

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 10-K

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

For the fiscal year ended December 31, 2022  
OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number: 1-12672  
AVALONBAY COMMUNITIES, INC.  
(Exact name of registrant as specified in its charter)

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

**77-0404318**  
(I.R.S. Employer  
Identification No.)

**4040 Wilson Blvd., Suite 1000**  
**Arlington, Virginia 22203**  
(Address of principal executive offices) (Zip code)  
**(703) 329-6300**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol (s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, par value \$0.01 per share	AVB	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes  No

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 for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes  No

The aggregate market value of the registrant's Common Stock, par value \$.01 per share, held by nonaffiliates of the registrant, as of June 30, 2022 was \$27,081,482,816.

The number of shares of the registrant's Common Stock, par value \$.01 per share, outstanding as of January 31, 2023 was 139,920,107.

**Documents Incorporated by Reference**

Portions of AvalonBay Communities, Inc.'s Proxy Statement for the 2023 annual meeting of stockholders, a definitive copy of which will be filed with the Securities and Exchange Commission within 120 days after the year end of the year covered by this Form 10-K, are incorporated by reference herein as portions of Part III of this Form 10-K.

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## PART I

This Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Our actual results could differ materially from those set forth in each forward-looking statement. Certain factors that might cause such a difference are discussed in this report, including in the section entitled “Forward-Looking Statements” included in this Form 10-K. You should also review Item 1A. “Risk Factors” for a discussion of various risks that could adversely affect us.

### ITEM 1. BUSINESS

#### General

AvalonBay Communities, Inc. (the “Company,” which term, unless the context otherwise requires, refers to AvalonBay Communities, Inc. together with its subsidiaries), is a Maryland corporation that has elected to be treated as a real estate investment trust (“REIT”) for federal income tax purposes. We develop, redevelop, acquire, own and operate multifamily apartment communities in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Pacific Northwest, and Northern and Southern California, as well as in our expansion markets of Raleigh-Durham and Charlotte, North Carolina, Southeast Florida, Dallas and Austin, Texas, and Denver, Colorado. We focus on leading metropolitan areas that we believe historically have been characterized by growing employment in high wage sectors of the economy, higher cost of home ownership and a diverse and vibrant quality of life. We believe these market characteristics have offered, and will continue in the future to offer, the opportunity for superior risk-adjusted returns over the long-term on apartment community investments relative to other markets that do not have these characteristics.

At January 31, 2023, we owned or held a direct or indirect ownership interest in:

- 275 operating apartment communities containing 82,411 apartment homes in 12 states and the District of Columbia, of which 267 communities containing 80,164 apartment homes were consolidated for financial reporting purposes and eight communities containing 2,247 apartment homes were held by unconsolidated entities in which we hold an ownership interest.
- 18 wholly-owned development apartment communities that are expected to contain an aggregate of 5,589 apartment homes when completed and one unconsolidated investment which holds an apartment community under development and is expected to contain 475 apartment homes when completed.
- Rights to develop an additional 39 communities that, if developed as expected, will contain 13,312 apartment homes.

We generally obtain ownership in an apartment community by developing a new community on either vacant land or land with improvements that we raze, or by acquiring an existing community. In selecting sites for development or acquisition, we favor locations that are near expanding employment centers and convenient to transportation, recreation areas, entertainment, shopping and dining.

Our principal financial goal is to increase long-term shareholder value through the development, redevelopment, acquisition, ownership and, when appropriate, disposition of apartment communities in our markets. To help meet this goal, we regularly (i) monitor our investment allocation by geographic market and product type, (ii) develop, redevelop and acquire interests in apartment communities in our selected markets, (iii) selectively sell apartment communities that no longer meet our long-term strategy or when opportunities are presented to realize a portion of the value created through our investment and redeploy the proceeds from those sales and (iv) maintain a capital structure that we believe is aligned with our business risks and allows us to maintain continuous access to cost-effective capital. We also seek to generate additional shareholder value from investments in other real estate-related ventures, including through the Structured Investment Program (“SIP”), our platform to provide mezzanine loans or preferred equity to third-party multifamily developers. We undertake our development and redevelopment activities primarily through in-house development and redevelopment teams, and buy and dispose of assets through our in-house investments platform. We believe that our organizational structure, which includes dedicated development and operational teams, and strong culture are key differentiators. We pursue our development, redevelopment, investment and operating activities with the purpose of “Creating a Better Way to Live.”

Our strategic vision is to be the leading apartment company in select U.S. markets, providing a range of distinctive living experiences that customers value. We pursue this vision by targeting what we believe are among the best markets and submarkets, leveraging our strategic capabilities in market research and consumer insight and being disciplined in our capital allocation and balance sheet management. We operate our apartment communities under four core brands:

- Avalon, our core “Avalon” brand, focuses on upscale apartment living and high end amenities and services;
- AVA targets customers in high energy, transit-served neighborhoods and generally feature smaller apartments, many of which are designed for roommate living, and a variety of active common spaces that encourage socialization;
- eaves by Avalon is targeted to the cost conscious, “value” segment primarily in suburban areas; and
- Kanso, which we introduced in 2020, is designed to create an apartment living experience that offers simplicity without sacrifice at a more moderate price point, featuring high-quality apartment homes, limited-to-no community amenities and a low-touch, largely self-service operating model that leverages technology and smart access.

We believe that this branding differentiation allows us to target our product offerings to multiple customer groups and submarkets within our existing geographic footprint.

During the three years ended December 31, 2022, we:

- acquired 11 apartment communities, excluding unconsolidated investments;
- disposed of 27 apartment communities, excluding unconsolidated investments;
- realized our pro rata share of the gain from the sale of six communities owned by unconsolidated real estate entities; and
- completed the development of 23 apartment communities, including unconsolidated investments, and the redevelopment of one apartment community.

A more detailed description of our unconsolidated real estate entities and the related investment activity can be found in Note 5, “Investments,” of the Consolidated Financial Statements in Item 8 of this report and in Item 7. “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

A further discussion of our development, redevelopment, disposition, acquisition, property management and related strategies follows.

*Development Strategy.* We select land for development and follow established procedures that we believe minimize both the cost and the risks of development. As one of the largest developers of multifamily rental apartment communities in our selected markets, we maintain regional offices to identify and support development opportunities through local market presence and access to local market information. In addition to our principal executive office in Arlington, Virginia, we also have regional offices, administrative offices or specialty offices, including offices that are in or near the following cities:

- Bellevue, Washington;
- Boston, Massachusetts;
- Chapel Hill, North Carolina;
- Denver, Colorado;
- Fort Lauderdale, Florida;
- Irvine, California;
- Los Angeles, California;
- Melville, New York;
- New York, New York;
- San Francisco, California;
- San Jose, California;
- Shelton, Connecticut;
- Virginia Beach, Virginia; and
- Westfield, New Jersey.

After selecting a site for development, we usually negotiate for the right to acquire the site either through an option or a long-term conditional contract. Options and long-term conditional contracts generally allow us to acquire an interest in the site after the completion of entitlements and shortly before the start of construction, which reduces development-related risks and preserves capital. However, as a result of competitive market conditions for land suitable for development, we have sometimes acquired and held land prior to construction for extended periods while entitlements are obtained. When acquiring improved land with existing commercial uses prior to development, any rent received in excess of expenses from these operations, which we consider to be incidental, is accounted for as a reduction in our investment in the development pursuit and not as net income. Any expenses relating to these operations, in excess of any rents received, are recognized in net income. In addition, we have previously identified, and may again in the future identify, opportunities to increase value by expanding the density of certain existing operating communities. We have also participated, and may in the future participate, in master planned or other large multi-use developments where we commit to build infrastructure (such as roads) to be used by other participants or commit to act as construction manager or general contractor in building structures or spaces for third parties (such as unimproved ground floor commercial space, municipal garages or parks). Costs we incur in connection with these activities may be accounted for as additional invested capital in the community or we may earn fee income for providing these services. Particularly with large scale, urban in-fill developments, we may engage in significant environmental remediation efforts to prepare a site for construction. For further discussion of our Development Rights, refer to Item 2. "Properties" in this report.

We generally act as our own development manager, general contractor and construction manager directly (although we may use a wholly-owned subsidiary), and will elect to use a third-party developer or general contractor where we believe it is beneficial to do so, such as in our expansion markets where we have limited experience. We believe direct involvement in construction enables us to achieve higher construction quality, greater control over construction schedules and cost savings. Our development, property management and construction teams monitor construction progress to ensure quality workmanship and a smooth and timely transition into the leasing and operating phase.

Throughout this report, the term "development" is used to refer to the entire property development cycle, including pursuit of zoning approvals, procurement of architectural and engineering designs and the construction process. References to "construction" refer to the actual construction of the property, which is only one element of the development cycle.

*Redevelopment Strategy.* When we undertake the redevelopment of a community, our goal is to renovate and/or rebuild an existing community so that our total investment is generally below replacement cost and the community is well positioned in the market to achieve attractive returns on our capital. In addition to large scale redevelopment where a community is classified as a redevelopment, we undertake smaller scale redevelopment activities related to the apartment interiors to enhance the resident experience at our operating communities. We have dedicated redevelopment teams and procedures that are intended to control both the cost and risks of redevelopment. Our redevelopment teams, which include redevelopment, construction and property management personnel, monitor redevelopment progress.

Throughout this report, the term "redevelopment" is used to refer to the entire redevelopment cycle, including planning and procurement of architectural and engineering designs, budgeting and actual renovation work. The actual renovation work is referred to as "reconstruction," which is only one element of the redevelopment cycle.

*Disposition Strategy.* We sell assets that no longer meet our long-term strategy or when real estate market conditions are favorable, and we redeploy the proceeds from those sales to develop, redevelop and acquire communities and to rebalance our portfolio across or within geographic regions. This also allows us to realize a portion of the value created through our investments and provides additional liquidity by redeploying the net proceeds from our dispositions in lieu of raising that amount of capital externally. When we decide to sell a community, we generally solicit competing bids from unrelated parties for these individual assets and consider the sales price and other terms of each proposal.

As part of the Archstone Acquisition in 2013 (as defined in Item 1. "Business" in the Company's Form 10-K filed with the Securities and Exchange Commission (the "SEC") on February 22, 2019), we acquired, and still own, 14 assets that had previously been contributed by third parties on a tax-deferred basis to an Archstone partnership in which the third parties received ownership interests. To protect the tax-deferred nature of the contribution, the third parties are entitled to cash payments if we trigger tax obligations to the third parties by selling, or failing to maintain sufficient levels of secured financing on, the contributed assets. Our tax protection payment obligations with respect to these assets expire at different times and in some cases don't expire until the death of a third party who contributed ownership interests to the Archstone partnership. After review and investigation of Archstone's tax and accounting records, we estimate that, had we sold or taken other triggering actions in 2022 with respect to all 14 assets, the aggregate amount of the tax protection payments that would have been triggered would have been approximately \$44,900,000. At the present time, we do not intend to take actions that would cause us to be required to make tax protection payments with respect to any of these assets.

*Acquisition Strategy.* Our core competencies in development and redevelopment discussed above allow us to be selective in the acquisitions we target. Acquisitions allow us to achieve rapid penetration into markets in which we desire an increased presence. Acquisitions (and dispositions) also help us achieve our desired product mix or rebalance our portfolio. While we are primarily focused on acquisitions in our expansion markets of Raleigh-Durham and Charlotte, North Carolina, Southeast Florida, Dallas and Austin, Texas, and Denver, Colorado, we may pursue additional investments in our established regions based on market conditions.

*Property Management Strategy.* We seek to increase operating income through innovative, proactive property management that will result in higher revenue from communities while constraining operating expenses. Our principal strategies to maximize operating income include:

- focusing on associate engagement and resident satisfaction;
- staggering lease terms such that lease expirations are matched with seasonal demand;
- delivering high occupancy with premium pricing for various customer segments; and
- making innovations in our operating model through (i) leveraging technology, including digital smart access and various automation technologies and (ii) data science to optimize revenue from the portfolio, while reducing customer acquisition, transaction and retention costs.

Constraining growth in operating expenses is another way in which we seek to increase earnings growth. Growth in our portfolio and the resulting increase in revenue allows for fixed operating costs to be spread over a larger volume of revenue, thereby increasing operating margins. We constrain growth in operating expenses in a variety of ways, which include, but are not limited to, the following:

- purchase order controls, including acquiring goods and services from pre-approved vendors;
- national negotiated contracts and bulk purchases where possible;
- bidding third-party contracts on a volume basis;
- retaining residents through high levels of service, which reduces apartment turnover costs, marketing and vacant apartment utility costs;
- performing turnover work in-house or hiring third parties, generally considering the most cost effective approach as well as expertise needed to perform the work;
- regular preventive maintenance to maximize resident safety and satisfaction and property and equipment life;
- centralization of many community administration and support tasks at our shared service center;
- pursuing real estate tax appeals;
- installing high efficiency lighting and water fixtures, cogeneration systems and solar panels; and
- implementing technology for resident and prospect services such as package lockers and self guided or virtual tours.

On-site property management teams receive bonuses based largely upon the revenue, expense, Net Operating Income ("NOI"), prospect conversion, resident retention and customer service metrics produced at their respective communities. We use and continuously seek ways to improve technology applications to help manage our communities, believing that technology applications can improve the delivery and efficiency of our services and aid in the accurate collection of financial and resident data, which will enable us to maximize revenue and control costs through careful leasing decisions, maintenance decisions and financial management.

We generally manage the operation and leasing activity of our communities directly (although we may use a wholly-owned subsidiary) both for ourselves and the joint ventures and partnerships of which we are a member or a partner. From time to time we may engage a third party to manage leasing and/or maintenance activity at one or more of our communities where we have limited historical experience such as our expansion markets or for other reasons.

From time to time we also pursue or arrange ancillary services for our residents to provide additional revenue sources or increase resident satisfaction. We provide such non-customary services to residents or share in the revenue or income from such services through a taxable REIT subsidiary ("TRS"), which is a subsidiary that is treated as a "C corporation" subject to federal income taxes. See "Tax Matters" below.

*Financing Strategy.* Our financing strategy is to maintain a capital structure that provides financial flexibility to help ensure we can select cost effective capital market options that are well matched to our business risks. We estimate that our short-term liquidity needs will be met from cash on hand, borrowings under our \$2,250,000,000 revolving variable rate unsecured credit facility (the "Credit Facility") and our \$500,000,000 unsecured commercial paper note program (the "Commercial Paper Program"), sales of current operating communities and/or issuance of additional debt or equity securities, including amounts through the planned settlement of the outstanding forward contracts to sell 2,000,000 shares of common stock by no later than

December 31, 2023. A determination to engage in an equity or debt offering depends on a variety of factors such as general market and economic conditions, our short and long-term liquidity needs, the relative costs of debt and equity capital and growth opportunities. A summary of debt and equity activity for the last three years is reflected on our Consolidated Statement of Cash Flows of the Consolidated Financial Statements set forth in Item 8 of this report.

We have entered into, and may continue in the future to enter into, joint ventures (including limited liability companies or partnerships) through which we would develop and/or own an indirect economic interest of less than 100% of the community or communities owned directly by such joint ventures. Our decision to either hold an apartment community in fee simple or to have an indirect interest in the community through a joint venture is based on a variety of factors and considerations, including: (i) the economic and tax terms required by a seller of land or of a community; (ii) our desire to diversify our portfolio of communities by market, submarket and product type; (iii) our desire at times to preserve our capital resources to maintain liquidity or balance sheet strength; and (iv) our projection, in some circumstances, that we will achieve higher returns on our invested capital or reduce our risk if a joint venture vehicle is used. Investments in joint ventures are not limited to a specified percentage of our assets. Each joint venture agreement is individually negotiated, and our ability to operate and/or dispose of a community in our sole discretion may be limited to varying degrees depending on the terms of the joint venture agreement.

In addition, from time to time, we may offer shares of our equity securities, debt securities or options to purchase stock in exchange for property. We may also acquire properties in exchange for properties we currently own.

*Other Strategies and Activities.* While we emphasize equity real estate investments in rental apartment communities, we have the ability to invest in other activities and to make non-equity investments, including the following:

- **Commercial space:** we develop, own and lease commercial space at our communities when either (i) the highest and best use of the space is for commercial (e.g., street level in an urban area); (ii) we believe the commercial space will enhance the attractiveness of the community to residents; or (iii) some component of commercial space is required to obtain entitlements to build apartment homes. As of December 31, 2022, we had a total of approximately 926,000 square feet of rentable commercial space, excluding commercial space within communities currently under development. Gross rental revenue provided by leased commercial space in 2022 was \$42,971,000 (1.7% of total revenue).
- **For-sale real estate development:** we may also develop a property in conjunction with another real estate company that will own and operate the commercial or for-sale residential components of a mixed-use building or project that we help develop. We may from time to time, through a TRS, develop real estate and hold it for sale upon completion if we believe that this will be the best use or disposition opportunity for the property, as is the case with our sale of apartment condominium units at The Park Loggia condominium development in New York, NY.
- **Structured Investment Program:** while we generally invest in multifamily real estate through fee simple ownership or an equity investment in a joint venture, we established a new investment platform through which we provide mezzanine loans or preferred equity to third-party multifamily developers. At December 31, 2022, we had commitments for three mezzanine loans of up to \$92,375,000 in the aggregate. The mezzanine loans have a weighted average rate of return of 9.8% and mature at various dates on or before June 2026. At December 31, 2022, we have funded \$29,352,000 of these commitments.
- **Property technology and environmentally focused companies and investment management funds:** we have also invested, either through a wholly-owned TRS, or in an investment vehicle that has elected to be treated as a TRS, in companies (and in venture funds that invest in companies) that provide technology services to the real estate industry, and we have invested, through a TRS, in environmentally focused companies and investment management funds to further our sustainability efforts and learning. As of December 31, 2022, we had invested \$36,178,000 in various property technology and environmentally focused companies directly and indirectly through investment management funds. As of December 31, 2022, we have \$34,299,000 of outstanding equity commitments to these investment management funds, with the timing and amount for these commitments to be fulfilled dependent on if, and when, investment opportunities are identified by their respective funds.

