UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q
QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED MARCH 31, 1998

COMMISSION FILE NUMBER 1-12672

BAY APARTMENT COMMUNITIES, INC.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

<TABLE>
<S> <C>

MARYLAND	77-0404318
(STATE OF INCORPORATION)	(I.R.S. EMPLOYER IDENTIFICATION NO.)

</TABLE>

4340 STEVENS CREEK BLVD., #275, SAN JOSE, CALIFORNIA 95129
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES, INCLUDING ZIP CODE)

(408) 983-1500
(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE)

N/A
(FORMER NAME, FORMER ADDRESS AND FORMER FISCAL YEAR, IF CHANGED SINCE LAST REPORT)

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

APPLICABLE ONLY TO CORPORATE ISSUERS

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<TABLE>
<CAPTION>

CLASS	SHARES OUTSTANDING	DATE
<S> <C>	<C>	
Common, $.01 par value	28,973,909	May 8, 1998

</TABLE>

BAY APARTMENT COMMUNITIES, INC.

FORM 10-Q

INDEX

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PART I -- FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

BAY APARTMENT COMMUNITIES, INC.

CONSOLIDATED BALANCE SHEETS
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

ASSETS

<TABLE>
<CAPTION>

	MARCH 31, 1998 (UNAUDITED)	DECEMBER 31, 1997
<S>	<C>	<C>
Real estate assets:		
Land	$ 323,802	$ 299,885
Buildings and improvements	940,608	839,638
Furniture, fixtures and equipment	70,185	63,631
	1,334,595	1,203,154
Less accumulated depreciation	(88,762)	(79,031)
Operating real estate assets	1,245,833	1,124,123
Construction in progress	171,875	170,361
Net real estate assets	1,417,708	1,294,484
Cash and cash equivalents	2,892	3,188
Restricted cash	1,845	1,597
Other assets, net	25,019	18,381
Total assets	$1,447,464	$1,317,650
LIABILITIES AND SHAREHOLDERS' EQUITY		
Notes payable	$ 605,191	$ 487,484
Accounts payable and accrued expenses	13,247	7,727
Dividends payable	12,695	12,591
Other liabilities	13,292	8,020
Total liabilities	644,425	515,822
Contingencies (Note 4)	--	--
Minority interest	9,124	9,133
Shareholders' equity:		
Preferred stock, $.01 par value; 25,000,000 shares authorized; 2,308,800 shares of Series A outstanding at both March 31, 1998 and December 31, 1997; 405,022 shares of Series B outstanding at both March 31, 1998 and December 31, 1997; 2,300,000 shares of Series C outstanding at both March 31, 1998 and December 31, 1997; 3,267,700 shares of Series D outstanding at both March 31, 1998 and December 31, 1997	83	83
Common stock, $.01 par value; 40,000,000 shares authorized; 26,197,865 shares outstanding at March 31, 1998; 26,077,518 shares outstanding at December 31, 1997	262	261
Paid-in capital	826,792	823,520
Dividends in excess of accumulated earnings	(33,222)	(31,169)
Total shareholders' equity	793,915	792,695
Total liabilities and shareholders' equity	$1,447,464	$1,317,650

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

BAY APARTMENT COMMUNITIES, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

<TABLE>
<CAPTION>

	QUARTER ENDED MARCH 31, 1998	QUARTER ENDED MARCH 31, 1997
<S>	<C>	<C>
Revenue:		
Rental	$43,666	$25,393
Other	1,719	864
Total revenue	45,385	26,257
Expenses:		
Property operating	10,344	5,971
Property taxes	3,626	1,914
General and administrative	2,016	1,367
Abandoned project costs	150	80
Interest and financing	6,249	3,317
Depreciation and amortization	9,867	5,699
Total expenses	32,252	18,348
Income before minority interest	13,133	7,909
Minority interest	(154)	(138)
Net income	12,979	7,771
Preferred stock dividend requirement:		
Series A and B	(1,174)	(1,146)
Series C and D	(2,855)	--
Earnings available to common shares	$ 8,950	$ 6,625
Basic and diluted earnings per common share:		
Income before minority interest	$ 0.35	$ 0.34
Minority interest	(0.01)	(0.01)
Earnings available to common shares	$ 0.34	$ 0.33
Dividends declared per common share	$ 0.42	$ 0.41

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

BAY APARTMENT COMMUNITIES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)
(DOLLARS IN THOUSANDS)

<TABLE>
<CAPTION>

	QUARTER ENDED MARCH 31, 1998	QUARTER ENDED MARCH 31, 1997
<S>	<C>	<C>
CASH FLOWS PROVIDED BY OPERATING ACTIVITIES:		
Net income	$ 12,979	$ 7,771
NONCASH EXPENSES INCLUDED IN NET INCOME:		
Depreciation and amortization	9,867	5,699
Minority interest	154	138
CASH PROVIDED BY (USED FOR) OPERATING ASSETS AND LIABILITIES:		
Restricted cash	(248)	(140)
Other assets	(6,774)	(3,778)
Accounts payable and accrued expenses	5,520	(1,756)
Other liabilities	5,272	(104)
NET CASH PROVIDED BY OPERATING ACTIVITIES	26,770	7,830
CASH FLOWS PROVIDED BY (USED FOR) INVESTING ACTIVITIES:		
Capital improvements	(979)	(640)
Acquisition of properties	(78,512)	(20,562)
Construction in progress	(43,064)	(17,677)

NET CASH (USED FOR) INVESTING ACTIVITIES.....	(122,555)	(38,879)
CASH FLOWS PROVIDED BY (USED FOR) FINANCING ACTIVITIES:		
Proceeds from stock offerings, net of issuance costs.....	--	49,271
Exercise of stock options.....	208	80
Proceeds from employee stock purchase plan.....	241	--
Proceeds from dividend reinvestment plan.....	2,824	--
Notes payable principal payments.....	(493)	(157)
Proceeds from senior unsecured note offerings.....	150,000	--
Borrowings on lines of credit.....	106,700	36,500
Repayments on lines of credit.....	(148,900)	(45,300)
Partner and minority interest distributions.....	(163)	(197)
Dividends paid.....	(14,928)	(8,940)
NET CASH PROVIDED BY FINANCING ACTIVITIES.....	95,489	31,257
Increase (decrease) in cash and cash equivalents.....	(296)	208
Cash and cash equivalents, beginning of period.....	3,188	920
Cash and cash equivalents, end of period.....	$ 2,892	$ 1,128
SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:		
Cash paid during the period for:		
Interest (net of amount capitalized).....	$ 4,278	$ 4,080
SUPPLEMENTAL DISCLOSURES OF NONCASH INVESTING AND FINANCING ACTIVITIES:		
Noncash transfers of construction in progress.....	$ 41,550	$ 7,818
Assumption of notes payable by the Company.....	$ 10,400	$ --
Conversion of partnership units to common stock.....	$ --	$ 844
Dividends declared or accrued but not paid.....	$ 12,695	$ 9,540

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

1. ORGANIZATION AND SIGNIFICANT ACCOUNTING POLICIES:

Organization

Bay Apartment Communities, Inc., in conjunction with its wholly-owned partnerships and subsidiaries (the "Company"), was formed in 1978 to develop, lease and manage upscale apartment communities. Before March 17, 1994, the Company was a part of the Greenbriar Group which consisted of the Greenbriar Development Company and certain affiliated entities. The Greenbriar Group included one land parcel held for future development, 12 apartment communities transferred to the Company in the reorganization transactions and the partnerships that held 11 of these apartment communities. On March 17, 1994, the Greenbriar Development Company became Bay Apartment Communities, Inc. as a result of certain reorganization transactions in connection with the sale of 10,889,742 shares of common stock in an initial public offering. Also included in this reorganization was the combination of building and management affiliates into the Company. The Company is a self-administered and self-managed real estate investment trust ("REIT") which acquires, builds, owns and manages apartment communities primarily in Northern and Southern California. At March 31, 1998, the Company owned 59 apartment communities, of which 37 are in Northern California, 19 are in Southern California, two are in the Seattle, Washington area and one community is in the Portland, Oregon area, comprising 16,669 apartment homes, including the apartment homes delivered at Toscana -- a partially completed community. In addition to Toscana, the Company had four communities under construction and one land site held for future development in Northern California.

The interim unaudited financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements required by generally accepted accounting principles have been condensed or omitted pursuant to such rules and regulations. These unaudited financial statements should be read in conjunction with the financial statements and notes thereto included in the Company's Annual Report on Form 10-K for the year ended December 31, 1997. The results of operations for the quarter ended March 31, 1998 are not necessarily indicative of the operating

results for the full year. Management believes that the disclosures are adequate to make the information presented not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods have been included.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company, and its wholly-owned partnerships and subsidiaries. The accompanying consolidated financial statements also include the accounts of Bay Countrybrook L.P., a Delaware limited partnership (the "Countrybrook Partnership"). The general partner of the Countrybrook Partnership is a wholly-owned subsidiary of the Company, Bay GP, Inc., a Maryland corporation. The accompanying consolidated financial statements also include the accounts of Bay Rincon, LP, a California limited partnership (the "Rincon Partnership"), and Bay Pacific Northwest, L.P., a Delaware limited partnership (the "Northwest Partnership"). The Company is the sole general partner of the Rincon Partnership and Northwest Partnership. All significant intercompany balances and transactions have been eliminated in consolidation.

Bay Countrybrook L.P.

In connection with the formation of the Countrybrook Partnership in July 1996, 298,577 units of limited partnership interests ("Countrybrook Units") were issued to the existing partners of the contributor of the CountryBrook community. Under the terms of the Countrybrook Partnership's Limited Partnership Agree-

ment, holders of Countrybrook Units have the right to require the Countrybrook Partnership to redeem their Countrybrook Units for cash, subject to certain conditions. The Company may, however, elect to deliver an equivalent number of shares of the Company's common stock to the holders of Countrybrook Units in satisfaction of the Countrybrook Partnership's obligation to redeem the Countrybrook Units for cash. An aggregate of 166,142 Countrybrook Units had been converted into the Company's common stock as of both March 31, 1998 and December 31, 1997. An aggregate of 762 Countrybrook Units had been redeemed for cash as of both March 31, 1998 and December 31,1997.

Bay Pacific Northwest, L.P.

In connection with the formation of the Northwest Partnership in September 1997, 163,338 units of limited partnership interest ("Northwest Units") were issued to the existing partners of the contributor of the Gallery Place community. Under the terms of the Northwest Partnership's Limited Partnership Agreement, holders of Northwest Units have the right to require the Northwest Partnership to redeem their Northwest Units for cash, subject to certain conditions. The Company may, however, elect to deliver an equivalent number of shares of common stock to the holders of Northwest Units in satisfaction of the Northwest Partnership's obligation to redeem the Northwest Units for cash. No Northwest Units had been converted into the Company's common stock or redeemed for cash as of both March 31, 1998 and December 31, 1997.

Operating Real Estate Assets

Subsequent to occupancy, significant expenditures, generally exceeding $5, which improve or extend the life of the asset are capitalized. The operating real estate assets are stated at cost and consist of land, buildings and improvements, furniture, fixtures and equipment, and other costs incurred during development or redevelopment and construction or reconstruction.

Apartment homes available for occupancy are generally leased on a one year or less basis. Rental income and operating costs incurred during the initial lease-up or post-reconstruction lease-up period are fully recognized as they accrue.

Capitalization of Costs During Development and Redevelopment

Cost capitalization during development of constructed assets (including interest and related loan fees, property taxes and other direct and indirect costs) begins when active development commences and ends when the asset is delivered and a certificate of occupancy is issued. Cost capitalization during redevelopment and reconstruction of assets (including interest and related loan fees, property taxes and other direct and indirect costs) begins when an apartment home is taken out-of-service for reconstruction and ends when the apartment home reconstruction is completed and the apartment home is placed-in-service.

(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

Depreciation

Depreciation is calculated on operating real estate assets using the straight-line method over their estimated useful lives, which range from ten to thirty years. Furniture, fixtures and equipment are generally depreciated using the straight-line method over their estimated useful lives, which range from five to seven years.

Income Taxes

The Company has elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, (the "Code"). A corporate REIT is a legal entity which holds real estate interests and through certain levels

of payments of dividends to shareholders and other criteria, is permitted to reduce or avoid the payment of federal and state income taxes at the corporate level. As a result, the Company will not be subject to federal and state income taxation at the corporate level if certain requirements are met. Accordingly, no provision for federal and state income taxes has been made.

Deferred Financing Costs

Included in "Other assets, net" are costs associated with obtaining debt financing and credit enhancements. Such costs are being amortized over the term of the associated debt or credit enhancement.

Cash and Cash Equivalents

Cash and cash equivalents include all cash and liquid investments with an original maturity of three months or less from the date acquired. Interest income amounted to $184 and $104 for the quarters ended March 31, 1998 and 1997, respectively.

Restricted Cash

Restricted cash at March 31, 1998 and December 31, 1997 consists of replacement reserves related to the debt on the Barrington Hills, Crossbrook, Rivershore, Canyon Creek, Sea Ridge and CountryBrook communities.

Earnings per Common Share

The Company has adopted Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings per Share". In accordance with the provisions of SFAS No. 128, basic earnings per share for the quarters ended March 31, 1998 and 1997 is computed by dividing earnings available to common shares (net income less preferred stock dividend requirement) by the weighted average number of shares outstanding during the period.

Additionally, other potentially dilutive common shares are considered when calculating earnings per share on a diluted basis. The Company's basic and diluted weighted average shares outstanding for the quarters ended March 31, 1998 and 1997 are as follows:

<TABLE>
<CAPTION>

	FOR THE QUARTER ENDED MARCH 31,	
	1998	1997
<S>	<C>	<C>
Common shares -- basic	26,172,571	19,997,068
Shares issuable from assumed conversion of Series A and B Preferred Stock	2,713,822	2,713,822
Shares issuable from assumed conversion of common stock options	278,669	279,088
Common shares -- diluted	29,165,062	22,989,978

</TABLE>

In calculating the earnings per common share for the quarters ended March 31, 1998 and 1997, the overall effect of all securities convertible into common shares during both periods was anti-dilutive. Therefore, diluted earnings per share is the same as basic earnings per share.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates.

Concentration of Geographic Risk

The majority of the Company's apartment communities are located in Northern California and most of these Northern California communities are located in the San Francisco Bay Area. This geographic concentration could expose the Company to a significant loss should one event affect the entire area such as an earthquake or other environmental event.

Financial Instruments

The Company enters into interest rate swap agreements (the "Swap Agreements") with parties whose credit ratings issued by Standard and Poor's Ratings Group are AAA in order to limit the Company's exposure should interest rates rise above specified levels. The Swap Agreements are held for purposes other than trading. The amortization of the cost of the Swap Agreements is included in amortization expense. The remaining unamortized cost of the Swap Agreements is included in "Other assets, net" on the balance sheet and is amortized over the remaining life of the agreements.

Accounting for Stock-based Compensation

The Company applies Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, and related interpretations in accounting for its stock-based compensation plans.

Newly Issued Accounting Standards

In June 1997, the Financial Accounting Standards Board issued SFAS No. 130 "Reporting Comprehensive Income" and No. 131 "Disclosure of Segment Information." SFAS No. 130 establishes the disclosure requirements for reporting comprehensive income in an entity's annual and interim financial statements and becomes effective for the Company for the fiscal year ending December 31, 1998. Comprehensive income includes unrealized gains and losses on securities currently reported by the Company as a component of stockholders' equity which the Company would be required to include in a financial statement and display the accumulated balance of other comprehensive income separately in the equity section of the consolidated balance sheet. The Company does not believe this pronouncement will have a material effect on the Company's results of operations.

SFAS No. 131 establishes standards for determining an entity's operating segments and the type and level of financial information to be disclosed. SFAS No. 131 becomes effective for the Company for the fiscal year ending December 31, 1998. The Company does not believe that this pronouncement will result in any additional disclosures.

On March 19, 1998, the Emerging Issues Task Force of the Financial Accounting Standards Board issued Ruling 97-11 entitled "Accounting for Internal Costs Relating to Real Estate Property Acquisitions," which requires that internal costs of identifying and acquiring operating property be expensed as incurred. Costs associated with the acquisition of non-operating property may still be capitalized. The ruling is effective for acquisitions completed subsequent to March 19, 1998. The Company estimates that this ruling will not have a material effect on the Company's consolidated financial statements.

2. INTEREST CAPITALIZED

Interest costs associated with projects under development and construction or redevelopment and reconstruction aggregating $2,964 and $1,025 for the quarters ended March 31, 1998 and 1997, respectively, have been capitalized.

3. NOTES PAYABLE

<TABLE>

(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

<CAPTION>

	MARCH 31, 1998	DECEMBER 31, 1997
<S>	<C>	<C>
TAX-EXEMPT VARIABLE RATE UNDER INTEREST RATE SWAPS:		
Foxchase (Phase I and II) and Fairway Glen are encumbered by first deeds of trust which collateralize three housing bond issues maturing November 1, 2007. The Company has entered into a Swap Agreement under which the interest rate is fixed until March 2004 at an effective rate of 5.88%. Such bonds require monthly payments of interest only. The bonds contain covenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	$ 35,980	$ 35,980
Waterford and Villa Mariposa are encumbered by first deeds of trust which collateralize two housing bond issues. The Company has entered into a Swap Agreement under which the interest rate is fixed until March 2004 at an effective rate of 5.88%. Such bonds require monthly payments of interest only and mature on August 1, 2014 and March 1, 2017, respectively. The bonds contain covenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families....	51,400	51,400
Barrington Hills is encumbered by a first deed of trust which collateralizes housing bond issues maturing June 15, 2025, fully amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until June 2010 at an effective rate of 6.48%, including the amortization of deferred financing costs. The bonds contain covenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	13,144	13,185
Crossbrook is encumbered by a first deed of trust which collateralizes housing bond issues maturing June 15, 2025, fully amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until June 2010 at an effective rate of 6.48%, including the amortization of deferred financing costs. The bonds contain covenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	8,459	8,484
Rivershore is encumbered by a first deed of trust which collateralizes housing bond issues maturing November 15, 2022, fully amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until June 2010 at an effective rate of 6.48%, including the amortization of deferred financing costs. The bonds contain convenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	10,274	10,309
Canyon Creek is encumbered by a first deed of trust which collateralizes housing bond issues maturing June 15, 2025, fully amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until June 2010 at an effective rate of 6.48%, including the amortization of deferred financing costs. The bonds contain convenants which require 20% of the apartment homes to be leased or held available for lease to low income families.....	38,416	38,534

</TABLE>

<TABLE>
<CAPTION>

	MARCH 31, 1998	DECEMBER 31, 1997
<S>	<C>	<C>
Sea Ridge is encumbered by a first deed of trust which collateralizes housing bond issues maturing June 15, 2025, fully amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until June 2010 at an effective rate of 6.48%, including the amortization of deferred financing costs. The bonds contain convenants which require 20% of the apartment homes to be leased or held available for lease to low income families.....	17,426	17,479
City Heights is encumbered by a first deed of trust which		

collateralizes housing bond issues maturing June 1, 2025, partially amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until July 2007 at an effective interest rate of 5.80%, including the amortization of deferred financing costs. The bonds contain convenants which require 20% of the apartment homes to be leased or held available for lease to low income families.....	20,661	20,714
Larkspur Canyon is encumbered by a first deed of trust which collateralizes housing bond issues maturing June 1, 2025, partially amortizing over the term. The Company has entered into a Swap Agreement under which the interest rate is fixed until September 2002 at an effective interest rate of 5.50%, including the amortization of deferred financing costs. The bonds contain covenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	7,590	7,610
Subtotal.....	203,350	203,695
TAX-EXEMPT FIXED RATE:		
CountryBrook is encumbered by a first deed of trust which collateralizes housing bond issues maturing March 1, 2012, partially amortizing over the term. The interest rate on the bonds is fixed until April 2002 at an effective interest rate of 7.87%, including the amortization of deferred financing costs. The bonds contain covenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	19,782	19,850
Subtotal.....	19,782	19,850
TAX-EXEMPT VARIABLE RATE:		
Laguna Brisas is encumbered by a first deed of trust which collateralizes housing bond issues maturing March 1, 2009. Interest only payments are required monthly at a variable rate set weekly by the remarketing agent (5.37% at March 31, 1998, including the amortization of deferred financing costs). The bonds contain convenants which require 20% of the apartment homes to be leased or held available for lease to low or moderate income families.....	10,400	--
Subtotal.....	10,400	--
FIXED RATE:		
Governor's Square is encumbered by a first deed of trust maturing August 1, 2004, partially amortizing over the term. The interest rate on the loan is fixed at 7.65%.....	14,152	14,184
The Arbors (formerly Cardiff Gardens) is encumbered by a first deed of trust maturing May 1, 2004. Interest only payments are required monthly at a fixed interest rate of 7.25%.....	12,870	12,870

</TABLE>

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)
(UNAUDITED)
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

<TABLE>
<CAPTION>

	MARCH 31, 1998	DECEMBER 31, 1997
<S>	<C>	<C>
Gallery Place is encumbered by a first deed of trust maturing May 15, 2001, partially amortizing over the term. The interest rate on the loan is fixed at 7.31%.....	11,637	11,685
Subtotal.....	38,659	38,739
UNSECURED FIXED RATE:		
Senior unsecured notes maturing January 15, 2003. Interest only payments are required semi-annually at a fixed interest rate of 6.25% (6.43% including the amortization of deferred financing costs).....	50,000	--
Senior unsecured notes maturing January 15, 2005. Interest only payments are required semi-annually at a fixed interest rate of 6.50% (6.63% including the amortization of deferred financing costs).....	50,000	--
Senior unsecured notes maturing January 15, 2008. Interest		

(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)

only payments are required semi-annually at a fixed interest rate of 6.625% (6.71% including the amortization of deferred financing costs)	50,000	--
Note payable assumed in connection with the Cedar Ridge acquisition maturing July 15, 1999. Interest only payments are required monthly at a fixed interest rate of 6.50%	1,000	1,000
Subtotal	151,000	1,000
CREDIT LINE:		
Unsecured line of credit (the "Unsecured Line of Credit") with an aggregate borrowing amount of up to $350,000 maturing May 2000. This line bears interest at various LIBOR rates plus 0.90%, with a competitive bid option	182,000	224,200
Subtotal	182,000	224,200
Total Notes Payable	$605,191	$487,484

Principal payments on outstanding notes payable as of March 31, 1998 are due as follows:

1998	$ 1,531
1999	3,175
2000	184,338
2001	13,308
2002	2,435
Thereafter	400,404
Total	$605,191

4. CONTINGENCIES

The Company is subject to various legal proceedings and claims that arise in the ordinary course of business. These matters are generally covered by insurance. While the resolution of these matters cannot be predicted with certainty, management believes that the final outcome of such matters will not have a material adverse effect on the financial position or results of operations of the Company.

On September 8, 1997, the Company agreed to purchase through the Northwest Partnership, a 264 apartment home community that was under construction in Redmond, Washington from Avondale Bear Creek Limited Partnership. The proposed acquisition of Verandas at Bear Creek will not be consummated

until 90 days after construction has been completed and the community is 90 percent occupied by residents. Construction at this community has recently been completed and the community is 90 percent occupied by residents. The proposed acquisition is expected to close during the second quarter of 1998 and the purchase price is anticipated to be approximately $34.3 million. In connection with this proposed acquisition, the Company has agreed to pay off mortgage indebtedness secured by the community in the amount of approximately $28 million and the Northwest Partnership will issue Northwest Units valued at approximately $3.9 million. The total number of Northwest Units issued in connection with this proposed acquisition will be determined based on a price per unit equal to the average closing sale price of the Company's common stock on the New York Stock Exchange for a specified number of days preceding the closing date of the acquisition. These Northwest Units will have the same 4.5% initial annual priority return applicable to the Northwest Units issued in connection with the Company's acquisition of the Gallery Place community. In addition, subject to certain terms and conditions, the holders of such Northwest Units may require the Northwest Partnership to redeem all or a portion of their Northwest Units in exchange for cash. The Company may, however, at its election, redeem such Northwest Units in exchange for shares of the Company's common stock. All of such shares will be covered by a registration rights agreement. Because the consummation of the acquisition of Verandas at Bear Creek is subject to the satisfaction of certain conditions that are not within the control of the Company, there can be no assurance that the Company will consummate the acquisition or, if the community is acquired, that it will be purchased on the terms currently contemplated.

On March 9, 1998, the Company announced that it had signed a definitive

merger agreement with Avalon Properties, Inc. ("Avalon"). The surviving company is to be named Avalon Bay Communities, Inc. Under the terms of the agreement, Avalon will be merged with and into the Company, with the Company as the surviving entity, through an exchange of shares in which the Avalon common shareholders will receive 0.7683 of a share of the Company's common stock for each share of Avalon common stock they own. Avalon preferred shareholders will receive comparable preferred shares of the Company as a result of the merger. The merger, which has been unanimously approved by the Board of Directors of both companies and is expected to close in June 1998, is intended to qualify as a tax-free transaction and will be accounted for as a purchase of Avalon by the Company. The merger is subject to the approval of the shareholders of both companies and other customary closing conditions. In connection with the execution of the merger agreement, the Company and Avalon each issued to the other an option to buy 19.9% of its outstanding common stock under certain circumstances. In addition, the Company and Avalon each adopted a shareholder rights agreement. Avalon Bay Communities, Inc. will be governed by a twelve-member Board of Directors, six of whom will be from the Company's Board of Directors and six of whom will be from Avalon's Board of Directors. Nine of the twelve Board members will be independent. Because the consummation of the merger between the Company and Avalon is subject to the satisfaction of certain conditions that are not within the control of the Company, there can be no assurance that the merger will be consummated.

5. SUBSEQUENT EVENTS

In April 1998, the Company acquired a 5.05 acre site in San Jose, California for approximately $4,700. The Company plans to develop, subject to certain governmental approvals, an apartment home community with up to 288 apartment homes and approximately 8,500 square feet of retail space.

Also in April 1998, the Company sold in a public offering 1,244,147 shares of common stock at a gross price of $37.375 per share. The net proceeds to the Company, after all anticipated issuance costs, were approximately $44,000. The net proceeds were used to reduce borrowings under the Unsecured Line of Credit.

On April 27, 1998, the owner of the Company's Series A Preferred Stock and Series B Preferred Stock (the "Preferred Holder") converted 1,358,736 shares of Series A Preferred Stock into an equal number of

shares of the Company's common stock . This conversion occurred on the date which was two business days after the record date for the Company's 1998 Annual Meeting of Stockholders pursuant to a Shareholder Agreement, dated as of March 9, 1998 (the "Shareholder Agreement"), between the Company and the Preferred Holder and in accordance with the procedure for conversion set forth in the Company's charter. Under certain circumstances, the Preferred Holder is required by the Shareholder Agreement to convert additional shares of the Company's Series A Preferred Stock and/or Series B Preferred Stock. In consideration of the Preferred Holder entering into the Shareholder Agreement, the Company paid $485 to the Preferred Holder. In October 2005, all outstanding shares of the Company's Series A Preferred Stock and Series B Preferred Stock will be automatically converted into shares of common stock.

In May 1998, the Company purchased the Avalon Ridge apartment community for approximately $21,300 including the purchase of approximately $18,800 in tax-exempt bond financing on this community. The Company will hold these bonds until it decides to either retire the bonds or refinance them with new tax-exempt debt. This community contains 356 apartment homes and is located in Renton, Washington.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The forward-looking statements contained in this discussion are statements that involve risks and uncertainties, including, but not limited to, the demand for apartment homes, the effects of economic conditions, the impact of competition and competitive pricing, changes in construction costs, the results of financing efforts, potential acquisitions under agreement, the effects of the Company's accounting policies and other risks detailed in the Company's filings with the Securities and Exchange Commission.

RESULTS OF OPERATIONS

The following discussion sets forth historical results of operations for

the Company for the quarters ended March 31, 1998 and 1997. The following table outlines the communities acquired or leased-up during 1997 and through March 31, 1998:

<TABLE>
<CAPTION>

1997 ACQUISITION COMMUNITIES	
COMMUNITY	DATE ACQUIRED
<S>	<C>
SummerWalk (a)	January 3, 1997
TimberWood (b)	March 13, 1997
SunScape (b)	April 1, 1997
The Arbors (b)	April 18, 1997
Villa Serena (c)	April 25, 1997
Amador Oaks (a)	April 30, 1997
Mission Woods (b)	May 16, 1997
Cedar Ridge (b)	July 15, 1997
The Park (b)	September 4, 1997
Lakeside (b)	September 5, 1997
Gallery Place (b)	September 23, 1997
Landing West (b)	October 1, 1997
Creekside (b)	October 31, 1997
Governor's Square (b)	December 11, 1997
Waterhouse Place (b)	December 18, 1997
Viewpointe (b)	December 18, 1997
Mission Bay Club (b)	December 30, 1997
Westwood Club (b)	December 30, 1997
Pacifica Club (b)	December 30, 1997

</TABLE>

<TABLE>
<CAPTION>

1998 ACQUISITION COMMUNITIES	
COMMUNITY	DATE ACQUIRED
<S>	<C>
Warner Oaks (b)	January 14, 1998
Amberway (b)	January 28, 1998
Arbor Park (b)	January 28, 1998
Laguna Brisas (b)	February 11, 1998
Cabrillo Square (b)	March 2, 1998

</TABLE>

<TABLE>
<CAPTION>

CURRENT DEVELOPMENT COMMUNITIES	
COMMUNITY	DATE STABILIZED (d)
<S>	<C>
Toscana	(e)
CentreMark	(f)
Paseo Alameda	(g)
Bay Towers	(h)
Rosewalk II	(i)
Mountain View Land Site	(j)

</TABLE>

The 1997 and 1998 Acquisition Communities and Toscana are collectively termed the "Acquisition Communities."

(a) Reconstruction was completed in 1997.

(b) Reconstruction is ongoing or planned as of March 31, 1998.

(c) Reconstruction was completed during the quarter ended March 31, 1998.

(d) Stabilized occupancy is defined as the first calendar month following completion of construction in which the community has a physical occupancy of at least 95%. As a result of delays due to weather conditions, the estimated occupancy and stabilization dates for the Current Development Communities have been adjusted by approximately six to eight weeks.

(e) Occupancy commenced in July 1997 and operations are expected to be stabilized in the fourth quarter of 1998.

(f) Occupancy is expected to commence in the third quarter of 1998 and

operations are expected to be stabilized in the first quarter of 1999.

(g) Occupancy is expected to commence in the fourth quarter of 1998 and operations are expected to be stabilized in the second quarter of 1999.

(h) Occupancy is expected to commence in 1999 and operations are expected to be stabilized in 2000.

(i) Occupancy is expected to commence in the fourth quarter of 1998 and operations are expected to be stabilized in the second quarter of 1999.

(j) This community is still undergoing planning and development.

Acquisitions entail risks that investments will fail to perform in accordance with expectations and that judgments with respect to the cost of improvements to bring an acquired community up to standards established for the market position intended for that community will prove inaccurate, as well as general investment risks associated with any new real estate investment. Although the Company undertakes an evaluation of the physical condition of each new community before it is acquired, certain defects or necessary repairs may not be detected until after the community is acquired, which could significantly increase the Company's total acquisition costs.

Construction costs are increasing and the cost to reposition communities that have been acquired has, in some cases, exceeded management's original estimates. Management believes that it may experience similar increases in the future. There can be no assurances that the Company will be able to charge rents upon completing the repositioning of the communities that will be sufficient to offset the effects of increases in construction costs.

The Company's results of operations are summarized as follows for the quarters ended March 31, 1998 and 1997 (Dollars in thousands):

<TABLE>
<CAPTION>

	FOR THE QUARTER ENDED MARCH 31,			
	1998	1997	$-CHANGE	%-CHANGE
<S>	<C>	<C>	<C>	<C>
Revenue:				
Rental	$43,666	$25,393	$18,273	72.0%
Other	1,719	864	855	99.0%
Total revenue	45,385	26,257	19,128	72.8%
Expenses:				
Property operating	10,344	5,971	4,373	73.2%
Property taxes	3,626	1,914	1,712	89.4%
General and administrative	2,016	1,367	649	47.5%
Abandoned project costs	150	80	70	87.5%
Interest and financing	6,249	3,317	2,932	88.4%
Depreciation and amortization	9,867	5,699	4,168	73.1%
Total expenses	32,252	18,348	13,904	75.8%
Income before minority interest	13,133	7,909	5,224	66.1%
Minority interest	(154)	(138)	(16)	11.6%
Net income	$12,979	$ 7,771	$ 5,208	67.0%

</TABLE>

Revenue from rental property increased primarily as a result of the addition of the Acquisition Communities. The 1997 and 1998 Acquisition Communities contributed $12,746 and $1,612, respectively, to the increase. Toscana, one of the Current Development Communities (defined below), contributed $1,533 to the increase. The remainder of the portfolio increased rental revenue by $2,382, of which $1,565 was attributable to the Same Store Communities (defined below).

Other income increased primarily due to the additional miscellaneous income from the Acquisition Communities.

