Issuer, of any outstanding Series A Preferred Shares with respect to which the Guarantee is issued hereunder; provided, however, that in determining whether the holders of the requisite percentage of Series A Preferred Shares have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor or any entity which is an Affiliate of the Guarantor.

“Liquidation Distribution” means the aggregate of the liquidation amount payable by the Issuer upon the Series A Preferred Shares in accordance with the terms set forth in the Articles Supplementary upon a voluntary or involuntary dissolution, winding-up or liquidation of the Issuer.

“Person” means any individual, corporation, limited liability company, partnership, joint venture, trust, estate, joint stock company, unincorporated organization or government, or any agency or political subdivision thereof, or any other entity of whatever nature.

“Redemption Price” means the amount payable by the Issuer on redemption of the Series A Preferred Shares in accordance with the terms set forth in the Articles Supplementary upon shares of Series A Preferred Shares duly called for redemption which shall include, without limitation, any accrued and unpaid dividends.

“66 2/3% of the Series A Preferred Shares” means Holders of outstanding Series A Preferred Shares voting together as a single class who are record owners of the Series A Preferred Shares whose amount of Series A Preferred Shares represents 66 2/3% or more in aggregate liquidation preference of the then outstanding Series A Preferred Shares.

## ARTICLE II

### GUARANTEE

SECTION 2.01 GUARANTEE. The Guarantor hereby fully and unconditionally guarantees to each Holder the due and punctual payment of the Guarantee Payments, as and to the extent applicable (without duplication of amounts theretofore paid by the Issuer) when and as the same shall become due and/or payable, according to the terms of the Series A Preferred Shares as set forth in the Articles Supplementary, regardless of any defense, right of set-off or counterclaim which the Issuer or the Guarantor may have or assert. In case of the failure of the Issuer or any successor thereto punctually to pay any such Guarantee Payments, as and to the extent applicable, the Guarantor hereby agrees to cause any such payment to be made punctually

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when and as the same shall become due and payable, as if such payment were made by the Issuer. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to or for the benefit of the Holders or by payment by the Issuer of such amounts to or for the benefit of the Holders.

SECTION 2.02 WAIVER OF NOTICE AND DEMAND. The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

SECTION 2.03 FULL AND UNCONDITIONAL. The Guarantor hereby agrees that its obligations under this Guarantee Agreement shall be as if it were a principal obligor and not merely a surety and shall be full and unconditional, irrespective of the validity, regularity or enforceability of the Series A Preferred Shares, the absence of any action to enforce the same, any waiver or consent by the Holder of any shares of the Series A Preferred Shares with respect to any terms thereof, the recovery of any judgment against the Issuer or any action to enforce the same, or any circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Series A Preferred Shares and that the Guarantor shall be liable as a principal obligor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in this Section 2.03.

SECTION 2.04 ENFORCEMENT OF GUARANTEE. Any Holder of Series A Preferred Shares may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Issuer or any other Person.

SECTION 2.05 GUARANTEE OF PAYMENT. This Guarantee Agreement creates a guarantee of payment and not merely of collection. This Guarantee Agreement will not be discharged except (i) by payment of the Dividend Payments, the Redemption Price or the Liquidation Distribution, if and as applicable, in full by the Issuer, (ii) by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) by the Guarantor or (iii) upon termination of this Guarantee Agreement pursuant to Section 5.01 hereof; provided, however, that notwithstanding anything contained herein, the holders of the Preferred Shares shall be entitled to the benefits of this Guarantee Agreement until its termination pursuant to Section 5.01 hereof.

SECTION 2.06 SUBROGATION. The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor

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agrees to hold such amount in trust for the applicable Holders and to pay over such amount to or for the applicable Holders.

SECTION 2.07 REINSTATEMENT OF OBLIGATIONS. If any Holder of Series A Preferred Shares is required by any court or otherwise to return to the Issuer or the Guarantor, or any custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official acting in relation to the Issuer or the Guarantor, any amount paid to such Holder in respect of Guarantee Payments on Series A Preferred Shares, the Guarantee issued under this Guarantee Agreement, to the extent theretofore discharged, shall be reinstated in full force and effect.