We have not engaged in trading, underwriting or agency distribution or sale of securities of other issuers and do not intend to do so. At all times we intend to make investments in a manner so as to qualify as a REIT unless, because of circumstances or changes to the Internal Revenue Code of 1986, as amended (the "Code") (or the Treasury Regulations thereunder), our Board of Directors determines that it is no longer in our best interest to qualify as a REIT.

We conduct many of the administrative functions associated with our property operations (including billing, collections, and response to resident inquiries) through an internally operated shared services center, rather than having on-site associates conduct such activities. We believe this centralized platform allows our on-site associates to focus more on current and prospective resident services, while at the same time enabling us to reduce costs, mitigate risk and increase our availability and responsiveness to our residents. We are exploring the possibility of performing these shared service center administrative functions for a third party as a means of creating an additional revenue stream and economies of scale at our center. We cannot assure that we will provide such services to a third party or that it will be successful if we do so.

#### Tax Matters

We filed an election with our 1994 federal income tax return to be taxed as a REIT under the Code and intend to maintain our qualification as a REIT in the future. As a REIT, with limited exceptions, such as those described under “Property Management Strategy” above, we will not be taxed under federal and certain state income tax laws at the corporate level on our taxable net income to the extent such taxable net income is distributed to our stockholders. We expect to make sufficient distributions to avoid income tax at the corporate level. While we believe that we are organized and qualified as a REIT and we intend to operate in a manner that will allow us to continue to qualify as a REIT, there can be no assurance that we will be successful in this regard. Qualification as a REIT involves the application of highly technical and complex provisions of the Code for which there are limited judicial and administrative interpretations and involves the determination of a variety of factual matters and circumstances not entirely within our control.

#### Competition

We face competition from other real estate investors, including insurance companies, pension and investment funds, REITs both in the multifamily as well as other sectors, and other well capitalized investors, to acquire and develop apartment communities and acquire land for future development. As an owner and operator of apartment communities, we also face competition for prospective residents from other operators whose communities may be perceived to offer a better location or better amenities or whose pricing may be perceived as a better value given the quality, location, terms and amenities that the prospective resident seeks. We also compete against condominiums and single-family homes that are for sale or rent, including those offered through online platforms. Although we often compete against large, sophisticated developers and operators for development opportunities and for prospective residents, real estate developers and operators of any size can provide effective competition for both real estate assets and potential residents.

#### Regulatory Matters

Compliance with various governmental regulations has an impact on our business, including our capital expenditures, earnings and competitive position, which can be material. We incur costs to monitor and take actions to comply with governmental regulations that are applicable to our business, which include, among others, federal securities laws and regulations, applicable stock exchange requirements, REIT and other tax laws and regulations, environmental and health and safety laws and regulations, local zoning, usage and other regulations relating to real property, the Americans with Disabilities Act of 1990 and related laws and regulations.

*Environmental Regulations.* As a current or prior owner, operator and developer of real estate, we are subject to various federal, state and local environmental laws, regulations and ordinances and also could be liable to third parties resulting from environmental contamination or noncompliance at our communities. For some Development Communities, we undertake extensive environmental remediation to prepare the site for construction, which could be a significant portion of our total construction cost. Environmental remediation efforts could expose us to possible liabilities for accidents or improper handling of contaminated materials during construction.

*Regulations Relating to the Construction, Operation and Leasing of Our Communities.* The construction, operation and leasing of our communities is subject to federal, state and local laws and regulations, include zoning laws, building codes, requirements that our communities be accessible to persons with disabilities, fair housing laws, and, depending on the jurisdiction, regulations regarding the charging of rents and fees and increases in such amounts upon renewal of leases. Some laws relating to the setting of rents apply broadly, such as in California, where residential rent increases at renewal in communities older than fifteen years are limited to the lesser of 10% or 5% plus local consumer price index (CPI), and in New York, where laws regulate increases on those units that are subject to rent-control or rent-stabilization. In California, the Governor and local governments have the ability to enact (and have in recent years exercised such right, for example, in connection with wildfires) local or statewide states of emergency which limit our ability to increase new and renewal rents to no more than 10% over the rent in place on the date such state of emergency was declared, which has impacted some of our California communities. In addition, various temporary federal, state and local laws enacted during the COVID-19 pandemic have imposed additional



regulations of or limitations on our ability to evict tenants who are delinquent in payment of their rent, charge late fees, or raise rents more than a regulated amount upon renewal. We have seen an increase in state and local governments in our markets implementing, considering or being urged by various constituencies to consider new or modified rent control regulations, rent stabilization, or other laws that may limit or delay our ability to charge market rents, increase rents, charge ancillary fees or evict tenants.

See Part I, Item 1A. "Risk Factors" for a discussion of material risks to us, including, to the extent material, to our competitive position, relating to governmental regulations, and see Part II, Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," together with the Consolidated Financial Statements and the accompanying Notes to Consolidated Financial Statements included elsewhere in this report, for a discussion of material information relevant to an assessment of our financial condition and results of operations.

### *Human Capital*

Attracting, motivating, developing, and retaining talented associates is important to our long-term success. We engage with our associates to understand our purpose, "Creating a Better Way to Live," our core values (a commitment to integrity, a spirit of caring and a focus on continuous improvement) and our cultural norms (we collaborate, excel, innovate, act like owners, are thoughtful and thorough, and show appreciation).

At January 31, 2023, we had 2,947 employees, of which approximately 97% were employed on a full-time basis. Approximately 66% of our associates work on-site at our operating communities and the balance work on other matters. None of our associates are represented by a union except for approximately 13 maintenance associates at communities in Westchester County, New York, where we are in the process of negotiating a collective bargaining agreement.

We consider the following aspects of human capital management to be important:

*Diversity and Inclusion.* We value workforce diversity and an inclusive culture. We believe that a diverse workplace will produce a variety of perspectives, motivate associates and help us understand and better serve our customers and the communities in which we do business. At January 31, 2023, 37% of our associates self-identified as White, 30% as Hispanic, 15% as Black, 7% as Asian, and 11% as other ethnicities, two or more ethnicities or did not respond. At January 31, 2023, 60% of our associates self-identified as male and 40% as female. We are committed to promoting and achieving greater workplace diversity and have undertaken active steps to further this goal, including by supporting associate resource groups.

*Associate Engagement.* We monitor the engagement of our associates, receive feedback from our associates, and benchmark our performance by having a third party firm conduct anonymous associate perspective surveys each year. The results are discussed and presented both on a company-wide basis and within each functional group.

*Safety.* We take workplace safety seriously at our construction sites, our operating communities and our offices. Through our Construction Site Safety Observation program and our dedicated safety team, we monitor project-level safety performance metrics at our construction sites, and elements of compensation for our construction group and our CEO are based on safety compliance performance. Our maintenance associates are required to take monthly safety training on a variety of subjects, and our risk management group monitors incident reports from our offices and communities.

*Training.* To help our associates develop the skills they need to advance in their careers and succeed at AvalonBay, we train them in a variety of ways, including online, instructor-led and on-the-job learning. Our learning management system, AvalonBay University, offers approximately 600 courses providing functional, technical, management, ethics, compliance and cyber-awareness training.

Other Information

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may obtain copies of our SEC filings, free of charge, from the SEC's website at [www.sec.gov](http://www.sec.gov).

We maintain a website at [www.avalonbay.com](http://www.avalonbay.com). Our annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, including exhibits and amendments to those reports, filed or furnished pursuant to the Securities Exchange Act of 1934 are available free of charge in the "Investor Relations" section of our website as soon as reasonably practicable after the reports are filed with or furnished to the SEC. In addition, the charters of our Board's Nominating, Governance and Corporate Responsibility Committee, Audit Committee and Compensation Committee, as well as our Director Independence Standards, Corporate Governance Guidelines, Code of Business Conduct and Ethics, Policy Regarding Shareholder Rights Agreements, Policy Regarding Shareholder Approval of Future Severance Agreements, Senior Officer Stock Ownership Guidelines, Policy on Political Contributions and Government Relations, Policy on Recoupment, AvalonBay Sanctions Compliance and Anti-Corruption Policy and Environmental, Social, and Governance Reports, are available free of charge in that section of our website or by writing to AvalonBay Communities, Inc., 4040 Wilson Blvd., Suite 1000, Arlington, Virginia 22203, Attention: Chief Financial Officer. To the extent required by the rules of the SEC and the NYSE, we will disclose amendments and waivers relating to these documents in the same place on our website. The information posted on our website is not incorporated into this Annual Report on Form 10-K.

Supplemental U.S. Federal Income Tax Considerations

The following discussion supplements and updates the disclosures under "Certain U.S. Federal Income Tax Considerations and Consequences of Your Investment" in the prospectus dated February 25, 2021, contained in our Registration Statement on Form S-3 filed with the SEC on February 25, 2021, as supplemented by the discussion under the heading "Supplemental U.S. Federal Income Tax Considerations" in the Company's Annual Report on Form 10-K for the year ended December 31, 2021, as filed with the SEC on February 25, 2022. Capitalized terms herein that are not otherwise defined shall have the same meaning as when used in such disclosures (as supplemented).

On December 29, 2022, the Internal Revenue Service promulgated final Treasury Regulations under Sections 897, 1441, 1445, and 1446 of the Code that were, in part, intended to coordinate various withholding regimes for non-U.S. stockholders. The new Treasury Regulations provide that:

- i. The withholding rules applicable to ordinary REIT dividends paid to a non-U.S. stockholder (generally, a 30% rate of withholding on gross amounts unless otherwise reduced by treaty or effectively connected with such non-U.S. stockholder's trade or business within the U.S. and proper certifications are provided) apply to (a) that portion of any distribution paid by us that is not designated as a capital gain dividend, a return of basis or a distribution in excess of the non-U.S. stockholder's adjusted basis in its stock that is treated as gain from the disposition of such stock and (b) any portion of a capital gain dividend paid by us that is not treated as gain attributable to the sale or exchange of a U.S. real property interest by reason of the recipient not owning more than 10% of a class of our stock that is regularly traded on an established securities market during the one-year period ending on the date of the capital gain dividend.
- ii. The withholding rules under FIRPTA apply to a distribution paid by us in excess of a non-U.S. stockholder's adjusted basis in our stock, unless the interest in our stock is not a U.S. real property interest (for example, because we are a domestically controlled qualified investment entity) or the distribution is paid to a "withholding qualified holder." A "withholding qualified holder" means a qualified holder (as defined below) and a foreign partnership all of the interests of which are held by qualified holders, including through one or more partnerships.
- iii. The withholding rules under FIRPTA apply to any portion of a capital gain dividend paid by us to a non-U.S. stockholder that is attributable to the sale or exchange of a U.S. real property interest, unless it is paid to a withholding qualified holder.

In the case of FIRPTA withholding under clause (ii) above, the applicable withholding rate is currently 15%, and in the case of FIRPTA withholding under clause (iii) above the withholding rate is currently 21%. For purposes of FIRPTA withholding under clause (iii), whether a capital gain dividend is attributable to the sale or exchange of a U.S. real property interest is determined taking into account the general exception from FIRPTA distribution treatment for distributions paid to certain non-U.S. stockholders under which any distribution by us to a non-U.S. stockholder with respect to any class of stock which is regularly traded on an established securities market located in the United States is not treated as gain recognized from the sale or exchange of a U.S. real property interest if such non-U.S. stockholder did not own more than 10% of such class of stock at any time during the 1-year period ending on the date of such distribution. To the extent inconsistent, these Treasury Regulations supersede the discussion on withholding contained in the above-referenced disclosures (as supplemented) under the heading "-U.S. Taxation of Non-U.S. Stockholders." However, if, notwithstanding these Treasury Regulations, we encounter difficulties

in properly characterizing a distribution for purposes of the withholding rules, we may decide to withhold on such distribution at the highest possible U.S. federal withholding rate that we determine could apply.

Additionally, the second paragraph under the heading “-U.S. Taxation of Non-U.S. Stockholders-Distributions by Avalon Bay” is hereby deleted and replaced with the following:

Distributions in excess of our current and accumulated earnings and profits (not attributable to gains from disposition of U.S. real property interests) that exceed the non-U.S. stockholder’s basis in its common stock will be taxable to a non-U.S. stockholder as gain from the sale of its common stock, which is discussed below. Distributions in excess of our current or accumulated earnings and profits and not attributable to gains from our sales or exchanges of U.S. real property interests will not be taxable to a non-U.S. stockholder to the extent they do not exceed the adjusted basis of the non-U.S. stockholder’s shares (determined separately for each share). Instead, they will reduce adjusted basis of such shares. To the extent that such distributions exceed the adjusted basis of a non-U.S. stockholder’s shares, they will be treated as gain from the sale or disposition of the non-U.S. stockholder’s shares and may be subject to tax as described in the “- Sale of Common Stock” portion of this section below.

The new Treasury Regulations also provide new guidance regarding qualified foreign pension funds. Accordingly, the first paragraph under the heading “-U.S. Taxation of Non-U.S. Stockholders-Qualified Foreign Pension Funds” is hereby deleted and replaced with the following:

In general, for FIRPTA purposes, and subject to the discussion below regarding “qualified holders,” neither a “qualified foreign pension fund” (as defined below) nor any entity all of the interests of which are held by a qualified foreign pension fund is treated as a foreign person, thereby exempting such entities from tax under FIRPTA. A “qualified foreign pension fund” is an organization or arrangement (i) created or organized in a foreign country, (ii) established by a foreign country (or one or more political subdivisions thereof) or one or more employers to provide retirement or pension benefits to current or former employees (including self-employed individuals) or their designees or, in consideration for, services rendered, (iii) which does not have a single participant or beneficiary that has a right to more than 5% of its assets or income, (iv) which is subject to government regulation and with respect to which annual information about its beneficiaries is provided, or is otherwise available, to relevant local tax authorities, and (v) with respect to which, under its local laws, (A) contributions that would otherwise be subject to tax are deductible or excluded from its gross income or taxed at a reduced rate, or (B) taxation of its investment income is deferred, or such income is excluded from its gross income or taxed at a reduced rate. Under Treasury Regulations, subject to the discussion below regarding “qualified holders,” a “qualified controlled entity” also is not generally treated as a foreign person for purposes of FIRPTA. A qualified controlled entity generally includes a trust or corporation organized under the laws of a foreign country all of the interests of which are held by one or more qualified foreign pension funds either directly or indirectly through one or more qualified controlled entities.

Treasury Regulations further require that a qualified foreign pension fund or qualified controlled entity will not be exempt from FIRPTA with respect to dispositions of U.S. real property interests or REIT distributions attributable to the same unless the qualified foreign pension fund or qualified controlled entity is a “qualified holder.” To be a qualified holder, a qualified foreign pension fund or qualified controlled entity must satisfy one of two alternative tests at the time of the disposition of the U.S. real property interest or the REIT distribution. Under the first test, a qualified foreign pension fund or qualified controlled entity is a qualified holder if it owned no U.S. real property interests as of the earliest date during an uninterrupted period ending on the date of the disposition or distribution during which it qualified as a qualified foreign pension fund or qualified controlled entity. Alternatively, if a qualified foreign pension fund or qualified controlled entity held U.S. real property interests as of the earliest date during the period described in the preceding sentence, it can be a qualified holder only if it satisfies certain testing period requirements.

Treasury Regulations also provide that a foreign partnership all of the interests of which are held by qualified holders, including through one or more partnerships, may certify its status as such and will not be treated as a foreign person for purposes of withholding under Code Section 1445 (and Code Section 1446, as applicable).

## ITEM 1A. RISK FACTORS

Our operations involve various risks that could have adverse consequences, including those described below. This Item 1A. includes forward-looking statements. You should refer to our discussion of the qualifications and limitations on forward-looking statements in this Form 10-K.

### **Risks related to investments through acquisitions, construction, development, and joint ventures**

***Development, redevelopment and construction risks could affect our profitability.*** We intend to continue to develop and redevelop apartment home communities. These activities can include long planning and entitlement timelines and can involve complex and costly activities, including significant environmental remediation or construction work in high-density urban areas. These activities may expose us to the following risks, among others:

- we may abandon opportunities that we have already begun to explore for a number of reasons, including changes in local market conditions or increases in construction or financing costs, and, as a result, we may fail to recover expenses already incurred in exploring those opportunities;
- occupancy rates and rents at a community may fail to meet our original expectations for a number of reasons, including changes in market and economic conditions beyond our control and the development by competitors of competing communities;
- we may be unable to obtain, or experience delays in obtaining, necessary zoning, occupancy or other required governmental or third party permits and authorizations, which could result in increased costs, or the delay or abandonment of opportunities;
- we may incur costs that exceed our original estimates due to increased material, labor or other costs or supply chain disruptions which could impact our overall return from our development, redevelopment or construction activity;
- we may be unable to complete construction of a community on schedule or for the originally projected cost resulting in increased construction and financing costs;
- we may incur liabilities to third parties during the development process, for example, in connection with managing existing improvements on the site prior to tenant terminations and demolition (such as commercial space) or in connection with providing services to third parties (such as the construction of shared infrastructure or other improvements); and
- we may incur liability if our communities are not constructed in compliance with the accessibility provisions of the Americans with Disabilities Acts, the Fair Housing Act or other federal, state or local requirements. Noncompliance could result in imposition of fines, an award of damages to private litigants and a requirement that we undertake structural modifications to remedy the noncompliance.

Refer to our “Risks related to liquidity and financing” section below for additional construction and development risks related to financing.

