EXHIBIT 10.3  
  
  
  
 AFFILIATE AGREEMENT  
  
 THIS AFFILIATE AGREEMENT (this "Agreement") is made and entered into  
as of July 22, 2003 by and among NMP, Inc., a Delaware corporation ("Holdco"),  
XxxxxxXxxxx.xxx, Inc., a Delaware corporation ("Parent"), and the undersigned  
stockholder (the "Affiliate"), who may be deemed an affiliate of Pinnacor  
Inc., a Delaware corporation (the "Company"), under applicable law.  
Capitalized terms used herein and not otherwise defined shall have the  
meanings ascribed thereto in the Merger Agreement (as defined below).  
  
 RECITALS:  
  
 WHEREAS, pursuant to an Agreement and Plan of Merger dated as of the  
date hereof (the "Merger Agreement") by and among Parent, the Company, Holdco,  
Maple Merger Sub Inc., a Delaware corporation and a direct wholly owned  
subsidiary of Holdco ("Parent Merger Sub"), and Pine Merger Sub, Inc., a  
Delaware corporation and a direct wholly owned subsidiary of Holdco ("Company  
Merger Sub"), Parent Merger Sub is merging with and into Parent (the "Parent  
Merger") and Company Merger Sub is merging with and into the Company (the  
"Company Merger" and together with the Parent Merger, the "Mergers") whereby  
after the Mergers each of Parent and the Company shall be the surviving  
corporations of the Mergers and direct wholly owned subsidiaries of Holdco;  
  
 WHEREAS, the Affiliate has been advised that the Affiliate may be  
deemed to be an "affiliate" of the Company, as the term "affiliate" is used  
for purposes of Rule 144 and Rule 145 of the rules and regulations of the  
Securities and Exchange Commission (the "SEC"); and  
  
 WHEREAS, the execution and delivery of this Agreement by the  
Affiliate is a material inducement to, and in consideration of, the  
willingness of Holdco and Parent to enter into the Merger Agreement.  
  
 NOW, THEREFORE, in consideration of the foregoing and the  
representations, warranties, covenants and agreements contained in this  
Agreement, and for other good and valuable consideration, the receipt and  
sufficiency of which are hereby acknowledged, and intending to be legally  
bound hereby, the parties hereto agree as follows:  
  
 1. Acknowledgments by Affiliate. The Affiliate understands and  
hereby acknowledges that the representations, warranties and covenants by the  
Affiliate set forth herein shall be relied upon by Holdco and Parent and their  
respective affiliates and legal counsel, and that substantial losses and  
damages may be incurred by such persons if the representations and warranties  
of the Affiliate contained herein are inaccurate or if the covenants of the  
Affiliate contained herein are breached. The Affiliate hereby represents and  
warrants to Holdco and Parent that the Affiliate has carefully read this  
Agreement and the Merger Agreement and has discussed the requirements of this  
Agreement with the Affiliate's professional advisors, who are qualified to  
advise the Affiliate with regard to such matters. Execution of this Agreement  
shall not be considered an admission by the Affiliate that he or it is an  
"affiliate", or as a waiver of any rights the Affiliate may have to object to  
any claim that the Affiliate is such an "affiliate" on or after the date of  
this Agreement.  
  
 2. Representations and Warranties of the Affiliate. The Affiliate  
hereby represents and warrants to Holdco and Parent as follows as of the date  
hereof: (i) the Affiliate is the sole beneficial owner of the number of shares  
of the common stock of the Company, par value $0.01 (the "Company Common  
Stock") set forth under the Affiliate's name on the signature page hereto (the  
"Shares"); (ii) the Shares are not subject to any Liens (as such term is  
defined in the Merger Agreement) or other encumbrance or to any rights of  
first refusal of any kind (other than in the case of GapStar, LLC ("GapStar"),  
the pledge and grant of a security interest by GapStar in its Shares to a  
lender to secure loans made to GapStar by such lender); (iii) there are no  
options, warrants, calls, rights, commitments or agreements of any kind or  
character, written or oral, to which the Affiliate is party or by which the  
Affiliate is bound obligating the Affiliate to issue, deliver, sell,  
repurchase or redeem, or cause to be issued, delivered, sold, repurchased or  
redeemed, any Shares, or obligating the Affiliate to grant or enter into any  
such option, warrant, call, right, commitment or agreement; (iv) the Affiliate  
has the sole right to transfer the Shares; (v) as of the date hereof, the  
Shares constitute all shares of Company Common Stock owned, beneficially or of  
record, by the Affiliate; (vi) the Shares are not subject to preemptive rights  
created by any agreement to which the Affiliate is party or by which the  
Affiliate is bound; and (vii) the Affiliate has not engaged in any sale or  
other transfer of the Shares in contemplation of the Mergers.  
  