SECTION 2.08 CERTAIN RIGHTS, REMEDIES AND POWERS OF GUARANTEED PERSONS. The Holders of Series A Preferred Shares shall have all of the rights and remedies available under applicable law and may proceed by appropriate court action to enforce the terms hereof and to recover damages for the breach hereof. Each and every remedy of each such Person shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. At the option of any such Person, the Guarantor may be joined in any action or proceeding commenced by such Person against the Issuer in respect of any obligations guaranteed pursuant to this Guarantee Agreement, and recovery may be had against the Guarantor in such action or proceeding or in any independent action or proceeding against the Guarantor, without any requirement that any remedy or claim against the Issuer be first asserted, prosecuted or exhausted.

SECTION 2.09 FORM OF GUARANTEE. The Guarantee to be endorsed upon any certificate representing Series A Preferred Shares shall be in substantially the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions, and other variations as are required or permitted hereby, and may include such letters, numbers or other marks of identification and legends as may be required to comply with the rules of any securities exchange. The definitive Guarantee to be endorsed upon the Series A Preferred Shares shall be produced in any manner permitted by law and the rules of any securities exchange on which the Series A Preferred Shares may be listed.

### ARTICLE III

#### LIMITATION OF TRANSACTIONS; SUBORDINATION

SECTION 3.01 LIMITATION OF TRANSACTIONS. If dividends have not been paid in full when due on the Series A Preferred Shares or any other amounts have not been paid when due with respect to the Series A Preferred Shares, including, without limitation the Redemption Price and the Liquidation Price, the Guarantor shall not (and shall not allow any of its subsidiaries (whether existing on or after the date hereof) to: (i) pay, or declare and set aside for payment, any dividends on any of the most senior preferred shares of Guarantor as regards participation in profits of Guarantor ("Guarantor dividend parity shares"), unless the amount of any dividends declared on any Guarantor dividend parity shares is paid on the Guarantor dividend parity shares and the Series A Preferred Shares on a pro rata basis on the date such dividends are paid on such Guarantor dividend parity shares, so that: (x) the ratio that (A) the

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aggregate amount of dividends paid on the Series A Preferred Shares bears to (B) the aggregate amount of dividends paid on such Guarantor dividend parity shares is the same as: (y) the ratio that (A) the aggregate of all accrued and unpaid dividends in respect of the Series A Preferred Shares bears to (B) the aggregate of all accrued and unpaid dividends in respect of such Guarantor dividend parity shares; (ii) pay, or declare and set aside for payment, any dividends on any shares of the Guarantor's capital stock ranking junior to the Guarantor dividend parity shares; or (iii) voluntarily redeem, purchase, or otherwise acquire any Guarantor dividend parity shares or any Guarantor shares ranking junior to the Guarantor dividend parity shares; until, in each case, such time as all accrued and unpaid dividends on the Series A Preferred Shares shall have been paid in full (or payments have been made in respect of such dividends by the Guarantor pursuant to the Guarantee) for all quarterly dividend periods terminating on or prior to, in the case of clauses (i) and (ii), such payment, and in the case of clause (iii), the date of such redemption, purchase or acquisition.

Neither the Guarantor nor any subsidiary of the Guarantor shall voluntarily redeem, purchase or otherwise acquire, or pay a liquidation preference with respect to, any shares of capital stock of the Guarantor ranking junior to the Guarantor's obligations under the guarantee or any preferred shares of affiliates of the Guarantor entitled to the benefits of a guarantee ranking junior to this Guarantee Agreement as to participation in assets of the Guarantor upon liquidation until such time as all accrued and unpaid dividends and any other amounts then owing with respect to the Series A Preferred Shares have been paid in full (or payments have been made in respect of such dividends by the Guarantor pursuant to the Guarantee).