Property operating expenses increased primarily as a result of the addition of the Acquisition Communities. Of the $4,373 increase, $3,814 was attributable to the 1997 Acquisition Communities, $382 was attributable to the 1998 Acquisition Communities and $251 was attributable to the apartment homes delivered at Toscana. The Same Store Communities contributed $96 to the increase while the remainder of the portfolio decreased by $170. In addition, the Acquisition Communities contributed $1,483 to the increase in property taxes and the remainder of the portfolio increased property taxes by $229, of which $112

was attributable to the Same Store Communities.

General and administrative costs increased primarily due to the growth in employee-related costs and other costs needed to manage the Acquisition Communities. The 1998 and 1997 amounts are net of $2,255 and $1,252, respectively, of allocated indirect project costs capitalized to construction and reconstruction projects, representing approximately 51% and 46% of total general and administrative expense, including abandoned project costs, for the quarters ended March 31, 1998 and 1997, respectively.

Interest and financing expense increased primarily as a result of increased borrowing for new acquisitions offset in part by higher capitalization of interest from increased development, redevelopment, construction and reconstruction activity.

Depreciation and amortization expense increased primarily due to the addition of the Acquisition Communities.

THE COMPANY'S RESULTS OF PROPERTY OPERATIONS (EARNINGS BEFORE INTEREST, INCOME TAXES, DEPRECIATION AND AMORTIZATION -- "EBITDA") FOR THE "SAME STORE COMMUNITIES" (1) IS SUMMARIZED BELOW FOR THE QUARTERS ENDED MARCH 31, 1998 AND 1997:

<TABLE>
<CAPTION>

(DOLLARS IN THOUSANDS)	FOR THE QUARTER ENDED MARCH 31, 1998	1997	$-CHANGE	%-CHANGE
<S>	<C>	<C>	<C>	<C>
Revenue	$20,237	$18,522	$1,715(2)	9.3%
Expenses	5,508	5,300	208(3)	3.9%
EBITDA	$14,729	$13,222	$1,507	11.4%

</TABLE>

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(1) The Same Store Communities consist of 24 apartment communities comprising a total of 6,354 apartment homes. These apartment communities include all those which were owned for all of 1997 and during the quarter ended March 31, 1998 and to which the Company made no major renovations after January 1, 1997.

(2) Same Store Communities' revenue increased due to rental increases of $1,422, vacancy decreases of $82, late fee increases of $47, concession decreases of $47, month to month fee increases of $40, interest income increases of $30 and a net increase in other income of $47.

(3) Same Store Communities' expenses increased as a result of a $112 increase in property taxes (primarily due to a one-time escape assessment charge of $51), a $57 increase in management and administrative costs and a $40 increase in building maintenance costs, offset by a $1 decrease in net other expenses.

CURRENT DEVELOPMENT COMMUNITIES

The Company has acquired six land sites on which it is building, or plans to commence building in the future, the following Current Development Communities, which will contain an aggregate of approximately 1,908 apartment homes.

- TOSCANA, SUNNYVALE, CALIFORNIA. The Company purchased this partially built and abandoned 17.8 acre site in May 1996 on which it is building a 710 apartment home community. The original total budgeted construction cost of this community was $95.7 million. The site, located approximately at the intersection of Highway 101 and Lawrence Expressway, is close to the center of Silicon Valley. This commmunity will contain a large leasing pavilion, business center, fitness center, two swimming pools, including one 75 foot lap pool, a small commercial area, secure underground parking and a perimeter gate system. Stabilized operations

are expected in the fourth quarter of 1998 and the first apartment homes were completed and occupied in July 1997. As of March 31, 1998, construction had been completed on 420 apartment homes.

- CENTREMARK, SAN JOSE, CALIFORNIA. The Company purchased 2.5 acres of this 7.9 acre site in May 1996. The remainder of this site was purchased in December 1996 after obtaining substantially all of the necessary public approvals for development of the community. The site is located at the intersection of Stevens Creek Boulevard and Interstate 280, in the northwest corner of San Jose, almost immediately adjacent to the City of Cupertino. The planned 311 apartment home

community will include a large leasing facility, business center, fitness center, 65 foot lap pool, secure underground parking and perimeter gate system. The Company has estimated a total budgeted construction cost for this community of $44.1 million. Stabilized operations are expected in the first quarter of 1999 and the first apartment homes are expected to be occupied in the third quarter of 1998.

- PASEO ALAMEDA, SAN JOSE, CALIFORNIA. The Company purchased 7.44 acres of this 8.87 acre site in February 1997 after it obtained substantially all of the necessary public approvals for development of the community. The remainder of this site was purchased in April 1997. The site is located on a major street, approximately one mile from downtown San Jose. The Company has approvals to build a 305 apartment home community which will include a large leasing pavilion, business center, fitness center, 75 foot lap pool, a small commercial area and secure underground parking. The Company has estimated a total budgeted construction cost for this community of $44.4 million. Stabilized operations are expected in the second quarter of 1999 and the first apartment homes are expected to be occupied in the fourth quarter of 1998.

- BAY TOWERS, SAN FRANCISCO, CALIFORNIA. The Company acquired, through a limited partnership in which it is the sole general partner, a portion of a city block in the Rincon Hill area of San Francisco for approximately $7.8 million in June 1997. The Company is constructing twin, 16-story towers above a four story parking garage on this land site. All public approvals have been received to allow 226 apartment homes, approximately 2,900 square feet of retail space and between 224 and 271 controlled access parking spaces. The land site is on Beale Street, between Harrison and Folsom Streets, almost two blocks north of the Bay Bridge, approximately three blocks south of Market Street and three blocks west of the Embarcadero and San Francisco Bay. The Company began site work in late 1997 and actual construction of the community in early 1998, with initial occupancy expected in 1999. The community will contain one, two and three bedroom apartment homes, with resident amenities including a health club, meeting and conference rooms, business center, leasing pavilion and parking deck gardens.

- ROSEWALK II, SAN JOSE, CALIFORNIA. In October 1997, the Company acquired a 5.82 acre land site adjacent to the Company's recently constructed 300 apartment home community, Rosewalk, in San Jose, California. The Company has public approvals and is under construction on 156 apartment homes as a second phase of Rosewalk on this land site. The Company has estimated a total budgeted construction cost for this community of $20.3 million. Stabilized operations are expected in the second quarter of 1999 and the first apartment homes are expected to be occupied in the fourth quarter of 1998.

- MOUNTAIN VIEW, CALIFORNIA LAND SITE. In September 1997, the Company acquired a 1.917 acre land site in Mountain View, California which includes a 50% undivided interest in an existing underground parking garage adjacent to this land site, subject to agreements which specifically allocate parking rights between an adjacent office building and this development, including 266 spaces reserved exclusively for residents of the community planned for this site. The Company intends to build two residential towers on this land site, which will contain an as yet undetermined number of apartment homes, expected to be at least 200, and approximately 10,000 square feet of ground level space for a recreation, leasing and community center. The acquisition of this site, purchased in two separate parcels for approximately $8.93 million, includes various public approvals and previously paid fees totaling approximately $800,000.

The Company intends to continue to pursue the development and construction of apartment home communities in accordance with the Company's development and underwriting policies. Risks associated with the Company's development and construction activities may include: the abandonment of development and acquisition opportunities explored by the Company; construction costs of a community may exceed original estimates due to increased materials, labor or other expenses, which could make completion of the community

uneconomical; occupancy rates and rents at a newly completed community are dependent on a number of factors, including market and general economic conditions, and may not be sufficient to make the community profitable; financing may not be available on favorable terms for the development of a community; and construction and lease-up may not be completed on schedule, resulting in increased debt service expense and construction costs. Development activities are also subject to risks relating to the inability to obtain, or delays in obtaining, all necessary zoning, land-use, building, occupancy, and other required governmental permits and authorizations. The occurrence of any of the events described above could adversely affect the Company's ability to achieve its projected yields on communities under development or reconstruction and could prevent the Company from paying distributions to its stockholders.

For new development communities, the Company's goal, on average, is to achieve projected EBITDA as a percentage of total budgeted construction cost of approximately 10%. Projected EBITDA as a percentage of total budgeted construction cost represents EBITDA projected to be received in the first

calendar year after a community reaches stabilized occupancy (i.e., the first month when the community has a weighted average physical occupancy of at least 95%), based on current market rents, less projected stabilized property operating and maintenance expenses, before interest, income taxes, depreciation and amortization. Total budgeted construction cost is based on current construction costs, including interest capitalized during the construction period. Market rents and construction costs reflect those prevailing in the community's market at the time the Company's development budgets are prepared taking into consideration certain changes to those market conditions anticipated by the Company at the time. Although the Company attempts to anticipate changes in market conditions, the Company cannot predict with certainty what those changes will be. For example, upon the acquisition of the Toscana land site in May 1996, the Company estimated that the total budgeted construction cost for this Current Development Community would be $95.7 million. Since that time, construction costs have been increasing and management believes that, the total construction cost for this development will be higher than the original budget. Nonetheless, because of increases in prevailing market rents management believes that it will still be able to achieve projected EBITDA as a percentage of total budgeted construction cost of at least 10%. Management believes that it will experience similar increases in construction costs and market rents with respect to the CentreMark and Paseo Alameda Current Development Communities. However, there can be no assurances that market rents in effect at the time the Current Development Communities are leased-up will be sufficient to fully offset the effects of any increased construction costs.

LIQUIDITY AND CAPITAL RESOURCES

The Company has considered its short-term liquidity needs and anticipates that these needs will be fully funded from cash flows provided by operating activities. The Company believes that its principal short-term liquidity needs are to fund normal recurring expenses, debt service requirements, the distributions required with respect to its Series C and D Cumulative Redeemable Preferred Stock and the distributions required to maintain the Company's REIT qualification under the Code.

The Company expects to fund certain committed acquisition, development, redevelopment, construction and reconstruction projects with a combination of working capital and proceeds available under the Unsecured Line of Credit. The Company intends to use available working capital first and proceeds available under its Unsecured Line of Credit second.

As of March 31, 1998, the proceeds from the Unsecured Line of Credit were used primarily for the acquisition, development and construction of the Current Development Communities and redevelopment and reconstruction of the 1997 and 1998 Acquisition Communities.

In January 1998, the Company issued $150,000,000 of senior unsecured notes. $50,000,000 of the notes bear interest at 6.25 percent and will mature on January 15, 2003, $50,000,000 of the notes bear interest at 6.5 percent and will mature on January 15, 2005 and $50,000,000 of the notes bear interest at 6.625 percent and will mature on January 15, 2008. The net proceeds to the Company were approximately $148,700.00.

In February 1998, the Company assumed $10,400,000 of tax-exempt variable rate debt in connection with the acquisition of the Laguna Brisas community. The bonds, which mature on March 1, 2009, require

monthly interest only payments at a variable rate set weekly by the remarketing agent. The interest rate on the bonds at March 31, 1998 was 5.37 percent, including the amortization of deferred financing costs.

The Company's outstanding debt as of March 31, 1998 is summarized as follows:

<TABLE>
<CAPTION>

(DOLLARS IN THOUSANDS)	BALANCE	AVAILABLE	MATURES	RATE	INTEREST RATE PROTECTION
<S>	<C>	<C>	<C>	<C>	<C>
NOTES SECURED BY PROPERTIES:					
Tax-exempt variable rate under interest rate swap	$87,720	$ --	November 2022 - June 2050	6.48%(a)	Interest rate is fixed until June 2010.
Tax-exempt variable rate under interest rate swap	87,380	--	November 2007 - March 2017	5.88%(b)	Interest rate is fixed until March 2004.
Tax-exempt fixed rate	19,782	--	March 2012	7.87%(a)	Interest rate is fixed until April 2002.
Tax-exempt variable rate under interest rate swap	20,660	--	June 2025	5.80%(a)	Interest rate is fixed until July 2007.
Tax-exempt variable	7,590	--	June 2025	5.50%(a)	Interest rate is fixed

rate under interest rate swap				until September 2002.
Tax-exempt variable rate	10,400	--	March 2009	5.37%(c)
Fixed rate	12,870	--	May 2004	7.25%
Fixed rate	11,637	--	May 2001	7.31%
Fixed rate	14,152	--	August 2004	7.65%
Subtotal	272,191	--		
UNSECURED NOTES:				
Senior fixed rate notes	50,000	--	January 2003	6.43%(a)
Senior fixed rate notes	50,000	--	January 2005	6.63%(a)
Senior fixed rate notes	50,000	--	January 2008	6.71%(a)
Fixed rate	1,000	--	July 1999	6.50%
Subtotal	151,000	--		
Line of credit(d)	182,000	168,000	May 2000	LIBOR+0.90%
Total	$605,191	$168,000		

</TABLE>

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(a) This rate represents an all-in financing cost, including amortization of deferred financing costs.

(b) The 5.88% rate excludes the amortization of financing costs paid by the sponsor prior to the IPO; if such costs were included, the all-inclusive effective rate would be 6.30%.

(c) The 5.37% rate represents an all-in financing cost, including amortization of deferred financing costs. The debt floats in a seven-day put bond mode with a current interest rate of 3.70%.

(d) The line of credit balance was used for acquisition, development, redevelopment, construction and reconstruction purposes.

The Company anticipates that its cash flow and cash available from the Unsecured Line of Credit will be adequate to meet its liquidity requirements for the foreseeable future. The Company anticipates that dividends will be paid from Funds Available for Distribution (defined below).

Net cash provided by operations for the quarter ended March 31, 1998 increased to $26,770,000 from $7,830,000 for the quarter ended March 31, 1997, primarily due to higher net income before noncash charges for depreciation and amortization from the addition of the Acquisition Communities and before increases in accrued interest payable due to the issuance of the Company's senior unsecured notes.

Net cash used for investing activities was $122,555,000 and $38,879,000 for the quarters ended March 31, 1998 and 1997, respectively. This increase reflects the expenditures for the purchases of the 1998 Acquisition

Communities, the amounts used for the acquisition, development and construction of the Current Development Communities and the costs incurred on the communities undergoing redevelopment and reconstruction.

Net cash provided by financing activities was $95,489,000 and $31,257,000 for the quarters ended March 31, 1998 and 1997, respectively. This increase is primarily due to the increase in borrowings for the purchase of the 1998 Acquisition Communities, the amounts used for the acquisition, development and construction of the Current Development Communities and the costs incurred on the redevelopment and reconstruction projects, offset in part by the increased dividends paid. The increase in borrowings included the issuance of $150,000,000 in senior unsecured notes in January 1998.

INFLATION

Substantially all of the leases at the Company's apartment communities are for a term of one year or less, which may enable the Company to counter the adverse effects of inflation by increasing rents upon renewal of existing leases or commencement of new leases. However, these short-term leases permit a resident to leave at the end of the lease term at minimal or no cost to the resident.

YEAR 2000 COMPLIANCE

The Year 2000 compliance issue concerns the inability of computerized information systems to accurately calculate, store or use a date after 1999. This could result in a system failure or miscalculations causing disruptions of

operations. The Year 2000 issue affects virtually all companies and all organizations.

The Company has conducted an assessment of its core internal and external computer information systems and is taking the further necessary steps to understand the nature and extent of the work required to make its systems, in those situations in which the Company is required to do so, Year 2000 compliant. These steps may require the Company to modify, upgrade or replace some of its internal financial and operational systems. The total cost of bringing all internal systems, equipment and operations into Year 2000 compliance has not been fully quantified. The Company continues to evaluate the estimated costs associated with these compliance efforts. While these efforts involve additional costs, the Company believes, based on available information, that these costs will not have a material adverse effect on its business, financial condition or results of operations. While the Company believes it will be Year 2000 compliant by December 31, 1999, if these efforts are not completed on time or if the cost of updating or replacing the Company's information systems exceeds the Company's current estimates, the Year 2000 issue could have a material impact on the Company's ability to meet its financial and reporting requirements. Further, no estimates can be made as to any potential adverse impact resulting from the failure of third-party service providers and vendors to prepare for the Year 2000. The Company is attempting to identify those risks as well as to receive compliance certificates from all third parties that have a material impact on the Company's operations, but the cost and timing of third party Year 2000 compliance is not within the Company's control and no assurance can be given with respect to the cost or timing of such efforts or the potential effects of any failure to comply.

NATURAL DISASTERS

Many of the communities are located in the general vicinity of active earthquake faults. In June 1997, the Company obtained a seismic risk analysis from an engineering firm which estimated the probable maximum loss ("PML") for each of the 41 communities owned at that time and Toscana, a Current Development Community, individually and for all of such communities and Toscana combined. To establish a PML, the engineers first define a severe earthquake event for the applicable geographic area, which is an earthquake that has only a 10% likelihood of occurring over a 50-year period. The PML is determined as the structural and architectural damage and business interruption loss that has a 10% probability of being exceeded in the event of such an earthquake. Because the communities are concentrated in the San Francisco Bay Area, the engineers' analysis defined an earthquake on the San Andreas Fault with a Richter Scale magnitude of 8.0 as a severe earthquake with a 10% probability of occurring within a 50-year period. The engineers then established an aggregate PML at that time of $63.8 million for the 41 communities owned at that time and Toscana. The $63.8 million PML for those communities was a PML level that is expected to be exceeded only 10% of the

time in the event of such a severe earthquake. The actual aggregate PML could be higher or lower as a result of variations in soil classifications and structural vulnerabilities. For each community, the engineers' analysis calculated an individual PML as a percentage of the community's replacement cost and projected revenue. Two of the communities had individual PMLs of 30%, while seven communities had individual PMLs of 25%, and the remaining 32 communities owned at such time and Toscana each had individual PMLs of 20% or less. The Company has obtained an individual PML assessment for each of the eighteen communities acquired since June 1997. One community had an individual PML of 50%, one had an individual PML of 30%, three had individual PMLs of 24%, one had an individual PML of 21% and the remaining twelve communities had individual PMLs of 20% or less. While the Company has not yet obtained an engineers' analysis establishing an aggregate PML for all of the communities combined, the Company currently intends to do so on an annual basis in order to assist it in evaluating appropriate levels of insurance coverage. No assurance can be given that an earthquake would not cause damage or loss greater than the PML assessments indicate, that future PML levels will not be higher than the current PML levels for the communities, or that future acquisitions or developments will not have PML assessments indicating the possibility of greater damage or loss than currently indicated.

In July 1997, the Company renewed its earthquake insurance, both for physical damage and lost revenue, with respect to the 41 communities then owned and Toscana. In addition, the eighteen communities acquired subsequent to June 1997 are included under the Company's earthquake insurance policy. For any single occurrence, the Company self-insures the first $25 million of loss, and has in place $35 million of coverage above this amount. In addition, the Company's general liability and property casualty insurance provides coverage for personal liability and fire damage. In the event that an uninsured disaster or a loss in excess of insured limits were to occur, the Company could lose its capital invested in the affected community, as well as anticipated future revenue from such community, and would continue to be obligated to repay any mortgage indebtedness or other obligations related to the community. Any such loss could materially and adversely affect the business of the Company and its financial condition and results of operations.

FUNDS FROM OPERATIONS AND FUNDS AVAILABLE FOR DISTRIBUTION

Many industry analysts consider Funds from Operations ("FFO") an appropriate measure of performance of an equity REIT. FFO, as defined by the National Association of Real Estate Investment Trusts ("NAREIT"), means net income (or loss) (computed in accordance with generally accepted accounting principles), excluding gains (or losses) from debt restructuring and sales of property, plus depreciation and amortization, and after adjustments for unconsolidated partnerships and joint ventures. This definition was revised by NAREIT effective for periods after 1995 to exclude the add back of non-real estate depreciation and the amortization of recurring deferred financing costs. The Company computes FFO in accordance with the revised NAREIT definition, which may differ from the methodology for computing FFO utilized by other equity REITs, and, accordingly, may not be comparable to such other REITs. The Company believes that in order to facilitate a clear understanding of the historical operating results, FFO should be examined in conjunction with net income (loss) as presented in the financial statements. FFO should not be considered as a substitute for net income (loss) as a measure of results of operations or for cash flow from operations as a measure of liquidity.

For the quarter ended March 31, 1998, FFO increased to $19,736,000 from $13,321,000 for the quarter ended March 31, 1997. This increase is primarily due to higher net income and real estate depreciation add back due to the addition of the Acquisition Communities.

FFO and Funds Available for Distribution (defined below) for the quarters ended March 31, 1998, December 31, 1997, September 30, 1997, June 30, 1997 and March 31, 1997 are summarized as follows:

CALCULATION OF FFO AND FUNDS AVAILABLE FOR DISTRIBUTION

<TABLE>
<CAPTION>

	QUARTER ENDED				
	MARCH 31, 1998	DECEMBER 31, 1997	SEPTEMBER 30, 1997	JUNE 30, 1997	MARCH 31, 1997
(DOLLARS IN THOUSANDS, EXCEPT PER APARTMENT HOME DATA)					
<S>	<C>	<C>	<C>	<C>	<C>
Net income	$ 12,979	$ 12,039	$ 10,653	$ 8,479	$ 7,771
Series C and D preferred dividend requirement	(2,856)	(1,469)	(1,222)	(149)	--
Depreciation -- real estate assets	9,523	7,669	6,659	6,173	5,462
Non-recurring adjustments to net income:					
Amortization of non-recurring costs, primarily legal, from the issuance of tax-exempt bonds(1)	90	90	88	88	88
FFO(2)	19,736	18,329	16,178	14,591	13,321
Recurring adjustments to net income:					
Amortization of reincorporation costs	7	7	7	7	7
Amortization of credit enhancement costs(3)	38	38	38	38	38
Depreciation -- non real estate assets	209	153	135	120	105
Capital expenditures(4)	(668)	(566)	(280)	(471)	(281)
Loan principal payments	(493)	(463)	(368)	(213)	(157)
Funds Available for Distribution ("FAD")	$ 18,829	$ 17,498	$ 15,710	$ 14,072	$ 13,033
Weighted average shares outstanding(5)	29,165,062	28,296,053	25,803,370	24,833,801	22,989,978

</TABLE>

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(1) Represents the amortization of pre-1986 bond issuance costs carried forward to the Company, under the pooling of interest method of accounting, and costs associated with the reissuance of tax-exempt bonds incurred prior to the Initial Offering in order to preserve the tax-exempt status of the bonds at the Initial Offering.

(2) FFO before recurring adjustments to net income represents the definition of FFO adopted by the NAREIT Board of Governors for periods after 1995.

(3) Represents origination fees and costs incurred at the initial setup of the credit enhancements used for the issuance of tax-exempt bonds. Such costs

are amortized over the life of the respective credit enhancements.

(4) Capital improvements represent amounts expended primarily at communities acquired or developed prior to 1996. A breakdown of the expenditures for the quarter ended March 31, 1998 is as follows:

<TABLE>
<CAPTION>

	TOTAL QUARTER ENDED MARCH 31, 1998	PER APARTMENT HOME QUARTER ENDED MARCH 31, 1998
<S>	<C>	<C>
Non-revenue generating:		
Landscaping	$216	$13
Leasing pavilion rehabilitation	187	11
Exterior lighting	32	2
Gate installation	17	1
Other capital expenditures	216	13
Subtotal -- capital expenditures	668	40
Revenue generating:		
Water submeters	251	15
Appliances	39	3
Fixtures	21	1
Subtotal	311	19
Total capital improvements	$979	$59

</TABLE>

The Company, as a matter of policy, expenses any apartment-related expenditure of less than $5. These normally include any expenditure related to the interior of an apartment. The Company typically capitalizes expenditures such as those for new security gate systems, leasing pavilion reconstruction and redecorating, roofing repair and replacement, exterior siding repair and repainting and parking area resurfacing. Capitalized expenditures as described here exclude major reconstruction costs incurred in conjunction with the redevelopment and reconstruction of apartment communities. Such costs are added to the cost basis of those communities. Capitalized expenditures also exclude costs such as those expended for construction of new garages or installation of water conservation devices which almost immediately and permanently either earn additional revenue or reduce expenses. The per apartment home calculation for the quarter is based on the ending number of apartment homes in the portfolio at March 31, 1998.

(5) The weighted average shares outstanding shown differs from the weighted average shares outstanding for the purpose of calculating earnings per share because the conversion of preferred stock is antidilutive for calculating earnings per share, but dilutive for the purposes of calculating FFO per share.

PART II -- OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

None

ITEM 2. CHANGES IN SECURITIES

None

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None

ITEM 5. OTHER INFORMATION

None

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

<TABLE>
<CAPTION>

EXHIBIT NO.	DESCRIPTION
<C>	<S>
1.1	Underwriting Agreement, dated as of April 23, 1998, between Bay Apartment Communities, Inc. (the "Company") and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
2.1	Agreement and Plan of Merger, dated as of March 9, 1998, between the Company and Avalon Properties, Inc. ("Avalon"). (Incorporated by reference to Exhibit 99.1 to Form 8-K of Bay Apartment Communities, Inc. filed March 11, 1998.)
3(i).1	Articles of Incorporation of the Company. (Incorporated by reference to Exhibit 3(i) to Form 8-B of Bay Apartment Communities, Inc. dated June 8, 1995.)
3(i).2	Articles Supplementary relating to the Series A Preferred Stock of the Company. (Incorporated by reference to Exhibit 3(i).1 to Form 8-K of Bay Apartment Communities, Inc, dated September 25, 1995.)
3(i).3	Articles Supplementary relating to the Series B Preferred Stock of the Company. (Incorporated by reference to Exhibit 3(i).1 to Form 8-K of Bay Apartment Communities, Inc. filed May 20, 1996.)
3(i).4	Articles Supplementary relating to the 8.50% Series C Cumulative Redeemable Preferred Stock of the Company. (Incorporated by reference to Exhibit 3(i) to Form 8-K of Bay Apartment Communities, Inc. filed July 25, 1997.)
3(i).5	Articles Supplementary relating to the 8.00% Series D Cumulative Redeemable Preferred Stock of the Company. (Incorporated by reference to Exhibit 1 to Form 8-A of Bay Apartment Communities, Inc. filed December 17, 1997.)

</TABLE>

<TABLE>
<CAPTION>

EXHIBIT NO.	DESCRIPTION
<C>	<S>
3(i).6	Articles Supplementary relating to the Series E Junior Participating Cumulative Preferred Stock of the Company. (Incorporated by reference to Exhibit 3.1 to Form 8-A of Bay Apartment Communities, Inc. filed March 11, 1998.)
3(ii).1	Bylaws of the Company. (Incorporated by reference to Exhibit 3(ii) to Form 8-B of Bay Apartment Communities, Inc. dated June 8, 1995.)
3(ii).2	Text of Amendment to Bylaws of the Company. (Incorporated by reference to Exhibit 4.2 to Form 8-K of Bay Apartment Communities, Inc. filed March 11, 1998.)
3(ii).3	Text of Amendment to Bylaws of the Company. (Incorporated by reference to Exhibit 3(ii).3 to Registration Statement on Form S-4 of Bay Apartment Communities, Inc. filed May 5, 1998.)
4.1	Indenture, dated as of January 16, 1998, between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.1 to Form 8-K of Bay Apartment Communities, Inc. filed January 21, 1998.)
4.2	First Supplemental Indenture, dated as of January 20, 1998, between Bay and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.2 to Form 8-K of Bay Apartment Communities, Inc. filed January 21, 1998.)
4.3	Bay Apartment Communities, Inc.'s 6.250% Senior Note due 2003. (Incorporated by reference to Exhibit 4.3 to Form 8-K of Bay Apartment Communities, Inc. filed January 21, 1998.)
4.4	Bay Apartment Communities, Inc.'s 6.500% Senior Note due 2005. (Incorporated by reference to Exhibit 4.4 to Form 8-K of Bay Apartment Communities, Inc. filed January 21, 1998.)
4.5	Bay Apartment Communities, Inc.'s 6.625% Senior Note due 2008. (Incorporated by reference to Exhibit 4.5 to Form 8-K of Bay Apartment Communities, Inc. filed January 21, 1998.)
4.6	Shareholder Rights Agreement, dated March 9, 1998, between the Company and American Stock Transfer and Trust Company, as Rights Agent (including the form of Rights Certificate as Exhibit B). (Incorporated by reference to Exhibit 4.1 to Form 8-A of Bay Apartment Communities, Inc. filed March 11, 1998.)
10.1	Employment Agreement, dated as of March 9, 1998, between the Company and Gilbert M. Meyer.
10.2	Employment Agreement, dated as of March 9, 1998, between the Company and Jeffrey B. Van Horn.
10.3	Employment Agreement, dated as of March 9, 1998, between the Company and Max L. Gardner.
10.4	Employment Agreement, dated as of March 9, 1998, between the

		Company and Morton L. Newman.
	10.5	Employment Agreement, dated as of March 9, 1998, between the Company and Debra L. Shotwell.
	10.6	Proxy Agreement, dated as of March 9, 1998, between the Company and Central States, Southeast and Southwest Areas Pension Fund, acting by and through its agent, LaSalle Advisors Limited Partnership.

EXHIBIT NO.	DESCRIPTION
10.7	Shareholder Agreement, dated as of March 9, 1998, between the Company and Central States, Southeast and Southwest Areas Pension Fund, acting by and through its agent, LaSalle Advisors Limited Partnership.
10.8	Stock Option Agreement, dated as of March 9, 1998, between the Company, as issuer, and Avalon. (Incorporated by reference to Exhibit 99.3 to Form 8-K of Bay Apartment Communities, Inc. filed March 11, 1998.)
10.9	Stock Option Agreement, dated as of March 9, 1998, between Avalon, as issuer, and the Company. (Incorporated by reference to Exhibit 99.4 to Form 8-K of Bay Apartment Communities, Inc. filed March 11, 1998.)
12.1	Statement re: Computation of Ratios.
27.1	Financial Data Schedule.

(b) REPORTS ON FORM 8-K

Form 8-K of the Company, filed January 8, 1998, relating to the acquisition of the Waterhouse Place, Viewpointe Apartments, Mission Bay Club, Westwood Club and Pacifica Club apartment home communities.

Form 8-K of the Company, filed January 21, 1998, relating to (i) the offering by the Company of $50,000,000 aggregate principal amount of its 6.250% Senior Notes due 2003, $50,000,000 aggregate principal amount of its 6.500% Senior Notes due 2005, and $50,000,000 aggregate principal amount of its 6.625% Senior Notes due 2008, and (ii) the acquisition of the Warner Oaks apartment home community.

Form 8-K of the Company, filed March 11, 1998, relating to (i) the Agreement and Plan of Merger, dated as of March 9, 1998, between the Company and Avalon, pursuant to which Avalon will merge with and into the Company, with the Company as the surviving corporation, (ii) the Stock Option Agreement, dated as of March 9, 1998, between the Company, as issuer, and Avalon, (iii) the Stock Option Agreement, dated as of March 9, 1998, between Avalon, as issuer, and the Company, and (iv) the adoption by the Company of a Shareholder Rights Agreement.

Form 8-K of the Company, filed March 27, 1998, relating to the acquisition of the Laguna Brisas and Cabrillo Square apartment home communities. This Form 8-K contained Financial Statements under Rule 3-14 of Regulation S-X and pro forma financial statements.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BAY APARTMENT COMMUNITIES, INC.

Date: May 12, 1998	/s/ GILBERT M. MEYER Gilbert M. Meyer President and Chairman of the Board
Date: May 12, 1998	/s/ JEFFREY B. VAN HORN Jeffrey B. Van Horn Chief Financial Officer (Authorized Officer of the Registrant and Principal Financial Officer)

EXHIBIT 1.1

1,244,147 Shares

BAY APARTMENT COMMUNITIES, INC.

UNDERWRITING AGREEMENT

April 23, 1998

MERRILL LYNCH & CO.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
North Tower
World Financial Center
New York, New York 10281-1209

Ladies and Gentlemen:

Bay Apartment Communities, Inc., a Maryland corporation (the "Company"), proposes to issue and sell an aggregate of 1,244,147 shares (the "Shares") of the Company's common stock, $0.01 par value per share (the "Common Stock") to Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter") under the terms and conditions set forth in this agreement (the "Agreement"). The Underwriter intends to deposit the Shares with the trustee of the Equity Investor Fund Cohen & Steers Realty Majors Portfolio (a Unit Investment Trust) (the "Trust") a registered unit investment trust under the Investment Company Act of 1940, as amended, for which the Underwriter acts as sponsor and depositor, in exchange for units in the Trust.