 3. Application to Subsequently Acquired Shares. The Affiliate  
hereby agrees that all shares of Company Common Stock and shares of the common  
stock of Holdco, par value $0.01 (the "Holdco Common Stock") acquired by the  
Affiliate subsequent to the date hereof (including shares of Holdco Common  
Stock acquired in the Company Merger), but prior to the earlier of (i) the  
Effective Time (as defined in the Merger Agreement), and (ii) the date on  
which the Merger Agreement is terminated in accordance with its terms  
(including any extensions to the Merger Agreement, as provided for therein)  
shall be subject to the terms and conditions set forth in this Agreement as if  
held by the Affiliate as of the date hereof.  
  
 4. Compliance with Rule 145 and the Securities Act.  
  
 (a) The Affiliate understands and hereby acknowledges that  
the Affiliate has been advised that (A) the issuance of Holdco Common Stock in  
connection with the Company Merger is expected to be effected pursuant to a  
registration statement on Form S-4 promulgated under the Securities Act of 1933,  
as amended (the "Securities Act"), and the resale of such shares of Holdco  
Common Stock will be subject to restrictions set forth in Rule 145 under the  
Securities Act; and (B) Affiliate may be deemed to be an "affiliate" of the  
Company as the term "affiliate" is used for purposes of Rule 144 and Rule 145  
under the Securities Act. Accordingly, the Affiliate hereby agrees not to sell,  
transfer or otherwise dispose of any Holdco Common Stock issued to the Affiliate  
in the Company Merger, or otherwise acquired by the Affiliate subsequent to the  
date hereof, unless (i) such sale, transfer or other disposition is made in  
conformity with the requirements of Rule 145(d) promulgated under the  
Securities Act; (ii) such sale, transfer or other disposition is made pursuant  
to a registration statement declared or ordered effective under the Securities  
Act, or an appropriate exemption from the registration and prospectus delivery  
requirements of the Securities Act; (iii) the Affiliate delivers to Holdco a  
written opinion of legal counsel, reasonably acceptable to Holdco in form and  
substance, that such sale, transfer or other disposition is otherwise exempt  
from the registration and prospectus delivery requirements of the Securities  
Act; or (iv) an authorized representative of the SEC shall have rendered  
written advice to the Affiliate to the effect that the SEC would take no  
action, or that the staff of the SEC would not recommend that the SEC take any  
action, with respect to the proposed disposition if consummated.  
  
 (b) The Affiliate understands and hereby acknowledges  
that Holdco will give stop transfer instructions to its transfer agent with  
respect to any Holdco Common Stock issued to the Affiliate pursuant to the  
Company Merger, and there shall be placed on the certificates representing such  
Holdco Common Stock, or any substitutions therefor, a legend stating in  
substance:  
  
 "The shares represented by this Certificate were issued in a  
 transaction to which Rule 145 applies and may only be  
 transferred in conformity with Rule 145(d) or pursuant to an  
 effective registration statement under the Securities Act of  
 1933, as amended, or in accordance with a written opinion of  
 counsel, reasonably acceptable to the issuer in form and  
 substance, that such transfer is exempt from registration  
 under the Securities Act of 1933, as amended."  
  
The legend set forth above shall be removed (by delivery of a substitute  
certificate without such legend), and any stop transfer instructions shall be  
rescinded, if the Affiliate delivers to Holdco (i) satisfactory written  
evidence that the Shares have been sold in compliance with Rule 145 (in which  
case, the substitute certificate shall be issued in the name of the  
transferee); or (ii) an opinion of counsel, in form and substance reasonably  
satisfactory to Holdco, to the effect that public sale of the Shares by the  
holder thereof is no longer subject to Rule 145.  
  
 5. Termination. This Agreement shall be terminated, and be of no  
further force and effect, automatically upon the termination of the Merger  
Agreement pursuant to its terms (including any extension to the Merger  
Agreement as provided for therein).  
  
 6. Miscellaneous.  
  
 (a) Waiver. No waiver by any party hereto of any  
condition or any breach of any term or provision set forth in this Agreement  
shall be effective unless in writing and signed by each party hereto. The  
waiver of a condition or any breach of any term or provision of this Agreement  
shall not operate as or be construed to be a waiver of any other previous or  
subsequent breach of any term or provision of this Agreement.  
  