Neither the Guarantor, nor any subsidiary of the Guarantor, shall pay dividends, or make guarantee payments with respect to dividends, on any preferred shares of affiliates of the Guarantor entitled to the benefits of a guarantee ranking junior to the guarantee as to participation in profits of the Guarantor until such time as all accrued dividends payable on the Series A Preferred Shares shall have been paid in full (or payments have been made in respect of such dividends by the Guarantor pursuant to the Guarantee).

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The foregoing provisions shall not prevent or restrict the Guarantor from making:

- (i) dividends in shares of, or options, warrants or rights to subscribe for or purchase shares of, Common Stock;
- (ii) any declaration of a dividend in the form of capital stock of the Guarantor in connection with the implementation by the Guarantor of a stockholders' rights plan, or the issuance of rights or Common Stock under any such plan in the future;
- (iii) payments pursuant to this Guarantee Agreement;
- (iv) cash payments in respect of fractional shares in accordance with customary market practices upon the conversion or exchange of securities convertible or exchangeable into Common Stock of the Guarantor;
- (v) purchases of Common Stock in connection with any stock option, stock purchase or other benefit plan pursuant to any pre-existing contractual agreement with an officer, director or employee of the Guarantor or pursuant to any dividend reinvestment plan, provided that any such purchases pursuant to this clause (v) shall not exceed \$2,000,000 in the aggregate during the term of this Guarantee Agreement and any Successor Guarantee;
- (vi) a distribution in connection with a consolidation, merger or reorganization, the result of which is that the Guarantor and the Issuer shall have become a single entity, to (i) holders of securities junior to the Series A Preferred Shares of securities ranking junior to the Series A Preferred Shares; and (ii) holders of parity securities with respect to the Series A Preferred Shares of securities junior to or on parity with the Series A Preferred Shares; and
- (vii) cash payments in lieu of fractional shares, in accordance with customary market practices, in connection with a consolidation, merger or reorganization contemplated in clause (vi) immediately above.

SECTION 3.02 SUBORDINATION. This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank (i) subordinate and junior in right of payment, and subject, to all liabilities of the Guarantor, except those made pari passu or subordinate by their terms, (ii) pari passu with the most senior preferred shares now or hereafter issued by the Guarantor and with any guarantee now or hereafter entered into by the Guarantor in respect of any of the most senior preferred shares of any Affiliate of the Guarantor, and (iii) senior to all common shares now or hereafter issued by the Guarantor. The Guarantor's obligations under this Guarantee Agreement will rank pari passu with respect to obligations under other guarantee agreements which it may enter into from time to time to the extent that such agreements shall be entered into in substantially the form hereof and provide for comparable guarantees by the Guarantor of payment on preferred shares issued by the Issuer or any of its Affiliates. Each Person, by virtue of having become a Holder of the Series A Preferred Shares, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Guarantee Agreement.

#### SECTION 3.03 LIQUIDATION DISTRIBUTIONS ON A WINDING UP.

Until all other indebtedness of the Guarantor has been paid in full, the holders of Series A Preferred Shares may not file a claim in competition with the holders of that indebtedness so as to diminish any distribution or payment which, but for such claim, the holders of such other indebtedness would have been entitled to receive.

Once the claims of all holders of all other indebtedness of the Guarantor have been satisfied in full, the guarantee payments to be paid by the Guarantor in respect of a liquidation distribution on a share of the Issuer's Series A Preferred Shares:

(i) shall be paid out of the surplus assets of the Guarantor available for distribution to holders of the most senior preferred shares of the Guarantor as regards participation in profits of the Guarantor; and

(ii) shall not exceed the amount, per share, that would have been paid had the Series A Preferred Shares been issued by the Guarantor as preferred shares ranking pari passu with the most senior preferred shares, if any, of the Guarantor.

If there are insufficient available assets to make the payments relating to the liquidation distributions described in the preceding paragraphs (i) and (ii) above in full, such amounts will be paid on a pro rata basis, so that:

(i) the ratio that (x) the aggregate amount paid as a liquidation distribution on the Series A Preferred Shares bears to (y) the aggregate amount paid as liquidation distributions on the Guarantor's most senior preferred shares as regards participation in profits, is the same as:

(ii) the ratio that (x) the aggregate maximum liquidation distributions on the Series A Preferred Shares bears to (y) the aggregate maximum liquidation distributions on the Guarantor's most senior preferred shares as regards participation in profits.