1. Representations and Warranties of the Company. The Company represents and warrants to, and agrees with, the Underwriter that:

(a) The Company meets the requirements for use of Form S-3 and a registration statement on Form S-3, as amended (File No. 333-41511), with respect to the Shares, including a prospectus (the "Base Prospectus"), has been carefully prepared by the Company in conformity with the requirements of the Securities Act of 1933, as amended (the "Act"), and the rules and regulations (the "Rules and Regulations") of the Securities and Exchange Commission (the "Commission") thereunder and filed with the Commission and has become effective. Such registration statement may have been amended prior to the date of this Agreement; any such amendment was so prepared and filed, and any such amendment filed after the effective date of such registration statement has become effective. No stop order suspending the effectiveness of the registration statement has been issued, and, to the Company's knowledge, no proceeding for that purpose has been instituted or threatened by the Commission. A prospectus supplement and a final prospectus containing information permitted to be omitted at the time of effectiveness by Rule 430A of the Rules and Regulations has been or will be so prepared and filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations on or before the second business day after the date hereof (or such earlier time as may be required by the Rules and Regulations); and the Rules and Regulations do not require the Company to, and, without the Underwriter's consent, the Company will not, file a post-effective amendment after the time of execution of this Agreement and prior to the filing of such final form of prospectus. Copies of such registration statement and any such amendments have

been delivered to the Underwriter and its counsel. The term "Registration Statement" means such registration statement as amended at the time it becomes or became effective (the "Effective Date"), including financial statements and all exhibits and any information deemed by virtue of Rule 430A of the Rules and Regulations to be included in such Registration Statement at the Effective Date and any prospectus supplement filed thereafter with the Commission and shall include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 which were filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The term "Prospectus" means, collectively, the Base Prospectus together with any prospectus supplement, in the respective forms they are filed with the Commission pursuant to Rule 424(b) of the Rules and Regulations. Any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement, the Base Prospectus or the Prospectus shall be deemed to refer to and include the filing of any document under the Exchange Act after the Effective Date, or the date of the Prospectus, as the case may be, that is incorporated therein by reference.

(b) Each part of the Registration Statement, when such part became or becomes effective, and the Prospectus and any amendment or supplement

thereto, on the date of filing thereof with the Commission and at the Closing Date (as hereinafter defined) conformed or will conform in all material respects with the requirements of the Act and the Rules and Regulations; each part of the Registration Statement, when such part became or becomes effective, 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 not misleading; the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission and at the Closing Date, did not or will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; the foregoing shall not apply to the statements in or omissions from any such document in reliance upon, and in conformity with, written information furnished to the Company by the Underwriter, specifically for use in the preparation thereof. The Company acknowledges that the only information furnished to the Company by the Underwriter specifically for inclusion in the Registration Statement is the information set forth in Exhibit I hereto. The Company has not distributed any offering material in connection with the offering or sale of the Shares other than the Registration Statement, the Prospectus or any other materials, if any, permitted by the Act.

(c) The financial statements and schedules included in the Registration Statement and the Prospectus set forth fairly the financial condition of the respective entity or entities presented as of the dates indicated and the results of operations and changes in financial position for the periods therein specified in conformity with generally accepted accounting principles consistently applied throughout the periods involved (except as otherwise stated therein). The pro forma financial statements of the Company included in the Registration Statement and the Prospectus comply in all material respects with the applicable requirements of Rule 11-02 of Regulation S-X of the Commission and the pro form adjustments have been properly applied to the historical amounts in the compilation of such statements. No other financial statements (or schedules) of the Company or any predecessor of the Company are required by the Act or the Rules and Regulations to be included in the Registration Statement or the Prospectus. Coopers & Lybrand L.L.P. ("Coopers & Lybrand"), who have reported on the financial statements and schedules which are audited, are independent accountants with respect to the Company as required by the Act and the Rules and Regulations.

(d) The Company has been duly organized and is validly existing as a corporation, is in good standing under the laws of the State of Maryland, has the power and authority to conduct its business as described in the Registration Statement and Prospectus, and is duly qualified to do business in

each jurisdiction in which it owns or leases real property or in which the conduct of its business requires such qualification, except where the failure to be so qualified, considering all such cases in the aggregate, does not involve and will not involve a material risk to the business, properties, financial position or results of operations of the Company and its subsidiaries (as hereinafter defined) taken as a whole.

(e) The only subsidiaries (as defined in the Rules and Regulations) of the Company are the subsidiaries listed on Exhibit II attached hereto (the "subsidiaries"). Each of the Company's subsidiaries existing as of the date hereof is a corporation or partnership, as the case may be, duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization. Each of the Company's subsidiaries existing as of the date hereof has the power and authority to conduct its business as described in the Registration Statement and Prospectus and is, or will be upon the Closing Date, duly qualified to do business in each jurisdiction in which it owns or leases, or will own or lease, real property or in which the conduct of its business requires such qualification except where the failure to be so qualified, considering all such cases in the aggregate, does not involve and will not involve a material risk to the business, properties, financial position or results of operations of the Company or any subsidiary taken as a whole. Except for the interests in the subsidiaries and as disclosed in the Registration Statement, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, trust, association or other entity. Complete and correct copies of the articles or certificate of incorporation, partnership agreements, and of the by-laws of each of the Company's subsidiaries and all amendments thereto have been delivered to the Underwriter, and no changes therein will be made subsequent to the date hereof and prior to the Closing Date, except as heretofore disclosed in writing to the Underwriter. Except as otherwise described in the Registration Statement or the Prospectus, or as described in Exhibit II, all of the issued and outstanding capital stock of each corporate

subsidiary of the Company has been duly authorized and will be, as of the Closing Date, validly issued, fully paid and non-assessable, and owned by the Company, in each case free and clear of any security interest, mortgage, pledge, lien, charge, encumbrance, claim, restriction or equity interest (each of the foregoing, a "Lien").

(f) The outstanding securities of the Company, including the Common Stock, $0.01 par value (the "Common Stock"), the outstanding shares of Series A Preferred Stock (the "Series A Preferred Stock"), the Series B Preferred Stock (the "Series B Preferred Stock"), the 8.50% Series C Cumulative Redeemable Preferred Stock (the "Series C Preferred Stock"), and the 8.00% Series D Cumulative Redeemable Preferred Stock (the "Series D Preferred Stock") have been duly authorized and are, or when issued and delivered to the Underwriter against full payment therefor as provided by this Agreement will be, validly issued, fully paid and nonassessable by the Company and conform to the description thereof in the Prospectus. There are no requirements, restrictions or limitations in the terms of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock or the Series D Preferred Stock applicable to the issuance and sale of the Shares. The shareholders of the Company have no preemptive or similar rights with respect to the Shares. Except as set forth in the Registration Statement or the Prospectus, the Company does not have outstanding any option to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or any contracts or commitments to issue or sell, any securities, any shares of capital stock of any subsidiary or any such warrants, convertible securities or obligations, except for stock options and shares of restricted stock granted, and shares of unrestricted stock to be issued to certain employees in connection with the deferment of income, pursuant to the Company's 1994 Stock Incentive Plan, as amended and restated, stock issuable under the 1996 Non-Qualified Employee Stock Purchase Plan and stock issuable under the Company's Dividend Reinvestment and Stock Purchase Plan.

(g) Except as disclosed in or contemplated by the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, the Company and its subsidiaries have not incurred any liabilities or obligations, direct or contingent, or entered into any transactions, not in the ordinary course of business, that are material to the Company and its subsidiaries, taken as a whole, and there has not been any material change in the capital stock, partnership interests, short-term debt or long-term debt of the Company or any of its subsidiaries, or any material adverse change, or any development involving a prospective material adverse change, in the condition (financial or other), business prospects, net worth or results of operations of the Company and its subsidiaries taken as a whole.

(h) Except as set forth in the Prospectus, there is not pending or, to the knowledge of the Company, threatened any action, suit or proceeding against or affecting the Company or any of its subsidiaries or any of their respective directors, partners or officers in their capacity as such, or any of the Communities (as defined in the Prospectus) before or by any Federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding might result in any material adverse change in the condition (financial or other), business prospects, net worth or results of operations of the Company and its subsidiaries taken as a whole, or materially and adversely affect the properties or assets of the Company and its subsidiaries taken as a whole.

(i) Since the respective dates as to which information is given in the Registration Statement and the Prospectus, except as otherwise stated therein, and except for regular dividends on the Common Stock, the Series A Preferred Stock, the Series B Preferred Stock, the Series C Cumulative Redeemable Preferred Stock and the Series D Cumulative Redeemable Preferred Stock, in amounts per share that are consistent with past practice, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock.

(j) There are no contracts or documents of a character required to be described in the Prospectus or to be filed as exhibits to the Registration Statement by the Act or the Rules and Regulations that have not been so described or filed (the "Contracts"). All Contracts executed and delivered on or before the date hereof to which the Company or any subsidiary of the Company is a party have been duly authorized, executed and delivered by the Company or such subsidiary, constitute valid and binding agreements of the Company or such subsidiary and are enforceable against the Company or such subsidiary in accordance with the terms thereof, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or, in the case of each such Contract which is to be executed and delivered on the Closing Date, will on the Closing Date, be duly authorized, executed and delivered by the Company or such subsidiary, constitute valid and binding

agreements of the Company or such subsidiary and be enforceable against the Company or such subsidiary in accordance with the terms thereof, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

(k) The Company has the corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company and is enforceable against the Company in accordance with the terms hereof, except as limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally. Except as disclosed in the Prospectus, the execution, delivery and the performance of this Agreement and the consummation of the transactions herein contemplated will not result in the creation or imposition of any lien, charge or encumbrance upon the Communities (as defined

in the Prospectus) or any of the other assets of the Company or any of its subsidiaries pursuant to the terms or provisions of, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, the articles of incorporation of the Company or by-laws of the Company, the articles or certificate of incorporation or by-laws or partnership agreements of any of the Company's subsidiaries, or any Contract, or violate or conflict with any judgment, ruling, decree, order, statute, rule or regulation of any court or other governmental agency or body applicable to the Communities or business or properties of the Company or any of its subsidiaries, except insofar as would not have a material adverse effect on the Company and its subsidiaries, taken as a whole. No consent, approval, authorization or order of, or filing with, any court or governmental agency or body is required for the consummation of the transactions contemplated by this Agreement or in connection with the issuance or sale of the Shares by the Company, except such as may be required under the Act, the Exchange Act or state securities laws, or the by-laws and rules of the National Association of Securities Dealers, Inc. (the "NASD") in connection with the purchase and distribution by the Underwriter of the Shares to be sold by the Company, and except where failure to so obtain would not have a material adverse effect on the Company and its subsidiaries taken as a whole. The Company has the power and authority to authorize, issue, offer and sell the Shares, as contemplated by this Agreement.

(l) Each of the Company and its subsidiaries has complied in all material respects with all laws, regulations and orders applicable to it or their respective businesses and properties where the failure to comply would, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries taken as a whole; neither the Company nor any of its subsidiaries is, and upon consummation of the Offering (as defined below), none of them will be, in default under any Contract, the violation of which would individually or in the aggregate have a material adverse effect on the Company and its subsidiaries taken as a whole, and no other party under any such Contract to which the Company or any of its subsidiaries is a party is, to the knowledge of the Company, in default in any material respect thereunder; the Company is not in violation of its articles of incorporation or by-laws; except as disclosed in the Prospectus, the Company and each of its subsidiaries have or, upon the Closing Date, will have all governmental licenses (including, without limitation, a California real estate brokerage license and a California general contractor's license, if applicable), permits, consents, orders, approvals and other authorizations required to carry on its business as contemplated in the Prospectus, and none of them has received any notice of proceedings relating to the revocation or modification of any such governmental license, permit, consent, order, approval or other authorization which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would materially and adversely affect the condition, financial or otherwise, or the earnings, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise.

(m) The Company, or its subsidiaries, as applicable, has good and marketable title to the Communities, and the Communities are not subject to any liens or encumbrances except for monetary liens as set forth in the Prospectus, non-delinquent property taxes, utility easements and other immaterial non-monetary liens or encumbrances of record. All liens, charges, encumbrances, claims or restrictions on or affecting the Communities which are required to be disclosed in the Prospectus are disclosed therein.

(n) The mortgages and deeds of trust encumbering the Communities are not convertible nor will the Company or any of its subsidiaries hold a participating interest therein and such mortgages and deeds of trust are not cross-defaulted or cross-collateralized to any property not to be owned directly or indirectly by the Company. To the knowledge of the Company (i) the present and intended use and occupancy of each of the Communities complies with all applicable codes and zoning laws and

regulations, if any, except for such failures to comply which would not individually or in the aggregate have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries taken as a whole; and (ii) there is no pending or, to the Company's knowledge, threatened condemnation, zoning change, environmental or other proceeding or action that will in any material respect affect the size of, use of, improvements on, construction on, or access to the Communities, except for such proceedings or actions that would not individually or in the aggregate have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries taken as a whole.

(o) The Company and its subsidiaries maintain property and casualty insurance (other than earthquake insurance) in favor of the Company and its subsidiaries with respect to each of the Communities, in an amount and on such terms as is reasonable for businesses of the type conducted by the Company and its subsidiaries. The Company maintains earthquake insurance on the Communities as set forth in the Prospectus. The Company or its subsidiaries has not received from any insurance company notice of any material defects or deficiencies affecting the insurability of any of the Communities (other than with respect to seismic activities).

(p) As of the Closing Date the Company, and each of its subsidiaries (i) will be in compliance in all material respects with any and all applicable foreign, Federal, state and local laws and regulations relating to the protection of human health and safety, the Hazardous Materials (as defined below), or hazardous or toxic wastes, pollutants or contaminants (the "Environmental Laws"); (ii) will have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) will be in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals are otherwise disclosed in the Prospectus or would not, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries taken as a whole.

(q)(i) None of the Company or any partnership that owns a Community (each a "Partnership") has at any time, and, to the best knowledge of the Company after due inquiry and investigation, no other party has, at any time, handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or be pumped, poured, emitted, emptied, discharged, released, injected, dumped, transferred or otherwise disposed of or dealt with, Hazardous Materials (as hereinafter defined) on, to, above under, in, into or from the Communities, except as disclosed in the environmental reports previously delivered to the Underwriter or its counsel or referred to in the Prospectus, or such as would not individually or in the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole. Neither the Company nor its subsidiaries intends to use the Communities or any subsequently acquired properties described in the Prospectus for the purpose of handling, burying, storing, retaining, refining, transporting, processing, manufacturing, generating, producing, spilling, seeping, leaking, escaping, leaching, pumping, pouring, emitting, emptying, discharging, releasing, injecting, dumping, transferring or otherwise disposing of or dealing with Hazardous Materials, except for the use, storage and transportation of small quantities of substances that are regularly used as office supplies, household cleaning supplies, gardening supplies, or pool maintenance supplies in compliance with applicable Environmental Laws and in accordance with prudent business practices and good hazardous materials storage and handling practices.

(ii) None of the Company or the Partnerships, to the best knowledge of the Company after due inquiry and investigation, knows of any seepage, leak, escape, leach, discharge, injection, release, emission, spill, pumping, pouring, emptying or dumping of Hazardous Materials into waters on, under or adjacent to the Communities or onto lands from which such hazardous or toxic waste or substances might seep, flow or drain into such waters, except as disclosed in the environmental reports previously delivered to the Underwriter or its counsel or referred to in the Prospectus or such as would not individually or in

the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(iii) None of the Company or the Partnerships to the best knowledge of the Company after due inquiry and investigation, has received notice of, or has knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to, any claim under or pursuant to any Environmental Law pertaining to Hazardous Materials, hazardous or toxic waste or substances on or originating from the Communities arising out of the conduct of any such party, including, without limitation, pursuant to any Environmental Law, except as disclosed in the environmental reports previously delivered to the Underwriter or its counsel or referred to in the Prospectus or such as would not individually or in the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole.

As used herein, "Hazardous Material" shall include, without limitation, any flammable materials or explosives, petroleum or petroleum-based products, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any material as defined by any Federal, state or local environmental law, ordinance, rule, or regulation including, without limitation, Environmental Laws, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("CERCLA"), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 9601, et seq.), and in the regulations adopted and publications promulgated pursuant to each of the foregoing or by any Federal, state or local governmental authority having or claiming jurisdiction over the Communities as described in the Prospectus.

(r) In the ordinary course of its business, each of the Company and the Partnerships conducts a periodic review of the effect of Environmental Laws on its business, operations and properties in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for investigation, 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). On the basis of such review and on the basis of the reviews conducted by the Company in connection with the Communities, the Company has reasonably concluded that such associated costs and liabilities would not individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries taken as a whole.

(s) The Company is not 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 "1940 Act").

(t) Neither the assets of the Company nor its subsidiaries constitute, nor will such assets, as of the Closing Date, constitute, "plan assets" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(u) The Company has elected to be taxed as a REIT under the Code and will use its best efforts to continue to be organized and will continue to operate in a manner so as to qualify as a "real estate investment trust" ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), unless the Board of Directors determines that it is no longer in the best interest of the Company to continue to be so qualified.

(v) Except as stated in the Prospectus, neither the Company nor any of its directors, officers or controlling persons has taken, nor will it take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Shares to facilitate the sale or resale of the Shares.

(w) The Company has not distributed and, prior to the later to occur of (i) the Closing Date and (ii) completion of the distribution of the Shares, will not distribute any offering material in connection with the Offering other than the Registration Statement, the Prospectus or other materials, if any, permitted by the Act.

(x) The Company maintains a system of internal accounting 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 financial and corporate books and records 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.

(y) The Company has applied to have the Shares authorized for listing by the New York Stock Exchange and the Pacific Exchange.

(z) Neither the Company nor any of its subsidiaries is involved in any material labor dispute nor, to the best knowledge of the Company after due inquiry and investigation, is any such dispute threatened.

(aa) No holder of securities of the Company has rights to the registration of any securities of the Company because of the filing of the Registration Statement, except as set forth in that certain Registration Rights Agreement dated March 16, 1994 among the Company and certain stockholders.

2. Purchase, Sale and Delivery of Shares.

(a) On the basis of the representations, warranties and agreements contained herein, but subject to the terms and conditions set forth herein, the Company agrees to issue and sell the Shares to the Underwriter as hereinafter provided, and the Underwriter agrees to purchase from the Company the Shares at the purchase price set forth in the Price Determination Agreement, as hereinafter defined. The Company is advised by the Underwriter that the Underwriter proposes to deposit the Shares with the trustee of the Trust, a registered unit investment trust under the Investment Company Act of 1940, as amended, for which the Underwriter acts as sponsor and depositor, in exchange for units of the Trust (the "Offering") as soon after the execution and delivery hereof as in the judgment of the Underwriter is advisable.

(b) Delivery of the Shares shall be made to the Underwriter against payment of the purchase price to the Company or to its order in immediately available funds, at the office of the Underwriter, North Tower, World Financial Center, New York, New York 10281-1209, at 10:00 a.m., New York City time, on the third business day (or, if the Shares are priced as contemplated by Rule 15c6-1(c) of the Exchange Act after 4:30 p.m., New York City time, the fourth business day) following the date of this Agreement, or at such time on such other date, not later than seven business days after the date of this Agreement, as may be agreed upon by the Company and the Underwriters (such date is herein referred to as the "Closing Date"). Such payment will be made against delivery to the Underwriter of the Shares registered in such names and in such denominations as the Underwriter shall request no less than two full Business Days prior to the date of delivery, with transfer taxes, if any, payable in connection with transfer to the Underwriter duly paid by the Company. As used herein, the term "Business Day" means any day other than a day on which banks are permitted or required to be closed in New York City. The Shares will be delivered through the book entry facilities of The Depository Trust Company ("DTC") and will be made available for inspection by the Underwriter by 1:00 P.M. New York City time on the Business Day prior to the Closing Date at such place in New York City as the Underwriter, DTC and the Company shall agree.

(c) The purchase price per share for the Shares to be paid by the Underwriter shall be agreed upon by the Company and the Underwriter, and such agreement shall be set forth in a separate written instrument substantially in the form of Exhibit III hereto (the "Price Determination Agreement"). The Price Determination Agreement may take the form of an exchange of any standard form of written telecommunication between the Company and the Underwriter and shall specify such applicable information as is indicated in Exhibit III hereto. The Offering will be governed by this Agreement, as supplemented by the Price Determination Agreement. From and after the date of the execution and delivery of the Price Determination Agreement, this Agreement shall be deemed to incorporate, and, unless the context otherwise indicates, all references contained herein to "this Agreement" and to the phrase "herein" shall be deemed to include, the Price Determination Agreement.

3. Covenants. The Company covenants and agrees with the Underwriter that:

(a) The Company will cause the Prospectus to be filed as required by Section 1(a) hereof (but only if the Underwriter has not reasonably objected thereto by notice to the Company after having been furnished a copy a reasonable time prior to filing) and will notify the Underwriter promptly of such filing; it will notify the Underwriter promptly of the time when any subsequent amendment to the Registration Statement has become effective or any supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information; it will prepare and file with the Commission, promptly upon the Underwriter's request, any amendments or supplements to the Registration Statement or Prospectus that, in the Underwriter's opinion, may be necessary or advisable in connection with the distribution of the Shares by the

Underwriter; and it will file no amendment or supplement to the Registration Statement or Prospectus to which the Underwriter shall reasonably object by notice to the Company after having been furnished a copy at a reasonable time prior to the filing.

(b) The Company will advise the Underwriter, promptly after it shall receive notice or obtain knowledge thereof, of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, of the suspension of the qualification of the Shares for offering or sale in any jurisdiction, or of the initiation or threatening of any proceeding for any purpose; and it will

promptly use its best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) Within the time during which a prospectus relating to the Shares is required to be delivered under the Act, the Company will comply with all requirements imposed upon it by the Act and by the Rules and Regulations, as from time to time in force, so far as necessary to permit the continuance of sales of or dealings in the Shares as contemplated by the provisions hereof and the Prospectus. If during such period any event occurs as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Act, the Company will promptly notify the Underwriter and will amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) As soon after the execution and delivery of this Agreement as possible and thereafter from time to time for such period as in the opinion of counsel for the Underwriter a prospectus is required by the Act to be delivered in connection with sales by the Underwriter or dealer, the Company will expeditiously deliver to the Underwriter and counsel for the Underwriter and each dealer, without charge, as many copies of the Prospectus (and of any amendment or supplement thereto) as the Underwriter or dealers may reasonably request. The Company consents to the use of the Prospectus (and of any amendment or supplement thereto) in accordance with the provisions of the Act, both in connection with the Offering and for such period of time thereafter as the Prospectus is required by the Act to be delivered in connection with sales by the Underwriter or dealer. If during such period of time any event shall occur that in the judgment of the Company or in the opinion of counsel for the Underwriter is required to be set forth in the Prospectus (as then amended or supplemented) or should be set forth therein in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, or if it is necessary to supplement or amend the Prospectus to comply with the Act or any other law, the Company will forthwith prepare and, subject to the provisions of Section 3(a) hereof, file with the Commission an appropriate supplement or amendment thereto, and will expeditiously furnish to the Underwriter and dealers a reasonable number of copies thereof. In the event that the Company and the Underwriter agree that the Prospectus should be amended or supplemented, the Company, if requested by the Underwriter, will promptly issue a press release announcing or disclosing the matters to be covered by the proposed amendment or supplement.

(e) The Company will make generally available to its security holders as soon as practicable, but not later than ninety (90) days after the close of the period covered thereby, an earnings statement (in form complying with the provisions of Section 11(a) of the Act and Rule 158 of the Rules and Regulations) covering a twelve-month period beginning not later than the first day of the Company's fiscal quarter next following the "effective date" (as defined in said Rule 158) of the Registration Statement.

(f) The Company agrees to pay the following costs and expenses and all other costs and expenses incident to the performance by the Company of the Company's obligations hereunder including, without limitation, its own travel (including air fare) and lodging expenses related to the preparation of the Prospectus and any sales efforts: (i) the preparation, printing or reproduction, and filing with the Commission of the Registration Statement (including financial statements and exhibits thereto), the Prospectus, and each amendment or supplement to either of them; (ii) the printing or (reproduction) and delivery (including postage, air freight charges and charges for counting and packaging) of such copies

of the Registration Statement, the Prospectus and all amendments or supplements to any of them as may be reasonably requested for use in connection with the Offering; (iii) the preparation, printing, authentication, issuance and delivery of certificates for the Shares, including any stamp taxes in connection with the original issuance and sale of the Shares; (iv) the printing (or reproduction) and delivery of this Agreement; (v) the Registration of the Shares under the Exchange Act and the listing of the Shares on the New York Stock Exchange and the Pacific Exchange; and (vi) the fees and expenses of the Company's accountants and the fees and expenses of counsel (including local and special counsel) for the Company.

(g) The Company will apply the net proceeds from the Offering in the manner set forth in the Prospectus under "Use of Proceeds."

(h) Unless the Board of Directors of the Company determines in its reasonable business judgment that continued qualification as a "real estate investment trust" under the Code is not in the Company's best interest the Company will use its best efforts to, and will continue to meet the requirements to, qualify as a "real estate investment trust."

(i) The Company will not at any time, directly or indirectly, take any action designed, or which might reasonably be expected to cause or result in, or which will constitute, stabilization of the price of the Shares to facilitate the sale or resale of any of the Shares.

(j) The Company will comply with all provisions of the undertakings contained in item 17 of the Registration Statement.

(k) In the event that any portion of the Shares is issued without certificates pursuant to Section 2-210 of the Maryland General Corporation Law (the "MGCL"), at the time of issuance of such Shares the Company shall comply fully with Sections 2-210 and 2-211 of the MGCL.

4. Conditions of Underwriter's Obligations. The obligations of the Underwriter to purchase and pay for the Shares as provided herein shall be subject to the accuracy, as of the date hereof and the Closing Date (as if made at the Closing Date), of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to the following additional conditions:

(a) Notification that the Registration Statement has become effective shall be received by the Underwriter not later than 5:00 pm., New York City time, on the date of this Agreement or at such later date and time as shall be consented to in writing by the Underwriter and all filings required by Rule 424 and Rule 430A of the Rules and Regulations shall have been made; no stop order suspending the effectiveness of the Registration Statement shall have been issued and, to the knowledge of the Company or the Underwriter, no proceeding for that purpose shall have been instituted or threatened by the Commission; and any request of the Commission for additional information (to be included in the Registration Statement or the Prospectus or otherwise) shall have been complied with to the Underwriter's satisfaction.

(b) The Underwriter shall not have advised the Company that the Registration Statement or Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the Underwriter's opinion is material, or omits to state a fact that in the Underwriter's opinion is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(c) Except as contemplated in the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, (i) there shall not have been any change in the capital stock, partnership interests, short-term debt or long-term debt of the Company or its subsidiaries, (ii) there shall not have been any adverse change, or any development involving a prospective adverse change, in the condition (financial or other), business, prospects, net worth or results of operations of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, and (iii) neither the Company nor any of its subsidiaries shall have sustained any material loss or interference with its business or properties from fire, explosion, flood or other casualty, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree, which is not set forth in the Registration Statement and the Prospectus, if in the reasonable judgment of the Underwriter any of the foregoing makes it impractical or inadvisable to (x) commence or continue the offering of the units of the Trust, or (y) enforce contracts for the sale of the units of the Trust.

(d) The Underwriter shall have received the opinion of Goodwin, Procter & Hoar LLP, counsel for the Company dated the Closing Date, to the effect that:

(i) The Registration Statement has been declared effective under the Act; the Prospectus has been filed with the Commission pursuant to Rule 424; and to the best knowledge of such counsel (which may be based solely on an oral representation of a member of the staff of the Commission) no stop order suspending the effectiveness of the Registration Statement has been issued under the Act and no proceeding for that purpose has been instituted or threatened by the Commission;

(ii) Each part of the Registration Statement, when such part became effective, and the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission and at the Closing Date, complied as to form in all material respects with the requirements of the Act and the Rules and Regulations (other than (A) the financial statements and supporting schedules and other financial and statistical information and data included therein or omitted therefrom, and (B) any documents incorporated therein by reference, as to which such counsel need express no opinion), it being understood that in passing upon compliance as to the form of the Registration Statement, such counsel may assume that the statements made therein are correct and complete;

(iii) The descriptions in the Registration Statement (other than the documents incorporated therein by reference) and Prospectus of statutes are accurate in all material respects and fairly present the information required to be shown; and such counsel do not know of any statutes or legal or governmental proceedings required to be described in the Prospectus that are not described as required, or of any contracts or documents of a character required to be described in the Registration Statement or Prospectus or to be filed as exhibits to the Registration Statement that are not described and filed as required;

(iv) The form of organization of the Company and its operations are such as to enable the Company to qualify as a "real estate investment trust" under the applicable provisions of the Code. The statements in the Prospectus set forth under the caption "Federal Income Tax Considerations," to the extent such information constitutes matters of law, summaries of legal matters, or legal conclusions, have been reviewed by such counsel and are accurate in all material respects;

(v) The Company is not (after giving effect to the sale of the Shares) required to be registered under the 1940 Act;

(vi) The Company is in good standing under the laws of the State of California as a foreign corporation, has full power and authority to conduct its business as described in the Registration Statement and Prospectus;

(vii) Each of the partnerships that owns a Community (the "Partnerships") is a limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation and has the power under its partnership agreement and the applicable Limited Partnership Act necessary to conduct its business as described in the Registration Statement and Prospectus; each of the corporate subsidiaries of the Company is duly organized, validly existing and in good standing under the laws of its state of incorporation and has the corporate power and authority to conduct its business as described in the Registration Statement and Prospectus;

(viii) The General Partners of each of the Partnerships are duly qualified to do business in the State of California, except where the failure to be so qualified, considering all such cases in the aggregate, does not involve and will not involve a material risk to the business, properties, financial position or results of operations of such subsidiary;

(ix) All of the outstanding shares of Common Stock and the Preferred Stock of the Company identified in the Prospectus (including the Shares) have been duly authorized and are, or when issued as contemplated herein will be, validly issued, fully paid and nonassessable and conform, or when so issued will conform, to the description thereof in the Prospectus; and the shareholders of the Company have no preemptive or similar rights with respect to the Shares pursuant to the Company's Charter or applicable statute or pursuant to any contract identified on an exhibit to such opinion (which exhibit lists all contracts identified by the Company in an officer's certificate as material under the standard set forth in Item 601(b)(10) of Regulation S-K);

(x) The Company has full corporate power and authority to

enter into this Agreement; this Agreement has been duly authorized, executed and delivered by the Company; to the knowledge of such counsel, the issuance and sale of the Shares to the Underwriter on the terms contemplated herein will not (A) result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company, any of its subsidiaries or the Partnerships, pursuant to the terms or provisions of any contract (i) which such counsel has prepared or negotiated on behalf of the Company and (ii) to which any of its subsidiaries or the Partnerships is a party or by or pursuant to which any of them or their respective properties is bound, affected or financed, or (B) result in a breach or violation of any of the terms or provisions of, or constitute a default or result in the acceleration of any obligation under, (i) the articles of incorporation or by-laws of the Company, (ii) the articles or certificate of incorporation or by-laws of any of the Company's subsidiaries, or the partnership agreements or other organizational documents of the Partnerships, (iii) any contract identified on the schedule to such opinion referenced above to which the Company, any of its subsidiaries or the Partnerships is a party or by or pursuant to which any of them or their respective properties is bound, affected or financed or (iv) any statute, judgment, ruling, decree, order, rule or regulation of any court or other governmental agency or body applicable to the business or properties of the Company, any of its subsidiaries or the Partnerships (except that such counsel need express no opinion as to the securities or Blue Sky laws of any jurisdiction other than the United States), where such violation or default, individually or in the

aggregate, might have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company or any of its subsidiaries taken as a whole;

(xi) To the knowledge of such counsel, no consent, approval, authorization or order of, or filing with, any court or governmental agency or body is required in connection with the issuance or sale of the Shares by the Company, except (i) such as have been obtained under the Act, the Exchange Act, or (ii) such as may be required under state securities laws or the by-laws of the NASD in connection with the purchase and distribution of the Shares by the Underwriter; and

(xii) To the knowledge of such counsel, none of the Company, any of its subsidiaries or the Partnerships is in violation of its articles or certificate of incorporation, by-laws, partnership agreements, or other organizational documents, as applicable, or in default (nor has an event occurred which with notice or lapse of time or both would constitute a default or acceleration) in the performance of any obligation, agreement or condition contained in any Contract known to such counsel to which the Company, any of its subsidiaries or the Partnerships is a party, or by or pursuant to which any of them or their respective properties is bound, affected or financed, and, to the knowledge of such counsel, none of the Company, any of its subsidiaries or the Partnerships is in violation of any judgment, ruling, decree, order, franchise, license or permit known to such counsel or any statute, rule or regulation of any court or other governmental agency or body applicable to the business or properties of the Company, any of its subsidiaries or the Partnerships; where such violation or default, individually or in the aggregate, might have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company or any of its subsidiaries taken as a whole.

In connection with delivering such opinion such counsel shall also state:

(a) No facts have come to their attention which cause them to believe that the Registration Statement (excluding the financial statements and notes thereto, financial schedules and other financial or statistical information and data included therein or omitted therefrom, as to which they need express an opinion), at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and

(b) No facts have come to their attention which cause them to believe that the Prospectus (excluding the financial statements and notes thereto, financial schedules and other financial or statistical information and data included therein or omitted therefrom, as to which they need express no opinion), as of its date or the date

of such opinion, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

In rendering such opinions, such counsel may rely on certificates of public officers, upon opinions of counsel reasonably satisfactory to the Underwriter, copies of which shall be contemporaneously delivered to the Underwriter, and as to matters of fact, upon certificates of officers of the Company; provided that such counsel shall state that the opinion of any other counsel is in form satisfactory to such counsel and, such counsel is unaware of any reason why it and the Underwriter are not justified in relying

on such opinions of other counsel. Copies of all such opinions and certificates shall be furnished to counsel to the Underwriter on the Closing Date.