 (b) Severability. In the event that any term, provision,  
covenant or restriction set forth in this Agreement, or the application of any  
such term, provision, covenant or restriction to any person, entity or set of  
circumstances, shall be determined by a court of competent jurisdiction to be  
invalid, unlawful, void or unenforceable to any extent, the remainder of the  
terms, provisions, covenants and restrictions set forth in this Agreement, and  
the application of such terms, provisions, covenants and restrictions to  
persons, entities or circumstances other than those as to which it is  
determined to be invalid, unlawful, void or unenforceable, shall remain in  
full force and effect, shall not be impaired, invalidated or otherwise  
affected and shall continue to be valid and enforceable to the fullest extent  
permitted by applicable law.  
  
 (c) Binding Effect and Assignment. This Agreement and all  
of the provisions hereof shall be binding upon and inure to the benefit of the  
parties hereto and their respective successors and permitted assigns, but,  
except as otherwise specifically provided herein, neither this Agreement nor  
any of the rights, interests or obligations of the parties hereto may be  
assigned by either of the parties without the prior written consent of the  
other; provided, however, that each of Holdco and Parent may freely assign its  
rights to a subsidiary of Holdco or Parent without such prior written approval  
but no such assignment shall relieve Holdco or Parent of any of its obligations  
hereunder. Any purported assignment without such consent shall be void.  
  
 (d) Amendment and Modification. This Agreement may not be  
modified, amended, altered or supplemented except by the execution and delivery  
of a written agreement executed by the parties hereto.  
  
 (e) Specific Performance; Injunctive Relief. Each of the  
parties hereto hereby acknowledge that (i) the representations, warranties,  
covenants and restrictions set forth in this Agreement are necessary,  
fundamental and required for the protection of Holdco and Parent and to  
preserve for Holdco and Parent the benefits of the Mergers; (ii) such covenants  
relate to matters which are of a special, unique, and extraordinary character  
that gives each such representation, warranty, covenant and restriction a  
special, unique, and extraordinary value; and (iii) a breach of any such  
representation, warranty, covenant or restriction, or any other term or  
provision of this Agreement, will result in irreparable harm and damages to  
Holdco and Parent that cannot be adequately compensated by a monetary award.  
Accordingly, Holdco, Parent and the Affiliate hereby expressly agree that in  
addition to all other remedies available at law or in equity, Holdco and Parent  
shall be entitled to the immediate remedy of specific performance, a temporary  
and/or permanent restraining order, preliminary injunction, or such other form  
of injunctive or equitable relief as may be used by any court of competent  
jurisdiction to restrain or enjoin any of the parties hereto from breaching any  
representations, warranties, covenants or restrictions set forth in this  
Agreement, or to specifically enforce the terms and provisions hereof.  
  
 (f) Governing Law. This Agreement shall be governed by  
and construed, interpreted and enforced in accordance with the internal laws of  
the State of Delaware without giving effect to any choice or conflict of law  
provision, rule or principle (whether of the State of Delaware or any other  
jurisdiction) that would cause the application of the laws of any jurisdiction  
other than the State of Delaware.  
  
 (g) Jurisdiction. The parties to this Agreement agree  
that any suit, action or proceeding arising out of, or with respect to, this  
Agreement or any judgment entered by any court in respect thereof shall be  
brought in the courts of California, County of San Francisco or in the U.S.  
District Court for the Northern District of California as the commencing party  
may elect, and the Affiliate hereby accepts the exclusive jurisdiction of those  
courts for the purpose of any suit, action or proceeding. In addition, the  
Affiliate hereby irrevocably waives, to the fullest extent permitted by law,  
any objection which the Affiliate may now or hereafter have to the laying of  
venue of any suit, action or proceeding arising out of or relating to this  
Agreement or any judgment entered by any court in respect thereof brought in  
California, County of San Francisco or the U.S. District Court for the Northern  
District of California, as selected by the commencing party, and hereby further  
irrevocably waives any claim that any suit, action or proceedings brought in  
California or in such District Court has been brought in an inconvenient  
forum.  
  
 (h) Entire Agreement. This Agreement contains the entire  
understanding of the parties in respect of the subject matter hereof, and  
supersedes all prior negotiations and understandings between the parties with  
respect to the subject matter hereof.  
  
 (i) Notices. All notices and other communications  
pursuant to this Agreement shall be in writing and deemed to be sufficient if  
contained in a written instrument and shall be deemed given if delivered  
personally, telecopied, sent by nationally-recognized overnight courier or  
mailed by registered or certified mail (return receipt requested), postage  
prepaid, to the parties at the following address (or at such other address for  
a party as shall be specified by like notice):  
  
 If to Holdco or Parent: XxxxxxXxxxx.xxx, Inc.  
 000 Xxxxxxx Xxxxxx  
 Xxx Xxxxxxxxx, XX 00000  
 Attention: Xxxx Xxxxxxxx, Esq.  
 Facsimile: (000) 000-0000  
 Telephone: (000) 000-0000  
  
 with a copy to: Xxxxxxxx & Xxxxxxxx LLP  
 000 Xxxxxx Xxxxxx  
 Xxx Xxxxxxxxx, Xxxxxxxxxx 00000  
 Attention: Xxxxxx Xxxxxxxx, Esq.  
 Facsimile: (000) 000-0000  
 Telephone: (000) 000-0000  
  
 If to the Affiliate: To the address for notice set  
 forth on the signature  
 page hereof.  
  