***Attractive investment opportunities may not be available, which could adversely affect our profitability.*** We expect that other real estate investors, including insurance companies, pension and investment funds, other REITs and other well-capitalized investors, will compete with us to acquire existing properties and to develop new properties. This competition could increase prices for properties of the type we would likely pursue and adversely affect our profitability for new investments.

***Acquisitions may not yield anticipated results.*** Our business strategy of acquiring communities may have the following risks: (i) acquisitions may not perform as we expected; (ii) our estimate of the costs of operating, repositioning or redeveloping an acquisition may be inaccurate; and (iii) acquisitions may subject us to unknown liabilities.

***Failure to succeed in new markets, or with new brands and community formats, or in activities other than the development, ownership and operation of residential rental communities may have adverse consequences.*** We have in recent years engaged, and may continue from time to time to engage in development, acquisition and operating activity outside of our pre-existing market areas. Our historical experience in our existing markets in developing, owning and operating rental communities does not ensure that we will be able to operate successfully in new markets. We may be exposed to a variety of risks when we enter a new market, including an inability to accurately evaluate local apartment market conditions and an inability to obtain land for development or to identify appropriate acquisition opportunities. In order to more rapidly expand in our new markets, we have relied on third party developers to source and manage developments and on third party general contractors to manage construction more than we have in our existing markets. Relying on third parties to assist with and/or oversee development and construction creates additional and different risks than when we manage these activities directly, including that the third party may not perform to our standards, may breach contractual arrangements, or may incur liquidity constraints.

We also may engage or have an interest in for-sale activity, such as the sale of the residential condominiums at The Park Loggia, a mixed-use development located in New York, New York. We may be unsuccessful at developing real estate with the

intent to sell or in selling condominiums at originally underwritten values, or at all, as a disposition strategy for an asset, which could have an adverse effect on our results of operations.

***We are exposed to risks associated with investment in technology and environmentally focused venture funds and companies.*** In recent years we have invested in, and may in the future invest in, venture funds that invest in companies seeking innovation through new processes and the application of technology to property operations, development, construction and energy management. We have also invested directly in, and may in the future invest directly in, companies that engage in these activities. While such investments give us a greater understanding of new and emerging technologies, such investments involve risks, including the possibility that our investments will decline substantially in value.

Our investments in technology companies, or in funds that invest in technology companies, are generally held through taxable REIT subsidiaries pursuant to which we will incur taxable gains upon the disposition of our interests. In addition, the value of these investments may be volatile and declines in value may impact our reported income even if we do not sell the investment.

***We are exposed to risks associated with investment in, and management of, discretionary real estate investment funds and joint ventures.*** At times we invest directly and indirectly in real estate as a partner or a co-venturer with other investors. Joint venture investments (including investments through partnerships or limited liability companies) involve risks, including the possibility that our partner might become insolvent or otherwise refuse to make capital contributions when due; that we may be responsible to our partner for indemnifiable losses or the debt and obligations of an investment; that our investments may lose all or some of their value; that our partner might have business goals that are inconsistent with ours which may result in the venture or investment being unable to implement certain decisions that we consider beneficial; that our partner may be in a position to take action or withhold consent contrary to our instructions or requests; that, in cases where we are the general partner or managing member, our partners holding a majority of the equity interests may remove us from such role in certain cases involving cause; and that we may be liable and/or our status as a REIT may be jeopardized if either the investments, or the REIT entities associated with the investments, fail to comply with various tax or other regulatory matters. Frequently, we and our partner may each have the right to trigger a buy-sell or similar arrangement that could cause us to sell our interest, acquire our partner's interest or force a sale of the asset, which could occur at a time when we otherwise would not have initiated such a transaction or on terms that are not most advantageous to us.

***Mezzanine debt and preferred equity investments could cause us to incur expenses, which could adversely affect our results of operations.*** We hold mezzanine loans and plan to hold preferred equity interests as part of our SIP through which we make these kinds of investments in projects owned by third parties. Some of these instruments may have some recourse to their sponsors, while others are limited to the collateral securing the loan. In the event of a default under these obligations, we may have to take possession of the collateral securing these interests. Borrowers may contest enforcement of foreclosure or other remedies, seek bankruptcy protection against such enforcement and/or bring claims for lender liability in response to actions to enforce their obligations to us. Declines in the value of the property may prevent us from realizing an amount equal to our investment upon foreclosure even if we make substantial improvements or repairs to the underlying real estate in order to maximize such property's investment potential.

We cannot be certain that reserves carried to protect against future credit losses will be adequate over time to protect against future credit losses because of unanticipated adverse changes in the economy or events adversely affecting specific properties, assets, tenants, borrowers, industries in which our tenants and borrowers operate or markets in which our tenants and borrowers or their properties are located. The ultimate resolutions may differ from our expectation, and we could suffer losses that would have a material adverse effect on our financial performance, the trading price of our securities and our ability to pay dividends and distributions.

***We are exposed to risks associated with real estate assets that are subject to ground leases that may restrict our ability to finance, sell or otherwise transfer our interests in those assets, limit our use and expose us to loss if such agreements are breached by us or terminated.*** We own assets that are subject to long-term ground leases. These ground leases may impose limitations on our use of the properties, restrict our ability to finance, sell or otherwise transfer our interests or restrict the leasing of the properties. These restrictions may limit our ability to timely sell or exchange the properties, impair the properties' value or negatively impact our ability to operate the properties. In addition, we could lose our interests in the properties if the ground leases are breached by us, terminated or lapse. As we get closer to the lease termination dates, the values of the properties could decrease if we are unable to agree upon an extension of the lease with the lessor. Certain of these ground leases have payments subject to annual escalations and/or periodic fair market value adjustments which could adversely affect our financial condition or results of operations.

***Land we hold with no current intent to develop may be subject to future impairment charges.*** We own land parcels that we do not currently intend to develop. As discussed in Item 2. “Properties—Other Land and Real Estate Assets,” in the event that the fair market value, less the cost to dispose of a parcel, changes such that it is less than the carrying basis of the parcel, we would be subject to an impairment charge, which would reduce our net income.

***Our various technology-related initiatives to improve our operating margins and customer experience may fail to perform as expected.*** We have developed and may continue to develop initiatives that are intended to serve our customers better and operate more efficiently, including “smart home” technology and self-service options that are accessible to residents through smart devices or otherwise. Such initiatives have involved and may involve our employees having new or different responsibilities and processes. We may incur significant costs and divert resources in connection with such initiatives, and these initiatives may not perform as expected, which could adversely affect our business, results of operations, cash flows and financial condition.

#### **Risks related to liquidity and financing**

***Capital and credit market conditions may adversely affect our access to various sources of capital and/or the cost of capital, which could impact our business activities, dividends, earnings and common stock price, among other things.*** In periods when the capital and credit markets experience significant volatility, the amounts, sources and cost of capital available to us may be adversely affected. We use external financing as one source of capital to fund construction and to refinance indebtedness as it matures. If sufficient sources of external financing are not available to us on cost effective terms, we could be forced to limit our development and redevelopment activity and/or take other actions to fund our business activities and repayment of debt, such as selling assets, reducing our cash dividend or issuing equity or debt securities. If we are able and/or choose to access capital at a higher cost than we have experienced in recent years, our earnings per share and cash flows could be adversely affected. In addition, the price of our common stock may fluctuate significantly and/or decline in a high interest rate environment or a volatile economic environment, or if we dilute the interest of stockholders by issuing additional equity. We believe that the lenders under our Credit Facility and the dealers under our Commercial Paper Program will fulfill their lending obligations thereunder, but if economic conditions deteriorate, the ability of those lenders and/or dealers to fulfill their obligations may be adversely impacted.

***Insufficient cash flow could affect our debt financing and create refinancing risk.*** We are subject to the risks associated with debt financing, including the risk that our available cash will be insufficient to meet required payments of principal and interest on our debt. For us to continue to qualify as a REIT, we are required to annually distribute dividends generally equal to at least 90% of our REIT taxable income, which limits the amount of our cash flow available to meet required principal and interest payments. The principal outstanding balance on a portion of our debt will not be fully amortized prior to its maturity. We cannot assure you that we will have sufficient cash flows available to make all required principal payments. Therefore, we expect that we will generally need to refinance at least a portion of our outstanding debt as it matures. There is a risk that we may not be able to refinance existing debt or that a refinancing will not be done on as favorable terms; either of these outcomes could have a material adverse effect on our financial condition and results of operations.

***Rising interest rates could increase interest costs and could affect the market price of our common stock, and efforts to hedge such risk could be ineffective and cause us to incur additional costs.*** If interest rates increase, our interest costs on variable rate debt will rise unless we have hedged the risk of rising interest rates. In addition, an increase in market interest rates may lead purchasers of our common stock to demand a greater annual dividend yield, which could adversely affect the market price of our common stock.

We may use interest rate derivatives to manage our exposure to fluctuations in interest rates, such as by entering into interest rate contracts. For example, when we anticipate issuing debt securities, we may seek to limit our exposure to fluctuations in interest rates prior to debt issuance by entering into interest rate hedging contracts. Although these agreements may partially protect against rising interest rates, they also may reduce the benefits to us if interest rates decline. The interest rate derivatives we use, primarily to manage interest rate risk for our anticipated debt issuance activity, could result in a material charge to earnings if we do not issue the anticipated debt, or are otherwise unsuccessful in our hedging activities. In addition, our use of hedging arrangements may expose us to additional risks, including a risk that a counterparty to a hedging arrangement may default on the contract. There can be no assurance that our hedging activities will be effective reducing the risks associated with interest rate fluctuations.

***Bond financing and zoning and other compliance requirements could limit our income, restrict the use of communities and cause favorable financing to become unavailable.*** We have financed some of our apartment communities with obligations issued by local government agencies because the interest paid to the holders of this debt is generally exempt from federal income taxes, which typically provides a more favorable interest rate for us. These obligations are commonly referred to as “tax-exempt bonds” and generally must be secured by mortgages on our communities. As a condition to obtaining (i) tax-exempt financing, (ii) favorable zoning or (iii) an agreement relating to property taxes in some jurisdictions, we will commit to

make some of the apartments in a community available to households whose income does not exceed certain thresholds (e.g., 50% or 80% of area median income), or who meet other qualifying tests. As of December 31, 2022, 4.9% of our apartment homes at current operating communities were under income limitations such as these. These commitments, which may or may not expire, may limit our ability to raise rents, adversely affecting the value of communities subject to these restrictions. If we fail to observe these commitments, we could lose benefits (such as reduced property taxes) or face liabilities including liability for the benefits we received under tax exempt bonds, tax credits or agreements related to property taxes.

Our tax-exempt bonds may require us to obtain a guarantee from a financial institution of payment of the principal and interest on the bonds, such as a letter of credit, surety bond, guarantee agreement or other additional collateral. If the financial institution defaults in its guarantee obligations, or if we are unable to renew the applicable guarantee or otherwise post satisfactory collateral, a default will occur and the community could be foreclosed upon if we do not redeem the tax exempt bonds.

**Risks related to indebtedness.** We have a Credit Facility and Commercial Paper Program with a syndicate of commercial banks as well as secured and unsecured notes. Our organizational documents do not limit the amount or percentage of indebtedness that may be incurred. Accordingly, subject to compliance with outstanding debt covenants, we could incur more debt, resulting in an increased risk of default on our obligations and an increase in debt service requirements that could adversely affect our financial condition and results of operations.

The mortgages on properties that are subject to secured debt, our Credit Facility, Commercial Paper Program and the indentures under which a substantial portion of our debt was issued contain customary restrictions, requirements and other limitations, as well as certain financial and operating covenants including maintenance of certain financial ratios. Maintaining compliance with these restrictions could limit our flexibility. A default in these requirements, if uncured, could result in a requirement that we repay indebtedness, which could materially adversely affect our liquidity and increase our financing costs. Refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" for further discussion.

A substantial portion of our debt is subject to prepayment penalties or premiums that we will be obligated to pay in the event that we elect to prepay the debt prior to the earlier of (i) its stated maturity or (ii) another stated date. If we elect to prepay a significant amount of outstanding debt, our prepayment penalties or payments under these provisions could materially adversely affect our results of operations.

**Failure to maintain our current credit ratings could adversely affect our cost of funds, related margins, liquidity and access to capital markets.** There are two major debt rating agencies that routinely evaluate and rate our debt. Their ratings are based on a number of factors, which include their assessment of our financial strength, liquidity, capital structure, asset quality, amount of real estate under development, and sustainability of cash flow and earnings, among other factors. If market conditions change, we may not be able to maintain our current credit ratings, which could adversely affect our cost of funds and related margins, liquidity and access to capital markets.

**The form, timing and/or amount of dividend distributions in future periods may vary and be impacted by our revenue generation, other liquidity needs and economic and other considerations.** The form, timing and/or amount of dividend distributions will be declared at the discretion of the Board of Directors and will depend on our rental revenue, actual cash from operations, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and other factors as the Board of Directors may consider relevant. The Board of Directors may modify our dividend policy from time to time.

**We may experience barriers to selling apartment communities that could limit financial flexibility.** Difficulties in selling real estate at prices we find acceptable in a timely manner may limit our ability to quickly change or reduce the apartment communities in our portfolio in response to changes in economic, regulatory, or other conditions. Federal tax laws may also limit our ability to sell properties when desired. See "Risks related to our REIT or tax status" section for more information on federal tax law risks. In addition, the capitalization rates/disposition yields at which apartment communities may be sold could also be higher than historic rates, thereby reducing our potential proceeds from sale.

**Increased scrutiny and changing expectations from investors, tenants and others regarding our environmental, social and governance ("ESG") practices and reporting could impact the price of our securities and business practices, and could cause us to incur additional costs.** ESG evaluations, including ESG scores and ratings, are important to some investors and other stakeholders and may impact the price of our securities and business practices. Investors may focus on, and consider a company's ESG-related business practices, scores and reporting when choosing to allocate their capital in making investment decisions, including if they invest in our securities. In addition, the adoption of increased government regulations and changes in investor preference related to ESG and similar matters may result in changes to our business practices, including increasing expenses or capital expenditures.

**Risks related to ongoing operations of our communities**

***Laws, regulations and orders imposing rent control or rent stabilization, or limiting our rights as a landlord, could adversely affect our operations and revenue.*** A number of states and municipalities have implemented or are seeking to implement rent control or rent stabilization laws and regulations or take other actions that could limit or delay our ability to raise rents, charge non-rent fees and evict tenants for non-payment of rent or other lease violations. For example, the State of California has statewide rent control for communities older than fifteen years, limiting rent increases to the lesser of 10% or 5% plus local CPI, and the State of New York has rules for rent-controlled and rent-stabilized units that limit the way rent increases are calculated for renewal leases, basing increases solely on rent actually paid and eliminating the ability to increase the renewal rent to a higher “registered rent.” Furthermore, in California the Governor has the ability to enact local or statewide states of emergency which limit our ability to increase new and renewal rents more than 10% over the rent in place on the date such state of emergency was declared, which has impacted some of our California communities. We have seen an increase in state and local governments in our markets implementing, considering or being urged by various constituencies to consider regulations of the types described above. Additionally, in January 2023, the White House published a white paper entitled the *Blueprint for a Renters Bill of Rights* and announced accompanying efforts aimed at increasing fairness in the rental market. Current and future enactments of rent control or rent stabilization laws or other laws regulating rental housing may limit our ability to charge market rents, increase rents, evict tenants or recover increases in our operating expenses and could make it more difficult for us to dispose of properties in certain circumstances. Expenses associated with our investment in these communities, such as debt service, real estate taxes, insurance and maintenance costs, are generally not reduced when circumstances cause a reduction in rental income from the community.

***Noncompliance with applicable laws in the building and operation of our communities could adversely affect our operations or expose us to liability.*** We must develop, construct and operate our communities in compliance with federal, state and local laws and regulations, some of which may conflict with one another or be subject to limited judicial or regulatory interpretations. These laws and regulations may include zoning laws, building codes, landlord/tenant laws and other laws generally applicable to business operations. Noncompliance with laws could expose us to liability. Lower revenue growth or significant unanticipated expenditures may result from our need to comply with changes in (i) laws imposing remediation requirements or other conditions, or (ii) other governmental rules and regulations or enforcement policies affecting the development, use and operation of our communities, including changes to building codes and fire and life-safety codes.

***Short-term leases expose us to the effects of declining market rents.*** Substantially all of our apartment leases are for a term of one year or less. Because these leases generally permit the residents to leave at the end of the lease term without penalty, our rental revenues are impacted by declines in market rents more quickly than if our leases were for longer terms.

***Competition could limit our ability to lease apartment homes or increase or maintain rents.*** Our apartment communities compete with other apartment operators as well as rental housing alternatives, such as single-family homes for rent and short term furnished offerings such as those available from extended stay hotels or through online listing services. In addition, our residents and prospective residents also consider, as an alternative to renting, the purchase of a new or existing condominium or single-family home. Competitive residential housing could adversely affect our ability to lease apartment homes and to increase or maintain rental rates.

***Unfavorable changes in market and economic conditions could adversely affect occupancy, rental rates, operating expenses, and the overall market value of our real estate assets.*** Local conditions in our markets significantly affect occupancy, rental rates and the operating performance of our communities, and may be adversely affected by the following risks:

- corporate restructurings and/or layoffs, and industry slowdowns;
- an oversupply of, or a reduced demand for, apartment homes;
- a decline in household formation or employment or lack of employment growth;
- the inability or unwillingness of residents to pay rent increases; and
- economic conditions that could cause an increase in our operating expenses, such as increases in property taxes, utilities, compensation of on-site associates and routine maintenance.

***Risks related to a pandemic’s impact on multifamily rental housing.*** The national and global impacts of a pandemic, such as the COVID-19 pandemic, may present material uncertainty and risk with respect to our financial condition, results of operations and cash flows. Moreover, many of the risk factors set forth in this Form 10-K could be interpreted as heightened risks as a result of the impact of a pandemic. Impacts from a pandemic may include the following:

- State, local, and federal entities may impose restrictions, for varying times and to varying degrees, on our ability to enforce residents’ contractual lease obligations, and this may affect our ability to enforce all our remedies (such as pursuing collections and seeking evictions) for the failure to pay rent.