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The amounts so paid (if any) will be full and final satisfaction of the obligation to repay the liquidation distribution on the Series A Preferred Shares.

#### SECTION 3.04 MERGERS, SALE OF ASSETS.

Guarantor shall not consolidate or merge with or into any other corporation or sell, lease, transfer or otherwise dispose of all or substantially all of its assets to another Person, unless (i) the successor entity assumes in writing all of the obligations of the Guarantor hereunder (the "Successor Guarantee") immediately after which time this Guarantee Agreement shall be terminated and replaced by the Successor Guarantee, or (ii) such consolidation, merger or reorganization is between the Guarantor and the Issuer. In the case of a consolidation, merger or reorganization, the result of which is that the Guarantor and the Issuer shall have become a single entity, immediately after the Holders are issued new preference securities with the same rights, privileges and preferences as the Series A Preferred Shares by such entity (except as permitted by the Articles Supplementary), this Guarantee Agreement shall terminate.

### ARTICLE IV

#### REPORTING OBLIGATIONS

##### SECTION 4.01 REPORTING

The Guarantor shall, at its expense, provide Holders of Series A Preferred Shares with copies of its annual report contemporaneously with its distribution to Holders of the Guarantor's Common Stock. Each Holder of Series A Preferred Shares shall also be entitled to receive copies of any additional information (other than proxy solicitation materials) that Holders of the Guarantor's Common Stock may be entitled to receive, on the same terms as such Holders are entitled to receive such information.

Guarantor further covenants and agrees to provide such information (financial and otherwise) about the Issuer in each of its annual reports on Form 10-K and quarterly reports on Form 10-Q required under Sections 13 or 15(d) of the Exchange Act with respect to the period to which such report relates:

- (i) a brief description of the business of the Issuer;
- (ii) a brief description of the Issuer's material developments;
- (iii) a brief description of material related party transactions involving the Issuer;
- (iv) a brief description of the results of operations of the Issuer; and
- (v) a brief discussion of liquidity and capital resources of the Issuer, including, without limitation, financing activities.

## ARTICLE V

### TERMINATION

SECTION 5.01 TERMINATION. This Guarantee Agreement shall terminate and be of no further force and effect upon: (i) full payment of the Redemption Price of all Series A Preferred Shares, (ii) full payment upon liquidation, dissolution or winding up of the Issuer or the Guarantor of amounts then payable to or for the Holders in accordance with the Articles Supplementary, or (iii) such date when no shares of Series A Preferred Shares are outstanding. This Guarantee Agreement shall also terminate as contemplated by Section 3.03 hereof.

Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore to the Issuer or Guarantor payment of any sums paid by the Issuer and guaranteed by the Guarantee, or any Guarantee Payments.

## ARTICLE VI

### MISCELLANEOUS

SECTION 6.01 AMENDMENTS. Except with respect to any changes which do not materially adversely affect the rights of Holders (in which case no consent of Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than 66 2/3% of the Series A Preferred Shares. Any such approval shall be deemed to be on behalf of the Holders of all of the Series A Preferred Shares. The provisions of the Articles Supplementary concerning meetings or consents of Holders shall apply to the giving of such approval. No amendment may impair the right of any Holder to receive payment of any Guarantee Payments in accordance with this Guarantee Agreement as in effect on the date hereof or to institute suit for the enforcement of any such payment without, in each case, the consent of each such Holder.

SECTION 6.02 SUBSIDIARY. The Guarantor represents that Guarantor as of the date hereof, indirectly through Accredited Home Lenders, Inc., owns all the issued and outstanding common shares of the Issuer, and that this Guarantee Agreement may reasonably be expected to benefit, directly or indirectly, the Guarantor. The Guarantor further represents that the consideration received for this Guarantee Agreement is reasonably worth at least as much as the liability and obligation incurred by the Guarantor under this Guarantee Agreement.