(e) The Underwriter shall have received the opinion of Cox, Castle & Nicholson LLP, counsel for the Company, dated the Closing Date, to the effect that to the best of their knowledge statements relating to the Communities and the Current Development Communities (as defined in the Prospectus) and tax-exempt bond financing in the Prospectus (but excluding the statistical and financial data, physical condition and construction status of such communities included therein) are materially fair and accurate.

(f) The Underwriter shall have received from O'Melveny & Myers LLP, counsel for the Underwriter (based upon Goodwin Procter & Hoar LLP's opinion respecting Maryland law), such opinion or opinions, dated the Closing Date, with respect to the organization of the Company, the validity of the Shares, the Registration Statement, the Prospectus and other related matters as the Underwriter reasonably may request, and such counsel shall have received such papers and information as they request to enable them to pass upon such matters. In rendering such opinion, such counsel may rely upon certificates of public officers and upon opinions of counsel, copies of which shall be contemporaneously delivered to the Underwriter, and as to matters of fact, upon certificates of officers of the Company.

(g) At the time of the execution of this Agreement, the Underwriter shall have received from Coopers & Lybrand a letter dated such date, in form and substance satisfactory to the Underwriter containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and other financial information included in the Registration Statement and the Prospectus (the "initial comfort letter"). On the Closing Date, the Underwriter shall have received from Coopers & Lybrand a letter dated as of the Closing Date to the effect that they reaffirm the statements made in the initial comfort letter, except that the specified date referred to shall be a date not more than five days prior to the Closing Date.

(h) The Underwriter shall have received from the Company a certificate, signed by the Chairman of the Board or the President and by the principal financial or accounting officer of the Company, dated the Closing Date, to the effect that:

(i) The representations and warranties of the Company in this Agreement were when originally made and are at the time such certificate is delivered true and correct, as if made at and as of the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date;

(ii) No stop order suspending the effectiveness of the Registration Statement has been issued, and, to their knowledge, no proceeding for that purpose has been instituted or is threatened, by the Commission;

(iii) Since the effective date of the Registration Statement, there has occurred no event required to be set forth in an amendment or supplement to the Registration Statement or Prospectus that has not been so set forth; and

(iv) The Shares shall have been approved for listing on the New York Stock Exchange and the Pacific Exchange, subject only to official notice of issuance.

(i) The Company shall have filed with the Commission a Current

Report on Form 8-K disclosing all material acquisition activity occurring since the Company's last public offering of securities which is required to be disclosed on Form 8-K as of the date of the Prospectus Supplement and is not otherwise disclosed in reports filed by the Company under the Exchange Act.

(j) The Company shall have furnished to the Underwriter such further certificates and documents as the Underwriter shall have reasonably requested.

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are satisfactory in form and substance to the Underwriter. The Company will furnish the Underwriter with such conformed copies of such opinions, certificates, letters and other documents as the Underwriter shall reasonably request.

5. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless the Underwriter and each person, if any, who controls the Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including the Rule 430A Information and the Rule 434 Information, if applicable, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading or arising out of any untrue statement or alleged untrue statement of a material fact included in the Prospectus (or any amendment or supplement thereto), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission;

(iii) against any and all expense whatsoever, as incurred (including the reasonable fees and disbursements of counsel chosen by the Underwriter), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above;

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent (a) arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with written information furnished to the Company by the Underwriter expressly for use in the Registration Statement (or any amendment thereto), including the Rule 430A Information and the Rule 434 Information, if applicable, or the Prospectus (or any amendment or supplement thereto) or (b) resulting solely from an untrue statement of a material fact contained in, or

the omission of a material fact from, the Prospectus, which untrue statement or omission was completely corrected in the Prospectus (as then amended or supplemented) if the Underwriters sold Shares to the person alleging such loss, claim, liability, expense or damage without sending or giving, at or prior to the written confirmation of such sale, a copy of the Prospectus (as then amended or supplemented) if the Company had previously furnished copies thereof to the Underwriters within a reasonable amount of time prior to such sale or such confirmation, and the Underwriters failed to deliver the corrected Prospectus, if required by law to have so delivered it and if delivered would have corrected the default giving rise to such loss, claim, liability expense or damage.

(b) The Underwriter agrees to indemnify and hold harmless the Company, its directors, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section 5, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), including the Rule 430A Information and the Rule 434 Information, if applicable, or the Prospectus

(or any amendment or supplement thereto) in reliance upon and in conformity with written information furnished to the Company by the Underwriter expressly for use in the Registration Statement (or any amendment thereto) or the Prospectus (or any amendment or supplement thereto).

(c) Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. In the case of parties indemnified pursuant to Section 5(a) above, counsel to the indemnified parties shall be selected by the Underwriter, and, in the case of parties indemnified pursuant to Section 5(b) above, counsel to the indemnified parties shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; provided, however, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all indemnified parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 5 (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim 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 any indemnified party.

(d) The indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense,

the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (1) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (2) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (3) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (4) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. An indemnifying party will not be liable for any settlement of any action or claim effected without its written consent (which consent will not be unreasonably withheld).

(e) If the indemnification provided for this Section 5 is applicable in accordance with its terms but is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein; then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriter on the other hand from the Offering pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Underwriter on the other hand in connection with the statements or omissions which resulted in such losses, liabilities, claims, damages or expenses, as well as any other relevant equitable considerations.

The relative benefits received by the Company on the one hand and the Underwriter on the other hand in connection with the Offering pursuant to this Agreement shall be deemed to be in the same respective proportions as the total net proceeds from the Offering pursuant to this Agreement (before deducting expenses) received by the Company and the total underwriting discount received by the Underwriter, in each case as set forth on the cover of the Prospectus, or, if Rule 434 is used, the corresponding location on the Term Sheet, bear to the aggregate initial public offering price of the Shares as set forth on such cover.

The relative fault of the Company on the one hand and the Underwriter on the other hand shall be determined by reference to, among other things, whether any such untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriter and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Underwriter agree that it would not be just and equitable if contribution pursuant to this Section 5(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 5(e). The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 5(e) shall be deemed to include any legal or other expenses reasonably

incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 5(e), the Underwriter shall not be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages which the Underwriter has otherwise been required to pay by reason of any such untrue or alleged untrue statement or omission or alleged omission.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 5(e), each person, if any, who controls the Underwriter within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Underwriter, and each director of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the 1933 Act or Section 20 of the 1934 Act shall have the same rights to contribution as the Company.

6. Termination of Agreement.

(a) The Underwriter may terminate this Agreement, by notice to the Company, at any time at or prior to Closing Date (i) if there has been, since the time of execution 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 or the international financial markets, 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 Underwriter, impracticable or inadvisable to (x) commence or continue the offering of the units of the Trust to the public or (y) enforce contracts for the sale of the units of the Trust, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the New York Stock Exchange, or if trading generally on the American Stock Exchange or the New York Stock Exchange or in the Nasdaq National Market has been suspended or materially 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 authorities.

(b) If this Agreement is terminated pursuant to this Section 6, such termination shall be without liability of any party to any other party

except as provided in Section 3(f) hereof, and provided further that Sections 1, 5, 6 and 7 shall survive such termination and remain in full force and effect.

7. Representations and Agreements to Survive Delivery. All representations, warranties, agreements and covenants, of the Company herein or in certificates delivered pursuant hereto, and the

agreements of the Underwriter contained in Section 5 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Underwriter or any controlling persons, or the Company or any of its officers, directors or any controlling persons, and shall survive delivery of and payment for the Shares hereunder.

8. Substitution of Underwriters. [Intentionally Omitted.]

9. Notices. All notices or communications hereunder shall be in writing and if to the Underwriter shall be mailed, delivered, telexed or telecopied and confirmed to the offices of Merrill Lynch, Pierce, Fenner & Smith Incorporated, North Tower, World Financial Center, New York, New York 10281-1209, Attention: Corporate Finance Department, or if sent to the Company, shall be mailed, delivered, telexed or telecopied and confirmed to the Company at 4340 Stevens Creek Boulevard, Suite 275, San Jose, California 95129, Attention: President. Either party to this Agreement may change such address for notices by sending to the other written notice of a new address for such purpose.

10. Parties. This Agreement shall inure to the benefit of and be binding upon the Company and the Underwriter and their respective successors and the persons or entities referred to in Section 5 hereof, and no other person will have any right or obligation hereunder.

11. APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE.

12. Counterparts. This Agreement may be signed in two or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

13. Severability. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14. Waivers of Trial by Jury. The Company and the Underwriter each hereby irrevocably waive any right they may have to a trial by jury in respect of any claim based upon or arising out of this Agreement or the transactions contemplated hereby.

If the foregoing correctly sets forth the understanding between the Company and the Underwriter, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Underwriter.

Very truly yours,

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Gilbert M. Meyer
President

CONFIRMED AND ACCEPTED as of the date first above written:

MERRILL LYNCH & CO.
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ John C. Brady

Authorized Signatory

EXHIBIT I

INFORMATION IN PROSPECTUS
SUPPLEMENT FURNISHED BY
THE UNDERWRITER

The following information appearing in the Prospectus has been furnished by the Underwriter in writing specifically for use in the preparation of such Prospectus.

1. The following information contained in the Prospectus Supplement under the heading "Underwriting":

a. The first and third sentences of the second paragraph.

EXHIBIT II

LIST OF SUBSIDIARIES

Bay Apartment Communities, Inc. (the "Company") owns interests in the following entities:

Subsidiaries

1. Bay Asset Group, Inc., a Maryland corporation, is a wholly-owned subsidiary of the Company.

2. Bay GP, Inc., a Maryland corporation, is a wholly-owned subsidiary of the Company.

3. Bay Development Partners, Inc., a Maryland corporation, is a wholly-owned subsidiary of Bay Asset Group, Inc.

4. Bay Waterford, Inc., a Maryland corporation, is a wholly-owned subsidiary of Bay Asset Group, Inc.

Partnerships

1. Bay GP, Inc. is the sole general partner of Bay Countrybrook, L.P., a Delaware limited partnership. There are third-party limited partners.

2. Bay Development Partners, Inc. is the sole general partner of San Francisco Bay Partners II, Ltd., a California limited partnership. There is one third-party limited partner.

3. Bay Development Partners, Inc. is the sole general partner of San Francisco Bay Partners III, L.P., a California limited partnership. The Company is the sole limited partner.

4. Bay Development Partners, Inc. is the sole general partner of Toyon Road San Jose Partners, L.P., a California limited partnership. The Company is the sole limited partner.

5. Bay Development Partners, Inc. is the sole general partner of Foxchase Drive San Jose Partners II, L.P., a California limited partnership. The Company is the sole limited partner.

6. The Company is the sole general partner of Bay Rincon, L.P., a California limited partnership. There are third-party limited partners.

7. The Company is the sole general partner of Bay Pacific Northwest, L.P., a Delaware limited partnership. There are third-party limited partners.

LIENS

The Financial Guaranty Insurance Company has a lien on all of the issued and outstanding capital stock of Bay Waterford, Inc. and Bay Development Partners, Inc.

EXHIBIT III

PRICE DETERMINATION AGREEMENT

April 23, 1998

MERRILL LYNCH & CO.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
North Tower
World Financial Center
New York, New York 10281-1209

Ladies and Gentlemen:

Reference is made to the Underwriting Agreement, dated April 23, 1998 (the "Underwriting Agreement"), between Bay Apartment Communities, Inc., a Maryland corporation (the "Company"), and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "Underwriter"). The Underwriting Agreement provides for the purchase by the Underwriter from the Company, subject to the terms and conditions set forth therein, of an aggregate of 1,244,147 shares (the "Shares") of the Company's common stock, par value $0.01 per share. This Agreement is the Price Determination Agreement referred to in the Underwriting Agreement.

Pursuant to Section 2 of the Underwriting Agreement, the undersigned agrees with the Underwriter as follows:

The purchase price per share for the Shares to be paid by the Underwriter shall be $35.4128.

The Company represents and warrants to the Underwriter that the representations and warranties of the Company set forth in Section 1 of the Underwriting Agreement are accurate as though expressly made at and as of the date hereof.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

If the foregoing is in accordance with your understanding of the agreement between the Underwriter and the Company, please sign and return to the Company a counterpart hereof, whereupon this instrument along with all counterparts and together with the Underwriting Agreement shall be a binding agreement between the Underwriter and the Company in accordance with its terms and the terms of the Underwriting Agreement.

Very truly yours,

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Name: Gilbert M. Meyer
Title: President

ACCEPTED as of the date
first above written

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: /s/ John C. Brady

Name: John C. Brady

Title: Managing Director

EXHIBIT 10.1

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Gilbert M. Meyer ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and the Company have previously entered into an Employment Agreement dated as of March 10, 1994 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon Properties, Inc. ("Avalon"), dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, the Company hereby agrees to employ Executive, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months prior to the expiration of the Original Term or any Renewal Term. Notwithstanding the foregoing, upon a Change in Control, the Employment Period shall be extended automatically to 3 years from the date of such Change in Control. (The period of Executive's employment hereunder within the Original Term and any Renewal Terms is herein referred to as the "Employment Period.")

2. Employment Duties.

(a) During the Employment Period, Executive shall be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of Executive Chairman of the Board. In the performance of his duties, Executive shall be subject to the direction of the Board of Directors of the Company (the "Board of Directors") and shall not be required to take direction from or report to any other person. Executive shall be appointed to the Board of Directors of the Company effective as of the Effective Date (or otherwise continue on the Board of Directors). Executive's duties and authority under this Agreement are set forth on Exhibit 1 to this Agreement.

(b) Executive agrees to his employment as described in this Section 2 and agrees to devote substantially all of his working time and efforts to the performance of his duties under this Agreement; provided that nothing herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors as an officer or director of, or advisor to, any other entity or organization that is not a customer or material service provider to the Company or a Competing Enterprise, as defined in Section 8, so long as such participation does not interfere with the performance of Executive's duties hereunder, whether or not such entity or organization is engaged in religious, charitable or other community or non-profit activities, (ii) investing in any entity or organization which is not a customer or material service provider to the Company or a Competing Enterprise, so long as such investment does not interfere with the performance of Executive's duties hereunder, or (iii) delivering lectures or fulfilling speaking engagements so long as such lectures or engagements do not interfere with the performance of Executive's duties hereunder. The Company consents to Executive's status as a director and stockholder of Greenbriar Homes Company and certain of its affiliates and as the owner of certain apartments in the San Francisco Bay area previously disclosed to the Board of Directors, and neither of such activities shall be treated as a Competing Enterprise.

(c) In performing his duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in San Jose, California, or otherwise in the greater San Francisco Bay area.

(d) Breach by either party of any of its respective obligations under this Section 2 shall be deemed a material breach of that

party's obligations hereunder.

3. Compensation/Benefits. In consideration of Executive's services hereunder, the Company shall provide Executive the following:

(a) Base Salary. During the Employment Period, the Executive shall receive an annual rate of base salary ("Base Salary") in an amount not less than $350,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for New York - Northern New Jersey - Long Island 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. Base Salary shall be payable in accordance with the Company's normal business practices, but in no event less frequently than monthly.

(b) Bonuses. Commencing at the close of each fiscal year during the Employment Period, the Company shall review the performance of the Company and of Executive during the prior fiscal year, and the Company may provide Executive with additional compensation as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.

(c) Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a

comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.

(d) Life Insurance/Disability Insurance. As of the Effective Date, during the Employment Period, Executive will receive a split dollar life insurance agreement and comprehensive disability policy comparable to those provided to comparable Avalon executives. Such life insurance amount shall equal $2,500,000, and both the life insurance and disability policy shall be subject to evidence of Executive's insurability. Executive agrees to submit to such medical examinations as may be required in order to establish or maintain such policies of insurance.

(e) Vacations. Executive shall be entitled to reasonable paid vacations during the Employment Period in accordance with the then regular procedures of the Company governing executives, not to exceed 6 weeks per annum, in the aggregate.

(f) Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.

(g) Club Membership. The Company will pay, or at Executive's election reimburse, during the Employment Period (i) the membership dues and special assessments (exclusive of initiation or admittance costs) for country club memberships of Executive's choice in an aggregate amount not to exceed $10,000 per year, increased but not decreased for each succeeding twelve month period during the Employment Period by the CPI Adjustment plus (ii) other costs and fees of use of such country club(s) reasonably related to the Company's business, subject to substantiation thereof in accordance with the Company's policies in effect from time to time for executive employees of the Company.

(h) Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than $950 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.

(i) Other Benefits. During the Employment Period, the Company shall provide to Executive such other benefits, excluding severance benefits, but including the right to participate in such retirement or pension plans, as

are made generally available to executives of the Company from time to time.

4. Expenses/Indemnification.

(a) During the Employment Period, the Company shall reimburse Executive for the reasonable business expenses incurred by Executive in the course of performing his duties for the Company hereunder, upon submission of invoices, vouchers or other appropriate documentation, as may be required in accordance with the policies in effect from time to time for executive employees of the Company.

(b) To the fullest extent permitted by law, the Company shall indemnify Executive with respect to any actions commenced against Executive in his capacity as an officer or director or former officer or director of the Company, or any affiliate thereof for which he may

render service in such capacity, whether by or on behalf of the Company, its shareholders or third parties, and the Company shall advance to Executive on a timely basis an amount equal to the reasonable fees and expenses incurred in defending such actions, after receipt of an itemized request for such advance, and an undertaking from Executive to repay the amount of such advance, with interest at a reasonable rate from the date of the request, as determined by the Company, if it shall ultimately be determined that he is not entitled to be indemnified against such expenses. The Company agrees to use its best efforts to secure and maintain officers and directors' liability insurance with respect to Executive.

5. Employer's Authority/Policies.

(a) General. Executive agrees to observe and comply with the rules and regulations of the Company as adopted by its Board respecting the performance of his duties and to carry out and perform orders, directions and policies communicated to him from time to time by the Board.

(b) Ethics Policies. Executive agrees to comply with and be bound by the Ethics Policies of the Company, as reflected in the attachment at Annex A hereto and made a part hereof.

6. Records/Nondisclosure/Company Policies.

(a) General. All records, financial statements and similar documents obtained, reviewed or compiled by Executive in the course of the performance by him of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Executive shall have no rights in such documents upon any termination of this Agreement.

(b) Nondisclosure Agreement. Without limitation of the Company's rights under Section 6(a), Executive agrees to abide by and be bound by the Nondisclosure Agreement of the Company executed by Executive and the Company as reflected in the attachment at Annex B and made a part hereof.

7. Termination; Severance and Related Matters.

(a) At-Will Employment. Executive's employment hereunder is "at will" and, therefore, may be terminated at any time, with or without Cause, at the option of the Company, subject only to the severance obligations under this Section 7. Upon any termination hereunder, the Employment Period shall expire.

(b) Definitions. For purposes of this Section 7, the following terms shall have the indicated definitions:

(1) Cause. "Cause" shall mean:

(i) Executive is convicted of or enters a plea of nolo contendere to an act which is defined as a felony under any federal, state or local law, not based upon a traffic violation, which conviction or plea has or can be expected to have, in the good faith opinion of the Board of Directors, a material adverse impact on the business or reputation of the Company;

(ii) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from

or with respect to the Company;

(iii) a breach by Executive of his fiduciary duties under Maryland law as an officer;

(iv) Executive's commission of any one or more acts of gross negligence or willful misconduct which in the good faith opinion of the Board of Directors has resulted in material harm to the business or reputation of the Company; or

(v) default by Executive in the performance of his material duties under this Agreement, without correction of such action within 15 days of written notice thereof.

Notwithstanding the foregoing, no termination of Executive's employment by the Company shall be treated as for Cause or be effective until and unless all of the steps described in subparagraphs (i) through (iii) below have been complied with:

Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

The Board of Directors has voted (at a meeting of the Board of Directors duly called and held as to which termination of Executive is an agenda item) to terminate Executive for Cause after Executive has been given notice of the particular acts or circumstances which are the basis for the termination for Cause and has been afforded at least 20 days notice after the meeting and an opportunity to present his position in writing; and

The Board of Directors has given a Notice of Termination to Executive within 20 days of such Board meeting.

The Company may suspend Executive with pay at any time during the period commencing with the giving of notice to Executive under clause (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

(2) Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

(i) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities having the right to vote generally in an election of the Company's Board of Directors

("Voting Securities"), other than as a result of (A) an acquisition of securities directly from the Company or any Subsidiary or (B) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (A), (B) and (C) of subparagraph (iii) of this Section 7(b)(2) are satisfied; or

(ii) Individuals who, as of the Effective Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the date hereof (excluding, for this purpose, (A) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (B) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation, involving an unrelated entity and occurring during the Employment

Period), whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the persons then comprising Incumbent Directors shall for purposes of this Agreement be considered an Incumbent Director; or

(iii) Consummation of a reorganization, merger or consolidation of the Company, unless, following such reorganization, merger or consolidation, (A) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (B) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (C) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(v) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, other than to a corporation, with respect to which following such sale, lease, exchange or other disposition (A) more than 50% of,

respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (B) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board of Directors providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change in Control" shall be deemed to have occurred for purposes of this Agreement.

(3) Complete Change in Control. A "Complete Change in Control" shall mean that a Change in Control has occurred, after modifying the definition of "Change in Control" by deleting clause (i) from Section 7(b)(2) of this Agreement.

(4) Constructive Termination Without Cause. "Constructive Termination Without Cause" shall mean a termination of Executive's employment initiated by

Executive not later than 12 months following the occurrence (not including any time during which an arbitration proceeding referenced below is pending), without Executive's prior written consent, of one or more of the following events (or the latest to occur in a series of events), and effected after giving the Company not less than 10 working days' written notice of the specific act or acts relied upon and right to cure:

(i) a material adverse change in the functions, duties or responsibilities of Executive's position which would reduce the level, importance or scope of such position; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, except in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause;

(ii) any material breach by the Company of this Agreement;

(iii) any purported termination of Executive's employment for Cause by the Company which does not comply with the terms of Section 7(b)(1) of this Agreement;

(iv) the failure of the Company to obtain an agreement, satisfactory to the Executive, from any successor or assign of the Company, to assume and agree to perform this Agreement, as contemplated in Section 10 of this Agreement;

(v) the failure by the Company to continue in effect any compensation plan in which Executive participates immediately prior to a Change in Control which is material to Executive's total compensation, unless comparable alternative arrangements (embodied in ongoing substitute or alternative plans) have been implemented with respect to such plans, or the failure by the Company to continue Executive's participation therein (or in such substitute or alternative plans) on a basis not materially less favorable, in terms of the amount of benefits provided and the level of Executive's participation relative to other participants, as existed during the last completed fiscal year of the Company prior to the Change in Control;

(vi) the relocation of the Company's San Jose offices to a new location more than fifty (50) miles from San Jose or the failure to locate Executive's own office at the San Jose office (or at the office to which such office is relocated which is within 50 miles of San Jose); or

(vii) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

Notwithstanding the foregoing, a Constructive Termination Without Cause shall not be treated as having occurred unless Executive has given a final Notice of Termination delivered after expiration of the Company's cure period. Executive or the Company may, at any time after the expiration of the Company's cure period and either prior to or up until three months after giving a final Notice of Termination, commence an arbitration proceeding to determine the question of whether, taking into account the actions complained of and any efforts made by the Company to cure such actions, a termination by Executive of his employment should be treated as a Constructive Termination Without Cause for purposes of this Agreement. If the Executive or the Company commences such a proceeding prior to delivery by Executive of a final Notice of Termination, the commencement of such a proceeding shall be without prejudice to either party and Executive's and the Company's rights and obligations under this Agreement shall continue unaffected unless and until the arbitrator has determined such question in the affirmative, or, if earlier, the date on which Executive or the Company has delivered a Notice of Termination in accordance with the provisions of this Agreement.

(5) Covered Average Compensation. "Covered Average Compensation" shall mean the sum of Executive's Covered Compensation as calculated for the calendar year in which the Date of Termination occurs and for each of the two preceding calendar years, divided by three.

(6) Covered Compensation. "Covered Compensation," for any calendar year, shall mean an amount equal to the sum of (i) Executive's Base Salary for the calendar year (disregarding any decreases made effective during the Employment Period), (ii) the cash bonus

actually earned by Executive with respect to such calendar year, and (iii) the value of all stock and other equity-based compensation awards made to Executive during such calendar year.

Covered Compensation shall be calculated according to the following rules:

(A) In valuing awards for purposes of clause (iii) above, all such awards shall be treated as if fully vested when granted, stock grants shall be valued by reference to the fair market value on the date of grant of the Company's common stock, par value $.01 per share, and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.

(B) In determining the cash bonus actually paid with respect to a calendar year, if no cash bonus has been paid with respect to the calendar year in which the Date of Termination occurs, the cash bonus paid with respect to the immediately preceding calendar year shall be assumed to have been paid in each of the current and immediately preceding calendar years, and if no cash bonus has been paid by the Date of Termination with respect to the immediately preceding calendar year, the cash bonus paid with respect to the second preceding calendar year shall be assumed to have been paid in all three of the calendar years taken into account in determining Covered Average Compensation.

(C) If any cash bonus paid with respect to the current or immediately preceding calendar year was paid within three months of Executive's Date of Termination, and is lower than the last cash bonus paid more than three months from the Date of Termination, any such cash bonus paid within three months of the Date of Termination shall be disregarded and the last cash bonus paid more than three months from the Date of Termination shall be substituted for each cash bonus so disregarded.

(D) In determining the amount of stock and other equity-based compensation awards made during a calendar year during the averaging period, rules similar to those set forth in subparagraphs (B) and (C) of this Section 7(b)(6) shall be followed, except that all awards made in connection with the Company's initial public offering shall be disregarded.

(7) Disability. "Disability" shall mean Executive has been determined to be disabled and to qualify for long-term disability benefits under the long-term disability insurance policy obtained pursuant to Section 3(d) of this Agreement.

(c) Rights Upon Termination.

(i) Payment of Benefits Earned Through Date of Termination. Upon any termination of Executive's employment during the Employment Period, Executive, or his estate, shall in all events be paid all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. Executive shall also retain all such rights with respect to vested equity-based awards as are provided under the circumstances under the applicable grant or award agreement, and shall be entitled to all other benefits which are provided under the circumstances in accordance with the provisions of the Company's generally applicable employee benefit plans, practices and policies, other than severance plans.

(ii) Death. In the event of Executive's death during the Employment Period, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), take whatever action is necessary to cause all of Executive's unvested equity-based awards to become fully vested as of the date of death and, in the case of equity-based awards which have an exercise schedule, to become fully exercisable and continue to be exercisable for such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.

(iii) Disability. In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), pay to Executive, in one lump sum, no later

than 31 days following the Date of Termination, an amount equal to two times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), commencing upon the Date of Termination:

(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of Termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;

(B) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms; and

(D) Continue to pay, or reimburse Executive for, all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due.

(v) Termination Without Cause; Constructive Termination Without Cause. In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), pay to Executive, in one lump sum no later than 31 days following the Date of Termination, an amount equal to three times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 36 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for so long as such payments are due, all premiums then due or payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d); and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all

stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(vi) Termination for Cause; Voluntary Resignation. In the event Executive's employment terminates during the Employment Period other than in connection with a termination meeting the conditions of subparagraphs (ii), (iii), (iv), or (v) of this Section 7(c), Executive shall receive the amounts set forth in Section 7(c)(i) in full satisfaction of all of his entitlements from the Company. All equity-based awards not vested as of the Date of Termination shall terminate (unless otherwise provided in the applicable award agreement) and Executive shall have no further entitlements with respect thereto.

(d) Additional Benefits.

(i) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable (1) pursuant to the terms of Section 7 of this Agreement, (2) pursuant to or in connection with any compensatory or employee benefit plan, agreement or arrangement, including but not limited to any stock options, restricted or unrestricted stock grants issued to or for the benefit of Executive and forgiveness of any loans by the Company to Executive or (3) otherwise (collectively, "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), and any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive shall be entitled to receive an additional payment (a "Partial Gross-Up Payment"), such that the net amount retained by Executive, before accrual or payment of any Federal, state or local income tax or employment tax, but after accrual or payment of the Excise Tax attributable to the Partial Gross-Up Payment, is equal to the Excise Tax on the Severance Payments.

(ii) Subject to the provisions of Section 7(d)(iii), all determinations required to be made under this Section 7, including whether a Partial Gross-Up Payment is required and the amount of such Partial Gross-Up Payment, shall be made by Coopers & Lybrand LLP or such other nationally recognized accounting firm as may at that time be the Company's independent public accountants immediately prior to the Change in Control (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. The initial Partial Gross-Up Payment, if any, as determined pursuant to this Section 7(d)(ii), shall be paid to Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by Executive, the Company shall furnish Executive with an opinion of counsel that failure to report the Excise Tax on Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Partial Gross-Up Payments which will not have been made by the Company should have been made (an "Underpayment"). In the event that the Company exhausts its remedies pursuant to Section 7(d)(iii) and Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, consistent with the calculations required to be made hereunder, and any such Underpayment, and any interest and penalties imposed on the Underpayment and required to be paid by Executive in connection with the proceedings described in Section 7(d)(iii), and any related legal and accounting expenses, shall be promptly paid by the Company to or for the benefit of Executive.

(iii) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Partial Gross-Up Payment. Such notification shall be given as soon as practicable but no later than 10 business days after Executive knows of such claim and shall apprise

the Company of the nature of such claim and the date on which such claim is requested to be paid. Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which he gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

(A) give the Company any information reasonably requested by the Company relating to such claim,

(B) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney selected by the Company,

(C) cooperate with the Company in good faith in order effectively to contest such claim, and

(D) permit the Company to participate in any proceedings relating to such claim; provided, however that the Company shall bear and pay directly all costs and expenses attributable to the failure to pay the Excise Tax (including related additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, for any Excise Tax up to an amount not exceeding the Partial Gross-Up Payment, including interest and penalties with respect thereto, imposed as a result of such representation, and payment of related legal and accounting costs and expenses (the "Indemnification Limit"). Without limitation on the foregoing provisions of this Section 7(d)(iii), the Company shall control all proceedings taken in connection with such contest and, at its sole option may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance so much of the amount of such payment as does not exceed the Excise Tax, and related interest and penalties, to Executive on an interest-free basis and shall indemnify and hold Executive harmless, from any related legal and accounting costs and expenses, and from any Excise Tax, including related interest or penalties imposed with respect to such advance or with respect to any imputed income with respect to such advance up to an amount not exceeding the Indemnification Limit; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Partial Gross-Up Payment would be payable hereunder and Executive shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), Executive becomes entitled to receive any refund with respect to such claim, Executive shall (subject to the Company's complying with the requirements of Section 7(d)(iii)) promptly pay to the Company so much of such refund (together with any interest paid or credited thereon after taxes applicable thereto) (the "Refund") as is equal to (A) if the Company advanced or paid the entire amount required to be so advanced or paid pursuant to Section 7(d)(iii) hereof (the "Required Section 7(d) Advance"), the aggregate amount advanced or paid by the Company pursuant to this Section 7(d) less the portion of such amount advanced to Executive to reimburse him for related legal and accounting costs, or (B) if the Company advanced or paid less than the Required Section 7(d) Advance, so much of the aggregate amount so advanced or paid by the Company pursuant to this Section 7(d) as is equal to the difference, if any, between (C) the amount refunded to Executive with respect to such claim and (D) the sum of the portion of the Required Section 7(d) Advance that was paid by Executive and not paid or advanced by the Company plus Executive's related legal and accounting fees, as

applicable. If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), a determination is made that Executive shall not be entitled to any refund with respect to such claim and the Company does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Partial Gross-Up Payment required to be paid.

(e) Notice of Termination. Notice of non-renewal of this Agreement pursuant to Section 1 hereof or of any termination of Executive's employment (other than by reason of death) shall be communicated by written notice (a "Notice of Termination") from one party hereto to the other party hereto in accordance with this Section 7 and Section 9.

(f) Date of Termination. "Date of Termination," with respect to any termination of Executive's employment during the Employment Period, shall mean (i) if Executive's employment is terminated for Disability, 30 days after Notice of Termination is given (provided that Executive shall not have returned to the full-time performance of Executive's duties during such 30 day period), (ii) if Executive's employment is terminated for Cause, the date on which a Notice of Termination is given which complies with the requirements of Section 7(b)(1) hereof, and (iii) if Executive's employment is terminated for any other reason, the date specified in the Notice of Termination. In the case of a termination by the Company other than for Cause, the Date of Termination shall not be less than 30 days after the Notice of Termination is given. In the case of a termination by Executive, the Date of Termination shall not be less than 15 days from the date such Notice of Termination is given. Notwithstanding the foregoing, in the event that Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in the termination being treated as a Termination without Cause. Upon any termination of his employment, Executive will concurrently resign his membership on the Board of Directors.

(g) No Mitigation. The Company agrees that, if Executive's employment by the Company is terminated during the term of this Agreement, Executive is not required to seek other employment, or to attempt in any way to reduce any amounts payable to Executive by the Company pursuant to Section 7(d)(i) hereof. Further, the amount of any payment provided for in this Agreement shall not be reduced by any compensation earned by Executive as the result of employment by another employer, by retirement benefits, or, except for amounts then due and

payable in accordance with the terms of any promissory notes given by Executive in favor of the Company, by offset against any amount claimed to be owed by Executive to the Company or otherwise.