- Consumers whose income has declined, who are working remotely or who cannot freely access neighborhood amenities like restaurants, may decide to live in a location other than our markets. Demand from students and demand for corporate apartment homes may be negatively impacted by trends in remote learning and work, and the adoption of new online technologies.
- Various state, local and federal rules may require us, in some jurisdictions or for some properties, to waive late fees and certain other customary fees associated with our apartment rental business. These requirements or practices may result in foregone revenue.
- Our properties may incur significant costs or losses related to shelter-in-place or stay-at-home orders, quarantines, infection, clean-up costs or other related factors.
- There may be concerns related to the general economy about (i) supply chain constraints and (ii) inflation caused by both supply chain constraints and governmental fiscal and monetary policies. Supply chain constraints could cause delays in our construction and redevelopment activity, and inflation could cause our construction and operating costs to increase without a commensurate increase in our rental revenue.

Emergency orders shutting down non-essential businesses, limiting congregations of people, and requiring social distancing may at times disrupt our development and construction activity. To the extent we experience delays in construction, our construction costs may increase and we may not achieve, on the schedule we originally planned, the cash flows that we expect when we begin leasing a completed property. We may also delay the start of construction of additional development communities which, if constructed and leased as originally planned, would have been a source of future additional cash flow.

The same factors as described immediately above may also impact our workforce. A disruption in the normal operations of our workforce, as well as the possibility of illness among our associates or a substantial portion of our workforce, could also adversely affect our operations.

***Risks related to commercial leasing operations.*** Although we are primarily in the multifamily rental business, we also own and lease ancillary commercial space. Gross rental revenue provided by leased commercial space in our portfolio represented 1.7% of our total revenue in 2022. The long term nature of our commercial leases and characteristics of many of our tenants (small, local businesses) may subject us to certain risks. We may not be able to lease new space for rents that are consistent with our projections or at market rates. Also, when leases for our existing commercial space expire, the space may not be relet or the terms of reletting, including the cost of allowances and concessions to tenants, may be less favorable than the current lease terms. Our properties compete with other properties with commercial space. If our commercial tenants experience financial distress or bankruptcy, they may fail to comply with their contractual obligations, seek concessions in order to continue operations or cease their operations, which could adversely impact our results of operations and financial condition.

***Inflation and related volatility in the economy could negatively impact our residents and our results of operations.*** Inflation accelerated rapidly in 2022 and may continue at an elevated level. Inflation and its related impacts, including increased prices for services and goods and higher interest rates and wages, and any policy interventions by the U.S. government, could negatively impact our residents' ability to pay rents or our results of operations. Substantially all of our apartment leases are for a term of one year or less, which we believe mitigates our exposure to inflation, by permitting us to set rents commensurate with inflation (subject to rent regulations to the extent they apply and assuming our current or prospective residents will accept and can pay commensurate increased rents, of which there can be no assurance). Inflation could outpace any increases in rent and adversely affect us. We may not be able to mitigate the effects of inflation and related impacts, and the duration and extent of any prolonged periods of inflation, and any related adverse effects on our results of operations and financial condition, are unknown at this time. Inflation may also cause increased volatility in financial markets, which could affect our ability to access the capital markets or impact the cost or timing at which we are able to do so.

Inflation may also increase the costs to complete our development projects, including costs of materials, labor and services from third-party contractors and suppliers. Higher construction costs could adversely impact our investments in real estate assets and our expected yields on development projects.

#### **Risks related to our REIT or tax status or reliance on various tax regulations**

***Failure to qualify as a REIT would cause us to be taxed as a corporation, which would significantly reduce funds available for distribution to stockholders.*** If we fail to qualify as a REIT for federal income tax purposes, we will be subject to regular federal corporate income tax on our taxable income. In addition, unless we are entitled to relief under applicable statutory provisions, we would be ineligible to make an election for treatment as a REIT for the four taxable years following the year we lose our qualification. The additional tax liability resulting from the failure to qualify as a REIT would significantly reduce or eliminate the amount of funds available for distribution to our stockholders. Furthermore, we would no longer be required to

make distributions to our stockholders. Thus, our failure to qualify as a REIT could also impair our ability to expand our business and raise capital and would adversely affect the value of our common stock.

We believe that we are organized and qualified as a REIT, and we intend to operate in a manner that will allow us to continue to qualify as a REIT. However, we cannot assure you that we are qualified as a REIT, or that we will remain qualified in the future. This is because qualification as a REIT involves the application of highly technical and complex provisions of the Code for which there are only limited judicial and administrative interpretations and involves the determination of a variety of factual matters and circumstances not entirely within our control. Our qualification as a REIT depends on our satisfaction of certain asset, income, organizational, distribution, shareholder ownership and other requirements on a continuing basis. In addition, future legislation, new regulations, administrative interpretations or court decisions may significantly change the tax laws or the application of the tax laws with respect to qualification as a REIT for federal income tax purposes or the federal income tax consequences of this qualification. Additionally, our expanding range of investments (such as investments in mezzanine loans, preferred equity, and technology and environmentally focused venture funds and companies) may add additional REIT compliance challenges, some of which may involve determinations or circumstances that may be beyond our control.

Even if we qualify as a REIT, we will be subject to certain federal, state and local taxes on our income and property and on taxable income that we do not distribute to our stockholders. In addition, we hold certain assets and engage in certain activities through our taxable REIT subsidiaries that a REIT could not engage in directly. We also use taxable REIT subsidiaries to hold certain assets that we believe would be subject to the 100% prohibited transaction tax if sold at a gain outside of a taxable REIT subsidiary or to engage in activities that generate non-qualifying REIT income. Our taxable REIT subsidiaries are subject to federal income tax as regular corporations.

**Legislative or other actions affecting REITs could have a negative effect on us or our stockholders.** The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the Internal Revenue Service and the U.S. Department of the Treasury. Changes to the tax laws, with or without retroactive legislation, could adversely affect us or our stockholders. New legislation, Treasury Regulations, administrative interpretations or court decisions could significantly and negatively affect our ability to qualify as a REIT, the federal income tax consequences of such qualification, or the federal income tax consequences of an investment in our Company. Also, the law relating to the tax treatment of other entities, or an investment in other entities, could change, making an investment in such other entities more attractive relative to an investment in a REIT.

**Our ownership of taxable REIT subsidiaries is subject to certain restrictions, and it will be required to pay a 100% penalty tax on certain income or deductions if transactions with our TRSs are not conducted on arm's length terms.** We have established several TRSs. The TRSs must pay U.S. federal income tax on their taxable income as a regular C corporation. While we will attempt to ensure that our dealings with our TRSs do not adversely affect our REIT qualification, we cannot provide assurances that it will successfully achieve that result. Furthermore, we may be subject to a 100% penalty tax, to the extent dealings between us and our TRSs are not deemed to be arm's length in nature. We intend that our dealings with our TRSs will be on an arm's length basis. No assurances can be given, however, that the Internal Revenue Service will not assert a contrary position.

**Failure of one or more of our subsidiaries to qualify as a REIT could adversely affect our ability to qualify as a REIT.** We own interests in subsidiaries that have elected to be taxed as REITs under the Code. These subsidiary REITs are subject to the REIT qualification requirements and other limitations that are applicable to us. If any of our subsidiary REITs were to fail to qualify as a REIT, then (i) the subsidiary REIT would become subject to federal income tax, (ii) our ownership of shares in such subsidiary REIT would cease to be a qualifying asset for purposes of the asset tests applicable to REITs, and (iii) it is possible that we could also fail to qualify as a REIT.

**The tax imposed on REITs engaging in "prohibited transactions" may limit our ability to engage in transactions which would be treated as sales for federal income tax purposes.** We may transfer or otherwise dispose of some of our properties. Under the Code, unless certain exceptions apply, any gain resulting from transfers of properties that we hold as inventory or primarily for sale to customers in the ordinary course of business could be treated as income from a prohibited transaction subject to a 100% penalty tax from the gain on the sale of the community, which could potentially adversely impact our status as a REIT unless we own the community through a TRS. Since we acquire properties for investment purposes, we do not believe that our occasional transfers or disposals of property should be treated as prohibited transactions. However, whether property is held for investment purposes depends on the facts and circumstances surrounding the particular transaction. The IRS may contend that certain of our transfers or disposals of properties are prohibited transactions. If the IRS were to argue successfully that a transfer or disposition of property was a prohibited transaction, then we would be required to pay a 100% penalty tax on any gain allocable to it from the prohibited transaction, and our ability to retain proceeds from real property sales may be jeopardized.

***We may face risks in connection with Section 1031 exchanges.*** We may dispose of real properties in transactions intended to qualify as "like-kind exchanges" under Section 1031 of the Code. If a transaction intended to qualify as a Section 1031 exchange is later determined to be taxable, we may face adverse consequences, and if the laws applicable to such transactions are amended or repealed, we may not be able to dispose of real properties on a tax deferred basis.

***We may choose to pay dividends in our own stock, in which case stockholders may be required to pay tax in excess of the cash they receive.*** We may distribute taxable dividends that are payable in part in our stock. Taxable stockholders receiving such dividends will be required to include the full amount of the dividend as income to the extent of our current and accumulated earnings and profits for federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such dividends in excess of the cash dividend received. If a U.S. stockholder sells the stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. In addition, the trading price of our stock would experience downward pressure if a significant number of our stockholders sell shares of our stock in order to pay taxes owed on dividends.

#### **Risks that may not be insured in full or in part**

***We are exposed to risks that are either uninsurable, not economically insurable or in excess of our insurance coverage, including risks discussed below.*** Insurance coverage for various risks can be costly and in limited supply. As a result, we may experience shortages in desired coverage levels if market conditions are such that insurance is not available or the cost of insurance makes it, in our view, economically impractical. Incidents that directly or indirectly damage our communities, both physically and financially, or cause losses that exceed our insurance coverage could have a material adverse effect on our business, financial condition and results of operations including increased maintenance, repair, and delays in construction. In addition, we would also continue to be obligated to repay any mortgage indebtedness or other obligations related to the community which could have a material adverse effect on our business and our financial condition and results of operations. The following risks are uninsurable or insurance coverage is limited due to premium rates (See Item 2. "Properties—Insurance and Risk of Uninsured Losses"):

- ***Earthquake risk.*** As further described in Item 2. "Properties—Insurance and Risk of Uninsured Losses," many of our West Coast communities are located in the general vicinity of active earthquake faults. Insurance coverage for earthquakes can be costly and in limited supply.
- ***Climate and severe or inclement weather risk.*** Many of our markets, particularly those located in coastal cities, are exposed to risks associated with inclement or severe weather including those arising from climate change such as hurricanes, severe winter storms and coastal flooding.
- ***Terrorism and other risk.*** We have significant investments in metropolitan markets such as Metro New York/New Jersey and Washington, D.C., which have in the past been or may in the future be the target of actual or threatened terrorist attacks. We carry commercial general liability insurance, property insurance and terrorism insurance with respect to our communities on terms and in amounts we consider commercially reasonable. There are, however, certain types of losses (such as from acts of war) we do not insure, in full or in part, because they are either uninsurable or we believe the cost of insurance is economically impractical.

***We may incur costs related to climate change.*** We may experience climate change impacts including extreme weather and changes in precipitation, temperature and wildfire exposure, all of which may result in physical damage to or a decrease in demand for properties located in these areas or affected by these conditions. Should the impact of these conditions be material in nature or occur for lengthy periods of time, our financial condition or results of operations may be adversely affected, and may negatively impact the types and pricing of insurance we are able to procure. In addition, implementation of new or changes in existing federal, state and local regulations based on concerns about climate change could result in increased capital expenditures or operating expenses on our existing properties (for example, requiring retrofitting of existing systems) and our new development properties (for example, to improve energy efficiency, reduce greenhouse gas emissions and/or improve resistance to inclement weather) without a corresponding increase in revenue, resulting in adverse impacts to our results of operations.

***We may incur costs due to environmental contamination or non-compliance.*** Under various public health laws and regulations, we may be required, regardless of knowledge or responsibility, to investigate and remediate the presence or effects of hazardous or toxic substances such as asbestos, lead paint, chemical vapors from soils or groundwater, petroleum product releases, and natural substances such as methane and radon gas. We may be held liable under these laws or common law to a governmental entity or to third parties for property, personal injury or natural resources damages and for investigation and remediation costs incurred as a result of the contamination. These damages and costs may be substantial and may exceed any

insurance coverage we have for such events. The presence of these substances, or the failure to properly remediate or contain the contamination, may adversely affect our ability to borrow against, develop, sell or rent the affected property. In addition, some environmental laws create or allow a government agency to impose a lien on the contaminated site in favor of the government for damages and costs it incurs as a result of the contamination.

The development, construction and operation of our communities are subject to regulations and permitting under various federal, state and local laws, regulations and ordinances, which regulate matters including wetlands protection, storm water runoff and wastewater discharge. These laws and regulations may impose restrictions on the manner in which our communities may be developed, and noncompliance with these laws and regulations may subject us to fines and penalties and may subject us to liability in connection with personal injury.

Certain laws and regulations govern the removal, encapsulation or disturbance of asbestos containing materials (“ACMs”) when such materials are in poor condition or in the event of renovation or demolition of a building. These laws and the common law may impose liability for release of ACMs and may allow third parties to seek recovery from owners or operators of real properties for personal injury associated with exposure to ACMs. We are not aware that any ACMs were used in the construction of the communities we developed. ACMs were, however, used in the construction of a number of the communities that we have acquired. Although we implement an operations and maintenance program at each of the communities at which ACMs are detected, we may fail to adequately observe such program or a disturbance of ACMs may occur nevertheless, exposing us to liability. We are aware that some of our communities have lead paint and have implemented an operations and maintenance program at each of those communities.

All of our stabilized operating communities, and all of the communities that we are currently developing, have been subjected to at least a Phase I or similar environmental assessment, which generally does not involve invasive techniques such as soil or groundwater sampling. These assessments, together with subsurface assessments conducted on some properties, have not revealed, and we are not otherwise aware of, any environmental conditions that we believe would have a material adverse effect on our business, assets, financial condition or results of operations. In connection with our ownership, operation and development of communities, we may undertake substantial remedial action in response to the presence of subsurface or other contaminants, including contaminants in soil, groundwater and soil vapor beneath or affecting our buildings. In some cases, an indemnity exists upon which we may be able to rely if environmental liability arises from the contamination or remediation costs exceed estimates. There can be no assurance, however, that all necessary remediation actions have been or will be undertaken at our properties or that we will be indemnified, in full or at all, in the event that environmental liability arises.

Mold growth may occur when excessive moisture accumulates in buildings or on building materials, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Certain molds may lead to adverse health effects, including allergic or other reactions. We cannot provide assurance that mold or excessive moisture will be detected and remediated in a timely manner. If a significant mold problem arises at one of our communities, we could be required to undertake a costly remediation program to contain or remove the mold from the affected community and could be exposed to other liabilities that may exceed any applicable insurance coverage.

Additionally, we have occasionally been involved in developing, managing, leasing and operating various properties for third parties. Consequently, we may be considered to have been an operator of such properties and, therefore, potentially liable for removal or remediation costs or other potential costs which relate to the release or presence of hazardous or toxic substances or petroleum products at such properties.

We cannot assure you that:

- the environmental assessments described above have identified all potential environmental liabilities;
- no prior owner created any material environmental condition not known to us or the consultants who prepared the assessments;
- no environmental liabilities have developed since the environmental assessments were prepared;
- the condition of land or operations in the vicinity of our communities, such as the presence of underground storage tanks, will not affect the environmental condition of our communities;
- future uses or conditions, including, without limitation, changes in applicable environmental laws and regulations, will not result in the imposition of environmental liability; and
- no environmental liabilities will arise at communities that we have sold for which we may have liability.

### **General Risk Factors**

*The ability of our stockholders to control our policies and effect a change of control of our company is limited by certain provisions of our charter and bylaws and by Maryland law.* There are provisions in our charter and bylaws that may discourage a third party from making a proposal to acquire us. These provisions include the following:

Our charter authorizes our Board of Directors to issue up to 50,000,000 shares of preferred stock without stockholder approval and to establish the preferences and rights, including voting rights, of any series of preferred stock issued. This could allow the Board to issue one or more classes or series of preferred stock that could discourage or delay a tender offer or a change in control.

To maintain our qualification as a REIT for federal income tax purposes, not more than 50% in value of our outstanding stock may be owned, directly or indirectly, by or for five or fewer individuals at any time during the last half of any taxable year. To maintain this qualification, and/or to address other concerns about concentrations of ownership of our stock, our charter generally prohibits ownership (directly, indirectly by virtue of the attribution provisions of the Code, or beneficially as defined in Section 13 of the Securities Exchange Act of 1934) by any single stockholder of more than 9.8% of the issued and outstanding shares of any class or series of our stock. In general, under our charter, pension plans and mutual funds may directly and beneficially own up to 15% of the outstanding shares of any class or series of stock. Under our charter, our Board of Directors may in its sole discretion waive or modify the ownership limit for one or more persons, but it is not required to do so even if such waiver would not affect our qualification as a REIT. These ownership limits may prevent or delay a change in control and, as a result, could adversely affect our stockholders' ability to realize a premium for their shares of common stock.

As a Maryland corporation, we are subject to the provisions of the Maryland General Corporation Law which restricts some business combinations and requires compliance with statutory procedures before some mergers and acquisitions may occur, which may delay or prevent offers to acquire us even if they are in our stockholders' best interests. In addition, other provisions of the Maryland General Corporation Law permit the Board of Directors to make elections and to take actions without stockholder approval (such as classifying our Board such that the entire Board is not up for re-election annually) that, if made or taken, could have the effect of discouraging or delaying a change in control.