SECTION 6.03 SUCCESSORS AND ASSIGNS. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assignees, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of Series A Preferred Shares then outstanding. The Guarantor shall not assign its obligations under this Guarantee Agreement without the prior approval of 66 2/3% of the Series A Preferred Shares. Notwithstanding the foregoing, a consolidation, reorganization or merger of the Guarantor with any other person or a sale, assignment or transfer of all or a substantial portion of the assets of the Guarantor in accordance with Section 3.03 above, shall not constitute an assignment for purposes of this Section 6.03.

SECTION 6.04 NOTICES. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, facsimiled or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address as the Guarantor may give notice of to the Holders:

Accredited Home Lenders Holding Co.  
15090 Avenue of Science  
San Diego, CA 92128  
Facsimile: (866) 726-5533  
Attention: General Counsel

(b) if given to any Holder of Series A Preferred Shares, at the address set forth on the books and records of the Issuer.

All notices hereunder shall be deemed to have been given when received in person, facsimiled with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 6.05 BENEFIT. This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Series A Preferred Shares.

SECTION 6.06 INTERPRETATION. In this Guarantee Agreement, unless the context otherwise requires:

(a) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;

(b) all references to “the Guarantee Agreement” or “this Guarantee Agreement” are to this Guarantee Agreement as modified, supplemented or amended from time to time;

(c) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified; and

(d) a reference to the singular includes the plural and vice versa.

SECTION 6.07 GOVERNING LAW. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREUNDER, THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

SECTION 6.08 SEPARABILITY. Wherever possible, each provision of this Guarantee Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Guarantee Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guarantee Agreement.

THIS GUARANTEE AGREEMENT is executed as of the day and year first above written.

Accredited Home Lenders Holding Co.  
as Guarantor

By: \_\_\_\_\_

Name: Ray W. Mckewon

Title: Executive Vice President

## EXHIBIT A

### FORM OF GUARANTEE

For value received, Accredited Home Lenders Holding Co., a Delaware corporation (the “Guarantor”) hereby fully and unconditionally guarantees to each Holder the due and punctual payment of the Guarantee Payments, as and to the extent applicable (without duplication of amounts theretofore paid by Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust (“the Issuer”)), when and as the same shall become due and payable, according to the terms of the 9.75% Series A Perpetual Cumulative Preferred Shares, par value \$1.00 per share and liquidation preference \$25.00 per share (the “Series A Preferred Shares”) as set forth in the Issuer’s Declaration of Trust, as amended and restated and as supplemented by the Articles Supplementary relating to the Series A Preferred Shares, as amended and supplemented from time to time, regardless of any defense, right of set-off or counterclaim which the Issuer or the Guarantor may have or assert. In case of the failure of the Issuer or any successor thereto punctually to pay any such Guarantee Payments, as and to the extent applicable, the Guarantor hereby agrees to cause any such payment to be made punctually when and as the same shall become due and payable, as if such payment were made by the Issuer. The Guarantor’s obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to or for the benefit of the Holders or by payment by the Issuer of such amounts to or for the benefit of the Holders. All terms used in this Guarantee that are defined in the Preferred Shares Guarantee Agreement to which this Guarantee relates shall have the meanings assigned to them in such Preferred Shares Guarantee Agreement, dated as of August 12, 2004, from the Guarantor to the Holders of the Series A Preferred Shares.

The Guarantor hereby waives notice of acceptance of the Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

The Guarantor hereby agrees that its obligations under the Guarantee Agreement shall be as if it were a principal obligor and not merely a surety and shall be full and unconditional, irrespective of the validity, regularity or enforceability of any provision of the Series A Preferred Shares, the absence of any action to enforce the same, any waiver or consent by the Holder of any Series A Preferred Shares with respect to any terms thereof, the recovery of any judgment against the Issuer or any action to enforce the same, or any circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Series A Preferred Shares and that the Guarantor shall be liable as a principal obligor hereunder to make Guarantee Payments pursuant to the terms of the Guarantee Agreement notwithstanding the occurrence of any event referred to in Section 2.03 of the Guarantee Agreement.