 (j) Further Assurances. The Affiliate shall execute and  
deliver any additional certificate, instruments and other documents, and take  
any additional actions, as Holdco or Parent may deem necessary or desirable, in  
the reasonable opinion of Holdco or Parent, to carry out and effectuate the  
purpose and intent of this Agreement and the transactions contemplated hereby.  
  
 (k) Expenses. If any action at law or in equity is  
necessary to enforce or interpret the terms of this Agreement, the prevailing  
party shall be entitled to reasonable attorney's fees, costs and necessary  
disbursements in addition to any other relief to which such party may be  
entitled after a final, non-appealable judgment that this Agreement has been  
breached by the non-prevailing party and such breach has caused actual damages  
to the prevailing party. In no event shall the prevailing party be entitled to  
consequential, speculative or punitive damages.  
  
 (l) Remedies Not Exclusive. All rights, powers and  
remedies provided under this Agreement or otherwise available in respect hereof  
at law or in equity will be cumulative and not alternative, and the exercise of  
any thereof by either party will not preclude the simultaneous or later  
exercise of any other such right, power or remedy by such party.  
  
 (m) Waiver of Jury Trial. Each party hereto irrevocably  
waives any and all right to trial by jury in any legal proceeding arising out  
of or related to this Agreement or the transactions contemplated hereby.  
  
 (n) Counterparts. This Agreement may be executed in any  
number of counterparts and delivered by facsimile, each of which when so  
executed and delivered shall be deemed an original, but all of which together  
shall constitute but one and the same instrument and the delivering party  
covenants and agrees that an original will be sent immediately thereafter by  
registered or certified mail.  
  
 (o) Effect of Headings. The section headings herein are  
for convenience only and shall not affect the construction or interpretation of  
this Agreement.  
  
 (p) Third Party Reliance. Legal counsel to Parent and the  
Company shall be entitled to rely upon this Agreement.  
  
 (q) Survival. The representations, warranties, covenants  
and other terms and provisions set forth in this Agreement shall survive the  
consummation of the Mergers.  
  
  
  
  
  
  
  
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 IN WITNESS WHEREOF, the undersigned have caused this Affiliate  
Agreement to be duly executed as of the date first written above.  
  
 HOLDCO:  
 By: /s/ Xxxxx Xxxxxx  
 -------------------------  
 Name: Xxxxx Xxxxxx  
 Title: CEO  
  
  
 PARENT:  
 By: /s/ Xxxxx Xxxxxx  
 -------------------------  
 Name: Xxxxx Xxxxxx  
 Title: CEO  
  
  
  
 AFFILIATE:  
  
 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Affiliate's Address for Notice:  
  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Shares beneficially owned:  
  
 \_\_\_\_\_ shares of Company Common Stock  
  
 \_\_\_\_\_ shares of Company Common Stock  
 issuable upon the exercise of  
 outstanding options, warrants  
 and other rights  
  
  
  
  
  
  
 SIGNATURE PAGE TO AFFILIATE AGREEMENT  
  
  
  
 INDIVIDUALS/ENTITIES SUBJECT TO THE AFFILIATES AGREEMENT  
  
  
  
GENERAL ATLANTIC PARTNERS 69, L.P. - 5,835,624 shares of common stock  
GAP COINVESTMENT PARTNERS II, L.P. - 905,421 shares of common stock  
GAPSTAR, LLC - 449,403 shares of common stock  
RRE VENTURES II L.P. - 497,459 shares of common stock  
RRE VENTURES FUND II L.P. - 87,022 shares of common stock  
XXXXX XXXXX - 375,938 shares of common stock  
XXXXX XXXXX - 0 shares of common stock  
XXXXX XXXXXXX - 5,000 shares of common stock  
XXXX XXXXXXX - 437,500 shares of common stock  
XXXXX XXXXXXX - 57,509 shares of common stock  
XXXXX X. XXXXXXXX - 2,266,261 shares of common stock  
XXXXX XXXXXXX - 30,000 shares of common stock  
XXXXXXX XXXXX - 170,861 shares of common stock