***Litigation could adversely affect our business.*** We are and may in the future become involved in legal proceedings, claims, actions, inquiries and/or investigations in connection with our operations, which may result in defense costs, settlements, fines and/or judgments against us, some of which are not, or cannot be, covered by insurance. For example, in late 2022 and early 2023, 14 purported class actions were filed against the Company, RealPage, Inc., (“RealPage”) and other defendants (the “RealPage Litigation”) alleging that RealPage and lessors of multifamily residential real estate conspired, principally in connection with the alleged use of RealPage revenue management systems, to artificially inflate the rental rates for multifamily residential real estate above competitive levels. The plaintiffs are seeking monetary damages and attorneys’ fees and costs and injunctive relief. We believe that the RealPage Litigation is without merit as it pertains to our Company, and plan to vigorously defend the lawsuits. While we do not currently believe the RealPage litigation will have a material impact on our financial condition or results of operations, we cannot predict the outcome of the lawsuits given the early stage. Legal proceedings and other claims, if decided adversely to or settled by us, and not covered by insurance, could result in liability material to our financial condition, results of operations or cash flows. Likewise, regardless of outcome, legal proceedings and other claims may result in substantial costs and expenses, affect the availability or cost of some of our insurance coverage and significantly divert the attention of our management. With respect to any legal proceeding or other claim, there can be no assurance that we will be able to prevail, or achieve a favorable settlement or outcome, or that our insurance and/or any contractual indemnities will be enough to cover all of our defense costs or any resulting liabilities.

***Changes in U.S. accounting standards may materially and adversely affect the reporting of our operations.*** We follow accounting principles generally accepted in the United States (“GAAP”). GAAP is established by the Financial Accounting Standards Board (“FASB”), an independent body whose standards are recognized by the SEC as authoritative for publicly held companies. The FASB and the SEC create and interpret accounting standards and may change the interpretation and application of these standards that govern the preparation of our financial statements. These changes could have a material impact on our reported consolidated results of operations and financial position.

***We rely on information technology in our operations, and any breach, interruption or security failure of that technology, or any non-compliance with applicable laws with respect to the use of that technology, could have a negative impact on our business, results of operations, financial condition and/or reputation.*** We rely on information technology, including the internet, to process, transmit and store electronic information, and to manage or support a variety of business processes, including financial transactions, personally identifiable information (“PII”), and tenant and lease data. Our business requires us and some of our vendors, to use and store PII and other sensitive information of our residents and employees. Privacy and information security laws and regulations for PII continue to evolve and may be inconsistent from one jurisdiction to another. Compliance with all such laws and regulations may increase our operating costs and adversely impact our ability to market our properties and services.

Information security risks have generally increased in recent years due to the rise in new technologies and the increased sophistication and activities of perpetrators of cyber attacks. Although our information technology is essential to the operation of our business and our ability to perform day-to-day operations, even the most well-protected information, networks, systems

and facilities remain potentially vulnerable because the techniques used in such attempted security breaches evolve and generally are not recognized until launched against a target, and in some cases are designed not to be detected and, in fact, may not be detected. Accordingly, we may be unable to implement adequate security barriers or other preventative measures, and thus it is impossible for us to entirely mitigate this risk.

There can be no assurance that we will be able to prevent unauthorized access to this PII or to our network or business systems in general. Any failure in or breach of our operational or information security systems, or those of our third party service providers, as a result of cyber attacks or information security breaches, could result in a wide range of potentially serious harm to our business operations and financial prospects, including (among others) disruption of our business and operations caused by an inability to access network systems or otherwise, disclosure or misuse of confidential or proprietary information (including PII of our residents and/or associates), damage to our reputation, and/or potentially significant legal and/or financial liabilities and penalties.

Various laws and regulations and interpretations thereof, as well as agreements with payment processors, require, or may require, us to comply with rules related to our websites for use by residents and prospective residents, including requirements related to accessibility of our websites to persons with disabilities and our handling and use of data we collect. We could face liabilities for failure to comply with these requirements. New statutes, such as the California Consumer Privacy Act (“CCPA”), and related regulations are evolving and may be subject to differing interpretations. We could incur costs to comply with stricter and more complex data privacy, data collection and information security laws and standards.

*Any material weaknesses identified in our internal control over financial reporting could have an impact on our Company.* Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate and report on our internal control over financial reporting. One or more material weaknesses in our internal control over financial reporting could result in misstatements of our results of operations and related restatements, a decline in the price/value of our securities, or otherwise materially adversely affect our business, reputation, results of operations, financial condition or liquidity.

*Our success depends on key personnel whose continued service is not guaranteed.* Our success depends in part on our ability to attract and retain the services of executive officers and other personnel. There is substantial competition for qualified personnel in the real estate industry, and the loss of our key personnel could adversely affect us.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

## ITEM 2. PROPERTIES

Our real estate investments consist primarily of current operating apartment communities ("Current Communities"), consolidated and unconsolidated communities in various stages of development ("Development" communities and "Unconsolidated Development" communities) and Development Rights (as defined below). Our Current Communities are further classified as Same Store communities, Other Stabilized communities, Redevelopment communities and Unconsolidated communities. While we generally establish the classification of communities on an annual basis, we update the classification of communities during the calendar year to the extent that our plans with regard to the disposition or redevelopment of a community change. The following is a description of each category:

Current Communities are categorized as Same Store, Other Stabilized, Redevelopment or Unconsolidated according to the following attributes:

- *Same Store* for the year ended December 31, 2022 is composed of consolidated communities where a comparison of operating results from the prior year to the current year is meaningful as these communities were owned and had stabilized occupancy as of the beginning of the respective prior year period. For the year ended December 31, 2022, Same Store communities are consolidated for financial reporting purposes, had stabilized occupancy as of January 1, 2021, are not conducting or are not probable to conduct substantial redevelopment activities and are not held for sale or probable for disposition to unrelated third parties within the current year. A community is considered to have stabilized occupancy at the earlier of (i) attainment of 90% physical occupancy or (ii) the one-year anniversary of completion of development or redevelopment.
- *Other Stabilized* is composed of completed consolidated communities that we own and that are not Same Store but which have stabilized occupancy, as defined above, as of January 1, 2022, or which were acquired subsequent to January 1, 2021. Other Stabilized includes stabilized wholly-owned communities in Charlotte, North Carolina and Dallas, Texas, the two new expansion markets we entered in 2021, but excludes communities that are conducting or are probable to conduct substantial redevelopment activities within the current year, as defined below.
- *Redevelopment* is composed of consolidated communities where substantial redevelopment is in progress or is probable to begin during the current year. Redevelopment is considered substantial when (i) capital invested is expected to exceed the lesser of \$5,000,000 or 10% of the community's pre-redevelopment basis and (ii) physical occupancy is below or is expected to be below 90% during, or as a result of, the redevelopment activity.
- *Unconsolidated* is composed of communities that we have an indirect ownership interest in through our investment interest in an unconsolidated joint venture.

Development is composed of consolidated communities that are either currently under construction, were under construction and were completed during the current year or where construction has been complete for less than one year and that do not have stabilized occupancy. These communities may be partially or fully complete and operating.

Unconsolidated Development is composed of communities that are either currently under construction, or were under construction and were completed during the current year, in which we have an indirect ownership interest through our investment interest in an unconsolidated joint venture. These communities may be partially or fully complete and operating.

Development Rights are development opportunities in the early phase of the development process where we either have an option to acquire land or enter into a leasehold interest, where we are the buyer under a long-term conditional contract to purchase land, where we control the land through a ground lease or own land to develop a new community, or where we are the designated developer in a public-private partnership. We capitalize related pre-development costs incurred in pursuit of new developments for which we currently believe future development is probable.

We currently lease our corporate headquarters located in Arlington, Virginia, as well as our other regional and administrative offices, under operating leases.

As of December 31, 2022, communities that we owned or held a direct or indirect interest in were classified as follows:

	Number of communities	Number of apartment homes
<b>Current Communities</b>		
<b>Same Store:</b>		
New England	37	9,618
Metro NY/NJ	39	11,641
Mid-Atlantic	37	12,577
Southeast Florida	4	1,214
Denver, CO	4	1,086
Pacific Northwest	18	4,807
Northern California	40	12,128
Southern California	56	16,422
Total Same Store	235	69,493
<b>Other Stabilized:</b>		
New England	3	253
Metro NY/NJ	3	1,354
Mid-Atlantic	4	1,337
North Carolina	4	760
Southeast Florida	4	1,623
Texas	2	621
Denver, CO	1	207
Pacific Northwest	2	667
Northern California	1	200
Southern California	2	849
Total Other Stabilized	26	7,871
Redevelopment	1	714
Unconsolidated	8	2,247
<b>Total Current</b>	<b>270</b>	<b>80,325</b>
<b>Development</b>	<b>23</b>	<b>7,675</b>
Unconsolidated Development	1	475
<b>Total Communities</b>	<b>294</b>	<b>88,475</b>
Development Rights	39	13,312

Our holdings under each of the above categories are discussed on the following pages.



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We generally establish the composition of our Same Store communities portfolio annually. Changes in the Same Store communities portfolios for the years ended December 31, 2022, 2021 and 2020 were as follows:

	Number of communities
Same Store communities as of December 31, 2019	210
Communities added	32
Communities removed (1)	
Redevelopment communities	(1)
Disposed communities	(9)
Same Store communities as of December 31, 2020	232
Communities added	15
Communities removed (1)	
Redevelopment communities	—
Disposed communities	(9)
Other Stabilized	(1)
Same Store communities as of December 31, 2021	237
Communities added	8
Communities removed (1)	
Redevelopment communities	(1)
Disposed communities	(9)
Same Store communities as of December 31, 2022	235

(1) We remove a community from our Same Store portfolio if we believe that planned activity for the upcoming year will result in that community's expected operations not being comparable to the prior year, including (i) when we intend to undertake a significant capital renovation, such that the community will be classified as a Redevelopment community; (ii) when we intend to dispose of a community; or (iii) when a significant casualty loss occurs.

#### Current Communities

Our Current Communities include garden-style apartment communities consisting of multi-story buildings of stacked flats and/or townhome apartments in landscaped settings, as well as mid and high rise apartment communities consisting of larger elevator-served buildings of four or more stories, frequently with structured parking. As of January 31, 2023, our Current Communities consisted of the following:

	Number of communities	Number of apartment homes
Garden-style	128	39,909
Mid-rise	119	34,060
High-rise	28	8,442
Total Current Communities	275	82,411

As discussed in Item 1. "Business," we operate under four core brands: *Avalon*, *AVA*, *eaves by Avalon* and *Kanso*. We believe that this branding differentiation allows us to target our product offerings to multiple customer groups and submarkets within our existing geographic footprint.

We also have an extensive and ongoing maintenance program to continually maintain and enhance our communities and apartment homes. The aesthetic appeal of our communities, and a service-oriented property management team that is focused on the specific needs of residents, enhances market appeal. We believe our mission of "Creating a Better Way to Live" helps us achieve higher rental rates and occupancy levels while minimizing resident turnover and operating expenses.

Our Current Communities are located in the following geographic markets:

	Number of communities at		Number of apartment homes at		Percentage of total apartment homes at	
	1/31/2022	1/31/2023	1/31/2022	1/31/2023	1/31/2022	1/31/2023
<b>New England</b>	<b>43</b>	<b>41</b>	<b>10,552</b>	<b>10,221</b>	<b>12.9 %</b>	<b>12.4 %</b>
<b>Metro NY/NJ</b>	<b>52</b>	<b>47</b>	<b>15,261</b>	<b>14,296</b>	<b>18.6 %</b>	<b>17.4 %</b>
New York City, NY	14	14	5,089	5,089	6.2 %	6.2 %
New York Suburban	16	12	4,577	3,792	5.6 %	4.6 %
New Jersey	22	21	5,595	5,415	6.8 %	6.6 %
<b>Mid-Atlantic</b>	<b>46</b>	<b>45</b>	<b>15,924</b>	<b>15,770</b>	<b>19.5 %</b>	<b>19.2 %</b>
Washington Metro	40	39	13,962	13,808	17.1 %	16.8 %
Baltimore, MD	6	6	1,962	1,962	2.4 %	2.4 %
<b>North Carolina</b>	<b>3</b>	<b>4</b>	<b>500</b>	<b>760</b>	<b>0.6 %</b>	<b>0.9 %</b>
<b>Southeast Florida</b>	<b>7</b>	<b>8</b>	<b>2,187</b>	<b>2,837</b>	<b>2.7 %</b>	<b>3.4 %</b>
<b>Texas</b>	<b>1</b>	<b>2</b>	<b>425</b>	<b>621</b>	<b>0.5 %</b>	<b>0.8 %</b>
<b>Denver, Colorado</b>	<b>4</b>	<b>6</b>	<b>1,086</b>	<b>1,539</b>	<b>1.3 %</b>	<b>1.9 %</b>
<b>Pacific Northwest</b>	<b>20</b>	<b>21</b>	<b>5,474</b>	<b>5,802</b>	<b>6.7 %</b>	<b>7.0 %</b>
<b>Northern California</b>	<b>42</b>	<b>42</b>	<b>12,633</b>	<b>12,641</b>	<b>15.5 %</b>	<b>15.3 %</b>
San Jose, CA	12	12	4,717	4,723	5.8 %	5.7 %
Oakland-East Bay, CA	15	15	4,336	4,338	5.3 %	5.3 %
San Francisco, CA	15	15	3,580	3,580	4.4 %	4.3 %
<b>Southern California</b>	<b>60</b>	<b>59</b>	<b>17,761</b>	<b>17,924</b>	<b>21.7 %</b>	<b>21.7 %</b>
Los Angeles, CA	41	39	12,624	12,133	15.4 %	14.7 %
Orange County, CA	12	13	3,370	4,024	4.1 %	4.9 %
San Diego, CA	7	7	1,767	1,767	2.2 %	2.1 %
	<u>278</u>	<u>275</u>	<u>81,803</u>	<u>82,411</u>	<u>100.0 %</u>	<u>100.0 %</u>

We manage and operate substantially all of our Current Communities. During the year ended December 31, 2022, we completed construction of five communities containing 1,858 apartment homes and sold 12 operating communities containing 2,733 apartment homes.

Of the Current Communities, as of January 31, 2023, we owned (directly or through wholly-owned subsidiaries):

- 265 operating communities, including 258 with a full fee simple, or absolute, ownership interest and seven that are on land subject to a land lease. The land leases have various expiration dates from July 2046 to April 2106, and three of the land leases are used to support tax advantaged structures that ultimately allow us to purchase the land upon lease expiration.

- A membership interest in five limited liability companies. One of the ventures, the NYTA MF Investors LLC, through subsidiaries owns a fee simple interest in three operating communities and a leasehold interest in two additional operating communities. The other four ventures that each hold a fee simple interest in an operating community, one of which is consolidated for financial reporting purposes.
- A general partnership interest in one partnership structured as a “DownREIT,” which is consolidated and owns one community. At January 31, 2023, there were 7,500 DownREIT partnership units outstanding. The limited partnership interests have the right to present all or some of their units for redemption for a cash amount based on the fair value of our common stock or we may elect to acquire any unit presented for redemption for one share of our common stock.

In addition to our Current Communities, we also hold, directly or through wholly-owned subsidiaries, a full fee simple ownership interest in our wholly-owned Development Communities and a membership interest in one limited liability company that holds a fee simple interest in an Unconsolidated Development Community.

#### Development Communities

As of December 31, 2022, we owned or held a direct interest in 17 Development Communities under construction. We expect these Development Communities, when completed, to add a total of 5,417 apartment homes and 56,000 square feet of commercial space to our portfolio for a total capitalized cost, including land acquisition costs, of approximately \$2,259,000,000. We cannot assure you that we will meet our schedule for construction completion or that we will meet our budgeted costs, either individually, or in the aggregate. You should carefully review Item 1A. “Risk Factors” for a discussion of the risks associated with development activity and our discussion under Item 7. “Management's Discussion and Analysis of Financial Condition and Results of Operations” (including the factors identified under “Forward-Looking Statements”) for further discussion of development activity.

The following table presents a summary of the Development Communities.