(h) Nature of Payments. The amounts due under this Section 7 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty. Such amounts are in full satisfaction of all claims Executive may have in respect of his employment by the Company or its affiliates and are provided as the sole and exclusive benefits to be provided to Executive, his estate, or his beneficiaries in respect of his termination of employment from the Company or its affiliates.

8. Non-Competition; Non-Solicitation; Specific Enforcement.

(a) Non-Competition. Because Executive's services to the Company are special and because Executive has access to the Company's confidential information, Executive covenants and agrees that, during the Employment Period and, for a period of one year following the Date of Termination by the Company for Cause or a termination by Executive (other than a Constructive Termination Without Cause) prior to a Change in Control, Executive shall not, without the prior written consent of the Board of Directors, become associated with, or engage in any "Restricted Activities" with respect to any "Competing Enterprise," as such terms are hereinafter defined, whether as an officer, employee, principal, partner, agent, consultant, independent contractor or shareholder. "Competing Enterprise," for purposes of this Agreement, shall mean any person, corporation, partnership, venture or other entity which (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential real estate owned or under management by the Company or its affiliates. "Restricted Activities," for purposes of this Agreement, shall mean executive, managerial, directorial, administrative, strategic, business development or supervisory responsibilities and activities relating to all aspects of residential real estate ownership, management, residential real estate franchising, and residential real estate joint-venturing.

(b) Non-Solicitation. During the Employment Period, and for a

period of one year following the Date of Termination, Executive shall not, without the prior written consent of the Company, except in the course of carrying out his duties hereunder, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates.

(c) Specific Enforcement. Executive and the Company agree that the restrictions, prohibitions and other provisions of this Section 8 are reasonable, fair and equitable in scope, terms, and duration, are necessary to protect the legitimate business interests of the Company and are a material inducement to the Company to enter into this Agreement. Should a decision be made by a court of competent jurisdiction that the character, duration or geographical scope of the provisions of this Section 8 is unreasonable, the parties intend and agree that this Agreement shall be construed by the court in such a manner as to impose all of those restrictions on Executive's conduct that are reasonable in light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. The Company and Executive further agree that the services to be rendered under this Agreement by Executive are special, unique and of extraordinary character, and that in the event of the breach by Executive of the terms and conditions of this Agreement or if Executive, without the prior consent of the Board of Directors,

shall take any action in violation of this Section 8, the Company will suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Executive hereby consents to the entry of a temporary restraining order or ex parte injunction, in addition to any other remedies available at law or in equity, to enforce the provisions hereof. Any proceeding or action seeking equitable relief for violation of this Section 8 must be commenced in the federal or state courts, in either case in California. Executive and the Company irrevocably and unconditionally submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of such courts.

9. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed sufficient when given by hand or by nationally recognized overnight courier or by Express, registered or certified mail, postage prepaid, return receipt requested, and addressed, if to the Company at 5904 Richmond Avenue, Alexandria, VA 22303, and if to Executive at the address set forth in the Company records (or to such other address as may be provided by notice).

10. Miscellaneous. This Agreement, together with Exhibit 1 and Annex A and Annex B, constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Company employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. This Agreement may not be assigned by Executive without the prior written consent of the Company, and may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Headings herein are for convenience of reference only and shall not define, limit or interpret the contents hereof.

11. Amendment. This Agreement may be amended, modified or supplemented by the mutual consent of the parties in writing, but no oral amendment, modification or supplement shall be effective. No waiver by either party of any breach by the other party of any condition or provision contained in this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by Executive or an authorized officer of the Company, as the case may be.

12. Severability. The provisions of this Agreement are severable. The

invalidity of any provision shall not affect the validity of any other provision, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Resolution of Disputes.

(a) Procedures and Scope of Arbitration. Except for any controversy or claim seeking equitable relief pursuant to Section 8 of this Agreement, all controversies and claims arising under or in connection with this Agreement or relating to the interpretation, breach or enforcement thereof and all other disputes between the parties, shall be resolved by expedited, binding arbitration, to be held in California in accordance with the National Rules of the American Arbitration Association governing employment disputes (the "National Rules"). In any proceeding relating to the amount owed to Executive in connection with his termination of employment, it is the contemplation of the parties that the only remedy that the arbitrator may award in such a proceeding is an amount equal to the termination payments, if any, required to be provided under the applicable provisions of Section 7(c) and, if applicable, Section 7(d) hereof, to the extent not previously paid, plus the costs of arbitration and Executive's reasonable attorneys fees and expenses as provided below. Any award made by such arbitrator shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Attorneys Fees.

(i) Reimbursement After Executive Prevails. Except as otherwise provided in this paragraph, each party shall pay the cost of his or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of Executive in such proceeding, all of his reasonable attorneys fees and expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to Executive by the Company within five days of the entry of the award.

(ii) Reimbursement in Actions to Stay, Enjoin or Collect. In any case where the Company or any other person seeks to stay or enjoin the commencement or continuation of an arbitration proceeding, whether before or after an award has been made, or where Executive seeks recovery of amounts due after an award has been made, or where the Company brings any proceeding challenging or contesting the award, all of Executive's reasonable attorneys fees and expenses incurred in connection therewith shall be promptly reimbursed by the Company to Executive, within five days of presentation of an itemized request for reimbursement, regardless of whether Executive prevails, regardless of the forum in which such proceeding is brought, and regardless of whether a Change in Control has occurred.

(iii) Reimbursement After a Change in Control. Without limitation on the foregoing, solely in a proceeding commenced by the Company or by Executive after a Change in Control has occurred, the Company shall advance to Executive, within five days of presentation of an itemized request for reimbursement, all of Executive's legal fees and expenses incurred in connection therewith, regardless of the forum in which such proceeding was commenced, subject to delivery of an undertaking by Executive to reimburse the Company for such advance if he does not prevail in such proceeding (unless such fees are to be reimbursed regardless of whether Executive prevails as provided in clause (ii) above).

14. Survivorship. The provisions of Sections 4(b), 6, 8 and 13 of this Agreement shall survive Executive's termination of employment. Other provisions of this Agreement shall survive any termination of Executive's employment to the extent necessary to the intended preservation of each party's respective rights and obligations.

15. Board Action. Where an action called for under this Agreement is required to be taken by the Board of Directors, such action shall be taken by the vote of not less than a majority of the members then in office and authorized to vote on the matter.

16. Withholding. All amounts required to be paid by the Company shall be subject to reduction in order to comply with applicable federal, state and local tax withholding requirements.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which

together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be construed and regulated in all respects under the laws of the State of Maryland.

IN WITNESS WHEREOF, this Agreement is entered into as of the date and year first above written.

Bay Apartment Communities, Inc.

By: /s/ Jeffrey B. Van Horn

Its: VP, CFO, Treas and Sec

/s/ Gilbert M. Meyer

Gilbert M. Meyer

EXHIBIT 10.2

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Jeffrey B. Van Horn ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and the Company have previously entered into an Employment Agreement dated as of June 19, 1996 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon Properties, Inc. ("Avalon"), dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, the Company hereby agrees to employ Executive, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months prior to the expiration of the Original Term or any Renewal Term. Notwithstanding the foregoing, upon a Change in Control, the Employment Period shall be extended automatically to 3 years from the date of such Change in Control. (The period of Executive's employment hereunder within the Original Term and any Renewal Terms is herein referred to as the "Employment Period.")

2. Employment Duties.

(a) During the Employment Period, Executive shall be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of Senior Vice President-Investments. Executive's duties and authority shall be commensurate with his title and position with the Company.

(b) Executive agrees to his employment as described in this Section 2 and a grees to devote substantially all of his working time and efforts to the performance of his duties under this Agreement; provided that nothing herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors as an officer or director of, or advisor to, any other entity or organization that is not a customer or material service provider to the Company or a Competing Enterprise, as defined in Section 8, so long as such participation does not interfere with the performance of Executive's duties hereunder, whether or not such entity or organization is engaged in religious, charitable or other

community or non-profit activities, (ii) investing in any entity or organization which is not a customer or material service provider to the Company or a Competing Enterprise, so long as such investment does not interfere with the performance of Executive's duties hereunder, or (iii) delivering lectures or fulfilling speaking engagements so long as such lectures or engagements do not interfere with the performance of Executive's duties hereunder.

(c) In performing his duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in San Jose, California, or otherwise in the greater San Francisco Bay area.

(d) Breach by either party of any of its respective obligations under this Section 2 shall be deemed a material breach of that party's obligations hereunder.

3. Compensation/Benefits. In consideration of Executive's services hereunder, the Company shall provide Executive the following:

(a) Base Salary. During the Employment Period, the Executive shall receive an annual rate of base salary ("Base Salary") in an amount not less than $270,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but

not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for New York Northern New Jersey - Long Island 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. Base Salary shall be payable in accordance with the Company's normal business practices, but in no event less frequently than monthly.

(b) Bonuses. Commencing at the close of each fiscal year during the Employment Period, the Company shall review the performance of the Company and of Executive during the prior fiscal year, and the Company may provide Executive with additional compensation as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.

(c) Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.

(d) Life Insurance/Disability Insurance. As of the Effective Date, during the Employment Period, Executive will receive a split dollar life insurance agreement and comprehensive disability policy comparable to those provided to comparable Avalon executives. Such life insurance amount shall equal $1,500,000, and both the life insurance and disability policy shall be subject to evidence of Executive's insurability. Executive agrees to

submit to such medical examinations as may be required in order to establish or maintain such policies of insurance.

(e) Vacations. Executive shall be entitled to reasonable paid vacations during the Employment Period in accordance with the then regular procedures of the Company governing executives, not to exceed 6 weeks per annum, in the aggregate.

(f) Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.

(g) Company Stock Option. Notwithstanding the consummation of the Merger, the Company granted to Executive on March 8, 1998, a non-qualified employee stock option to purchase 70,000 shares of common stock of the Company, par value $.01 per share (the "Company Stock Option"). The Company Stock Option was granted at an exercise price equal to $37.00. The Company Stock Option was granted with a 10-year term and shall be exercisable as to 100% of the shares covered thereby on the tenth anniversary of the date of grant so long as Executive remains employed by the Company or one of its affiliates; provided, that, if the Merger is consummated, the Company Stock Option shall be exercisable to the extent of 33 1/3% of the shares covered thereby on each of the first three anniversaries of the Effective Date, so long as Executive remains employed by the Company or one of its affiliates. Upon termination of Executive's employment, vesting and exercisability of the Company Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.

(h) Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than $750 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.

(i) Company Loan. Executive has an outstanding loan (the "Company Loan") from the Company (currently $97,600). On January 1st of each year during the Employment Period, 25% of the Company Loan will be forgiven. In the event that Executive's employment with the Company is terminated by the

Company without Cause, any outstanding balance under the Company Loan will be forgiven by the Company. In the event that Executive's employment with the Company is terminated under any circumstances other than as described in the preceding sentence, the Company Loan will be converted to a fifteen-year amortization schedule with a five-year balloon payment and will bear interest at the average market rate applicable at such time for a fifteen-year first mortgage residential loan.

(j) Other Benefits. During the Employment Period, the Company shall provide to Executive such other benefits, excluding severance benefits, but including the right to participate in such retirement or pension plans, as are made generally available to executives of the Company from time to time.

4. Expenses/Indemnification.

(a) During the Employment Period, the Company shall reimburse Executive for the reasonable business expenses incurred by Executive in the course of performing his duties for the Company hereunder, upon submission of invoices, vouchers or other appropriate documentation, as may be required in accordance with the policies in effect from time to time for executive employees of the Company.

(b) To the fullest extent permitted by law, the Company shall indemnify Executive with respect to any actions commenced against Executive in his capacity as an officer or director or former officer or director of the Company, or any affiliate thereof for which he may render service in such capacity, whether by or on behalf of the Company, its shareholders or third parties, and the Company shall advance to Executive on a timely basis an amount equal to the reasonable fees and expenses incurred in defending such actions, after receipt of an itemized request for such advance, and an undertaking from Executive to repay the amount of such advance, with interest at a reasonable rate from the date of the request, as determined by the Company, if it shall ultimately be determined that he is not entitled to be indemnified against such expenses. The Company agrees to use its best efforts to secure and maintain officers and directors' liability insurance with respect to Executive.

5. Employer's Authority/Policies.

(a) General. Executive agrees to observe and comply with the rules and regulations of the Company as adopted by its Board respecting the performance of his duties and to carry out and perform orders, directions and policies communicated to him from time to time by the Board.

(b) Ethics Policies. Executive agrees to comply with and be bound by the Ethics Policies of the Company, as reflected in the attachment at Annex A hereto and made a part hereof.

6. Records/Nondisclosure/Company Policies.

(a) General. All records, financial statements and similar documents obtained, reviewed or compiled by Executive in the course of the performance by him of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Executive shall have no rights in such documents upon any termination of this Agreement.

(b) Nondisclosure Agreement. Without limitation of the Company's rights under Section 6(a), Executive agrees to abide by and be bound by the Nondisclosure Agreement of the Company executed by Executive and the Company as reflected in the attachment at Annex B and made a part hereof.

7. Termination; Severance and Related Matters.

(a) At-Will Employment. Executive's employment hereunder is "at will" and, therefore, may be terminated at any time, with or without Cause, at the option of the Company, subject only to the severance obligations under this Section 7. Upon any termination hereunder, the Employment Period shall expire.

(b) Definitions. For purposes of this Section 7, the following terms shall have the indicated definitions:

(1) Cause. "Cause" shall mean:

(i) Executive is convicted of or enters a plea of

nolo contendere to an act which is defined as a felony under any federal, state or local law, not based upon a traffic violation, which conviction or plea has or can be expected to have, in the good faith opinion of the Board of Directors, a material adverse impact on the business or reputation of the Company;

(ii) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;

(iii) a breach by Executive of his fiduciary duties under Maryland law as an officer;

(iv) Executive's commission of any one or more acts of gross negligence or willful misconduct which in the good faith opinion of the Board of Directors has resulted in material harm to the business or reputation of the Company; or

(v) default by Executive in the performance of his material duties under this Agreement, without correction of such action within 15 days of written notice thereof.

Notwithstanding the foregoing, no termination of Executive's employment by the Company shall be treated as for Cause or be effective until and unless all of the steps described in subparagraphs (i) through (iii) below have been complied with:

Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

The Board of Directors has voted (at a meeting of the Board of Directors duly called and held as to which termination of Executive is an agenda item) to terminate Executive for Cause after Executive has been given notice of the particular acts or circumstances which are the basis for the termination for Cause and has been afforded at least 20 days notice after the meeting and an opportunity to present his position in writing; and

The Board of Directors has given a Notice of Termination to Executive within 20 days of such Board meeting.

The Company may suspend Executive with pay at any time during the period commencing with the giving of notice to Executive under clause (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

(2) Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

(i) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities having the right to vote generally in an election of the Company's Board of Directors ("Voting Securities"), other than as a result of (A) an acquisition of securities directly from the Company or any Subsidiary or (B) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (A), (B) and (C) of subparagraph (iii) of this Section 7(b)(2) are satisfied; or

(ii) Individuals who, as of the Effective Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the date hereof (excluding, for this purpose, (A) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election

of members of the Board of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (B) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation, involving an unrelated entity and occurring during the Employment Period), whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the persons then comprising Incumbent Directors shall for purposes of this Agreement be considered an Incumbent Director; or

(iii) Consummation of a reorganization, merger or consolidation of the Company, unless, following such reorganization, merger or consolidation, (A) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (B) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of the corporation

resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (C) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(v) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, other than to a corporation, with respect to which following such sale, lease, exchange or other disposition (A) more than 50% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (B) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board of Directors providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change in Control" shall be deemed to have occurred for purposes of this Agreement.

(3) Complete Change in Control. A "Complete Change in Control" shall mean that a Change in Control has occurred, after modifying the definition of "Change in Control" by deleting clause (i) from Section 7(b)(2) of this Agreement.

(4) Constructive Termination Without Cause. "Constructive Termination Without Cause" shall mean a termination of Executive's employment initiated by Executive not later than 12 months following the occurrence (not including any time during which an arbitration proceeding referenced below is pending), without Executive's prior written consent, of one or more of the following events (or the latest to occur in a series of events), and effected after giving the Company not less than 10 working days' written notice of the specific act or acts relied upon and right to cure:

(i) a material adverse change in the functions, duties or responsibilities of Executive's position which would reduce the level, importance or scope of such position; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, except in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause;

(ii) any material breach by the Company of this Agreement;

(iii) any purported termination of Executive's employment for Cause by the Company which does not comply with the terms of Section 7(b)(1) of this Agreement;

(iv) the failure of the Company to obtain an agreement, satisfactory to the Executive, from any successor or assign of the Company, to assume and agree to perform this Agreement, as contemplated in Section 10 of this Agreement;

(v) the failure by the Company to continue in effect any compensation plan in which Executive participates immediately prior to a Change in Control which is material to Executive's total compensation, unless comparable alternative arrangements (embodied in ongoing substitute or alternative plans) have been implemented with respect to such plans, or the failure by the Company to continue Executive's participation therein (or in such substitute or alternative plans) on a basis not materially less favorable, in terms of the amount of benefits provided and the level of Executive's participation relative to other participants, as existed during the last completed fiscal year of the Company prior to the Change in Control;

(vi) the relocation of the Company's San Jose offices to a new location more than fifty (50) miles from San Jose or the failure to locate Executive's own office at the San Jose office (or at the office to which such office is relocated which is within 50 miles of San Jose); or

(vii) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

Notwithstanding the foregoing, a Constructive Termination Without Cause shall not be treated as having occurred unless Executive has given a final Notice of Termination delivered after expiration of the Company's cure period. Executive or the Company may, at any time after the expiration of the Company's cure period and either prior to or up until three months after giving a final Notice of Termination, commence an arbitration proceeding to determine the question of whether, taking into account the actions complained of and any efforts made by the Company to cure such actions, a termination by Executive of his employment should be treated as a Constructive Termination Without Cause for purposes of this Agreement. If the Executive or the Company commences such a proceeding prior to delivery by Executive of a final Notice of Termination, the commencement of such a proceeding shall be without prejudice to either party and Executive's and the Company's rights and obligations under this Agreement shall continue unaffected unless and until the arbitrator has determined such question in the affirmative, or, if earlier, the date on which Executive or the Company has delivered a Notice of Termination in accordance with the provisions of this Agreement.

(5) Covered Average Compensation. "Covered Average Compensation" shall mean the sum of Executive's Covered Compensation as calculated for the calendar year in which the Date of Termination occurs and for each of the two preceding calendar years, divided by three.

(6) Covered Compensation. "Covered Compensation," for any calendar year, shall mean an amount equal to the sum of (i) Executive's Base Salary for the calendar year (disregarding any decreases made effective during the Employment Period), (ii) the cash bonus actually earned by Executive with respect to such calendar year, and (iii) the value of all stock and other equity-based compensation awards made to Executive during such calendar year.

Covered Compensation shall be calculated according to the following rules:

(A) In valuing awards for purposes of clause (iii) above, all such awards shall be treated as if fully vested when granted, stock grants shall be valued by reference to the fair market value on the date of grant of the Company's common stock, par value $.01 per share, and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.

(B) In determining the cash bonus actually paid with respect to a calendar year, if no cash bonus has been paid with respect to the calendar year in which the Date of Termination occurs, the cash bonus paid with respect to the immediately preceding calendar year shall be assumed to have been paid in each of the current and immediately preceding calendar years, and if no cash bonus has been paid by the Date of Termination with respect to the immediately preceding calendar year, the cash bonus paid with respect to the second preceding calendar year shall be assumed to have been paid in all three of the calendar years taken into account in determining Covered Average Compensation.

(C) If any cash bonus paid with respect to the current or immediately preceding calendar year was paid within three months of Executive's Date of Termination, and is lower than the last cash bonus paid more than three months from the Date of Termination, any such cash bonus paid within three months of the Date of Termination shall be disregarded and the last cash bonus paid more than three months from the Date of Termination shall be substituted for each cash bonus so disregarded.

(D) In determining the amount of stock and other equity-based compensation awards made during a calendar year during the averaging period, rules similar to those set forth in subparagraphs (B) and (C) of this Section 7(b)(6) shall be followed, except that all awards made in connection with the Company's initial public offering shall be disregarded.

(7) Disability. "Disability" shall mean Executive has been determined to be disabled and to qualify for long-term disability benefits under the long-term disability insurance policy obtained pursuant to Section 3(d) of this Agreement.

(c) Rights Upon Termination.

(i) Payment of Benefits Earned Through Date of Termination. Upon any termination of Executive's employment during the Employment Period, Executive, or his estate, shall in all events be paid all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. Executive shall also retain all such rights with respect to vested equity-based awards as are provided under the circumstances under the applicable grant or award agreement, and shall be entitled to all other benefits which are provided under the circumstances in accordance with the provisions of the Company's generally applicable employee benefit plans, practices and policies, other than severance plans.

(ii) Death. In the event of Executive's death during the Employment Period, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), take whatever action is necessary to cause all of Executive's unvested equity-based awards to become fully vested as of the date of death and, in the case of equity-based awards which have an exercise schedule, to become fully exercisable and continue to be exercisable for such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.

(iii) Disability. In the event the Company elects to terminate Executive's employment during the Employment Period on account

of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), pay to Executive, in one lump sum, no later than 31 days following the Date of Termination, an amount equal to two times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), commencing upon the Date of

Termination:

(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of Termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;

(B) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms; and

(D) Continue to pay, or reimburse Executive for, all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due.

(v) Termination Without Cause; Constructive Termination Without Cause. In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), pay to Executive, in one lump sum no later than 31 days following the Date of Termination, an amount equal to three times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 36 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for so long as such payments are due, all premiums then due or payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d); and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their

terms.

(vi) Termination for Cause; Voluntary Resignation. In the event Executive's employment terminates during the Employment Period other than in connection with a termination meeting the conditions of subparagraphs (ii), (iii), (iv), or (v) of this Section 7(c), Executive shall receive the amounts set forth in Section 7(c)(i) in full satisfaction of all of his entitlements from the Company. All equity-based awards not vested as of the Date of Termination shall terminate (unless otherwise provided in the applicable award agreement) and Executive shall have no further entitlements with respect thereto.

(d) Additional Benefits.

(i) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable (1) pursuant to the terms of Section 7 of this Agreement, (2) pursuant to or in connection with any compensatory or employee benefit plan, agreement or arrangement, including but not limited to any stock options, restricted or unrestricted stock grants issued to or for the benefit of Executive and forgiveness of any loans by the Company to Executive or (3) otherwise (collectively, "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), and any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive shall be entitled to receive an additional payment (a "Partial Gross-Up Payment"), such that the net amount retained by Executive, before accrual or payment of any Federal, state or local income tax or employment tax, but after accrual or payment of the Excise Tax attributable to the Partial Gross-Up Payment, is equal to the Excise Tax on the Severance Payments.

(ii) Subject to the provisions of Section 7(d)(iii), all determinations required to be made under this Section 7, including whether a Partial Gross-Up Payment is required and the amount of such Partial Gross-Up Payment, shall be made by Coopers & Lybrand LLP or such other nationally recognized accounting firm as may at that time be the Company's independent public accountants immediately prior to the Change in Control (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. The initial Partial Gross-Up Payment, if any, as determined pursuant to this Section 7(d)(ii), shall be paid to Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by Executive, the Company shall furnish Executive with an opinion of counsel that failure to report the Excise Tax on Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Partial Gross-Up Payments which will not have been made by the Company should have been made (an "Underpayment"). In the event that the Company exhausts its remedies pursuant to Section 7(d)(iii) and

Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, consistent with the calculations required to be made hereunder, and any such Underpayment, and any interest and penalties imposed on the Underpayment and required to be paid by Executive in connection with the proceedings described in Section 7(d)(iii), and any related legal and accounting expenses, shall be promptly paid by the

Company to or for the benefit of Executive.

(iii) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Partial Gross-Up Payment. Such notification shall be given as soon as practicable but no later than 10 business days after Executive knows of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which he gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

(A) give the Company any information reasonably requested by the Company relating to such claim,

(B) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney selected by the Company,

(C) cooperate with the Company in good faith in order effectively to contest such claim, and

(D) permit the Company to participate in any proceedings relating to such claim; provided, however that the Company shall bear and pay directly all costs and expenses attributable to the failure to pay the Excise Tax (including related additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, for any Excise Tax up to an amount not exceeding the Partial Gross-Up Payment, including interest and penalties with respect thereto, imposed as a result of such representation, and payment of related legal and accounting costs and expenses (the "Indemnification Limit"). Without limitation on the foregoing provisions of this Section 7(d)(iii), the Company shall control all proceedings taken in connection with such contest and, at its sole option may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance so much of the amount of such payment as does not exceed the Excise Tax, and related interest and penalties, to Executive

on an interest-free basis and shall indemnify and hold Executive harmless, from any related legal and accounting costs and expenses, and from any Excise Tax, including related interest or penalties imposed with respect to such advance or with respect to any imputed income with respect to such advance up to an amount not exceeding the Indemnification Limit; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Partial Gross-Up Payment would be payable hereunder and Executive shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), Executive becomes entitled to receive any refund with respect to such claim, Executive shall (subject to the Company's complying with the requirements of Section 7(d)(iii)) promptly pay to the Company so much of such refund (together with any interest paid or credited thereon after taxes applicable thereto) (the "Refund") as is equal to (A) if the Company advanced or paid the entire amount required to be so advanced or paid pursuant to Section 7(d)(iii) hereof (the "Required Section 7(d) Advance"), the aggregate amount advanced or paid by the Company pursuant to this Section 7(d) less the portion of such amount advanced to

Executive to reimburse him for related legal and accounting costs, or (B) if the Company advanced or paid less than the Required Section 7(d) Advance, so much of the aggregate amount so advanced or paid by the Company pursuant to this Section 7(d) as is equal to the difference, if any, between (C) the amount refunded to Executive with respect to such claim and (D) the sum of the portion of the Required Section 7(d) Advance that was paid by Executive and not paid or advanced by the Company plus Executive's related legal and accounting fees, as applicable. If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), a determination is made that Executive shall not be entitled to any refund with respect to such claim and the Company does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Partial Gross-Up Payment required to be paid.

(e) Notice of Termination. Notice of non-renewal of this Agreement pursuant to Section 1 hereof or of any termination of Executive's employment (other than by reason of death) shall be communicated by written notice (a "Notice of Termination") from one party hereto to the other party hereto in accordance with this Section 7 and Section 9.

(f) Date of Termination. "Date of Termination," with respect to any termination of Executive's employment during the Employment Period, shall mean (i) if Executive's employment is terminated for Disability, 30 days after Notice of Termination is given (provided that Executive shall not have returned to the full-time performance of Executive's duties during such 30 day period), (ii) if Executive's employment is terminated for Cause, the date on which a Notice of Termination is given which complies with the requirements of Section 7(b)(1) hereof, and (iii) if Executive's employment is terminated for any other reason, the date specified in the Notice of Termination. In the case of a termination

by the Company other than for Cause, the Date of Termination shall not be less than 30 days after the Notice of Termination is given. In the case of a termination by Executive, the Date of Termination shall not be less than 15 days from the date such Notice of Termination is given. Notwithstanding the foregoing, in the event that Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in the termination being treated as a Termination without Cause. Upon any termination of his employment, Executive will concurrently resign his membership on the Board of Directors.

(g) No Mitigation. The Company agrees that, if Executive's employment by the Company is terminated during the term of this Agreement, Executive is not required to seek other employment, or to attempt in any way to reduce any amounts payable to Executive by the Company pursuant to Section 7(d)(i) hereof. Further, the amount of any payment provided for in this Agreement shall not be reduced by any compensation earned by Executive as the result of employment by another employer, by retirement benefits, or, except for amounts then due and payable in accordance with the terms of any promissory notes given by Executive in favor of the Company, by offset against any amount claimed to be owed by Executive to the Company or otherwise.

(h) Nature of Payments. The amounts due under this Section 7 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty. Such amounts are in full satisfaction of all claims Executive may have in respect of his employment by the Company or its affiliates and are provided as the sole and exclusive benefits to be provided to Executive, his estate, or his beneficiaries in respect of his termination of employment from the Company or its affiliates.

8. Non-Competition; Non-Solicitation; Specific Enforcement.

(a) Non-Competition. Because Executive's services to the Company are special and because Executive has access to the Company's confidential information, Executive covenants and agrees that, during the Employment Period and, for a period of one year following the Date of Termination by the Company for Cause or a termination by Executive (other than a Constructive Termination Without Cause) prior to a Change in Control, Executive shall not, without the prior written consent of the Board of Directors, become associated with, or engage in any "Restricted Activities" with respect to any "Competing Enterprise," as such terms are hereinafter defined, whether as an officer, employee, principal, partner, agent, consultant, independent contractor or shareholder. "Competing Enterprise," for purposes of this Agreement, shall mean any person, corporation, partnership, venture or other entity which (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential real estate owned or under management by the

Company or its affiliates. "Restricted Activities," for purposes of this Agreement, shall mean executive, managerial, directorial, administrative, strategic, business development or supervisory responsibilities and activities relating to all aspects of residential real estate ownership, management, residential real estate franchising, and residential real estate joint-venturing.

(b) Non-Solicitation. During the Employment Period, and for a period of one year following the Date of Termination, Executive shall not, without the prior written consent of the Company, except in the course of carrying out his duties hereunder, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who

was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates.

(c) Specific Enforcement. Executive and the Company agree that the restrictions, prohibitions and other provisions of this Section 8 are reasonable, fair and equitable in scope, terms, and duration, are necessary to protect the legitimate business interests of the Company and are a material inducement to the Company to enter into this Agreement. Should a decision be made by a court of competent jurisdiction that the character, duration or geographical scope of the provisions of this Section 8 is unreasonable, the parties intend and agree that this Agreement shall be construed by the court in such a manner as to impose all of those restrictions on Executive's conduct that are reasonable in light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. The Company and Executive further agree that the services to be rendered under this Agreement by Executive are special, unique and of extraordinary character, and that in the event of the breach by Executive of the terms and conditions of this Agreement or if Executive, without the prior consent of the Board of Directors, shall take any action in violation of this Section 8, the Company will suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Executive hereby consents to the entry of a temporary restraining order or ex parte injunction, in addition to any other remedies available at law or in equity, to enforce the provisions hereof. Any proceeding or action seeking equitable relief for violation of this Section 8 must be commenced in the federal or state courts, in either case in California. Executive and the Company irrevocably and unconditionally submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of such courts.

9. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed sufficient when given by hand or by nationally recognized overnight courier or by Express, registered or certified mail, postage prepaid, return receipt requested, and addressed, if to the Company at 5904 Richmond Avenue, Alexandria, VA 22303, and if to Executive at the address set forth in the Company records (or to such other address as may be provided by notice).

10. Miscellaneous. This Agreement, together with Annex A and Annex B, constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Company employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. This Agreement may not be assigned by Executive without the prior written consent of the Company, and may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner

and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Headings herein are for convenience of reference

only and shall not define, limit or interpret the contents hereof.

11. Amendment. This Agreement may be amended, modified or supplemented by the mutual consent of the parties in writing, but no oral amendment, modification or supplement shall be effective. No waiver by either party of any breach by the other party of any condition or provision contained in this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by Executive or an authorized officer of the Company, as the case may be.

12. Severability. The provisions of this Agreement are severable. The invalidity of any provision shall not affect the validity of any other provision, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Resolution of Disputes.

(a) Procedures and Scope of Arbitration. Except for any controversy or claim seeking equitable relief pursuant to Section 8 of this Agreement, all controversies and claims arising under or in connection with this Agreement or relating to the interpretation, breach or enforcement thereof and all other disputes between the parties, shall be resolved by expedited, binding arbitration, to be held in California in accordance with the National Rules of the American Arbitration Association governing employment disputes (the "National Rules"). In any proceeding relating to the amount owed to Executive in connection with his termination of employment, it is the contemplation of the parties that the only remedy that the arbitrator may award in such a proceeding is an amount equal to the termination payments, if any, required to be provided under the applicable provisions of Section 7(c) and, if applicable, Section 7(d) hereof, to the extent not previously paid, plus the costs of arbitration and Executive's reasonable attorneys fees and expenses as provided below. Any award made by such arbitrator shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Attorneys Fees.

(i) Reimbursement After Executive Prevails. Except as otherwise provided in this paragraph, each party shall pay the cost of his or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of Executive in such proceeding, all of his reasonable attorneys fees and expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to Executive by the Company within five days of the entry of the award.

(ii) Reimbursement in Actions to Stay, Enjoin or Collect. In any case where the Company or any other person seeks to stay or enjoin the commencement or continuation of an arbitration proceeding, whether before or after an award has been made, or where Executive seeks recovery of amounts due after an award has been made, or where the Company brings any proceeding challenging or contesting the award, all of Executive's reasonable attorneys fees and expenses incurred in connection therewith shall be promptly reimbursed by the Company to Executive, within five days

of presentation of an itemized request for reimbursement, regardless of whether Executive prevails, regardless of the forum in which such proceeding is brought, and regardless of whether a Change in Control has occurred.