Any Holder of Series A Preferred Shares may institute a legal proceeding directly against the Guarantor to enforce its rights under the Guarantee Agreement, without first instituting a legal proceeding against the Issuer or any other Person.

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The Guarantee Agreement creates a guarantee of payment and not merely of collection. The Guarantee Agreement will not be discharged except (i) by payment of the Dividend Payments, the Redemption Price or the Liquidation Distribution, if and as applicable, in full by the Issuer, (ii) by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) by the Guarantor or (iii) upon termination of the Guarantee Agreement pursuant to Section 5.01 thereof.

The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid by the Guarantor to the Holders by the Guarantor under the Guarantee Agreement; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under the Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under the Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the applicable Holders and to pay over such amount to or for the applicable Holders.

If any Holder of Series A Preferred Shares is required by any court or otherwise to return to the Issuer or the Guarantor, or any custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official acting in relation to the Issuer or the Guarantor, any amount paid to such Holder in respect of such Guarantee Payments, the Guarantee issued under the Guarantee Agreement, to the extent theretofore discharged, shall be reinstated in full force and effect.

This Guarantee shall not be valid or obligatory for any purpose unless and until the Series A Preferred Shares to which this Guarantee relates are duly authorized, issued and outstanding.

Reference is made to the Preferred Shares Guarantee Agreement for further provisions with respect to this Guarantee.

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THE GUARANTEE AGREEMENT AND THIS GUARANTEE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREUNDER, THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION.

Accredited Home Lenders Holding Co.  
as Guarantor

By:

\_\_\_\_\_

Name:

Title:

A-3

## VENABLE LLP

August 11, 2004

Accredited Mortgage Loan REIT Trust  
15090 Avenue of Science  
San Diego, California 92128

Re: Registration Statement on Form S-3 (File Nos. 333-117484, 333-117484-01)

Ladies and Gentlemen:

We have served as Maryland counsel to Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust (the “Company”), in connection with certain matters of Maryland law arising out of the registration of up to 3,910,000 9.75% Series A Perpetual Cumulative Preferred Shares of beneficial interest, \$1.00 par value per share (the “Series A Preferred Shares”), of the Company, covered by the above-referenced Registration Statement, and all amendments thereto (the “Registration Statement”), filed by the Company with the United States Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “1933 Act”). The Series A Preferred Shares are to be issued in an underwritten public offering pursuant to a Prospectus Supplement, dated August 9, 2004 (the “Prospectus Supplement”), to be filed with the Commission on or about the date hereof. Capitalized terms used but not defined herein shall have the meanings given to them in the Registration Statement.

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

1. The Registration Statement and the related form of prospectus included therein, substantially in the form filed by the Company with the Commission;
2. The Prospectus Supplement, substantially in the form to be filed by the Company with the Commission;
3. The Declaration of Trust of the Company, as amended and restated, and as supplemented by the Articles Supplementary relating to the Series A Preferred Shares (the “Declaration of Trust”), certified as of a recent date by the State Department of Assessments and Taxation of Maryland (the “SDAT”);
4. The Amended and Restated Bylaws of the Company, certified as of the date hereof by an officer of the Company;



5. A certificate of the SDAT as to the good standing of the Company, dated as of a recent date;

6. Resolutions (the "Resolutions") adopted by the Board of Trustees of the Company, or a duly authorized committee thereof, relating to the registration and issuance of the Series A Preferred Shares, certified as of the date hereof by an officer of the Company;

7. A certificate executed by an officer of the Company, dated as of the date hereof; and

8. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

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

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.

2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.

3. Each of the parties (other than the Company) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all such Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. The Series A Preferred Shares will not be issued or transferred in violation of any restriction or limitation contained in Article VIII of the Declaration of Trust.