		Number of apartment homes	Projected total capitalized cost (1) (\$ millions)	Construction start	Initial projected or actual occupancy	Estimated completion	Estimated stabilized operations (2)
1.	Avalon Harrison (3) <i>Harrison, NY</i>	143	\$ 94	Q4 2018	Q3 2021	Q2 2023	Q3 2023
2.	Avalon Somerville Station <i>Somerville, NJ</i>	374	122	Q4 2020	Q2 2022	Q3 2023	Q1 2024
3.	Avalon North Andover (4) <i>North Andover, MA</i>	221	78	Q2 2021	Q4 2022	Q3 2023	Q4 2023
4.	Avalon Brighton <i>Boston, MA</i>	180	89	Q2 2021	Q1 2023	Q2 2023	Q4 2023
5.	Avalon Merrick Park <i>Miami, FL</i>	254	101	Q2 2021	Q1 2023	Q2 2023	Q1 2024
6.	Avalon Amityville I <i>Amityville, NY</i>	338	135	Q2 2021	Q4 2023	Q2 2024	Q4 2024
7.	Avalon Bothell Commons I <i>Bothell, WA</i>	467	236	Q2 2021	Q3 2023	Q3 2024	Q2 2025
8.	Avalon Westminster Promenade <i>Westminster, CO</i>	312	110	Q3 2021	Q1 2024	Q2 2024	Q1 2025
9.	Avalon West Dublin <i>Dublin, CA</i>	499	270	Q3 2021	Q4 2023	Q1 2025	Q2 2025
10.	Avalon Princeton Circle <i>Princeton, NJ</i>	221	88	Q4 2021	Q2 2023	Q1 2024	Q3 2024
11.	Avalon Montville <i>Montville, NJ</i>	349	127	Q4 2021	Q4 2023	Q3 2024	Q4 2024
12.	Avalon Redmond Campus (5) <i>Redmond, WA</i>	214	80	Q4 2021	Q3 2023	Q1 2024	Q3 2024
13.	Avalon Governor's Park <i>Denver, CO</i>	304	135	Q1 2022	Q2 2024	Q3 2024	Q2 2025
14.	Avalon West Windsor (3) <i>West Windsor, NJ</i>	535	201	Q2 2022	Q3 2024	Q4 2025	Q2 2026
15.	Avalon Durham <i>Durham, NC</i>	336	125	Q2 2022	Q2 2024	Q3 2024	Q2 2025
16.	Avalon Annapolis <i>Annapolis, MD</i>	508	202	Q3 2022	Q3 2024	Q3 2025	Q2 2026
17.	Kanso Milford <i>Milford, MA</i>	162	66	Q4 2022	Q1 2024	Q3 2024	Q1 2025
	<b>Total</b>	<u>5,417</u>	<u>\$ 2,259</u>				

- (1) Projected total capitalized cost includes all capitalized costs projected to be or actually incurred to develop the respective Development Community, determined in accordance with GAAP, including land acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees, as well as costs incurred for first generation commercial tenants such as tenant improvements and leasing commissions.
- (2) Stabilized operations is defined as the earlier of (i) attainment of 90% or greater physical occupancy or (ii) the one-year anniversary of completion of development.
- (3) Development Communities containing at least 10,000 square feet of commercial space include Avalon Harrison (27,000 square feet) and Avalon West Windsor (19,000 square feet).
- (4) During the year ended December 31, 2022, we expanded our existing Development Community, Avalon North Andover, adding 51 apartment homes at an incremental projected total capitalized cost of \$22,000.
- (5) Avalon Redmond Campus is a densification of the existing eaves Redmond Campus wholly-owned community, replacing 48 existing older apartment homes that were demolished.

During the year ended December 31, 2022, we completed the development of the following wholly-owned communities:

		Number of apartment homes	Total capitalized cost (1) (\$ millions)	Approximate rentable area (sq. ft.)	Total capitalized cost per sq. ft.	Quarter of completion
1.	Avalon Foundry Row Owings Mills, MD	437	\$ 98	364,310	\$ 269	Q1 2022
2.	Avalon Woburn Woburn, MA	350	120	329,792	\$ 364	Q1 2022
3.	Avalon Brea Place Brea, CA	653	293	557,454	\$ 526	Q2 2022
4.	AVA RiNo Denver, CO	246	87	187,733	\$ 463	Q2 2022
5.	Avalon Harbor Isle Island Park, NY	172	94	227,070	\$ 414	Q4 2022
	<b>Total</b>	<b>1,858</b>	<b>\$ 692</b>			

(1) Total capitalized cost is as of December 31, 2022. We generally anticipate incurring additional costs associated with these communities that are customary for new developments.

### Unconsolidated Development Communities

As of December 31, 2022, we had an indirect interest in the following Unconsolidated Development Communities.

Unconsolidated Development Community	Company ownership percentage	# of apartment homes	Projected total capitalized cost (1) (\$ millions)	Construction start	Initial projected or actual occupancy	Estimated completion
1. AVA Arts District (2)(3) Los Angeles, CA	25.0 %	475	\$ 276	Q3 2020	Q3 2023	Q4 2023

(1) Projected total capitalized cost includes all capitalized costs projected to be incurred to develop the respective Unconsolidated Development Community, determined in accordance with GAAP, including land acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees and other regulatory fees, as well as costs incurred for first generation commercial tenants such as tenant improvements and leasing commissions. Projected total capitalized cost is the total projected joint venture amount.

(2) AVA Arts District is expected to contain 56,000 square feet of commercial space.

(3) As of December 31, 2022, we have contributed our equity investment in AVA Arts District of \$28,660. The remaining development costs, representing 60% of the total project cost, are expected to be funded by the venture's variable rate construction loan. The venture has drawn \$86,664 of the \$167,147 maximum borrowing capacity of the construction loan as of December 31, 2022. While we guarantee the construction loan on behalf of the venture, any amounts under the guarantee are obligations of the venture partners in proportion to ownership interest.

### Unconsolidated Operating Communities

As of December 31, 2022, we had investments in the following unconsolidated real estate entities accounted for under the equity method of accounting, excluding development joint ventures. See Note 5, "Investments," of the Consolidated Financial Statements included elsewhere in this report, which includes information on the aggregate assets, liabilities and equity, as well as operating results, and our proportionate share of their operating results. For joint ventures holding operating apartment communities as of December 31, 2022, detail of the real estate and associated indebtedness underlying our unconsolidated investments is presented in the following table (dollars in thousands).

Unconsolidated Real Estate Investments	Company Ownership Percentage	# of Apartment Homes	Total Capitalized Cost	Debt (1)			
				Principal Amount	Type	Interest Rate	Maturity Date
<b>NYTA MF Investors LLC</b>							
1. Avalon Bowery Place I—New York, NY		206	\$ 214,411	\$ 93,800	Fixed	4.01 %	Jan 2029
2. Avalon Bowery Place II—New York, NY		90	91,236	39,639	Fixed	4.01 %	Jan 2029
3. Avalon Morningside—New York, NY (2)		295	211,471	111,750	Fixed	3.55 %	Jan 2029/May 2046
4. Avalon West Chelsea—New York, NY (3)		305	128,851	66,000	Fixed	4.01 %	Jan 2029
5. AVA High Line—New York, NY (3)		405	122,181	84,000	Fixed	4.01 %	Jan 2029
<b>Total NYTA MF Investors LLC</b>	<b>20.0 %</b>	<b>1,301</b>	<b>768,150</b>	<b>395,189</b>		<b>3.88 %</b>	
<b>Other Operating Joint Ventures</b>							
1. MVP I, LLC - Avalon at Mission Bay II - San Francisco, CA	25.0 %	313	129,305	103,000	Fixed	3.24 %	Jul 2025
2. Brandywine Apartments of Maryland, LLC - Brandywine - Washington, D.C.	28.7 %	305	19,383	19,731	Fixed	3.40 %	Jun 2028
3. Avalon Alderwood MF Member, LLC - Avalon Alderwood Place - Lynnwood, WA (4)	50.0 %	328	108,682	—	N/A	N/A	N/A
<b>Total Other Joint Ventures</b>		<b>946</b>	<b>257,370</b>	<b>122,731</b>		<b>3.27 %</b>	
<b>Total Unconsolidated Investments (5)</b>		<b>2,247</b>	<b>\$ 1,025,520</b>	<b>\$ 517,920</b>		<b>3.73 %</b>	

- (1) We have not guaranteed the debt of these unconsolidated investees and bear no responsibility for the repayment unless otherwise disclosed.
- (2) Borrowing on this community is comprised of two mortgage loans. The interest rate is the weighted average interest rate as of December 31, 2022.
- (3) Borrowing on this dual-branded community is comprised of a single mortgage loan. This dual-branded community is subject to a leasehold interest which is not included in the total capitalized cost.
- (4) Development of this community, which contains 284,000 square feet of rentable space, was completed during the year ended December 31, 2022.
- (5) In addition to leasehold assets, there are net other assets of \$49,848 as of December 31, 2022 associated with these unconsolidated real estate investments which are primarily cash and cash equivalents.

During 2022, the Archstone Multifamily Partners AC LP (the "U.S. Fund") sold its final three communities containing 671 apartment homes for a sales price of \$313,500,000. Our share of the gain in accordance with GAAP was \$38,144,000. The U.S. Fund repaid the \$115,213,000 of outstanding secured indebtedness at par in advance of the scheduled maturity dates. We have an equity interest of 28.6% in the U.S. Fund and during the year ended December 31, 2022 in conjunction with the final dispositions, achieved a threshold return, resulting in an incentive distribution for our promoted interest based on the returns earned by the U.S. Fund. During the year ended December 31, 2022, we recognized income of \$4,690,000 for our promoted interest included in income from investments in unconsolidated entities on the accompanying Consolidated Statements of Comprehensive Income.

Development Rights

At December 31, 2022, we had \$179,204,000 in acquisition and related capitalized costs for direct interests in eight land parcels we own. In addition, we had \$58,489,000 in capitalized costs (including legal fees, design fees and related overhead costs) related to (i) 27 Development Rights for which we control the land parcel, typically through a conditional agreement or option to purchase or lease the land, as well as (ii) costs incurred for four Development Rights that we expect to construct as additional phases of our existing stabilized operating communities on land we own. Collectively, the land held for development and associated costs for deferred development rights relate to 39 Development Rights for which we expect to develop new apartment communities in the future. The Development Rights range from those beginning design and architectural planning to those that have completed site plans and drawings and can begin construction almost immediately. We estimate that the successful completion of all of these communities would ultimately add approximately 13,312 apartment homes to our portfolio. Substantially all of these apartment homes will offer features like those offered by the communities we currently own.

The Development Rights are in different stages of the due diligence and regulatory approval process. The decisions as to which of the Development Rights to invest in, if any, or to continue to pursue once an investment in a Development Right is made, are business judgments that we make after we perform financial, demographic and other analyses. In the event that we do not proceed with a Development Right, we generally would not recover any of the capitalized costs incurred in the pursuit of those communities, unless we were to recover amounts in connection with the sale of land; however, we cannot guarantee a recovery. Pre-development costs incurred in the pursuit of Development Rights, for which future development is not yet considered probable, are expensed as incurred. In addition, if the status of a Development Right changes, making future development no longer probable, any unrecoverable capitalized pre-development costs are charged to expense. During 2022, we incurred a charge of \$16,565,000 for expensed transaction, development and other pursuit costs, net of recoveries, which include development pursuits that were not yet probable of future development at the time incurred, or for pursuits that we determined were no longer probable of being developed. This amount includes charges of \$10,073,000 primarily related to development opportunities in the Pacific Northwest and Southern California that we determined are no longer probable.

You should carefully review Item 1A. “Risk Factors,” for a discussion of the risks associated with Development Rights.

Land Acquisitions

We select land for development and follow established procedures that we believe minimize both the cost and the risks of development. During 2022, we acquired the following land parcels for an aggregate investment of \$137,885,000.

		Estimated number of apartment homes	Projected total capitalized cost (1) (\$ millions)	Date acquired
1.	Avalon Northtown (2) <i>Austin, TX</i>	1,427	\$ 429	March 2022
2.	Avalon Durham (3) <i>Durham, NC</i>	336	125	March 2022
3.	Avalon Pleasanton <i>Pleasanton, CA</i>	305	191	June 2022
4.	Avalon Annapolis (3)(4) <i>Annapolis, MD</i>	508	202	September 2022
5.	Avalon Lake Norman <i> Mooresville, NC</i>	345	104	October 2022
6.	Kanso Milford (3) <i>Milford, MA</i>	162	66	November 2022
	Total	<u>3,083</u>	<u>\$ 1,117</u>	

(1) Projected total capitalized cost includes all capitalized costs incurred to date (if any) and projected to be incurred to develop the respective community, determined in accordance with GAAP, including land and related acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees, as well as costs incurred for first generation commercial tenants such as tenant improvements and leasing commissions, net of projected proceeds for any planned sales of associated outparcels and other real estate.

(2) Land purchased for the expected development of three adjacent operating communities.

(3) Construction on this land parcel commenced during 2022.

(4) Additional parcel of land acquired in 2022 for a current Development Community. The estimated number of apartment homes and projected total capitalized cost represent the amounts for the full Development Community.

#### Disposition Activity

We sell assets when they do not meet our long-term investment strategy or when real estate markets allow us to realize a portion of the value created over our periods of ownership, and we generally redeploy the proceeds from those sales to develop, redevelop and acquire communities. Pending such redeployment, we will generally use the proceeds from the sale of these communities to reduce amounts outstanding under our Credit Facility or Commercial Paper Program or retain the cash proceeds on our balance sheet until it is redeployed into acquisition, development or redevelopment activity. On occasion, we will set aside the proceeds from the sale of communities into a cash escrow account to facilitate a tax-deferred, like-kind exchange transaction. From January 1, 2022 to January 31, 2023, we sold our interest in nine wholly-owned communities, containing 2,062 apartment homes, with an aggregate gross sales price of \$924,450,000.

#### Insurance and Risk of Uninsured Losses

We maintain commercial general liability insurance and property insurance with respect to all of our communities, with insurance policies issued by a combination of third party insurers as well as a wholly-owned captive insurance company. These policies, along with other insurance policies we maintain, have policy specifications, insured and self-insured limits, exclusions and deductibles that we consider commercially reasonable. We utilize a wholly-owned captive insurance company to insure certain types and amounts of risks, which include property damage and resulting business interruption losses, general liability insurance and other construction related liability risks. The captive is utilized to insure other limited levels of risk, which may be in part reinsured by third party insurance. There are, however, certain types of losses (including, but not limited to, losses arising from nuclear liability, pandemic or acts of war) that are not insured, in full or in part, because they are either uninsurable or the cost of insurance makes it, in management's view, economically impractical. You should carefully review the discussion under Part I, Item 1A. "Risk Factors" of this Form 10-K for a discussion of risks associated with an uninsured property or casualty loss.

Our communities are insured for certain property damage and business interruption losses through a combination of community specific insurance policies and/or a master property insurance program which covers the majority of our communities. This master property program provides a \$400,000,000 limit for any single occurrence and annually in the aggregate, subject to certain sub-limits and exclusions. Under the master property program, we are subject to various deductibles per occurrence, as well as additional self-insured retentions. In addition to our potential liability for the various policy self-insured retentions and deductibles, our captive insurance company is directly responsible for 100% of the first \$25,000,000 of losses (per occurrence) and 10% of the second \$25,000,000 of losses (per occurrence) incurred by the master property insurance policy. Our master property insurance program includes coverage for losses resulting from customary perils, including but not limited to wildfires and windstorms. Limits, deductibles, self-insured retentions and coverages may increase or decrease annually during the insurance renewal process, which occurs on different dates throughout the calendar year.

Many of our West Coast communities are located within the general vicinity of active earthquake faults. Many of our communities are near, and thus susceptible to, the major fault lines in California, including the San Andreas Fault, the Hayward Fault or other geological faults that are known or unknown. We cannot assure you that an earthquake would not cause damage or losses greater than our current insured levels. We procure property damage and resulting business interruption insurance coverage with a loss limit of \$175,000,000 for any single occurrence and in the annual aggregate for losses resulting from earthquakes, subject to deductibles and self-insured retentions. However, for any losses resulting from earthquakes at communities located in California or Washington, the loss limit is \$200,000,000 for any single occurrence and in the annual aggregate, subject to deductibles and self-insured retentions.

Our Southeast Florida communities could be impacted by significant storm events like hurricanes. We include coverage for losses arising from these types of weather events within our master property insurance program. We cannot assure you that a significant storm event would not cause damage or losses greater than our current insured levels.

Our communities and construction sites are insured for third-party liability losses through a combination of community specific insurance policies and/or coverage provided under a master commercial general liability and umbrella/excess insurance program. The master commercial general liability and umbrella/excess insurance policies cover the majority of our communities and construction sites and are subject to certain coverage limitations and exclusions, which we believe are commercially reasonable. After applicable self-insured retentions borne by us, our captive insurance company is directly responsible for the first \$2,000,000 of losses (per occurrence) covered by the master general liability insurance policy.



Just as with office buildings, transportation systems and government buildings, apartment communities could become targets of terrorism. Our communities are insured for terrorism related losses through the Terrorism Risk Insurance Program Reauthorization Act (“TRIPRA”) program. This coverage extends to most of our casualty exposures (subject to deductibles and insured limits) and certain property insurance policies. We have also purchased private-market insurance for property damage due to terrorism with limits of \$600,000,000 per occurrence and in the annual aggregate that includes certain coverages (not covered under TRIPRA) such as domestic-based terrorism. This insurance, often referred to as “non-certified” terrorism insurance, is subject to deductibles, limits and exclusions.

An additional consideration for insurance coverage and potential uninsured losses is mold growth or other environmental contamination. Mold growth may occur when excessive moisture accumulates in buildings or on building materials, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. If a significant mold problem arises at one of our communities, we could be required to undertake a costly remediation program to contain or remove the mold from the affected community and could be exposed to other liabilities. For further discussion of the risks and our related prevention and remediation activities, please refer to the discussion under Part I, Item 1A. “Risk Factors - We may incur costs due to environmental contamination or non-compliance” elsewhere in this report. We cannot provide assurance that we will have coverage under our existing policies for property damage or liability to third parties arising as a result of exposure to mold or a claim of exposure to mold at one of our communities.

We also maintain other insurance programs that provide coverage for events including but not limited to employee dishonesty, loss of data, and liability associated with management of certain employee benefit plans. These policies are subject to maximum loss limits and include coverage limitations or exclusion that may preclude us from fully recovering.

The amount or types of insurance we maintain may not be sufficient to cover all losses and we may change our policy limits, coverages, and self-insured retentions or deductibles at any time.

**ITEM 3. LEGAL PROCEEDINGS**

The Company is involved in various legal proceedings that arise in the ordinary course of its business. While the resolutions of these matters cannot be predicted with certainty, the Company does not currently believe that any of these outstanding litigation matters, either individually or in the aggregate, will have a material adverse effect on its financial condition or results of operations.

**ITEM 4. MINE SAFETY DISCLOSURES**

Not Applicable.

**PART II****ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

Our common stock is traded on the NYSE under the ticker symbol AVB. On January 31, 2023 there were 687 holders of record of an aggregate of 139,920,107 shares of our outstanding common stock. The number of holders does not include individuals or entities who beneficially own shares but whose shares are held of record by a broker or clearing agency, but does include each such broker or clearing agency as one record holder.