(iii) Reimbursement After a Change in Control. Without limitation on the foregoing, solely in a proceeding commenced by the Company or by Executive after a Change in Control has occurred, the Company shall advance to Executive, within five days of presentation of an itemized request for reimbursement, all of Executive's legal fees and expenses incurred in connection therewith, regardless of the forum in which such proceeding was commenced, subject to delivery of an undertaking by Executive to reimburse the Company for such advance if he does not prevail in such proceeding (unless such fees are to be reimbursed regardless of whether Executive prevails as provided in clause (ii) above).

14. Survivorship. The provisions of Sections 4(b), 6, 8 and 13 of this Agreement shall survive Executive's termination of employment. Other provisions of this Agreement shall survive any termination of Executive's employment to the extent necessary to the intended preservation of each party's respective rights and obligations.

15. Board Action. Where an action called for under this Agreement is

required to be taken by the Board of Directors, such action shall be taken by the vote of not less than a majority of the members then in office and authorized to vote on the matter.

16. Withholding. All amounts required to be paid by the Company shall be subject to reduction in order to comply with applicable federal, state and local tax withholding requirements.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be construed and regulated in all respects under the laws of the State of Maryland.

IN WITNESS WHEREOF, this Agreement is entered into as of the date and year first above written.

Bay Apartment Communities, Inc.

By: /s/ Gilbert M. Meyer

Its: Chairman

/s/ Jeffrey B. Van Horn

Jeffrey B. Van Horn

EXHIBIT 10.3

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Max L. Gardner ("Employee") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Employee and the Company have previously entered into an Employment Agreement as of November 10, 1995 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan or Merger, by and between the Company and Avalon Properties, Inc., dated as of March 9, 1998 (the "Merger Agreement"), Avalon Properties, Inc. will merge into the Company; and

WHEREAS, Employee and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, the Company hereby agrees to employ Employee, and Employee hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on the first anniversary of the Effective Date, unless earlier terminated as provided in Section 9 below. The term of the Agreement shall not be extended. The period of Employee's employment under the Agreement is herein referred to as the "Employment Period."

2. Employment. During the Employment Period, Employee shall be employed as a senior executive officer of the Company with the title of Senior Vice President-Merger Integration. Employee acknowledges and consents to his removal as a member of the Board of Directors of the Company (the "Board of Directors") on the earlier of the date of Company's 1998 annual meeting or the Effective Date. In the performance of his duties, Employee shall be subject to the direction of the Chief Executive Officer, the Senior Vice President-Property Operations and the Board of Directors. Employee's duties and authority shall be commensurate with his title and position with the Company. Employee agrees to his employment as described in this Section 2 and agrees to devote substantially all of his business time and efforts to the business and affairs of the Company. Employee agrees to serve the Company faithfully and to the best of his ability, and to perform such services and duties in connection with the business, affairs and operations of the Company as may be assigned or delegated to him from time to time by or under, and in accordance with, the authority and direction of the Board of Directors, and to use his reasonable best efforts in the promotion and advancement of the Company and its welfare.

3. Noncompetition During Employment Period. Because Employee's services to the Company are essential and because Employee has access to the Company's confidential information, Employee covenants and agrees that during the Employment Period, Employee will be a full-time employee of the Company as provided in Section 2 hereof and Employee will not, without the express prior written consent of the Board of Directors invest in any property or any business or venture which competes, directly or indirectly, with the Company in the development, construction, acquisition, management, leasing or marketing of multi-family apartment communities or which investment would require Employee's active involvement in such business or venture or would materially impair Employee's ability to perform fully his obligations under this Agreement. Notwithstanding anything contained herein to the contrary, Employee is not prohibited by this Section 3 from making investments in any entity that owns, invests in, refurbishes, manages, leases or markets multi-family apartment communities if the shares of such entity are publicly traded and Employee's aggregate investment in such entity constitutes less than 1% of the equity ownership of such entity or from making passive investments in any properties or other businesses provided that such investments are first offered to the Company and refused by the Board of Directors.

4. Non-Solicitation. During the Employment Period and for a period of one year following the date of any termination of employment, Employee shall not, without the prior written consent of the Company, except in the course of carrying out his duties hereunder, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates. The agreement set forth in this Section 4 shall survive the expiration of the Employment Period and any termination of this Agreement.

5. Base Salary. During the Employment Period, Employee's salary will be at the rate of $250,000 per year ("Base Salary"). Base Salary shall be payable

in accordance with the Company's normal business practices for senior executive officers, but no less frequently than monthly.

6. Initial Stock Option Grant. Notwithstanding the consummation of the Merger, the Company shall grant to Employee on the date hereof a non-qualified option to purchase 50,000 shares of common stock of the Company, par value $.01 per share ("Common Stock"), which option shall be referred to hereunder as the "Company Stock Option". The Company Stock Option shall be granted at an exercise price equal to $37.00. The Company Stock Option shall be granted with a 10-year term and shall be exercisable as to 100% of the shares covered thereby on the tenth anniversary of the date hereof so long as Employee remains employed by the Company or one of its affiliates; provided, that, if the Merger is consummated, the Company Stock Option shall be exercisable to the extent of 33 1/3% of the shares covered thereby on each of the first three anniversaries of the Effective Date, so long as Employee remains employed by the Company or one of its affiliates.

7. Incentive Compensation. Employee will be eligible for bonus compensation in an amount up to 75% of the annual Base Salary with a target of 50% ("Bonus Compensation"), subject to proration for any period less than a full year. The amount of Bonus Compensation to be paid to the Employee will be determined by the Compensation Committee of the Board of Directors in its sole and absolute discretion. In addition to Bonus Compensation, Employee will have an opportunity to earn as long-term incentive compensation up to 2,000 restricted shares of Common Stock and an option to acquire up to 25,000 shares of Common Stock. Any such grants shall be determined in the sole and absolute discretion of the Compensation Committee of the Board of Directors.

8. Automobile and Other Benefits.

(a) Automobile. During the Employment Period, the Company shall provide Employee with a monthly car allowance of not less than $750 per month.

(b) Other Benefits. During the Employment Period, Employee shall have the right to participate in the Company's 401(k) Savings Plan, and any health, dental, retirement, pension or other benefit plans that are made generally available to all full-time employees of the Company from time to time. Employee shall be entitled to reasonable paid vacation time in accordance with the then regular procedures of the Company for senior executive officers.

9. Termination.

(a) At-Will Employment. Employee's employment hereunder is "at will" and the Employment Period may be terminated by the Company at any time prior to the expiration of the term of this Agreement in Section 1 for any reason upon ten (10) days' written notice to Employee, subject only to the severance provisions set forth in Section 9(b) hereof.

(b) Certain Benefits upon Termination by Company without Cause or by Employee With Good Reason. In the event that (A) Employee is terminated by the Company without Cause (as defined in Section 9(d) below) on or before the expiration of the Employment Period in Section 1, including termination of employment upon expiration of the Agreement, or (B) Employee voluntarily terminates his employment for Good Reason (as defined in 9(d) below), the Company shall continue to pay Employee's Base Salary for the twelve (12) months immediately following the date of termination of the Employment Period, at the rate in effect on the date of termination and on the same periodic payment dates as payment would have been made to Employee had the Employment Period not been terminated. In addition, for the twelve (12) month period referred to in the previous sentence, Employee will be eligible for Bonus Compensation pursuant to Section 7 and the Company shall pay, for such twelve (12) month period, for continuation coverage available to Employee under the Company's health and dental plans and the car allowance under Section 8(a). Upon

Employee's termination of employment, all options and restricted stock awards granted to the Employee prior to March 5, 1998 shall become fully vested and exercisable on the date of termination under this Section 9(b) and shall continue to be exercisable until the close of business on the 91st day following said date of termination. With regard to the Company Stock Option and other stock options and restricted stock grants awarded under this Agreement, the following shall apply: (i) any stock option, to the extent vested and exercisable pursuant to the terms of the original grant agreement, shall continue to be exercisable until the close of business on the 91st day following the date of termination, and (ii) any other unvested stock awards, including any unvested restricted stock or unexercisable stock option (but in no event vested restricted stock), shall cease vesting and be forfeited on the date of termination.

(c) Termination by the Company for Cause or by Employee Without Good Reason. In the event that (A) Employee is terminated by the Company for Cause (as defined in Section 9 (d) below) or (B) Employee voluntarily terminates his employment without Good Reason (as defined in Section 9(d) below), then the Employment Period shall terminate as of the effective date set forth in the written notice of such termination in (A) or the date of termination in (B) and (i) Employee shall be entitled to receive only his Base Salary at the rate provided pursuant to Section 5 which is payable prior to the date of termination, (ii) any outstanding vested stock options, including the Company Stock Option or other stock options awarded under this Agreement, to the extent vested, shall continue to be exercisable until the close of business on the 30th day following such date of termination and (iii) other unvested stock awards, including any unvested restricted stock or unexercisable Company Stock Options (but in no event vested restricted stock), shall cease vesting and be forfeited on the date of termination.

(d) Definitions. "Cause" shall mean a finding by the Board of Directors that the Employee has (A) acted with gross negligence or willful misconduct in connection with the performance of his material duties hereunder, (B) defaulted in the performance of his material duties hereunder and has not corrected such action within fifteen (15) days of receipt of written notice thereof; (C) committed a material act of common law fraud against the Company or its employees, which act has had an adverse impact on the financial affairs of the Company; or (D) been convicted of a felony and such conviction has had an adverse effect on the interests of the Company. "Good Reason" shall mean (I) a failure by the Board of Directors to elect Employee to offices with the same or substantially the same duties and responsibilities as set forth in Section 2, or (ii) a failure by the Company to comply with the provisions of Sections 5, 6 or 7, provided that the Employee delivers written notice of any such failure to the Board of Directors.

10. Remedies For Breach. If Employee breaches the terms of this Agreement, in addition to any other remedies which it may have, the Company may terminate Employee's employment and any further participation in any employee plan in accordance with employment policies of the Company, as in effect from time to time, and Employee shall

forfeit any further compensation. In addition, the provisions of this Agreement may be specifically enforced if not performed according to their terms. Without limiting the generality of the foregoing, the parties acknowledge that the Company would be irreparably damaged and there would be no adequate remedy at law for Employee's breach of Sections 3, 4 and 11 hereof and, accordingly, Employee hereby consents to the entry of any temporary restraining order or preliminary or ex parte injunction, in addition to any other remedies available at law or in equity, to enforce the provisions thereof. This Section 10 and the agreement hereunder shall survive the termination of this Agreement.

11. Records and Nondisclosure of Confidential Information. All records, financial statements and similar documents obtained, reviewed or compiled by Employee in the course of the performance by him of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Employee shall have no rights in such documents upon any termination of this Agreement. Employee agrees to comply with and be bound by the Company's Policy on Securities Trading and Disclosure of Confidential Information previously delivered to Employee and made a part hereof. The agreement set forth in this Section 11 shall survive the expiration of the Employment Period and any termination of this Agreement.

12. Waiver. The failure of the Company to require the performance of any term or obligation provided for herein, or the waiver by the Company of any breach of this Agreement, shall not prevent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

13. Conflicting Agreements. Employee hereby represents and warrants that the execution of this Agreement and the performance of his duties and obligations hereunder will not breach or be in conflict with any other agreement to which he is a party or is bound, and that he is not now subject to any covenants against competition or similar covenants in favor of any other person or entity which could affect the performance of his duties hereunder.

14. Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof. This Agreement supersedes and replaces any prior agreement or arrangement relative to Employee's employment by the Company, and all such prior agreements and arrangements are hereby terminated.

15. Governing Law and Severability. This Agreement shall be governed by and construed under the laws of the State of California and shall not be modified or discharged in whole or in part except by an agreement in writing

signed by the parties hereto. In case any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision or part of a provision had been limited or modified (consistent with its general intent) to the extent necessary so that it shall be valid, legal and enforceable, or if it shall not be

possible to so limit or modify such invalid, illegal or unenforceable provision or part of a provision, this Agreement shall be construed as if such invalid, illegal or unenforceable provision or part of a provision had never been contained herein, and the parties will use their best efforts to substitute a valid, legal and enforceable provision which, insofar as practicable, implements the purpose and intent of the provision or part of such provision originally contained herein.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; provided, however, that this Agreement may not be assigned by Employee without the prior written consent of the Company. The Company shall require any successor of the Company which shall acquire, directly or indirectly, by merger, consolidation, purchase or otherwise, all or substantially all of the assets of the Company, by an agreement in form and substance satisfactory to Employee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent as the Company would be required to perform if no such succession had taken place.

17. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have no further force or effect. Employee hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any employee benefit plan or agreement of the Company.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.

IN WITNESS WHEREOF, the Agreement is entered into as of the date first written above.

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Title: Chairman of the Board and President

/s/ Max L. Gardner

MAX L. GARDNER

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Morton L. Newman ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and the Company have previously entered into an Employment Agreement dated as of March 10, 1994 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon Properties, Inc. ("Avalon"), dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, the Company hereby agrees to employ Executive, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months prior to the expiration of the Original Term or any Renewal Term. Notwithstanding the foregoing, upon a Change in Control, the Employment Period shall be extended automatically to 3 years from the date of such Change in Control. (The period of Executive's employment hereunder within the Original Term and any Renewal Terms is herein referred to as the "Employment Period.")

2. Employment Duties.

(a) During the Employment Period, Executive shall be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title Senior Vice President-Construction. Executive's duties and authority shall be commensurate with his title and position with the Company, and shall not be materially diminished from, or materially inconsistent with, his primary duties and authority with the Company immediately prior to the date of this Agreement.

(b) Executive agrees to his employment as described in this Section 2 and agrees to devote substantially all of his working time and efforts to the performance of his duties under this Agreement; provided that nothing herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors as an officer or director of, or advisor to, any other entity or organization that is not a customer or material service provider to the Company or a Competing Enterprise, as defined in Section 8, so long as

such participation does not interfere with the performance of Executive's duties hereunder, whether or not such entity or organization is engaged in religious, charitable or other community or non-profit activities, (ii) investing in any entity or organization which is not a customer or material service provider to the Company or a Competing Enterprise, so long as such investment does not interfere with the performance of Executive's duties hereunder, or (iii) delivering lectures or fulfilling speaking engagements so long as such lectures or engagements do not interfere with the performance of Executive's duties hereunder.

(c) In performing his duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in San Jose, California, or otherwise in the greater San Francisco Bay area.

(d) Breach by either party of any of its respective obligations under this Section 2 shall be deemed a material breach of that party's obligations hereunder.

3. Compensation/Benefits. In consideration of Executive's services hereunder, the Company shall provide Executive the following:

(a) Base Salary. During the Employment Period, the Executive

shall receive an annual rate of base salary ("Base Salary") in an amount not less than $200,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for New York - Northern New Jersey - Long Island 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. Base Salary shall be payable in accordance with the Company's normal business practices, but in no event less frequently than monthly.

(b) Bonuses. Commencing at the close of each fiscal year during the Employment Period, the Company shall review the performance of the Company and of Executive during the prior fiscal year, and the Company may provide Executive with additional compensation as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.

(c) Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.

(d) Life Insurance/Disability Insurance. As of the Effective Date, during the Employment Period, Executive will receive a split dollar life insurance agreement and comprehensive disability policy comparable to those provided to comparable Avalon executives.

Such life insurance amount shall equal $750,000, and both the life insurance and disability policy shall be subject to evidence of Executive's insurability. Executive agrees to submit to such medical examinations as may be required in order to establish or maintain such policies of insurance.

(e) Vacations. Executive shall be entitled to reasonable paid vacations during the Employment Period in accordance with the then regular procedures of the Company governing executives, not to exceed 6 weeks per annum, in the aggregate.

(f) Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.

(g) Company Stock Option. Notwithstanding the consummation of the Merger, the Company granted to Executive on March 8, 1998, a non-qualified employee stock option to purchase 30,000 shares of common stock of the Company, par value $.01 per share (the "Company Stock Option"). The Company Stock Option was granted at an exercise price equal to $37.00. The Company Stock Option was granted with a 10-year term and shall be exercisable as to 100% of the shares covered thereby on the tenth anniversary of the date of grant so long as Executive remains employed by the Company or one of its affiliates; provided, that, if the Merger is consummated, the Company Stock Option shall be exercisable to the extent of 33 1/3% of the shares covered thereby on each of the first three anniversaries of the Effective Date, so long as Executive remains employed by the Company or one of its affiliates. Upon termination of Executive's employment, vesting and exercisability of the Company Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.

(h) Automobile. Executive shall continue his current car lease and credit card arrangement with the Company, but following expiration of such lease, the Company shall provide Executive with a monthly car allowance during the Employment Period of not less than $750 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.

(i) Other Benefits. During the Employment Period, the Company shall provide to Executive such other benefits, excluding severance benefits, but including the right to participate in such retirement or pension plans, as are made generally available to executives of the Company from time to time.

4. Expenses/Indemnification.

(a) During the Employment Period, the Company shall reimburse Executive for the reasonable business expenses incurred by Executive in the course of performing his duties for the Company hereunder, upon submission of invoices, vouchers or other appropriate documentation, as may be required in accordance with the policies in effect from time to time for executive employees of the Company.

(b) To the fullest extent permitted by law, the Company shall indemnify Executive with respect to any actions commenced against Executive in his capacity as an officer

or director or former officer or director of the Company, or any affiliate thereof for which he may render service in such capacity, whether by or on behalf of the Company, its shareholders or third parties, and the Company shall advance to Executive on a timely basis an amount equal to the reasonable fees and expenses incurred in defending such actions, after receipt of an itemized request for such advance, and an undertaking from Executive to repay the amount of such advance, with interest at a reasonable rate from the date of the request, as determined by the Company, if it shall ultimately be determined that he is not entitled to be indemnified against such expenses. The Company agrees to use its best efforts to secure and maintain officers and directors' liability insurance with respect to Executive.

5. Employer's Authority/Policies.

(a) General. Executive agrees to observe and comply with the rules and regulations of the Company as adopted by its Board respecting the performance of his duties and to carry out and perform orders, directions and policies communicated to him from time to time by the Board.

(b) Ethics Policies. Executive agrees to comply with and be bound by the Ethics Policies of the Company, as reflected in the attachment at Annex A hereto and made a part hereof.

6. Records/Nondisclosure/Company Policies.

(a) General. All records, financial statements and similar documents obtained, reviewed or compiled by Executive in the course of the performance by him of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Executive shall have no rights in such documents upon any termination of this Agreement.

(b) Nondisclosure Agreement. Without limitation of the Company's rights under Section 6(a), Executive agrees to abide by and be bound by the Nondisclosure Agreement of the Company executed by Executive and the Company as reflected in the attachment at Annex B and made a part hereof.

7. Termination; Severance and Related Matters.

(a) At-Will Employment. Executive's employment hereunder is "at will" and, therefore, may be terminated at any time, with or without Cause, at the option of the Company, subject only to the severance obligations under this Section 7. Upon any termination hereunder, the Employment Period shall expire.

(b) Definitions. For purposes of this Section 7, the following terms shall have the indicated definitions:

(1) Cause. "Cause" shall mean:

(i) Executive is convicted of or enters a plea of nolo contendere to an act which is defined as a felony under any federal, state or local law, not based upon a traffic violation, which conviction or plea has or can be expected to have, in the good faith opinion of the Board of Directors, a material adverse impact on the business or reputation of the Company;

(ii) any one or more acts of theft, larceny,

embezzlement, fraud or material intentional misappropriation from or with respect to the Company;

(iii) a breach by Executive of his fiduciary duties under Maryland law as an officer;

(iv) Executive's commission of any one or more acts of gross negligence or willful misconduct which in the good faith opinion of the Board of Directors has resulted in material harm to the business or reputation of the Company; or

(v) default by Executive in the performance of his material duties under this Agreement, without correction of such action within 15 days of written notice thereof.

Notwithstanding the foregoing, no termination of Executive's employment by the Company shall be treated as for Cause or be effective until and unless all of the steps described in subparagraphs (i) through (iii) below have been complied with:

Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

The Board of Directors has voted (at a meeting of the Board of Directors duly called and held as to which termination of Executive is an agenda item) to terminate Executive for Cause after Executive has been given notice of the particular acts or circumstances which are the basis for the termination for Cause and has been afforded at least 20 days notice after the meeting and an opportunity to present his position in writing; and

The Board of Directors has given a Notice of Termination to Executive within 20 days of such Board meeting.

The Company may suspend Executive with pay at any time during the period commencing with the giving of notice to Executive under clause (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

(2) Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

(i) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities having the right to vote generally in an election of the Company's Board of Directors

("Voting Securities"), other than as a result of (A) an acquisition of securities directly from the Company or any Subsidiary or (B) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (A), (B) and (C) of subparagraph (iii) of this Section 7(b)(2) are satisfied; or

(ii) Individuals who, as of the Effective Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the date hereof (excluding, for this purpose, (A) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (B) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation,

involving an unrelated entity and occurring during the Employment Period), whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the persons then comprising Incumbent Directors shall for purposes of this Agreement be considered an Incumbent Director; or

(iii) Consummation of a reorganization, merger or consolidation of the Company, unless, following such reorganization, merger or consolidation, (A) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (B) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (C) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(v) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, other than to a corporation, with respect to which following such sale, lease, exchange or other disposition (A) more than 50% of,

respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (B) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board of Directors providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change in Control" shall be deemed to have occurred for purposes of this Agreement.

(3) Complete Change in Control. A "Complete Change in Control" shall mean that a Change in Control has occurred, after modifying the definition of "Change in Control" by deleting clause (i) from Section 7(b)(2) of this Agreement.

(4) Constructive Termination Without Cause. "Constructive

Termination Without Cause" shall mean a termination of Executive's employment initiated by Executive not later than 12 months following the occurrence (not including any time during which an arbitration proceeding referenced below is pending), without Executive's prior written consent, of one or more of the following events (or the latest to occur in a series of events), and effected after giving the Company not less than 10 working days' written notice of the specific act or acts relied upon and right to cure:

(i) a material adverse change in the functions, duties or responsibilities of Executive's position which would reduce the level, importance or scope of such position; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, except in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause;

(ii) any material breach by the Company of this Agreement;

(iii) any purported termination of Executive's employment for Cause

by the Company which does not comply with the terms of Section 7(b)(1) of this Agreement;

(iv) the failure of the Company to obtain an agreement, satisfactory to the Executive, from any successor or assign of the Company, to assume and agree to perform this Agreement, as contemplated in Section 10 of this Agreement;

(v) the failure by the Company to continue in effect any compensation plan in which Executive participates immediately prior to a Change in Control which is material to Executive's total compensation, unless comparable alternative arrangements (embodied in ongoing substitute or alternative plans) have been implemented with respect to such plans, or the failure by the Company to continue Executive's participation therein (or in such substitute or alternative plans) on a basis not materially less favorable, in terms of the amount of benefits provided and the level of Executive's participation relative to other participants, as existed during the last completed fiscal year of the Company prior to the Change in Control;

(vi) the relocation of the Company's San Jose offices to a new location more than fifty (50) miles from San Jose or the failure to locate Executive's own office at the San Jose office (or at the office to which such office is relocated which is within 50 miles of San Jose); or

(vii) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

Notwithstanding the foregoing, a Constructive Termination Without Cause shall not be treated as having occurred unless Executive has given a final Notice of Termination delivered after expiration of the Company's cure period. Executive or the Company may, at any time after the expiration of the Company's cure period and either prior to or up until three months after giving a final Notice of Termination, commence an arbitration proceeding to determine the question of whether, taking into account the actions complained of and any efforts made by the Company to cure such actions, a termination by Executive of his employment should be treated as a Constructive Termination Without Cause for purposes of this Agreement. If the Executive or the Company commences such a proceeding prior to delivery by Executive of a final Notice of Termination, the commencement of such a proceeding shall be without prejudice to either party and Executive's and the Company's rights and obligations under this Agreement shall continue unaffected unless and until the arbitrator has determined such question in the affirmative, or, if earlier, the date on which Executive or the Company has delivered a Notice of Termination in accordance with the provisions of this Agreement.

(5) Covered Average Compensation. "Covered Average Compensation" shall mean the sum of Executive's Covered Compensation as calculated for the calendar year in which the Date of Termination occurs and for each of the two preceding calendar years, divided by three.

(6) Covered Compensation. "Covered Compensation," for any calendar year, shall mean an amount equal to the sum of (i) Executive's Base Salary for the calendar year (disregarding any decreases made effective during the Employment Period), (ii) the cash bonus actually earned by Executive with respect to such calendar year, and (iii) the value of all stock

and other equity-based compensation awards made to Executive during such calendar year.

Covered Compensation shall be calculated according to the following rules:

(A) In valuing awards for purposes of clause (iii) above, all such awards shall be treated as if fully vested when granted, stock grants shall be valued by reference to the fair market value on the date of grant of the Company's common stock, par value $.01 per share, and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.

(B) In determining the cash bonus actually paid with respect to a calendar year, if no cash bonus has been paid with respect to the calendar year in which the Date of Termination occurs, the cash bonus paid with respect to the immediately preceding calendar year shall be assumed to have been paid in each of the current and immediately preceding calendar years, and if no cash bonus has been paid by the Date of Termination with respect to the immediately preceding calendar year, the cash bonus paid with respect to the second preceding calendar year shall be assumed to have been paid in all three of the calendar years taken into account in determining Covered Average Compensation.

(C) If any cash bonus paid with respect to the current or immediately preceding calendar year was paid within three months of Executive's Date of Termination, and is lower than the last cash bonus paid more than three months from the Date of Termination, any such cash bonus paid within three months of the Date of Termination shall be disregarded and the last cash bonus paid more than three months from the Date of Termination shall be substituted for each cash bonus so disregarded.

(D) In determining the amount of stock and other equity-based compensation awards made during a calendar year during the averaging period, rules similar to those set forth in subparagraphs (B) and (C) of this Section 7(b)(6) shall be followed, except that all awards made in connection with the Company's initial public offering shall be disregarded.

(7) Disability. "Disability" shall mean Executive has been determined to be disabled and to qualify for long-term disability benefits under the long-term disability insurance policy obtained pursuant to Section 3(d) of this Agreement.

(c) Rights Upon Termination.

(i) Payment of Benefits Earned Through Date of Termination. Upon any termination of Executive's employment during the Employment Period, Executive, or his estate, shall in all events be paid all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. Executive shall also retain all such rights with respect to vested equity-based awards as are provided under the circumstances under the applicable grant or award agreement, and shall be entitled to all other benefits which are provided under the circumstances in accordance with the provisions of the Company's generally applicable employee benefit plans, practices and policies, other than severance plans.

(ii) Death. In the event of Executive's death during the Employment Period, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), take whatever action is necessary to cause all of Executive's unvested equity-based awards to become fully vested as of the date of death and, in the case of equity-based awards which have an exercise schedule, to become fully exercisable and continue to be exercisable for such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.

(iii) Disability. In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set

forth in Section 7(c)(i), pay to Executive, in one lump sum, no later than 31 days following the Date of Termination, an amount equal to two times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), commencing upon the Date of Termination:

(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of Termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;

(B) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue

to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms; and

(D) Continue to pay, or reimburse Executive for, all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due.

(v) Termination Without Cause; Constructive Termination Without Cause. In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), pay to Executive, in one lump sum no later than 31 days following the Date of Termination, an amount equal to three times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 36 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for so long as such payments are due, all premiums then due or payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d); and

(C) Take whatever action is necessary to cause

Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(vi) Termination for Cause; Voluntary Resignation. In the event Executive's employment terminates during the Employment Period other than in connection with a termination meeting the conditions of subparagraphs (ii), (iii), (iv), or (v) of this Section 7(c), Executive shall receive the amounts set forth in Section 7(c)(i) in full satisfaction of all of his entitlements from the Company. All equity-based awards not vested as of the Date of Termination shall terminate (unless otherwise provided in the applicable award agreement) and Executive shall have no further entitlements with respect thereto.

(d) Additional Benefits.

(i) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable (1) pursuant to the terms of Section 7 of this Agreement, (2) pursuant to or in connection with any compensatory or employee benefit plan, agreement or arrangement, including but not limited to any stock options, restricted or unrestricted stock grants issued to or for the benefit of Executive and forgiveness of any loans by the Company to Executive or (3) otherwise (collectively, "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), and any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive shall be entitled to receive an additional payment (a "Partial Gross-Up Payment"), such that the net amount retained by Executive, before accrual or payment of any Federal, state or local income tax or employment tax, but after accrual or payment of the Excise Tax attributable to the Partial Gross-Up Payment, is equal to the Excise Tax on the Severance Payments.

(ii) Subject to the provisions of Section 7(d)(iii), all determinations required to be made under this Section 7, including whether a Partial Gross-Up Payment is required and the amount of such Partial Gross-Up Payment, shall be made by Coopers & Lybrand LLP or such other nationally recognized accounting firm as may at that time be the Company's independent public accountants immediately prior to the Change in Control (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. The initial Partial Gross-Up Payment, if any, as determined pursuant to this Section 7(d)(ii), shall be paid to Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by Executive, the Company shall furnish Executive with an opinion of counsel that failure to report the Excise Tax on Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Partial Gross-Up Payments which will not have been made by the Company should have been made (an "Underpayment"). In the event that the Company exhausts its remedies pursuant to Section 7(d)(iii) and Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, consistent with the calculations required to be made hereunder, and any such Underpayment, and any interest and penalties imposed on the Underpayment and required to be paid by Executive in connection with the proceedings described in Section 7(d)(iii), and any related legal and accounting expenses, shall be promptly paid by the Company to or for the benefit of Executive.

(iii) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Partial Gross-Up Payment. Such notification shall be given as soon as practicable but no later than 10 business days after Executive knows of such claim and shall apprise

the Company of the nature of such claim and the date on which such claim is requested to be paid. Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which he gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

(A) give the Company any information reasonably requested by the Company relating to such claim,

(B) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney selected by the Company,

(C) cooperate with the Company in good faith in order effectively to contest such claim, and

(D) permit the Company to participate in any proceedings relating to such claim; provided, however that the Company shall bear and pay directly all costs and expenses attributable to the failure to pay the Excise Tax (including related additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, for any Excise Tax up to an amount not exceeding the Partial Gross-Up Payment, including interest and penalties with respect thereto, imposed as a result of such representation, and payment of related legal and accounting costs and expenses (the "Indemnification Limit"). Without limitation on the foregoing provisions of this Section 7(d)(iii), the Company shall control all proceedings taken in connection with such contest and, at its sole option may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance so much of the amount of such payment as does not exceed the Excise Tax, and related interest and penalties, to Executive on an interest-free basis and shall indemnify and hold Executive harmless, from any related legal and accounting costs and expenses, and from any Excise Tax, including related interest or penalties imposed with respect to such advance or with respect to any imputed income with respect to such advance up to an amount not exceeding the Indemnification Limit; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Partial Gross-Up Payment would be payable hereunder and Executive shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), Executive becomes entitled to receive any refund with respect to such claim, Executive shall (subject to the Company's complying with the requirements of Section 7(d)(iii)) promptly pay to the Company so much of such refund (together with any interest paid or credited thereon after taxes applicable thereto) (the "Refund") as is equal to (A) if the Company advanced or paid the entire amount required to be so advanced or paid pursuant to Section 7(d)(iii) hereof (the "Required Section 7(d) Advance"), the aggregate amount advanced or paid by the Company pursuant to this Section 7(d) less the portion of such amount advanced to Executive to reimburse him for related legal and accounting costs, or (B) if the Company advanced or paid less than the Required Section 7(d) Advance, so much of the aggregate amount so advanced or paid by the Company pursuant to this Section 7(d) as is equal to the difference, if any, between (C) the amount refunded to Executive with respect to such claim and (D) the sum of the portion of the Required Section 7(d) Advance that was paid by Executive and not paid or advanced by the

Company plus Executive's related legal and accounting fees, as applicable. If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), a determination is made that Executive shall not be entitled to any refund with respect to such claim and the Company does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Partial Gross-Up Payment required to be paid.

(e) Notice of Termination. Notice of non-renewal of this Agreement pursuant to Section 1 hereof or of any termination of Executive's employment (other than by reason of death) shall be communicated by written notice (a "Notice of Termination") from one party hereto to the other party hereto in accordance with this Section 7 and Section 9.

(f) Date of Termination. "Date of Termination," with respect to any termination of Executive's employment during the Employment Period, shall mean (i) if Executive's employment is terminated for Disability, 30 days after Notice of Termination is given (provided that Executive shall not have returned to the full-time performance of Executive's duties during such 30 day period), (ii) if Executive's employment is terminated for Cause, the date on which a Notice of Termination is given which complies with the requirements of Section 7(b)(1) hereof, and (iii) if Executive's employment is terminated for any other reason, the date specified in the Notice of Termination. In the case of a termination by the Company other than for Cause, the Date of Termination shall not be less than 30 days after the Notice of Termination is given. In the case of a termination by Executive, the Date of Termination shall not be less than 15 days from the date such Notice of Termination is given. Notwithstanding the foregoing, in the event that Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in the termination being treated as a Termination without Cause. Upon any termination of his employment, Executive will concurrently resign his membership on the Board of Directors.