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

1. The Company is a real estate investment trust duly formed and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Series A Preferred Shares has been duly authorized and, when issued and delivered by the Company pursuant to the Resolutions and the Registration Statement against payment of the consideration set forth therein, the Series A Preferred Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other law. We express no opinion as to compliance with, or the applicability of, federal or state securities laws, including the securities laws of the State of Maryland. The opinion expressed herein is subject to the effect of judicial decisions which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

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

This opinion is being furnished to you solely for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K, dated August 9, 2004 (the "Current Report"), which is incorporated by reference in the Registration Statement, and, accordingly, may not be relied upon by, quoted in any manner to, or delivered to any other person or entity without, in each instance, our prior written consent. We hereby consent to the filing of this opinion as an exhibit to the Current Report and the said incorporation by reference and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP

**DEWEY BALLANTINE LLP**

**1301 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6092  
TEL 212 259-8000 FAX 212 259-6333**

August 9, 2004

Accredited Home Lenders Holding Co.  
15090 Avenue of Science  
San Diego, California 92128

Ladies and Gentlemen:

We are acting as counsel to Accredited Home Lenders Holding Co., a Delaware corporation (the "Company"), in connection with the offering by the Company and Accredited Mortgage Loan REIT Trust, a Maryland real estate investment trust ("REIT"), of (i) 3,400,000 shares of Series A Perpetual Cumulative Preferred Shares of Beneficial Interest of REIT (the "Preferred Securities") and (ii) guarantees by the Company of such Preferred Securities pursuant to a guarantee agreement in the form filed as exhibit 4.3 to the Company's Current Report on Form 8-K dated August 9, 2004 (the "Guarantee"). The Preferred Securities and the Guarantee are being offered pursuant to a Registration Statement on Form S-3 (File Nos. 333-117484 and 333-117484-01) (the "Registration Statement") filed by REIT and the Company under the Securities Act of 1933, as amended (the "Act").

In connection with this opinion, we have examined and are familiar with originals or copies, certified or otherwise identified to our satisfaction, of such documents, corporate records, certificates of public officials and officers of the Company and such other instruments as we have deemed necessary or appropriate for the purpose of this opinion, including the Registration Statement, the Amended and Restated Certificate of Incorporation of the Company, the Bylaws of the Company, as amended, and that certain Underwriting Agreement (the "Underwriting Agreement"), dated August 9, 2004, among the Company, REIT and the underwriters named therein (the "Underwriters"). Insofar as the statements in this letter relate to factual matters, we have made inquiries of officers of the Company to the extent we have deemed appropriate and have, without investigation, relied upon representations made by the Company and by one or more officers of the Company.

In rendering this opinion, we have assumed the authenticity of all instruments presented to us as originals, the conformity to the originals of all instruments presented to us as copies, the genuineness of all signatures, the competency of all individuals signing all instruments presented to us and the truth, accuracy and completeness of the information, representations and warranties contained in the agreements, instruments, records, certificates and other documents we have reviewed as of their stated dates and as of the date hereof.

NEW YORK WASHINGTON, D.C. LOS ANGELES EAST PALO ALTO HOUSTON AUSTIN

LONDON WARSAW BUDAPEST PRAGUE FRANKFURT MILAN ROME

Based upon the foregoing, and in reliance thereon, and subject to the additional limitations and qualifications set forth below, we are of the opinion that the Guarantee has been duly authorized by the Company and, upon execution and delivery of the Guarantee and delivery of the Preferred Securities to the Underwriters against payment therefor in accordance with the terms of the Underwriting Agreement, will constitute a valid and binding agreement of the Company, subject to the qualification that the enforceability of the Guarantee will be subject to, and may be limited by, bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

We are members of the Bar of the State of New York, and, in expressing the foregoing opinion, we are not passing upon the laws of any jurisdiction other than the laws of the State of New York and the Delaware General Corporation Law.

We hereby consent to the filing of this opinion as Exhibit 5.2 to the Company's Current Report on Form 8-K dated August 9, 2004, incorporated by reference in the Registration Statement, and to the reference to our name under the caption "Legal Matters" in the Registration Statement. In giving such consent, we do not thereby admit that we come within the category of persons whose consent is required pursuant to Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ DEWEY BALLANTINE LLP