At present, we expect to continue our policy of paying regular quarterly cash dividends. However, the form, timing and/or amount of dividend distributions will be declared at the discretion of the Board of Directors and will depend on actual cash from operations, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Code and other factors as the Board of Directors may consider relevant. The Board of Directors may modify our dividend policy from time to time.

In February 2023, we announced that our Board of Directors declared a dividend on our common stock for the first quarter of 2023 of \$1.65 per share, a 3.8% increase over the Company's prior quarterly dividend of \$1.59 per share. The dividend will be payable on April 17, 2023 to all common stockholders of record as of March 31, 2023.

*Issuer Purchases of Equity Securities*

Period	(a) Total Number of Shares Purchased (1)	(b) Average Price Paid Per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet be Purchased Under the Plans or Programs (in thousands) (2)
October 1 - October 31, 2022	428	\$ 184.19	—	\$ 316,148
November 1 - November 30, 2022	—	\$ —	—	\$ 316,148
December 1 - December 31, 2022	223	\$ 173.92	—	\$ 316,148
Total	651	\$ 180.67	—	

(1) Consists of shares surrendered to the Company in connection with exercise of stock options as payment of exercise price, as well as for taxes associated with the vesting of restricted share grants.

(2) In July 2020, the Board of Directors approved the 2020 Stock Repurchase Program, under which the Company may acquire shares of its common stock in open market or negotiated transactions up to an aggregate purchase price of \$500,000,000. Purchases of common stock under the 2020 Stock Repurchase Program may be exercised from time to time in the Company's discretion and in such amounts as market conditions warrant. The timing and actual number of shares repurchased will depend on a variety of factors including price, corporate and regulatory requirements, market conditions and other corporate liquidity requirements and priorities. The 2020 Stock Repurchase Program does not have an expiration date and may be suspended or terminated at any time without prior notice.

Information regarding securities authorized for issuance under equity compensation plans is included in the section entitled Item 12. "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters" in this Form 10-K.

**ITEM 6. [RESERVED]**

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to help provide an understanding of our business, financial condition and results of operations. This MD&A should be read in conjunction with our Consolidated Financial Statements and the accompanying Notes to Consolidated Financial Statements included elsewhere in this report. This report, including the following MD&A, contains forward-looking statements regarding future events or trends that should be read in conjunction with the factors described under "Forward-Looking Statements" included in this report. Actual results or developments could differ materially from those projected in such statements as a result of the factors described under "Forward-Looking Statements" as well as the risk factors described in Part I, Item 1A. "Risk Factors" of this report.

Capitalized terms used without definition have the meanings provided elsewhere in this Form 10-K.

### Executive Overview

#### *2022 Financial Highlights*

Net income attributable to common stockholders for the year ended December 31, 2022 was \$1,136,775,000, an increase of \$132,476,000, or 13.2%, over the prior year. The increase is primarily attributable to an increase in NOI from communities, over the prior year. These amounts were partially offset by an increase in depreciation expense and decrease in gains related to real estate sales in the current year.

Same Store NOI attributable to our apartment rental operations, including parking and other ancillary residential revenue ("Residential"), for the year ended December 31, 2022 was \$1,540,390,000, an increase of \$179,941,000, or 13.2%, over the prior year. The increase was due to an increase in Residential rental revenue of \$218,692,000, or 10.9%, partially offset by an increase in Residential property operating expenses of \$39,015,000, or 6.0%, over 2021.

During 2022, we raised approximately \$1,445,710,000 of gross capital through the sale of nine consolidated operating communities, the sale of condominiums at The Park Loggia and other real estate, the issuance of unsecured notes and the settlement of outstanding forward contracts entered into under our current continuous equity program. This amount does not include our share of proceeds from joint venture dispositions. We believe that our current capital structure will continue to provide financial flexibility to access capital on attractive terms.

We believe our portfolio management activity through dispositions, development and acquisitions will continue to create long-term value. During 2022, we:

- sold nine consolidated apartment communities containing an aggregate of 2,062 apartment homes for \$924,450,000;
- completed the construction of five consolidated apartment communities containing an aggregate of 1,858 apartment homes for an aggregate total capitalized cost of \$692,000,000;
- completed the construction of one unconsolidated apartment community containing 328 apartment homes for a total capitalized cost of \$110,000,000, or \$55,000,000 when including only our 50.0% interest;
- started the construction of five consolidated apartment communities containing an aggregate of 1,845 apartment homes, which are expected to be completed for an estimated total capitalized cost of \$729,000,000; and
- acquired four consolidated apartment communities containing an aggregate of 1,313 apartment homes and 16,000 square feet of commercial space for an aggregate purchase price of \$536,200,000.

We believe that our balance sheet strength, as measured by our current level of indebtedness, our current ability to service interest and other fixed charges, and our current moderate use of financial encumbrances (such as secured financing), provide us with adequate access to liquidity from the capital markets. We expect to be able to meet our reasonably foreseeable liquidity needs, as they arise, through a combination of one or more of the following sources: existing cash on hand; operating cash flows; borrowings under our Credit Facility and Commercial Paper Program; secured debt; the issuance of corporate securities (which could include unsecured debt, preferred equity, including amounts through the planned settlement of the outstanding forward contracts to sell 2,000,000 shares of common stock by no later than December 31, 2023 and/or common equity); the sale of apartment communities; or through the formation of joint ventures. See the discussion under "Liquidity and Capital Resources."

#### Communities Overview

As of December 31, 2022 we owned or held a direct or indirect ownership interest in 294 apartment communities containing 88,475 apartment homes in 12 states and the District of Columbia, of which 18 communities were under development and one community was under redevelopment. We have an indirect interest in nine of the 294 apartment communities which were owned by entities that were not consolidated for financial reporting purposes, including one that is being developed within a joint venture. In addition, we held a direct or indirect ownership interest in Development Rights to develop an additional 39 communities that, if developed as expected, will contain an estimated 13,312 apartment homes.

Our real estate investments consist primarily of Current Communities, Development communities, Unconsolidated Development communities and Development Rights. Our Current Communities are further classified as Same Store communities, Other Stabilized communities, Redevelopment communities and Unconsolidated communities.

Same Store communities are consolidated communities that were owned and had stabilized occupancy as of the beginning of the prior year, allowing for a meaningful comparison of operating results between years. Other Stabilized communities are generally all other completed consolidated communities that have stabilized occupancy at the beginning of the current year or were acquired during the year. Redevelopment communities are consolidated communities where substantial redevelopment is in progress or is probable to begin during the fiscal year. Unconsolidated communities are communities in which we have an indirect ownership interest through our investment interest in an unconsolidated entity. A more detailed description of our reportable segments and other related operating information can be found in Note 8, "Segment Reporting," of our Consolidated Financial Statements.

Although each of these categories is important to our business, we generally evaluate overall operating, industry and market trends based on the operating results of Same Store communities, for which a detailed discussion can be found in "Results of Operations" as part of our discussion of overall operating results. We evaluate our current and future cash needs and future operating potential based on acquisition, disposition, development, redevelopment and financing activities within Other Stabilized, Redevelopment and Development communities. Discussions related to current and future cash needs and financing activities can be found under "Liquidity and Capital Resources."

NOI of our current operating communities is one of the financial measures that we use to evaluate the performance of our communities. NOI is affected by the demand and supply dynamics within our markets, our rental rates and occupancy levels and our ability to control operating costs. Our overall financial performance is also impacted by the general availability and cost of capital and the performance of newly developed, redeveloped and acquired apartment communities.

#### Results of Operations

Our year-over-year operating performance is primarily affected by both overall and individual geographic market conditions and apartment fundamentals and is reflected in changes in Same Store NOI; NOI derived from acquisitions, development completions and development under construction and in lease-up; loss of NOI related to disposed communities; and capital market and financing activity. See also Part I, Item 1A, "Risk Factors." Discussion of our operating results for 2021 and comparison to 2020 can be found in Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Form 10-K filed with the SEC on February 25, 2022. A comparison of our operating results for 2022 and 2021 follows (dollars in thousands).

	For the year ended December 31,		2022 vs. 2021	
	2022	2021	\$ Change	% Change
<b>Revenue:</b>				
Rental and other income	\$ 2,587,113	\$ 2,291,766	\$ 295,347	12.9 %
Management, development and other fees	6,333	3,084	3,249	105.4 %
Total revenue	2,593,446	2,294,850	298,596	13.0 %
<b>Expenses:</b>				
Direct property operating expenses, excluding property taxes	509,529	469,123	40,406	8.6 %
Property taxes	288,960	283,089	5,871	2.1 %
Total community operating expenses	798,489	752,212	46,277	6.2 %
Corporate-level property management and other indirect operating expenses	(120,625)	(101,730)	(18,895)	18.6 %
Expensed transaction, development and other pursuit costs, net of recoveries	(16,565)	(3,231)	(13,334)	412.7 %
Interest expense, net	(230,074)	(220,415)	(9,659)	4.4 %
Loss on extinguishment of debt, net	(1,646)	(17,787)	16,141	(90.7)%
Depreciation expense	(814,978)	(758,596)	(56,382)	7.4 %
General and administrative expense	(74,064)	(69,611)	(4,453)	6.4 %
Casualty loss	—	(3,119)	3,119	100.0 %
Income from investments in unconsolidated entities	53,394	38,585	14,809	38.4 %
Gain on sale of communities	555,558	602,235	(46,677)	(7.8)%
Gain on other real estate transactions, net	5,039	2,097	2,942	140.3 %
Net for-sale condominium activity	88	(977)	1,065	N/A (1)
Income before income taxes	1,151,084	1,010,089	140,995	14.0 %
Income tax expense	(14,646)	(5,733)	(8,913)	155.5 %
Net income	1,136,438	1,004,356	132,082	13.2 %
Net loss (income) attributable to noncontrolling interests	337	(57)	394	N/A (1)
Net income attributable to common stockholders	\$ 1,136,775	\$ 1,004,299	\$ 132,476	13.2 %

(1) Percent change is not meaningful.

Net income attributable to common stockholders increased \$132,476,000, or 13.2%, to \$1,136,775,000 in 2022 over 2021, primarily due to increases in NOI from communities in the current year.

NOI is considered by management to be an important and appropriate supplemental performance measure to net income because it helps both investors and management to understand the core operations of a community or communities prior to the allocation of any corporate-level or financing-related costs. NOI reflects the operating performance of a community and allows for an easier comparison of the operating performance of individual assets or groups of assets. In addition, because prospective buyers of real estate have different financing and overhead structures, with varying marginal impact to overhead as a result of acquiring real estate, NOI is considered by many in the real estate industry to be a useful measure for determining the value of a real estate asset or group of assets. We define NOI as total property revenue less direct property operating expenses (including property taxes), and excluding corporate-level income (including management, development and other fees), corporate-level property management and other indirect operating expenses, expensed transaction, development and other pursuit costs, net of recoveries, interest expense, net, loss on extinguishment of debt, net, general and administrative expense, income from investments in unconsolidated entities, depreciation expense, income tax expense, casualty loss, gain on sale of communities, gain on other real estate transactions, net, net for-sale condominium activity and net operating income from real estate assets sold or held for sale.

NOI does not represent cash generated from operating activities in accordance with GAAP, and NOI should not be considered an alternative to net income as an indication of our performance. NOI should also not be considered an alternative to net cash flow from operating activities, as determined by GAAP, as a measure of liquidity, nor is NOI indicative of cash available to fund cash needs. Residential NOI represents results attributable to our apartment rental operations, including parking and other

ancillary residential revenue. Reconciliations of NOI and Residential NOI for the years ended December 31, 2022 and 2021 to net income for each year are as follows (dollars in thousands):

	For the year ended December 31,	
	2022	2021
Net income	\$ 1,136,438	\$ 1,004,356
Property management and other indirect operating expenses, net of corporate income	114,200	98,665
Expensed transaction, development and other pursuit costs, net of recoveries	16,565	3,231
Interest expense, net	230,074	220,415
Loss on extinguishment of debt, net	1,646	17,787
General and administrative expense	74,064	69,611
Income from investments in unconsolidated entities	(53,394)	(38,585)
Depreciation expense	814,978	758,596
Income tax expense	14,646	5,733
Casualty loss	—	3,119
Gain on sale of communities	(555,558)	(602,235)
Gain on other real estate transactions, net	(5,039)	(2,097)
Net for-sale condominium activity	(88)	977
Net operating income from real estate assets sold or held for sale	(22,746)	(61,105)
NOI	<u>1,765,786</u>	<u>1,478,468</u>
Commercial NOI (1)	(36,144)	(25,326)
Residential NOI	<u>\$ 1,729,642</u>	<u>\$ 1,453,142</u>

(1) Represents results attributable to the commercial and other non-residential operations at our communities ("Commercial").

The Residential NOI changes for 2022 as compared to 2021 consists of changes in the following categories (dollars in thousands):

	Full Year	
	2022	
Same Store	\$	179,941
Other Stabilized		59,954
Development / Redevelopment		36,605
Total	<u>\$</u>	<u>276,500</u>

The increase in our Same Store Residential NOI in 2022 is due to an increase in Residential rental revenue of \$218,692,000, or 10.9%, partially offset by an increase in property operating expenses of \$39,015,000, or 6.0%, over 2021.

Our results of operations in future periods may be impacted directly or indirectly by uncertainties such as the lingering effects of the COVID-19 pandemic (the "Pandemic") and the recent increases in inflation. If the financial condition of our residents and commercial tenants deteriorates, and/or regulations that limit our ability to evict residents and tenants continue or are adopted in response to future developments related to the Pandemic, that may result in higher than normal uncollectible lease revenue. The Pandemic may also depress consumer demand for our apartments for a variety of reasons, including (i) if consumers decide to live in markets that are less costly than ours for one or more reasons, such as a decline in their income or remote working arrangements; (ii) consumers who would otherwise rent may seek home ownership; and (iii) ongoing downward pressures on demand for certain types of housing (e.g., corporate apartment homes) or by certain consumers (e.g., students or consumers who require seasonal job-related demand such as in the entertainment industry).

Increases in inflation can result in an increase in our operating costs, including utilities and payroll, both at our communities and at the corporate level. Substantially all of our apartment leases are for a term of one year or less. In an inflationary environment, this may allow us to realize increased rents upon renewal of existing leases or the beginning of new leases. Short-term leases generally reduce our risk from the adverse effect of inflation, although these leases also permit residents to leave at the end of their lease term. In addition, inflation could cause our construction costs and cost of other capitalized expenditures to increase, impacting the expected economic return of, and expected operating results for, current and planned development activity.

*Rental and other income* increased \$295,347,000, or 12.9%, in 2022 compared to the prior year primarily due to the increased rental revenue from our stabilized wholly-owned communities, discussed below.

Consolidated Communities—The weighted average number of occupied apartment homes for consolidated communities increased to 77,319 apartment homes for 2022, as compared to 75,744 homes for 2021. The weighted average monthly rental revenue per occupied apartment home increased to \$2,784 for 2022 as compared to \$2,518 in 2021.

The increase in Same Store rental revenue is due to (i) an increase in Same Store Residential rental revenue of \$218,692,000, or 10.9%, for the year ended December 31, 2022, compared to the prior year, and (ii) an increase in Same Store Commercial rental revenue of \$3,873,000, or 18.8%, for the year ended December 31, 2022, compared to the prior year.

The following table presents the change in Same Store Residential rental revenue, including the attribution of the change between average rental revenue per occupied home and Economic Occupancy for the year ended December 31, 2022 (dollars in thousands).

	For the year ended December 31,									
	Residential rental revenue				Average monthly rental revenue per occupied home			Economic Occupancy (1)		
			\$ Change	% Change			% Change			% Change
	2022	2021	2022 to 2021	2022 to 2021	2022	2021	2022 to 2021	2022	2021	2022 to 2021
New England	\$ 343,179	\$ 305,040	\$ 38,139	12.5 %	\$ 3,064	\$ 2,744	11.7 %	97.0 %	96.2 %	0.8 %
Metro NY/NJ	460,774	410,726	50,048	12.2 %	3,423	3,048	12.3 %	96.4 %	96.5 %	(0.1)%
Mid-Atlantic	330,272	307,529	22,743	7.4 %	2,297	2,140	7.3 %	95.3 %	95.2 %	0.1 %
Southeast Florida	38,206	31,644	6,562	20.7 %	2,734	2,253	21.3 %	95.9 %	96.5 %	(0.6)%
Denver, CO	26,845	23,739	3,106	13.1 %	2,151	1,896	13.4 %	95.8 %	96.1 %	(0.3)%
Pacific Northwest	140,384	121,791	18,593	15.3 %	2,555	2,218	15.2 %	95.2 %	95.1 %	0.1 %
Northern California	399,152	368,419	30,733	8.3 %	2,860	2,640	8.3 %	95.9 %	95.9 %	— %
Southern California	485,313	436,545	48,768	11.2 %	2,555	2,296	11.3 %	96.4 %	96.5 %	(0.1)%
<b>Total Same Store</b>	<b>\$ 2,224,125</b>	<b>\$ 2,005,433</b>	<b>\$ 218,692</b>	<b>10.9 %</b>	<b>\$ 2,774</b>	<b>\$ 2,504</b>	<b>10.8 %</b>	<b>96.1 %</b>	<b>96.0 %</b>	<b>0.1 %</b>

(1) Economic Occupancy considers that apartment homes of different sizes and locations within a community have different economic impacts on a community's gross revenue. Economic Occupancy is defined as gross potential revenue less vacancy loss, as a percentage of gross potential revenue. Gross potential revenue is determined by valuing occupied homes at leased rates and vacant homes at market rents. Vacancy loss is determined by valuing vacant units at current market rents.