(g) No Mitigation. The Company agrees that, if Executive's employment by the Company is terminated during the term of this Agreement, Executive is not required to seek other employment, or to attempt in any way to reduce any amounts payable to Executive by the Company pursuant to Section 7(d)(i) hereof. Further, the amount of any payment provided for in this Agreement shall not be reduced by any compensation earned by Executive as the result of employment by another employer, by retirement benefits, or, except for amounts then due and

payable in accordance with the terms of any promissory notes given by Executive in favor of the Company, by offset against any amount claimed to be owed by Executive to the Company or otherwise.

(h) Nature of Payments. The amounts due under this Section 7 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty. Such amounts are in full satisfaction of all claims Executive may have in respect of his employment by the Company or its affiliates and are provided as the sole and exclusive benefits to be provided to Executive, his estate, or his beneficiaries in respect of his termination of employment from the Company or its affiliates.

8. Non-Competition; Non-Solicitation; Specific Enforcement.

(a) Non-Competition. Because Executive's services to the Company are special and because Executive has access to the Company's confidential information, Executive covenants and agrees that, during the Employment Period and, for a period of one year following the Date of Termination by the Company for Cause or a termination by Executive (other than a Constructive Termination Without Cause) prior to a Change in Control, Executive shall not, without the prior written consent of the Board of Directors, become associated with, or engage in any "Restricted Activities" with respect to any "Competing Enterprise," as such terms are hereinafter defined, whether as an officer, employee, principal, partner, agent, consultant, independent contractor or shareholder. "Competing Enterprise," for purposes of this Agreement, shall mean any person, corporation, partnership, venture or other entity which (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential real estate owned or under management by the Company or its affiliates. "Restricted Activities," for purposes of this Agreement, shall mean executive, managerial, directorial, administrative, strategic, business development or supervisory responsibilities and activities relating to all aspects of residential real estate ownership, management, residential real estate franchising, and residential real estate joint-venturing.

(b) Non-Solicitation. During the Employment Period, and for a period of one year following the Date of Termination, Executive shall not, without the prior written consent of the Company, except in the course of carrying out his duties hereunder, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates.

(c) Specific Enforcement. Executive and the Company agree that the restrictions, prohibitions and other provisions of this Section 8 are reasonable, fair and equitable in scope, terms, and duration, are necessary to protect the legitimate business interests of the Company and are a material inducement to the Company to enter into this Agreement. Should a decision be made by a court of competent jurisdiction that the character, duration or geographical scope of the provisions of this Section 8 is unreasonable, the parties intend and agree that this Agreement shall be construed by the court in such a manner as to impose all of those restrictions on Executive's conduct that are reasonable in light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. The Company and Executive further agree that the services to be rendered under this Agreement by Executive are special, unique and of extraordinary character, and that in the event of the breach by Executive of the terms and conditions of this Agreement or if Executive, without the prior consent of the Board of Directors,

shall take any action in violation of this Section 8, the Company will suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Executive hereby consents to the entry of a temporary restraining order or ex parte injunction, in addition to any other remedies available at law or in equity, to enforce the provisions hereof. Any proceeding or action seeking equitable relief for violation of this Section 8 must be commenced in the federal or state courts, in either case in California. Executive and the Company irrevocably and unconditionally submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of such courts.

9. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed sufficient when given by hand or by nationally recognized overnight courier or by Express, registered or certified mail, postage prepaid, return receipt requested, and addressed, if to the Company at 5904 Richmond Avenue, Alexandria, VA 22303, and if to Executive at the address set forth in the Company records (or to such other address as may be provided by notice).

10. Miscellaneous. This Agreement, together with Annex A and Annex B, constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Company employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. This Agreement may not be assigned by Executive without the prior written consent of the Company, and may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Headings herein are for convenience of reference only and shall not define, limit or interpret the contents hereof.

11. Amendment. This Agreement may be amended, modified or supplemented by the mutual consent of the parties in writing, but no oral amendment, modification or supplement shall be effective. No waiver by either party of any breach by the other party of any condition or provision contained in this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by Executive or an authorized officer of the Company, as the case may be.

12. Severability. The provisions of this Agreement are severable. The invalidity of any provision shall not affect the validity of any other provision, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Resolution of Disputes.

(a) Procedures and Scope of Arbitration. Except for any controversy or claim seeking equitable relief pursuant to Section 8 of this Agreement, all controversies and claims arising under or in connection with this Agreement or relating to the interpretation, breach or enforcement thereof and all other disputes between the parties, shall be resolved by expedited, binding arbitration, to be held in California in accordance with the National Rules of the American Arbitration Association governing employment disputes (the "National Rules"). In any proceeding relating to the amount owed to Executive in connection with his termination of employment, it is the contemplation of the parties that the only remedy that the arbitrator may award in such a proceeding is an amount equal to the termination payments, if any, required to be provided under the applicable provisions of Section 7(c) and, if applicable, Section 7(d) hereof, to the extent not previously paid, plus the costs of arbitration and Executive's reasonable attorneys fees and expenses as provided below. Any award made by such arbitrator shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Attorneys Fees.

(i) Reimbursement After Executive Prevails. Except as otherwise provided in this paragraph, each party shall pay the cost of his or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of Executive in such proceeding, all of his reasonable attorneys fees and expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to Executive by the Company within five days of the entry of the award.

(ii) Reimbursement in Actions to Stay, Enjoin or Collect. In any case where the Company or any other person seeks to stay or enjoin the commencement or continuation of an arbitration proceeding, whether before or after an award has been made, or where Executive seeks recovery of amounts due after an award has been made, or where the Company brings any proceeding challenging or contesting the award, all of Executive's reasonable attorneys fees and expenses incurred in connection therewith shall be promptly reimbursed by the Company to Executive, within five days of presentation of an itemized request for reimbursement, regardless of whether Executive prevails, regardless of the forum in which such proceeding is brought, and regardless of whether a Change in Control has occurred.

(iii) Reimbursement After a Change in Control. Without limitation on the foregoing, solely in a proceeding commenced by the Company or by Executive after a Change in Control has occurred, the Company shall advance to Executive, within five days of presentation of an itemized request for reimbursement, all of Executive's legal fees and expenses incurred in connection therewith, regardless of the forum in which such proceeding was commenced, subject to delivery of an undertaking by Executive to reimburse the Company for such advance if he does not prevail in such proceeding (unless such fees are to be reimbursed regardless of whether Executive prevails as provided in clause (ii) above).

14. Survivorship. The provisions of Sections 4(b), 6, 8 and 13 of this Agreement shall survive Executive's termination of employment. Other provisions of this Agreement shall survive any termination of Executive's employment to the extent necessary to the intended preservation of each party's respective rights and obligations.

15. Board Action. Where an action called for under this Agreement is required to be taken by the Board of Directors, such action shall be taken by the vote of not less than a majority of the members then in office and authorized to vote on the matter.

16. Withholding. All amounts required to be paid by the Company shall be subject to reduction in order to comply with applicable federal, state and local tax withholding requirements.

17. Counterparts. This Agreement may be executed in two or more

counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be construed and regulated in all respects under the laws of the State of Maryland.

IN WITNESS WHEREOF, this Agreement is entered into as of the date and year first above written.

Bay Apartment Communities, Inc.

By: /s/ Gilbert M. Meyer

Its: Chairman

/s/ Morton L. Newman

Morton L. Newman

EXHIBIT 10.5

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Debbie L. Shotwell ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and the Company have previously entered into an Employment Agreement dated as of May 1, 1995 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon Properties, Inc. ("Avalon"), dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, the Company hereby agrees to employ Executive, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months prior to the expiration of the Original Term or any Renewal Term. Notwithstanding the foregoing, upon a Change in Control, the Employment Period shall be extended automatically to 3 years from the date of such Change in Control. (The period of Executive's employment hereunder within the Original Term and any Renewal Terms is herein referred to as the "Employment Period.")

2. Employment Duties.

(a) During the Employment Period, Executive shall be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title Senior Vice President-Administration. Executive's duties and authority shall be commensurate with her title and position with the Company, and shall not be materially diminished from, or materially inconsistent with, her primary duties and authority with the Company immediately prior to the date of this Agreement.

(b) Executive agrees to her employment as described in this Section 2 and agrees to devote substantially all of her working time and efforts to the performance of her duties under this Agreement; provided that nothing herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors as an officer or director of, or advisor to, any other entity or organization that is not a customer or material service provider to the Company or a Competing Enterprise, as defined in Section 8,

so long as such participation does not interfere with the performance of Executive's duties hereunder, whether or not such entity or organization is engaged in religious, charitable or other community or non-profit activities, (ii) investing in any entity or organization which is not a customer or material service provider to the Company or a Competing Enterprise, so long as such investment does not interfere with the performance of Executive's duties hereunder, or (iii) delivering lectures or fulfilling speaking engagements so long as such lectures or engagements do not interfere with the performance of Executive's duties hereunder.

(c) In performing her duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in San Jose, California.

(d) Breach by either party of any of its respective obligations under this Section 2 shall be deemed a material breach of that party's obligations hereunder.

3. Compensation/Benefits. In consideration of Executive's services hereunder, the Company shall provide Executive the following:

(a) Base Salary. During the Employment Period, the Executive shall receive an annual rate of base salary ("Base Salary") in an amount not

less than $160,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for New York Northern New Jersey - Long Island 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. Base Salary shall be payable in accordance with the Company's normal business practices, but in no event less frequently than monthly.

(b) Bonuses. Commencing at the close of each fiscal year during the Employment Period, the Company shall review the performance of the Company and of Executive during the prior fiscal year, and the Company may provide Executive with additional compensation as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.

(c) Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.

(d) Life Insurance/Disability Insurance. As of the Effective Date, during the Employment Period, Executive will receive a split dollar life insurance agreement and comprehensive disability policy comparable to those provided to comparable Avalon

executives. Such life insurance amount shall equal $750,000, and both the life insurance and disability policy shall be subject to evidence of Executive's insurability. Executive agrees to submit to such medical examinations as may be required in order to establish or maintain such policies of insurance.

(e) Vacations. Executive shall be entitled to reasonable paid vacations during the Employment Period in accordance with the then regular procedures of the Company governing executives, not to exceed 6 weeks per annum, in the aggregate.

(f) Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with her title and duties.

(g) Company Stock Option. Notwithstanding the consummation of the Merger, the Company granted to Executive on March 8, 1998, a non-qualified employee stock option to purchase 20,000 shares of common stock of the Company, par value $.01 per share (the "Company Stock Option"). The Company Stock Option was granted at an exercise price equal to $37.00. The Company Stock Option was granted with a 10-year term and shall be exercisable as to 100% of the shares covered thereby on the tenth anniversary of the date of grant so long as Executive remains employed by the Company or one of its affiliates; provided, that, if the Merger is consummated, the Company Stock Option shall be exercisable to the extent of 33 1/3% of the shares covered thereby on each of the first three anniversaries of the Effective Date, so long as Executive remains employed by the Company or one of its affiliates. Upon termination of Executive's employment, vesting and exercisability of the Company Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.

(h) Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than $750 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at her own expense, with the same standard of care Executive applies to her own property and as may be required under any applicable lease agreement.

(i) Other Benefits. During the Employment Period, the Company shall provide to Executive such other benefits, excluding severance benefits,

but including the right to participate in such retirement or pension plans, as are made generally available to executives of the Company from time to time.

4. Expenses/Indemnification.

(a) During the Employment Period, the Company shall reimburse Executive for the reasonable business expenses incurred by Executive in the course of performing her duties for the Company hereunder, upon submission of invoices, vouchers or other appropriate documentation, as may be required in accordance with the policies in effect from time to time for executive employees of the Company.

(b) To the fullest extent permitted by law, the Company shall indemnify Executive with respect to any actions commenced against Executive in her capacity as an

officer or director or former officer or director of the Company, or any affiliate thereof for which she may render service in such capacity, whether by or on behalf of the Company, its shareholders or third parties, and the Company shall advance to Executive on a timely basis an amount equal to the reasonable fees and expenses incurred in defending such actions, after receipt of an itemized request for such advance, and an undertaking from Executive to repay the amount of such advance, with interest at a reasonable rate from the date of the request, as determined by the Company, if it shall ultimately be determined that she is not entitled to be indemnified against such expenses. The Company agrees to use its best efforts to secure and maintain officers and directors' liability insurance with respect to Executive.

5. Employer's Authority/Policies.

(a) General. Executive agrees to observe and comply with the rules and regulations of the Company as adopted by its Board respecting the performance of her duties and to carry out and perform orders, directions and policies communicated to her from time to time by the Board.

(b) Ethics Policies. Executive agrees to comply with and be bound by the Ethics Policies of the Company, as reflected in the attachment at Annex A hereto and made a part hereof.

6. Records/Nondisclosure/Company Policies.

(a) General. All records, financial statements and similar documents obtained, reviewed or compiled by Executive in the course of the performance by her of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Executive shall have no rights in such documents upon any termination of this Agreement.

(b) Nondisclosure Agreement. Without limitation of the Company's rights under Section 6(a), Executive agrees to abide by and be bound by the Nondisclosure Agreement of the Company executed by Executive and the Company as reflected in the attachment at Annex B and made a part hereof.

7. Termination; Severance and Related Matters.

(a) At-Will Employment. Executive's employment hereunder is "at will" and, therefore, may be terminated at any time, with or without Cause, at the option of the Company, subject only to the severance obligations under this Section 7. Upon any termination hereunder, the Employment Period shall expire.

(b) Definitions. For purposes of this Section 7, the following terms shall have the indicated definitions:

(1) Cause. "Cause" shall mean:

(i) Executive is convicted of or enters a plea of nolo contendere to an act which is defined as a felony under any federal, state or local law, not based upon a traffic violation, which conviction or plea has or can be expected to have, in the good faith opinion of the Board of Directors, a material adverse impact on the business or reputation of the Company;

(ii) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;

(iii) a breach by Executive of her fiduciary duties under Maryland law as an officer;

(iv) Executive's commission of any one or more acts of gross negligence or willful misconduct which in the good faith opinion of the Board of Directors has resulted in material harm to the business or reputation of the Company; or

(v) default by Executive in the performance of her material duties under this Agreement, without correction of such action within 15 days of written notice thereof.

Notwithstanding the foregoing, no termination of Executive's employment by the Company shall be treated as for Cause or be effective until and unless all of the steps described in subparagraphs (i) through (iii) below have been complied with:

Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

The Board of Directors has voted (at a meeting of the Board of Directors duly called and held as to which termination of Executive is an agenda item) to terminate Executive for Cause after Executive has been given notice of the particular acts or circumstances which are the basis for the termination for Cause and has been afforded at least 20 days notice after the meeting and an opportunity to present her position in writing; and

The Board of Directors has given a Notice of Termination to Executive within 20 days of such Board meeting.

The Company may suspend Executive with pay at any time during the period commencing with the giving of notice to Executive under clause (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

(2) Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

(i) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then

outstanding securities having the right to vote generally in an election of the Company's Board of Directors ("Voting Securities"), other than as a result of (A) an acquisition of securities directly from the Company or any Subsidiary or (B) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (A), (B) and (C) of subparagraph (iii) of this Section 7(b)(2) are satisfied; or

(ii) Individuals who, as of the Effective Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the date hereof (excluding, for this purpose, (A) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (B) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation, involving an unrelated entity and occurring during the Employment Period), whose election or nomination for election by the Company's

shareholders was approved by a vote of at least a majority of the persons then comprising Incumbent Directors shall for purposes of this Agreement be considered an Incumbent Director; or

(iii) Consummation of a reorganization, merger or consolidation of the Company, unless, following such reorganization, merger or consolidation, (A) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (B) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (C) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(v) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, other than to a corporation, with respect

to which following such sale, lease, exchange or other disposition (A) more than 50% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (B) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board of Directors providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change in Control" shall be deemed to have occurred for purposes of this Agreement.

(3) Complete Change in Control. A "Complete Change in Control" shall mean that a Change in Control has occurred, after modifying the definition of "Change in Control" by deleting clause (i) from Section 7(b)(2) of this Agreement.

(4) Constructive Termination Without Cause. "Constructive Termination Without Cause" shall mean a termination of Executive's employment initiated by Executive not later than 12 months following the occurrence (not

including any time during which an arbitration proceeding referenced below is pending), without Executive's prior written consent, of one or more of the following events (or the latest to occur in a series of events), and effected after giving the Company not less than 10 working days' written notice of the specific act or acts relied upon and right to cure:

(i) a material adverse change in the functions, duties or responsibilities of Executive's position which would reduce the level, importance or scope of such position; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, except in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause;

(ii) any material breach by the Company of this Agreement;

(iii) any purported termination of Executive's employment for Cause by the Company which does not comply with the terms of Section 7(b)(1) of this Agreement;

(iv) the failure of the Company to obtain an agreement, satisfactory to the Executive, from any successor or assign of the Company, to assume and agree to perform this Agreement, as contemplated in Section 10 of this Agreement;

(v) the failure by the Company to continue in effect any compensation plan in which Executive participates immediately prior to a Change in Control which is material to Executive's total compensation, unless comparable alternative arrangements (embodied in ongoing substitute or alternative plans) have been implemented with respect to such plans, or the failure by the Company to continue Executive's participation therein (or in such substitute or alternative plans) on a basis not materially less favorable, in terms of the amount of benefits provided and the level of Executive's participation relative to other participants, as existed during the last completed fiscal year of the Company prior to the Change in Control;

(vi) the relocation of the Company's San Jose offices to a new location more than fifty (50) miles from San Jose or the failure to locate Executive's own office at the San Jose office (or at the office to which such office is relocated which is within 50 miles of San Jose); or

(vii) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

Notwithstanding the foregoing, a Constructive Termination Without Cause shall not be treated as having occurred unless Executive has given a final Notice of Termination delivered after expiration of the Company's cure period. Executive or the Company may, at any time after the expiration of the Company's cure period and either prior to or up until three months after giving a final Notice of Termination, commence an arbitration proceeding to determine the question of whether, taking into account the actions complained of and any efforts made by the Company to cure such actions, a termination by Executive of her employment should be treated as a Constructive Termination Without Cause for purposes of this Agreement. If the Executive or the Company commences such a proceeding prior to delivery by Executive of a final Notice of Termination, the commencement of such a proceeding shall be without prejudice to either party and Executive's and the Company's rights and obligations under this Agreement shall continue unaffected unless and until the arbitrator has determined such question in the affirmative, or, if earlier, the date on which Executive or the Company has delivered a Notice of Termination in accordance with the provisions of this Agreement.

(5) Covered Average Compensation. "Covered Average Compensation" shall mean the sum of Executive's Covered Compensation as calculated for the calendar year in which the Date of Termination occurs and for each of the two preceding calendar years, divided by three.

(6) Covered Compensation. "Covered Compensation," for any calendar year, shall mean an amount equal to the sum of (i) Executive's Base Salary for the calendar year (disregarding any decreases made effective during the Employment Period), (ii) the cash

bonus actually earned by Executive with respect to such calendar year, and (iii) the value of all stock and other equity-based compensation awards made to Executive during such calendar year.

Covered Compensation shall be calculated according to the following rules:

(A) In valuing awards for purposes of clause (iii) above, all such awards shall be treated as if fully vested when granted, stock grants shall be valued by reference to the fair market value on the date of grant of the Company's common stock, par value $.01 per share, and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.

(B) In determining the cash bonus actually paid with respect to a calendar year, if no cash bonus has been paid with respect to the calendar year in which the Date of Termination occurs, the cash bonus paid with respect to the immediately preceding calendar year shall be assumed to have been paid in each of the current and immediately preceding calendar years, and if no cash bonus has been paid by the Date of Termination with respect to the immediately preceding calendar year, the cash bonus paid with respect to the second preceding calendar year shall be assumed to have been paid in all three of the calendar years taken into account in determining Covered Average Compensation.

(C) If any cash bonus paid with respect to the current or immediately preceding calendar year was paid within three months of Executive's Date of Termination, and is lower than the last cash bonus paid more than three months from the Date of Termination, any such cash bonus paid within three months of the Date of Termination shall be disregarded and the last cash bonus paid more than three months from the Date of Termination shall be substituted for each cash bonus so disregarded.

(D) In determining the amount of stock and other equity-based compensation awards made during a calendar year during the averaging period, rules similar to those set forth in subparagraphs (B) and (C) of this Section 7(b)(6) shall be followed, except that all awards made in connection with the Company's initial public offering shall be disregarded.

(7) Disability. "Disability" shall mean Executive has been determined to be disabled and to qualify for long-term disability benefits under the long-term disability insurance policy obtained pursuant to Section 3(d) of this Agreement.

(c) Rights Upon Termination.

(i) Payment of Benefits Earned Through Date of Termination. Upon any termination of Executive's employment during the Employment Period, Executive, or her estate, shall in all events be paid all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through her Date of Termination. Executive shall also retain all such rights with respect to vested equity-based awards as are provided under the circumstances under the applicable grant or award agreement, and shall be entitled to all other benefits which are provided under the circumstances in accordance with the provisions of the Company's generally applicable employee benefit plans, practices and policies, other than severance plans.

(ii) Death. In the event of Executive's death during the Employment Period, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), take whatever action is necessary to cause all of Executive's unvested equity-based awards to become fully vested as of the date of death and, in the case of equity-based awards which have an exercise schedule, to become fully exercisable and continue to be exercisable for such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.

(iii) Disability. In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), pay to Executive, in one lump sum, no later than 31 days following the Date of Termination, an amount equal to two times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), commencing upon the Date of Termination:

(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of Termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;

(B) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms; and

(D) Continue to pay, or reimburse Executive for, all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due.

(v) Termination Without Cause; Constructive Termination Without Cause. In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates her employment in a Constructive Termination without Cause, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), pay to Executive, in one lump sum no later than 31 days following the Date of Termination, an amount equal to three times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) for a period of 36 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Continue to pay, or reimburse Executive, for so long as such payments are due, all premiums then due or payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d); and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all

stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and

continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(vi) Termination for Cause; Voluntary Resignation. In the event Executive's employment terminates during the Employment Period other than in connection with a termination meeting the conditions of subparagraphs (ii), (iii), (iv), or (v) of this Section 7(c), Executive shall receive the amounts set forth in Section 7(c)(i) in full satisfaction of all of her entitlements from the Company. All equity-based awards not vested as of the Date of Termination shall terminate (unless otherwise provided in the applicable award agreement) and Executive shall have no further entitlements with respect thereto.

(d) Additional Benefits.

(i) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable (1) pursuant to the terms of Section 7 of this Agreement, (2) pursuant to or in connection with any compensatory or employee benefit plan, agreement or arrangement, including but not limited to any stock options, restricted or unrestricted stock grants issued to or for the benefit of Executive and forgiveness of any loans by the Company to Executive or (3) otherwise (collectively, "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), and any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive shall be entitled to receive an additional payment (a "Partial Gross-Up Payment"), such that the net amount retained by Executive, before accrual or payment of any Federal, state or local income tax or employment tax, but after accrual or payment of the Excise Tax attributable to the Partial Gross-Up Payment, is equal to the Excise Tax on the Severance Payments.

(ii) Subject to the provisions of Section 7(d)(iii), all determinations required to be made under this Section 7, including whether a Partial Gross-Up Payment is required and the amount of such Partial Gross-Up Payment, shall be made by Coopers & Lybrand LLP or such other nationally recognized accounting firm as may at that time be the Company's independent public accountants immediately prior to the Change in Control (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. The initial Partial Gross-Up Payment, if any, as determined pursuant to this Section 7(d)(ii), shall be paid to Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by Executive, the Company shall furnish Executive with an opinion of counsel that failure to report the Excise Tax on Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the

Accounting Firm hereunder, it is possible that Partial Gross-Up Payments which will not have been made by the Company should have been made (an "Underpayment"). In the event that the Company exhausts its remedies pursuant to Section 7(d)(iii) and Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, consistent with the calculations required to be made hereunder, and any such Underpayment, and any interest and penalties imposed on the Underpayment and required to be paid by Executive in connection with the proceedings described in Section 7(d)(iii), and any related legal and accounting expenses, shall be promptly paid by the Company to or for the benefit of Executive.

(iii) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Partial Gross-Up Payment. Such

notification shall be given as soon as practicable but no later than 10 business days after Executive knows of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which she gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

(A) give the Company any information reasonably requested by the Company relating to such claim,

(B) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney selected by the Company,

(C) cooperate with the Company in good faith in order effectively to contest such claim, and

(D) permit the Company to participate in any proceedings relating to such claim; provided, however that the Company shall bear and pay directly all costs and expenses attributable to the failure to pay the Excise Tax (including related additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, for any Excise Tax up to an amount not exceeding the Partial Gross-Up Payment, including interest and penalties with respect thereto, imposed as a result of such representation, and payment of related legal and accounting costs and expenses (the "Indemnification Limit"). Without limitation on the foregoing provisions of this Section 7(d)(iii), the Company shall control all proceedings taken in connection with such contest and, at its sole option may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided,

however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance so much of the amount of such payment as does not exceed the Excise Tax, and related interest and penalties, to Executive on an interest-free basis and shall indemnify and hold Executive harmless, from any related legal and accounting costs and expenses, and from any Excise Tax, including related interest or penalties imposed with respect to such advance or with respect to any imputed income with respect to such advance up to an amount not exceeding the Indemnification Limit; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Partial Gross-Up Payment would be payable hereunder and Executive shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), Executive becomes entitled to receive any refund with respect to such claim, Executive shall (subject to the Company's complying with the requirements of Section 7(d)(iii)) promptly pay to the Company so much of such refund (together with any interest paid or credited thereon after taxes applicable thereto) (the "Refund") as is equal to (A) if the Company advanced or paid the entire amount required to be so advanced or paid pursuant to Section 7(d)(iii) hereof (the "Required Section 7(d) Advance"), the aggregate amount advanced or paid by the Company pursuant to this Section 7(d) less the portion of such amount advanced to Executive to reimburse her for related legal and accounting costs, or (B) if the Company advanced or paid less than the Required Section 7(d) Advance, so much of the aggregate amount so advanced or paid by the Company pursuant to this Section 7(d) as is equal to the difference, if any, between (C) the amount refunded to Executive with respect to such

claim and (D) the sum of the portion of the Required Section 7(d) Advance that was paid by Executive and not paid or advanced by the Company plus Executive's related legal and accounting fees, as applicable. If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), a determination is made that Executive shall not be entitled to any refund with respect to such claim and the Company does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Partial Gross-Up Payment required to be paid.

(e) Notice of Termination. Notice of non-renewal of this Agreement pursuant to Section 1 hereof or of any termination of Executive's employment (other than by reason of death) shall be communicated by written notice (a "Notice of Termination") from one party hereto to the other party hereto in accordance with this Section 7 and Section 9.

(f) Date of Termination. "Date of Termination," with respect to any termination of Executive's employment during the Employment Period, shall mean (i) if Executive's employment is terminated for Disability, 30 days after Notice of Termination is given (provided that Executive shall not have returned to the full-time performance of Executive's duties during such 30 day period), (ii) if Executive's employment is terminated for Cause, the date on which a Notice of Termination is given which complies with the requirements of Section 7(b)(1) hereof, and (iii) if Executive's employment is terminated for any other reason, the date specified in the Notice of Termination. In the case of a termination by the Company other than for Cause, the Date of Termination shall not be less than 30 days after the Notice of Termination is given. In the case of a termination by Executive, the Date of Termination shall not be less than 15 days from the date such Notice of Termination is given. Notwithstanding the foregoing, in the event that Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in the termination being treated as a Termination without Cause. Upon any termination of her employment, Executive will concurrently resign her membership on the Board of Directors.

(g) No Mitigation. The Company agrees that, if Executive's employment by the Company is terminated during the term of this Agreement, Executive is not required to seek other employment, or to attempt in any way to reduce any amounts payable to Executive by the Company pursuant to Section 7(d)(i) hereof. Further, the amount of any payment provided for in this Agreement shall not be reduced by any compensation earned by Executive as the result of employment by another employer, by retirement benefits, or, except for amounts then due and payable in accordance with the terms of any promissory notes given by Executive in favor of the Company, by offset against any amount claimed to be owed by Executive to the Company or otherwise.

(h) Nature of Payments. The amounts due under this Section 7 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty. Such amounts are in full satisfaction of all claims Executive may have in respect of her employment by the Company or its affiliates and are provided as the sole and exclusive benefits to be provided to Executive, her estate, or her beneficiaries in respect of her termination of employment from the Company or its affiliates.

8. Non-Competition; Non-Solicitation; Specific Enforcement.

(a) Non-Competition. Because Executive's services to the Company are special and because Executive has access to the Company's confidential information, Executive covenants and agrees that, during the Employment Period and, for a period of one year following the Date of Termination by the Company for Cause or a termination by Executive (other than a Constructive Termination Without Cause) prior to a Change in Control, Executive shall not, without the prior written consent of the Board of Directors, become associated with, or engage in any "Restricted Activities" with respect to any "Competing Enterprise," as such terms are hereinafter defined, whether as an officer, employee, principal, partner, agent, consultant, independent contractor or shareholder. "Competing Enterprise," for purposes of this Agreement, shall mean any person, corporation, partnership, venture or other entity which (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential real estate owned or under management by the Company or its affiliates. "Restricted Activities," for purposes of this Agreement, shall mean executive, managerial, directorial, administrative, strategic, business development or supervisory responsibilities and activities relating to all aspects of residential real estate ownership, management, residential real estate franchising, and residential real estate

joint-venturing.

(b) Non-Solicitation. During the Employment Period, and for a period of one year following the Date of Termination, Executive shall not, without the prior written

consent of the Company, except in the course of carrying out her duties hereunder, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates.

(c) Specific Enforcement. Executive and the Company agree that the restrictions, prohibitions and other provisions of this Section 8 are reasonable, fair and equitable in scope, terms, and duration, are necessary to protect the legitimate business interests of the Company and are a material inducement to the Company to enter into this Agreement. Should a decision be made by a court of competent jurisdiction that the character, duration or geographical scope of the provisions of this Section 8 is unreasonable, the parties intend and agree that this Agreement shall be construed by the court in such a manner as to impose all of those restrictions on Executive's conduct that are reasonable in light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. The Company and Executive further agree that the services to be rendered under this Agreement by Executive are special, unique and of extraordinary character, and that in the event of the breach by Executive of the terms and conditions of this Agreement or if Executive, without the prior consent of the Board of Directors, shall take any action in violation of this Section 8, the Company will suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Executive hereby consents to the entry of a temporary restraining order or ex parte injunction, in addition to any other remedies available at law or in equity, to enforce the provisions hereof. Any proceeding or action seeking equitable relief for violation of this Section 8 must be commenced in the federal or state courts, in either case in California. Executive and the Company irrevocably and unconditionally submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of such courts.

9. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed sufficient when given by hand or by nationally recognized overnight courier or by Express, registered or certified mail, postage prepaid, return receipt requested, and addressed, if to the Company at 5904 Richmond Avenue, Alexandria, VA 22303, and if to Executive at the address set forth in the Company records (or to such other address as may be provided by notice).

10. Miscellaneous. This Agreement, together with Annex A and Annex B, constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Company employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. This Agreement may not be assigned by Executive without the prior written consent of the Company, and may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and

assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Headings herein are for convenience of reference only and shall not define, limit or interpret the contents hereof.

11. Amendment. This Agreement may be amended, modified or supplemented by the mutual consent of the parties in writing, but no oral amendment, modification or supplement shall be effective. No waiver by either

party of any breach by the other party of any condition or provision contained in this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by Executive or an authorized officer of the Company, as the case may be.

12. Severability. The provisions of this Agreement are severable. The invalidity of any provision shall not affect the validity of any other provision, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Resolution of Disputes.

(a) Procedures and Scope of Arbitration. Except for any controversy or claim seeking equitable relief pursuant to Section 8 of this Agreement, all controversies and claims arising under or in connection with this Agreement or relating to the interpretation, breach or enforcement thereof and all other disputes between the parties, shall be resolved by expedited, binding arbitration, to be held in California in accordance with the National Rules of the American Arbitration Association governing employment disputes (the "National Rules"). In any proceeding relating to the amount owed to Executive in connection with her termination of employment, it is the contemplation of the parties that the only remedy that the arbitrator may award in such a proceeding is an amount equal to the termination payments, if any, required to be provided under the applicable provisions of Section 7(c) and, if applicable, Section 7(d) hereof, to the extent not previously paid, plus the costs of arbitration and Executive's reasonable attorneys fees and expenses as provided below. Any award made by such arbitrator shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Attorneys Fees.

(i) Reimbursement After Executive Prevails. Except as otherwise provided in this paragraph, each party shall pay the cost of her or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of Executive in such proceeding, all of her reasonable attorneys fees and expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to Executive by the Company within five days of the entry of the award.

(ii) Reimbursement in Actions to Stay, Enjoin or Collect. In any case where the Company or any other person seeks to stay or enjoin the commencement or continuation of an arbitration proceeding, whether before or after an award has been made, or where Executive seeks recovery of amounts due after an award has been

made, or where the Company brings any proceeding challenging or contesting the award, all of Executive's reasonable attorneys fees and expenses incurred in connection therewith shall be promptly reimbursed by the Company to Executive, within five days of presentation of an itemized request for reimbursement, regardless of whether Executive prevails, regardless of the forum in which such proceeding is brought, and regardless of whether a Change in Control has occurred.

(iii) Reimbursement After a Change in Control. Without limitation on the foregoing, solely in a proceeding commenced by the Company or by Executive after a Change in Control has occurred, the Company shall advance to Executive, within five days of presentation of an itemized request for reimbursement, all of Executive's legal fees and expenses incurred in connection therewith, regardless of the forum in which such proceeding was commenced, subject to delivery of an undertaking by Executive to reimburse the Company for such advance if she does not prevail in such proceeding (unless such fees are to be reimbursed regardless of whether Executive prevails as provided in clause (ii) above).

14. Survivorship. The provisions of Sections 4(b), 6, 8 and 13 of this Agreement shall survive Executive's termination of employment. Other provisions of this Agreement shall survive any termination of Executive's employment to the extent necessary to the intended preservation of each party's respective rights and obligations.

15. Board Action. Where an action called for under this Agreement is required to be taken by the Board of Directors, such action shall be taken by the vote of not less than a majority of the members then in office and authorized to vote on the matter.

16. Withholding. All amounts required to be paid by the Company shall be subject to reduction in order to comply with applicable federal, state and

local tax withholding requirements.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be construed and regulated in all respects under the laws of the State of Maryland.

IN WITNESS WHEREOF, this Agreement is entered into as of the date and year first above written.

Bay Apartment Communities, Inc.

By: /s/ Gilbert M. Meyer

Its: Chairman

/s/ Debbie L. Shotwell

Debbie L. Shotwell

EXHIBIT 10.6

PROXY AGREEMENT

This Proxy Agreement, dated as of March 9, 1998 (this "Agreement"), is among Bay Apartment Communities, Inc., a Maryland corporation (the "Company"), and Central States, Southeast and Southwest Areas Pension Fund (the "Stockholder") acting by and through its agent, LaSalle Advisors Capital Management, Inc. ("LaSalle"), a registered investment advisor and successor to LaSalle Advisors Limited Partnership.

RECITALS:

A. As of the date hereof, the Stockholder owns 2,308,800 shares of Series A Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock"), of the Company (such shares are hereinafter referred to as the "Shares");

B. The Company and the Stockholder desire to effect certain amendments to the Company's Articles of Incorporation, as amended, relating to the liquidation and voting rights of the Series A Preferred Stock (the "Charter Amendments"), which Charter Amendments are set forth on Exhibit A hereto;

C. The Company proposes to enter into an Agreement and Plan of Merger, dated on or about the date hereof (as the same may be amended from time to time, the "Merger Agreement"), which will provide, on the terms and subject to the conditions thereof, for the merger of Avalon Properties, Inc. with and into the Company and/or any of its affiliates (the "Merger"); and

D. As a condition to the willingness of the Company to recommend that the Company's stockholders approve the Charter Amendments at an annual or special meeting, the Company has requested that the Stockholder agree, and, in order to induce the Company to recommend that the Company's stockholders approve such Charter Amendments at such a meeting, the Stockholder is willing to agree, to enter into this Agreement to grant the Company an irrevocable proxy to vote, or to otherwise cause to be voted, the Shares pursuant to the terms and conditions hereof.

NOW, THEREFORE, the parties hereto agree as follows:

I. REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDER

The Stockholder hereby represents and warrants to the Company as follows:

1.1 Due Authority. The Stockholder has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by or on behalf of the Stockholder and, assuming its due authorization, execution and delivery by the

Company, constitutes a legal, valid and binding obligation of the Stockholder, enforceable against it in accordance with its terms.

1.2 No Conflict; Consents. (a) The execution and delivery of this Agreement by the Stockholder does not, and the performance by the Stockholder of its obligations under this Agreement and the compliance by the Stockholder with the provisions hereof do not and will not, conflict with or violate (i) the advisory agreement between LaSalle and the Stockholder (the "Advisory Agreement") or (ii) any law, statute, rule, regulation, order, writ, judgment or decree referred to in the Advisory Agreement applicable to the Stockholder or the Shares.

(b) The execution and delivery of this Agreement by the Stockholder does not, and the performance of this Agreement by the Stockholder will not, require any consent, approval, authorization or permit of, or filing with (except for applicable requirements, if any, of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), or notification to, any government or regulatory authority by the Stockholder.

(c) No other person or entity has, or will have during the Proxy Term (subject to the Stockholder's right to terminate the Advisory Agreement, it being understood that no such termination shall affect any of the Company's rights or any of the Stockholder's obligations hereunder or under the Irrevocable Proxy (the "Irrevocable Proxy") given to the Company by Mellon Bank, N.A. ("Mellon")), any right, directly or indirectly, to vote or control or affect the voting of the Shares.

1.3 Title to Shares. Mellon, as custodian, (a) is the record owner of

the Shares free and clear, to the Stockholder's knowledge, of any proxy or voting restriction other than pursuant to this Agreement and (b) has, and during the Proxy Term will have (subject to the possible termination of Mellon's right to act as custodian, it being understood that no such termination shall affect any of the Company's rights or any of the Stockholder's obligations hereunder or under the Irrevocable Proxy), sole voting power (subject to the direction of LaSalle) with respect to the Shares.

1.4 Acknowledgment of Reliance. The Stockholder understands and acknowledges that the Company is agreeing to recommend that the Company's stockholders approve the Charter Amendments in reliance upon the Stockholder's execution and delivery of this Agreement.

II. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Stockholder as follows:

2.1 Due Authority. The Company has full power, corporate or otherwise, and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by or on behalf of the Company and, assuming its due authorization, execution and delivery by the Stockholder, constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms.

2.2 No Conflict; Consents. (a) The execution and delivery of this Agreement does not, and the performance by the Company of its obligations contemplated by this Agreement and its compliance with any provisions hereof do not and will not, (i) conflict with or violate any law, statute, rule, regulation, order, writ, judgment or decree applicable to such party, (ii) conflict with or violate the Company's charter or bylaws, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company is a party or by which the Company is bound.

(b) The execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company will not, require any consent, approval, authorization or permit of, or filing with (except for applicable requirements, if any, of the Exchange Act) or notification to, any governmental or regulatory authority by the Company.

III. CERTAIN COVENANTS OF THE STOCKHOLDER

The Stockholder hereby covenants and agrees with the Company as follows:

3.1 Transfer of Shares. Except pursuant to that certain Shareholder Agreement, dated the date hereof, between the Company and the Stockholder, during the Proxy Term the Stockholder shall not, and shall not permit anyone else to, (a) sell, transfer, encumber, pledge, assign or otherwise dispose of any of the Shares, (b) deposit the Shares into a voting trust or enter into a voting agreement or arrangement with respect to the Shares or grant any proxy or power of attorney with respect thereto, or (c) enter into any contract, option or other legally binding undertaking providing for any transaction provided in (a) or (b) hereof, unless the proposed transferee or pledgee shall have entered into a written agreement with the Company, containing terms and conditions satisfactory to the Company, in which such transferee or pledgee shall agree to be bound by all the terms and conditions of this Agreement.

3.2 Proxy. (a) The Stockholder, by this Agreement, hereby constitutes and appoints the Company, with full power of substitution, during and for the Proxy Term, as the Stockholder's true and lawful attorney and irrevocable proxy, for and in the Stockholder's name, place and stead, to vote each of the Shares owned by the Stockholder as Stockholder's proxy, at every meeting of the stockholders of the Company or any adjournment thereof or in connection with any written consent of the Company's stockholders, in favor of the Charter Amendments. The Stockholder intends the foregoing proxy to be, and it shall be, irrevocable and coupled with an interest during the Proxy Term and hereby revokes any proxies previously granted by the Stockholder with respect to the Shares.

(b) The Stockholder hereby further agrees, with respect to any Shares not voted pursuant to paragraph (a) above, including without limitation any Shares owned beneficially but not of record by the Stockholder, that during the Proxy Term, at every meeting of the stockholders of the Company or any adjournment thereof or in connection with any written consent of the Company's stockholders, the Stockholder shall vote or cause to be voted, all Shares whether or not owned of record or beneficially by the Stockholder except as specifically requested in writing by the Company in advance, in favor of the Charter Amendments.

(c) For the purposes of this Agreement, "Proxy Term" means the period from the date hereof until the earlier of (i) the final adjournment of the Company's next annual meeting of stockholders and (ii) the consummation of the Merger in accordance with the terms of the Merger Agreement.

(d) The Stockholder agrees that it will not enter into any agreement or understanding with any person or entity or take any action during the Proxy Term which will permit any person or entity to vote or give instructions to vote the Shares in any manner inconsistent with the terms of this Section 3.2. The Stockholder further agrees to take such further action and execute and deliver, and cause others to execute and deliver such other instruments as may be necessary to effectuate the intent of this Agreement, including without limitation, proxies and other documents permitting the Company or any of its officers to vote the Shares or to direct the record owners thereof to vote the Shares in accordance with this Agreement. Without limiting the foregoing, the Stockholder will use commercially reasonable efforts to, and will instruct the record owner of the Shares to, deliver to the Company a duly executed Irrevocable Proxy in the form attached hereto as Exhibit B not later than five business days after the date hereof.

(e) The Stockholder further approves and consents to, if and to the extent such approval or consent is necessary pursuant to or for the purposes of Section (5) of the Articles Supplementary to the Company's Articles of Incorporation for the Series A Preferred Stock, the creation, authorization and issuance of one or more new classes or series of stock having terms (other than the number of shares, dividend rates, payment dates, and redemption provisions) substantially similar to the existing terms of the Articles Supplementary for the Company's Series C and Series D Preferred Stock.

3.3 Legend. The Stockholder agrees that it will use commercially reasonable efforts to, and will instruct the custodian of the shares to, tender to the Company, within ten days after the date hereof, the certificate representing the Shares and the Company may inscribe upon such certificate the following legend, which the Company shall cause to be removed promptly following the Proxy Term or as otherwise mutually agreed by the parties: "The shares of Series A Preferred Stock, par value $.01 per share, of Bay Apartment Communities, Inc. (the "Company") represented by this certificate are subject to a Proxy Agreement dated as of March 9, 1998, and may not be sold or otherwise transferred except in accordance therewith. Copies of such Agreement may be obtained at the principal executive offices of the Company upon request and without charge."

IV. MISCELLANEOUS; GENERAL PROVISIONS

4.1 Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

4.2 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof.

4.3 Amendments. This Agreement may not be modified, amended, waived, altered or supplemented, except upon the execution and delivery of a written agreement executed by the parties hereto.

4.4 Assignment. This Agreement may not be assigned by either party hereto by operation of law or otherwise without the other party's consent and is binding on each party's successors and permitted assignees.

4.5 Parties in Interest. This Agreement is binding upon, and shall inure solely to the benefit of, each party hereto and nothing in this Agreement,

express or implied, is intended to or will confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

4.6 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof or was otherwise breached. It is accordingly agreed that the parties will be entitled to specific relief hereunder including, without limitation, an injunction or injunctions

to prevent and enjoin breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, in any state or federal court in the State of Maryland, in addition to any other remedy to which they may be entitled at law or in equity. Any requirements for the securing or posting of any bond with respect to any such remedy are hereby waived.

4.7 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Maryland without regard to its rules of conflict of laws. The parties hereto hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the federal and state Maryland courts for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in such courts), waive any objection to the laying of venue of any such litigation in such Maryland courts and agree not to plead or claim in any such Maryland court that such litigation brought therein has been brought in any inconvenient forum.

4.8 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement.

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

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Name: Gilbert M. Meyer
Title: President

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUNDS

By Its Authorized Agent:

LaSalle Advisors Capital Management, Inc.

By: /s/ Stanley J. Kraska, Jr.

Name: Stanley J. Kraska, Jr.
Title: Managing Director

EXHIBIT A

AMENDMENTS TO THE CHARTER OF
BAY APARTMENT COMMUNITIES, INC.

RELATING TO THE SERIES A PREFERRED STOCK

1. Article SECOND, Section (3)(a) of the Articles Supplementary to the Articles of Incorporation of Bay Apartment Communities, Inc., which were filed with the State Department of Assessments and Taxation of the State of Maryland on September 29, 1995 in order to designate the rights, preferences and privileges of the Series A Preferred Stock, would be deleted and the following inserted in lieu thereof:

"(3) LIQUIDATION RIGHTS.

(a) Subject to any prior rights of any class or series of stock, in the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock by reason of their ownership of such stock, an amount equal to all accrued but unpaid dividends for each share of Series A Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full amounts to which they are entitled under the preceding sentence, then, subject to any prior rights of any classes or series of stock, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of any other shares of Stock on a parity for liquidation purposes with the Series A Preferred Stock in proportion to the aggregate amounts owed to each such holder."

2. Article SECOND, Section (5) of the Articles Supplementary to the Company's Articles of Incorporation, which were filed with the State Department of Assessments and Taxation of the State of Maryland on September 29, 1995 in order to designate the rights, preferences and privileges of the Series A Preferred Stock, would be deleted and the following inserted in lieu thereof:

"(5) VOTING RIGHTS.

Except as indicated in this Section 5, or except as otherwise from time to time required by applicable law, the holders of shares of Series A Preferred Stock shall not be entitled to vote on any matter on which the holders of shares of Common Stock are entitled to vote, except that the holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class, shall be required to vote on and approve any material adverse change in the

rights, preferences or privileges of the Series A Preferred Stock. For purposes of the foregoing, the creation of a new class of stock having rights, preferences or privileges senior to, in parity with or junior to the rights, preferences or privileges of the Series A Preferred Stock shall not be treated as a material adverse change in the rights, preferences or privileges of the Series A Preferred Stock, and the holders of Series A Preferred Stock shall not have any right to vote on the creation of such new class of stock. Except as provided above and as required by law, the holders of Series A Preferred Stock are not entitled to vote on any merger or consolidation involving the Corporation, on any share exchange or on a sale of all or substantially all of the assets of the Corporation."

EXHIBIT B

BAY APARTMENT COMMUNITIES, INC.

IRREVOCABLE PROXY

The undersigned holder of 2,308,800 shares of Series A Preferred Stock, par value $.01 per share (the "Series A Preferred Stock"), of Bay Apartment Communities, Inc., a Maryland corporation (the "Company"), hereby appoints Messrs. Gilbert M. Meyer and Jeffrey B. Van Horn, each a shareholder and individually the President and the Secretary of the Company, respectively, and each of them singly, as proxies (the "Proxies"), each with full power of substitution, for and in the name of the undersigned at an annual or special

meeting of the stockholders of the Company, and at any and all postponements or adjournments thereof, to vote all shares of the Series A Preferred Stock of the Company FOR the amendments to the Company's Articles of Incorporation relating to the voting and liquidation rights of the Series A Preferred Stock which are attached hereto as Exhibit I, as if the undersigned were present and voting such shares. The undersigned hereby affirms that this Irrevocable Proxy is coupled with an interest and is irrevocable, and ratifies and confirms all that the Proxies may lawfully do or cause to be done by virtue hereof.

Executed this 22nd day of April, 1998.

WITNESS:

/s/ Jacqueline Davis

MELLON BANK, N.A., CUSTODIAN

By: Boston Safe Deposit and Trust Company
Mellon Bank, N.A.
DTC No: 964

Name: /s/ Sandra M. Spontak

Title: Trust Officer

EXHIBIT I

AMENDMENTS TO THE CHARTER OF
BAY APARTMENT COMMUNITIES, INC.
RELATING TO THE SERIES A PREFERRED STOCK

1. Article SECOND, Section (3)(a) of the Articles Supplementary to the Articles of Incorporation of Bay Apartment Communities, Inc., which were filed with the State Department of Assessments and Taxation of the State of Maryland on September 29, 1995 in order to designate the rights, preferences and privileges of the Series A Preferred Stock, would be deleted and the following inserted in lieu thereof:

"(3) LIQUIDATION RIGHTS.

(a) Subject to any prior rights of any class or series of stock, in the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock by reason of their ownership of such stock, an amount equal to all accrued but unpaid dividends for each share of Series A Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full amounts to which they are entitled under the preceding sentence, then, subject to any prior rights of any classes or series of stock, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of any other shares of Stock on a parity for liquidation purposes with the Series A Preferred Stock in proportion to the aggregate amounts owed to each such holder."

2. Article SECOND, Section (5) of the Articles Supplementary to the Company's Articles of Incorporation, which were filed with the State Department of Assessments and Taxation of the State of Maryland on September 29, 1995 in order to designate the rights, preferences and privileges of the Series A Preferred Stock, would be deleted and the following inserted in lieu thereof:

"(5) VOTING RIGHTS.

Except as indicated in this Section 5, or except as otherwise from time to time required by applicable law, the holders of shares of Series A Preferred Stock shall not be entitled to vote on any matter on which the holders of shares of Common Stock are entitled to vote, except that the holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class, shall be required to vote on and approve any material adverse change in the

rights, preferences or privileges of the Series A Preferred Stock. For purposes of the foregoing, the creation of a new class of stock having rights, preferences or privileges senior to, in parity with or junior to the rights, preferences or privileges of the Series A Preferred Stock shall not be treated as a material adverse change in the rights, preferences or privileges of the Series A Preferred Stock, and the holders of Series A Preferred Stock shall not have any right to vote on the creation of such new class of stock. Except as provided above and as required by law, the holders of Series A Preferred Stock are not entitled to vote on any merger or consolidation involving the Corporation, on any share exchange or on a sale of all or substantially all of the assets of the Corporation."

EXHIBIT 10.7

SHAREHOLDER AGREEMENT

This Shareholder Agreement, dated as of March 9, 1998 (this "Agreement"), is among Bay Apartment Communities, Inc., a Maryland corporation (the "Company"), and Central States, Southeast and Southwest Areas Pension Fund (the "Stockholder"), acting by and through its agent, LaSalle Advisors Capital Management, Inc. ("LaSalle"), a registered investment advisor and successor to LaSalle Advisors Limited Partnership.

RECITALS:

A. As of the date hereof, the Stockholder owns 2,308,800 shares of Series A Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock"), and 405,022 shares of Series B Preferred Stock, par value $.01 per share (the "Series B Preferred Stock"), of the Company (collectively, the shares of Series A Preferred Stock and Series B Preferred Stock are hereinafter referred to as the "Shares");

B. The Company proposes to enter into an Agreement and Plan of Merger, dated on or about the date hereof (as the same may be amended from time to time, the "Merger Agreement"), which will provide, on the terms and subject to the conditions thereof, for the merger of Avalon Properties, Inc. with and into the Company and/or any of its affiliates (the "Merger"); and

C. As a condition to the willingness of the Company to enter into the Merger Agreement, the Company has requested that the Stockholder agree, and, in order to induce the Company to enter into the Merger Agreement, the Stockholder is willing to agree, to convert, or to cause to be converted, the Shares into shares of common stock, par value $.01 per share (the "Common Stock"), of the Company pursuant to the terms and conditions hereof.

NOW, THEREFORE, the parties hereto agree as follows:

I. REPRESENTATIONS AND WARRANTIES OF THE STOCKHOLDER

The Stockholder hereby represents and warrants to the Company as follows:

1.1 Due Authority. The Stockholder has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder and consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by or on behalf of the Stockholder and, assuming its due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of the Stockholder, enforceable against it in accordance with its terms.

1.2 No Conflict; Consents.

(a) The execution and delivery of this Agreement by the Stockholder does not, and the performance by the Stockholder of its obligations under this Agreement and the compliance by the Stockholder with the provisions hereof do not and will not, conflict with or violate (i) the advisory agreement between LaSalle and the Stockholder (the "Advisory Agreement") or (ii) any law, statute, rule, regulation, order, writ, judgment or decree referred to in the Advisory Agreement applicable to the Stockholder or the Shares.

(b) The execution and delivery of this Agreement by the Stockholder does not, and the performance of this Agreement by the Stockholder will not, require any consent, approval, authorization or permit of, or filing with (except for applicable requirements, if any, of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), or notification to, any government or regulatory authority by the Stockholder.

(c) Only the Stockholder has, and during the Conversion Term will have, any right, directly or indirectly, to convert or control the conversion of the Shares.

1.3 Title to Shares. Each of Mellon Bank, N.A. ("Mellon"), as custodian, with respect to all the outstanding shares of Series A Preferred Stock, and CS & Co., with respect to all the outstanding shares of Series B Preferred Stock, (a) is the record owner of the Shares free and clear, to the Stockholder's knowledge, of any proxy or voting restriction other than pursuant to that certain Proxy Agreement, dated as of the date hereof, between the Company and the Stockholder (the "Proxy Agreement") and (b) has, and prior to their conversion pursuant to this Agreement will have (subject to the possible termination of Mellon's right to act as custodian, it being understood that no

such termination shall affect any of the Company's rights or any of the Stockholder's obligations hereunder or under the Irrevocable Proxy given to the Company by Mellon), the sole right to convert (subject to the direction of LaSalle) the Shares.

II. REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Stockholder as follows:

2.1 Due Authority. The Company has full power, corporate or otherwise, and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been duly executed and delivered by or on behalf of the Company and, assuming its due authorization, execution and delivery by the Stockholder, constitutes a legal, valid and binding obligation of the Company enforceable against it in accordance with its terms.

2.2 No Conflict; Consents. (a) The execution and delivery of this Agreement does

not, and the performance by the Company of its obligations contemplated by this Agreement and its compliance with any provisions hereof do not and will not, (i) conflict with or violate any law, statute, rule, regulation, order, writ, judgment or decree applicable to such party, (ii) conflict with or violate the Company's charter or bylaws, or (iii) result in any breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company is a party or by which the Company is bound.

(b) The execution and delivery of this Agreement by the Company does not, and the performance of this Agreement by the Company will not, require any consent, approval, authorization or permit of, or filing with (except for applicable requirements, if any, of the Exchange Act) or notification to, any governmental or regulatory authority by the Company.

2.3 Affiliate Status. Assuming the Stockholder and LaSalle do not increase their stock ownership in the Company and that the other current relevant facts and circumstances do not change, the Company will not take the position that either the Stockholder or LaSalle is an "affiliate" of the Company as that term is defined in Rule 144 under the Securities Act of 1933, as amended.

III. CERTAIN COVENANTS OF THE STOCKHOLDER

The Stockholder hereby covenants and agrees with the Company as follows:

3.1 Right to Convert. The Stockholder acknowledges and affirms that the execution of the Merger Agreement by the Company will result in the right of the Stockholder, pursuant to the terms of (A) Section 4.1(iii) of the Articles Supplementary to the Company's Articles of Incorporation relating to the rights, preferences and privileges of the Series A Preferred Stock (the "Series A Articles Supplementary") and (B) Section 4.1(iii) of the Articles Supplementary to the Company's Articles of Incorporation relating to the rights, preferences and privileges of the Series B Preferred Stock (the "Series B Articles Supplementary"), to convert the Shares into Common Stock.

3.2 Agreement Not to Convert. Notwithstanding anything contained in Section 3.1 hereof, the Stockholder agrees that it shall not exercise its right to convert the Shares into Common Stock as a result of the execution of the Merger Agreement except as required by and pursuant to the terms of Section 3.3 hereof.

3.3 Conversion of Shares. On the date (the "Conversion Date") which is two business days after the record date (the "Record Date") for determining the holders of common stock of the Company entitled to notice of and to vote at any annual or special meeting of stockholders called to approve the Merger Agreement and the other transactions contemplated

by the Merger, the Stockholder shall exercise its right to convert, or otherwise cause to be converted, 1,345,000 shares of Series A Preferred Stock into an aggregate of 1,345,000 shares (as adjusted, if hereafter required, pursuant to the terms of the Series A Articles Supplementary) of Common Stock in accordance

with Section 3.4 hereof; provided, however, that if such number of shares of Common Stock would then equal more than 4.9% of the number of shares of the Company's Common Stock to be outstanding immediately after such conversion, the number of shares of Series A Preferred Stock to be converted shall instead be reduced so that the number of shares of Common Stock issued upon such conversion will equal 4.9% of the number of shares of the Company's Common Stock to be outstanding immediately after such conversion. If at any later date additional shares of either Series A Preferred Stock or Series B Preferred Stock could be converted without causing the 4.9% Limitation (as defined in the Series A Articles Supplementary and Series B Articles Supplementary) to be exceeded, the Stockholder will convert or cause to be converted such shares promptly (and will convert or cause to be converted all shares of Series A Preferred Stock before converting any shares of Series B Preferred Stock); provided, however, that it shall have no obligation to do so unless the additional number of shares of Common Stock which would be issued upon such conversions without exceeding the 4.9% Limitation would equal at least .5% of the number of shares of Common Stock then outstanding or unless all of the then remaining outstanding shares of Series A Preferred Stock could then be converted without exceeding the 4.9% Limitation. In connection therewith, the Company agrees to provide written notice to the Stockholder of the Record Date within 48 hours after it has been fixed and publicly announced by the Company.

3.4 Procedure for Conversion. In order to convert the Shares into Common Stock, the Stockholder shall comply with the procedures set forth in the Series A Articles Supplementary or Series B Articles Supplementary, as the case may be, except that even if the Stockholder does not comply with such procedures, at the Company's election the Shares shall be deemed to have been converted immediately prior to the close of business on the Conversion Date (or, in the event of conversions after the Conversion Date, on the applicable date by which the conversion should have occurred), and the person(s) entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes to be record holder(s) of such Common Stock as of the close of business on such Conversion Date (or, in the event of conversions after the Conversion Date, on the applicable date by which the conversion should have occurred).

3.5 Transfer of Shares. (a) Except pursuant to the Proxy Agreement, prior to the conversion of the Shares the Stockholder shall not, and shall not permit anyone else to, (i) sell, tender, encumber, pledge, assign or otherwise dispose of any of the Shares, (ii) deposit the Shares into a voting trust or enter into a voting agreement or arrangement with respect to the Shares or grant any proxy or power of attorney with respect thereto, or (iii) enter into any contract, option or other legally binding undertaking providing for any transaction listed in (i) or (ii) of this Section 3.5, unless prior thereto the proposed transferee or pledgee shall have entered into a written agreement with the Company, containing terms and conditions

satisfactory to the Company, in which such transferee or pledgee shall agree to be bound by all the terms and conditions of this Agreement.

(b) The Stockholder agrees to take such further action and execute such other instruments as may be reasonably necessary to effectuate the intent of this Agreement.

3.6 Legend. The Stockholder agrees it will use commercially reasonable efforts to, and will instruct the custodian of the Shares to, tender to the Company, within ten days after the date hereof, the certificates representing the Shares and the Company will inscribe upon such certificates the following legend: "The shares of preferred stock of Bay Apartment Communities, Inc. (the "Company") represented by this certificate are subject to a Shareholder Agreement dated as of March 9, 1998, and may not be converted, sold or otherwise transferred except in accordance therewith. Copies of such Agreement may be obtained at the principal executive offices of the Company upon request and without charge."

IV. CONSIDERATION

As an inducement to the Stockholder to convert Shares pursuant to the provisions of Article III hereof, the Company shall pay the Stockholder, at the time of the conversion on the Conversion Date of the number of Shares required to be converted pursuant to the first sentence of Section 3.3 hereof, Four Hundred Eighty-Five Thousand Dollars ($485,000).

V. MISCELLANEOUS; GENERAL PROVISIONS

5.1 Severability. If any term or other provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto will negotiate in good faith to modify this Agreement so as to

effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

5.2 Entire Agreement. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements and undertakings, both written and oral, between the parties with respect to the subject matter hereof.

5.3 Amendments. This Agreement may not be modified, amended, waived, altered or supplemented, except upon the execution and delivery of a written agreement executed by the parties hereto.

5.4 Assignment. This Agreement may not be assigned by either party hereto by operation of law or otherwise without the other party's consent and is binding on each party's successors and permitted assignees.

5.5 Parties in Interest. This Agreement is binding upon, and shall inure solely to the benefit of, each party hereto and nothing in this Agreement, express or implied, is intended to or will confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

5.6 Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof or was otherwise breached. It is accordingly agreed that the parties will be entitled to specific relief hereunder including, without limitation, an injunction or injunctions to prevent and enjoin breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof, in any state or federal court in the State of Maryland, in addition to any other remedy to which they may be entitled at law or in equity. Any requirements for the securing or posting of any bond with respect to any such remedy are hereby waived.

5.7 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Maryland without regard to its rules of conflict of laws. The parties hereto hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the federal and state Maryland courts for any litigation arising out of or relating to this Agreement and the transactions contemplated hereby (and agree not to commence any litigation relating thereto except in such courts), waive any objection to the laying of venue of any such litigation in such Maryland courts and agree not to plead or claim in any such Maryland court that such litigation brought therein has been brought in any inconvenient forum.

5.8 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement.

5.9 Termination. Except for Section 2.3 hereof, this Agreement shall terminate upon the earlier of (i) the termination of the Merger Agreement and (ii) the consummation of the Merger in accordance with the terms of the Merger Agreement.

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

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Name: Gilbert M. Meyer
Title: President

CENTRAL STATES, SOUTHEAST AND
SOUTHWEST AREAS PENSION FUNDS

By Its Agent:

LaSalle Advisors Capital Management, Inc.

By: /s/ Stanley J. Kraska, Jr.

Name: Stanley J. Kraska, Jr.
Title: Managing Director

Exhibit 12.1

BAY APARTMENT COMMUNITIES, INC.
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

<TABLE>
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	Quarter Ended March 31, 1998	Year Ended December 31, 1997	Year Ended December 31, 1996	Year Ended December 31, 1995	March 17- December 31, 1994	January 1- March 16, 1994	Year Ended December 31, 1993
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Net Operating Income	$12,979	$38,941	$19,626	$11,460	$ 7,486	$ (716)	$ (447)
(Less) Nonrecurring Item:							
Gain on sale	$ 0	$ 0	$ 0	$(2,412)	$ 0	$ 0	$ 0
Plus Extraordinary Item:							
Unamortized loan fee write-off	$ 0	$ 0	$ 511	$ 0	$ 0	$ 0	$ 0
Plus Fixed Charges:							
Interest expense	$ 6,249	$14,113	$14,276	$11,472	$ 4,782	$2,358	$10,932
Interest capitalized	2,964	6,985	2,567	3,641	2,096	0	0
Debt cost amortization	128	505	667	1,278	241	80	218
Preferred dividend	4,029	7,480	4,264	917	0	0	0
Total fixed charges(1)	$13,370	$29,083	$21,774	$17,308	$ 7,119	$2,438	$11,150
Less:							
Interest capitalized	$ 2,964	$ 6,985	$ 2,567	$ 3,641	$ 2,096	$ 0	$ 0
Preferred dividend	4,029	7,480	4,264	917	0	0	0
Adjusted earnings(2)	$19,356	$53,559	$35,080	$21,798	$12,509	$1,722	$10,703
Ratio (2 divided by 1)	1.45	1.84	1.61	1.26	1.76	0.71	0.96

</TABLE>

BAY APARTMENT COMMUNITIES, INC.
RATIOS OF EARNINGS TO FIXED CHARGES

<TABLE>
<CAPTION>

	Quarter Ended March 31,	Year Ended December 31,	Year Ended December 31,	Year Ended December 31,	March 17- December 31,	January 1- March 16,	Year Ended December 31,

	1998	1997	1996	1995	1994	1994	1993
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Net Operating Income	$12,979	$38,941	$19,626	$11,460	$ 7,486	$ (716)	$ (447)
(Less) Nonrecurring Item:							
Gain on sale	$ 0	$ 0	$ 0	$(2,412)	$ 0	$ 0	$ 0
Plus Extraordinary Item:							
Unamortized loan fee write-off	$ 0	$ 0	$ 511	$ 0	$ 0	$ 0	$ 0
Plus Fixed Charges:							
Interest expense	$ 6,249	$14,113	$14,276	$11,472	$ 4,782	$2,358	$10,932
Interest capitalized	2,964	6,985	2,567	3,641	2,096	0	0
Debt cost amortization	128	505	667	1,278	241	80	218
Total fixed charges(1)	$ 9,341	$21,603	$17,510	$16,391	$ 7,119	$2,438	$11,150
Less:							
Interest capitalized	$ 2,964	$ 6,985	$ 2,567	$ 3,641	$ 2,096	$ 0	$ 0
Adjusted earnings(2)	$19,356	$53,559	$35,080	$21,798	$12,509	$1,722	$10,703
Ratio (2 divided by 1)	2.07	2.48	2.00	1.33	1.76	0.71	0.96

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM (A) THE CONSOLIDATED BALANCE AT MARCH 31, 1998 AND THE CONSOLIDATED STATEMENT OF OPERATIONS FOR THE QUARTER ENDED MARCH 31, 1998 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH (B) FIRST QUARTER FILING ON FORM 10-Q FOR THE QUARTER ENDED MARCH 31, 1998.
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