The following table details the increase in Same Store Residential rental revenue by component for the year ended December 31, 2022, compared to the prior year:

	For the year ended December 31, 2022
Residential rental revenue	
Lease rates	7.8 %
Concessions and other discounts	1.9 %
Economic Occupancy	0.1 %
Other rental revenue	1.0 %
Uncollectible lease revenue (excluding rent relief)	(0.1)%
Rent relief	0.2 %
Total Residential rental revenue	10.9 %

The increase for Same Store Residential rental revenue for the year ended December 31, 2022, compared to the prior year, was impacted by (i) uncollectible lease revenue, net of amounts received from government rent relief programs and (ii) concessions.

Same Store uncollectible lease revenue decreased for the year ended December 31, 2022 by \$3,556,000. The change in uncollectible lease revenue for the year ended December 31, 2022 was impacted by amounts received from government rent relief programs. Adjusting to remove the impact of rent relief, uncollectible lease revenue as a percentage of Same Store Residential rental revenue decreased to 3.4% in the year ended December 31, 2022 from 3.7% in the year ended December 31, 2021. We recognized \$36,778,000 and \$31,823,000 from government rent relief programs during the years ended December 31, 2022 and 2021, respectively.

During the Pandemic, we increased our use of residential concessions relative to concessions granted prior to 2020. While concessions granted remained slightly elevated relative to periods prior to 2020, concessions for our Same Store communities granted in the year ended December 31, 2022 decreased from the prior year by \$31,618,000 to \$10,514,000. We amortize concessions on a straight-line basis over the life of the respective leases (generally one year), reducing the income recognized over the lease term. For the year ended December 31, 2022, amortized concessions decreased by \$39,932,000 contributing to the increase in revenue as compared to the prior year. The remaining net unamortized balance of Same Store residential concessions as of December 31, 2022 and 2021 was \$5,671,000 and \$14,081,000, respectively.

*Management, development and other fees* increased \$3,249,000, or 105.4%, in 2022 as compared to the prior year, primarily due to the net construction and development fee income for work performed at joint ventures.

*Direct property operating expenses, excluding property taxes*, increased \$40,406,000, or 8.6%, in 2022 as compared to the prior year, primarily due to the addition of newly developed and acquired apartment communities, as well as increased operating expenses at our Same Store communities as discussed below.

Same Store Residential direct property operating expenses, excluding property taxes, represents substantially all of total Same Store operating expenses for the year ended December 31, 2022. Residential direct property operating expenses, excluding property taxes, increased \$33,171,000, or 8.1%, in 2022 as compared to the prior year, primarily due to increased utilities and maintenance costs as well as bad debt associated with resident expense reimbursements.

*Property taxes* increased \$5,871,000, or 2.1%, in 2022 as compared to the prior year, primarily due to the addition of newly developed and acquired apartment communities and increased assessments for our stabilized portfolio, partially offset by decreased property taxes from dispositions.

Same Store Residential property taxes represents substantially all of total Same Store property taxes for the year ended December 31, 2022. Same Store Residential property taxes increased \$5,844,000, or 2.5%, in 2022 as compared to the prior year, primarily due to increased assessments across the portfolio and the expiration of property tax incentive programs at certain of our properties in New York City, partially offset by successful appeals in the current year in excess of the prior year.

*Corporate-level property management and other indirect operating expenses* increased \$18,895,000, or 18.6%, for the year ended December 31, 2022 compared to the prior year, primarily due to increased compensation related costs as well as costs related to increased investment in technology and other initiatives in the current year to improve future efficiency in services for residents and prospects.

*Expensed transaction, development and other pursuit costs, net of recoveries* primarily reflect costs incurred for development pursuits not yet considered probable for development, as well as write downs and abandonment of Development Rights and costs related to abandoned acquisition and disposition pursuits and any recoveries of costs incurred. These costs can be volatile, particularly in periods of increased acquisition pursuit activity, periods of economic downturn or when there is limited access to capital, and therefore may vary significantly from year to year. In addition, the timing for potential recoveries will not always align with the timing for expensing an abandoned pursuit. Expensed transaction, development and other pursuit costs, net of recoveries, increased \$13,334,000 in 2022 as compared to the prior year. The amount for 2022 includes charges of \$10,073,000 primarily related to development opportunities in the Pacific Northwest and Southern California that we determined are no longer probable.

*Interest expense, net* increased \$9,659,000, or 4.4%, in 2022 as compared to the prior year. This category includes interest costs offset by capitalized interest pertaining to development and redevelopment activity, amortization of premium/discount on debt, interest income, any mark to market impact from derivatives not in qualifying hedge relationships and the recognition of the GAAP required estimate of future credit losses for the SIP. The increase in 2022 is primarily due to an increase in variable rates on unsecured and secured indebtedness, partially offset by an increase in capitalized interest.

*Loss on extinguishment of debt, net* reflects prepayment penalties, the write-off of unamortized deferred financing costs and premiums/discounts from our debt repurchase and retirement activity, or payments to acquire our outstanding debt at amounts above or below the carrying basis of the debt acquired. The loss of \$1,646,000 in 2022 was primarily due to the repayment of secured debt. The loss of \$17,787,000 in 2021 was due to the repayments of unsecured debt.

*Depreciation expense* increased \$56,382,000, or 7.4%, in 2022 as compared to the prior year, primarily due to the addition of newly developed and acquired apartment communities, partially offset by dispositions.

*General and administrative expense* (“G&A”) increased \$4,453,000, or 6.4%, in 2022 as compared to the prior year, primarily due to an increase in compensation related expenses in the current year, partially offset by legal settlement recoveries recognized in the current year.

*Casualty loss* for the year ended December 31, 2021 of \$3,119,000 related to damage across several communities in our East Coast markets from severe storms and a fire at an operating community.

*Income from investments in unconsolidated entities* increased \$14,809,000 in 2022 as compared to the prior year, primarily due to the gain from the sale of the final three communities in the U.S. Fund and includes the recognition of \$4,690,000 for the promoted interest associated with the final U.S. Fund dispositions. The increase for the year ended December 31, 2022 was partially offset by the gain from the sale of the final two communities in the Archstone Multifamily Partners AC JV LP in the prior year.

*Gain on sale of communities* decreased in 2022 as compared to the prior year. The amount of gain realized in a given period depends on many factors, including the number of communities sold, the size and carrying value of the communities sold and the market conditions in the local area. The gains of \$555,558,000 and \$602,235,000 in 2022 and 2021, respectively, were primarily due to the sale of nine wholly-owned communities in both 2022 and 2021.

*Gain on other real estate transactions, net* represents the impact from the sale of land parcels and other tangible and intangible real estate assets, and increased \$2,942,000, or 140.3%, in 2022 over the prior year.

*Net for-sale condominium activity* is a net gain of \$88,000 for the year ended December 31, 2022 and a net expense of \$977,000 for the year ended December 31, 2021, and is comprised of the net gain before taxes on the sale of condominiums at The Park Loggia and associated marketing, operating and administrative costs. During the year ended December 31, 2022, we sold 40 residential condominiums at The Park Loggia, for gross proceeds of \$126,848,000, resulting in a gain in accordance with GAAP of \$2,217,000. During the year ended December 31, 2021, we sold 53 residential condominiums at The Park Loggia for gross proceeds of \$135,458,000, resulting in a gain in accordance with GAAP of \$3,110,000. In addition, we incurred \$2,129,000 and \$4,087,000 for the years ended December 31, 2022 and 2021, respectively, in marketing, operating and administrative costs.

*Income tax expense* of \$14,646,000 and \$5,733,000 for the years ended December 31, 2022 and 2021, respectively, is primarily related to the activity at The Park Loggia and other taxable REIT subsidiary (“TRS”) activity.

#### Non-GAAP Financial Measures — Reconciliation of FFO and Core FFO

FFO and FFO adjusted for non-core items, or “Core FFO,” as defined below, are generally considered by management to be appropriate supplemental measures of our operating and financial performance.

Consistent with the definition adopted by the Board of Governors of the National Association of Real Estate Investment Trusts® (“Nareit”), we calculate Funds from Operations Attributable to Common Stockholders (“FFO”) as net income or loss attributable to common stockholders computed in accordance with GAAP, adjusted for:

- gains or losses on sales of previously depreciated operating communities;
- cumulative effect of change in accounting principle;
- impairment write-downs of depreciable real estate assets;
- write-downs of investments in affiliates due to a decrease in the value of depreciable real estate assets held by those affiliates;
- depreciation of real estate assets; and
- similar adjustments for unconsolidated partnerships and joint ventures, including those from a change in control.

FFO can help with the comparison of the operating and financial performance of a real estate company between periods or as compared to different companies because the adjustments such as (i) excluding gains or losses on sales of previously depreciated property or (ii) real estate depreciation may impact comparability between companies as the amount and timing of these or similar items can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates. By further adjusting for items that we do not consider part of our core business operations, Core FFO can help with the comparison of our core operating performance year over year. We believe that, in order to understand our operating results, FFO and Core FFO should be considered in conjunction with net income as presented in the Consolidated Statements of Comprehensive Income included elsewhere in this report.

We calculate Core FFO as FFO, adjusted for:

- joint venture gains (if not adjusted through FFO), non-core costs and promoted interests from partnerships;
- casualty and impairment losses or gains, net on non-depreciable real estate;
- gains or losses from early extinguishment of consolidated borrowings;
- expensed transaction, development and other pursuit costs, net of recoveries;
- third-party business interruption insurance proceeds and the related lost NOI that is covered by the expected third party business interruption insurance proceeds;
- property and casualty insurance proceeds and legal settlement activity;
- gains or losses on sales of assets not subject to depreciation and other investment gains or losses;
- advocacy contributions, representing payments to promote our business interests;
- hedge ineffectiveness or gains or losses from derivatives not designated as hedges for accounting purposes;
- expected credit losses associated with the lending commitments under the SIP;
- severance related costs;
- executive transition compensation costs;
- net for-sale condominium activity, including gains, marketing, operating and administrative costs and imputed carry cost; and
- income taxes.

FFO and Core FFO do not represent net income in accordance with GAAP, and therefore should not be considered an alternative to net income, which remains the primary measure, as an indication of our performance. In addition, FFO and Core FFO as calculated by other REITs may not be comparable to our calculations of FFO and Core FFO.

FFO and Core FFO also do not represent cash generated from operating activities in accordance with GAAP, and therefore should not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity. Additionally, it is not necessarily indicative of cash available to fund cash needs. A presentation of GAAP-based cash flow metrics is included in our Consolidated Financial Statements included elsewhere in this report.

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The following is a reconciliation of net income attributable to common stockholders to FFO attributable to common stockholders and to Core FFO attributable to common stockholders for the years ended December 31, 2022 and 2021 (dollars in thousands, except per share amounts).

	For the year ended December 31,	
	2022	2021
Net income attributable to common stockholders	\$ 1,136,775	\$ 1,004,299
Depreciation - real estate assets, including joint venture adjustments	810,611	753,755
Distributions to noncontrolling interests	48	48
Gain on sale of unconsolidated entities holding previously depreciated real estate	(38,144)	(23,305)
Gain on sale of previously depreciated real estate	(555,558)	(602,235)
Casualty loss on real estate	—	3,119
FFO attributable to common stockholders	\$ 1,353,732	\$ 1,135,681
Adjusting items:		
Unconsolidated entity gains, net (1)	(8,355)	(14,870)
Joint venture promote (2)	(4,690)	—
Structured Investment Program loan reserve (3)	1,632	—
Loss on extinguishment of consolidated debt	1,646	17,787
Gain on interest rate contract	(229)	(2,654)
Advocacy contributions	634	59
Executive transition compensation costs	1,631	3,010
Severance related costs	1,097	313
Expensed transaction, development and other pursuit costs, net of recoveries (4)	13,288	1,363
Gain on for-sale condominiums (5)	(2,217)	(3,110)
For-sale condominium marketing, operating and administrative costs (5)	2,129	4,087
For-sale condominium imputed carry cost (6)	2,306	7,031
Gain on other real estate transactions, net	(5,039)	(2,097)
Legal settlements	(2,212)	1,139
Income tax expense (7)	14,646	5,733
Core FFO attributable to common stockholders	\$ 1,369,999	\$ 1,153,472
Weighted average common shares outstanding - diluted	139,975,087	139,717,399
EPS per common share - diluted	\$ 8.12	\$ 7.19
FFO per common share - diluted	\$ 9.67	\$ 8.13
Core FFO per common share - diluted	\$ 9.79	\$ 8.26

(1) Amounts consist primarily of net unrealized gains on technology investments.

(2) Amount for 2022 is for our recognition of our promoted interest in the U.S. Fund.

(3) Amount for 2022 is the expected credit losses associated with the lending commitments under our SIP. The timing and amount of actual losses that will be incurred, if any, is to be determined.

(4) Amount for 2022 includes charges of \$10,073 primarily related to development opportunities in the Pacific Northwest and Southern California that we determined are no longer probable.

(5) The aggregate impact of (i) gain on for-sale condominiums and (ii) for-sale condominium marketing, operating and administrative costs is a net gain of \$88 for 2022, and a net expense of \$977 for 2021.

(6) Represents the imputed carry cost of for-sale residential condominiums at The Park Loggia. We computed this adjustment by multiplying the total capitalized cost of completed and unsold for-sale residential condominiums by our weighted average unsecured debt rate.

(7) Amounts are primarily for the recognition of taxes associated with The Park Loggia and other TRS activity.

## Liquidity and Capital Resources

We employ a disciplined approach to our liquidity and capital management. When we source capital, we take into account both our view of the most cost effective alternative available and our desire to maintain a balance sheet that provides us with flexibility. Our principal focus on near-term and intermediate-term liquidity is to ensure we have adequate capital to fund:

- development and redevelopment activity in which we are currently engaged or in which we plan to engage;
- the minimum dividend payments on our common stock required to maintain our REIT qualification under the Code;
- debt service and principal payments either at maturity or opportunistically before maturity;
- lending commitments under our SIP;
- normal recurring operating and corporate overhead expenses; and
- investment in our operating platform, including strategic investments.

Factors affecting our liquidity and capital resources are our cash flows from operations, financing activities and investing activities (including dispositions) as well as general economic and market conditions. Cash flows from operations are determined by: operating activities and factors including but not limited to (i) the number of apartment homes currently owned, (ii) rental rates, (iii) occupancy levels, (iv) uncollectible lease revenue levels or interruptions in collections caused by market conditions and (v) operating expenses with respect to apartment homes. The timing and type of capital markets activity in which we engage is affected by changes in the capital markets environment, such as changes in interest rates or the availability of cost-effective capital. Our plans for development, redevelopment, non-routine capital expenditure, acquisition and disposition activity are affected by market conditions and capital availability. We frequently review our liquidity needs, especially in periods with volatile market conditions, as well as the adequacy of cash flows from operations and other expected liquidity sources to meet these needs.

We had cash, cash equivalents and cash in escrow of \$734,245,000 at December 31, 2022, an increase of \$190,457,000 from \$543,788,000 at December 31, 2021. The following discussion relates to changes in cash, cash equivalents and cash in escrow due to operating, investing and financing activities, which are presented in our Consolidated Statements of Cash Flows included elsewhere in this report.

Operating Activities—Net cash provided by operating activities increased to \$1,421,932,000 in 2022 from \$1,203,170,000 in 2021, primarily due to increases in rental income.

Investing Activities—Net cash used in investing activities totaled \$560,419,000 in 2022. The net cash used was primarily due to:

- investment of \$921,203,000 in the development and redevelopment of communities;
- acquisition of four wholly-owned communities for \$536,838,000; and
- capital expenditures of \$174,705,000 for our wholly-owned communities and non-real estate assets.

These amounts were partially offset by:

- net proceeds from the disposition of nine wholly-owned communities and ancillary real estate of \$934,117,000; and
- net proceeds from the sale of for-sale residential condominiums of \$117,266,000.

Financing Activities—Net cash used in financing activities totaled \$671,056,000 in 2022. The net cash used was primarily due to:

- payment of cash dividends in the amount of \$889,607,000;
- the repayment of the \$100,000,000 variable rate unsecured term loan; and
- the mortgage note repayment and principal amortization payments in the amount of \$43,332,000.

These amounts were partially offset by proceeds from the issuance of unsecured notes in the amount of \$348,565,000.

### *Commercial Paper Program*

In March 2022, we established the Commercial Paper Program. Under the terms of the Commercial Paper Program, we may issue, from time to time, unsecured commercial paper notes with varying maturities of less than one year. Amounts available under the Commercial Paper Program may be issued, repaid and re-issued from time to time, with the maximum aggregate face or principal amount outstanding at any one time not to exceed \$500,000,000. The Commercial Paper Program is backstopped by our commitment to maintain available borrowing capacity under the Credit Facility in an amount equal to actual borrowings under the Commercial Paper Program. As of January 31, 2023, we did not have any amounts outstanding under the Commercial Paper Program.

### *Variable Rate Unsecured Credit Facility*

In September 2022, we entered into the Sixth Amended and Restated Revolving Loan Agreement (the "Credit Facility") with a syndicate of banks, which replaces our prior credit facility dated as of February 28, 2019. The amended and restated Credit Facility (i) increased the borrowing capacity from \$1,750,000,000 to \$2,250,000,000, (ii) extended the term of the Credit Facility from February 28, 2024 to September 27, 2026, with two six-month extension options available to us, provided we are not in default and upon payment of a \$1,406,000 extension fee, (iii) amended certain provisions, notably to reduce the capitalization rate used to derive certain financial covenants from 6.0% to 5.75% and (iv) transitioned the benchmark rate from the London Interbank Offered Rate ("LIBOR") to the Secured Overnight Financing Rate ("SOFR"). We may elect to expand the Credit Facility to \$3,000,000,000, provided that one or more banks (from the syndicate or otherwise) voluntarily agree to provide the additional commitment. No member of the syndicate of banks can prohibit the increase, which will only be effective to the extent banks (from the syndicate or otherwise) choose to commit to lend additional funds.

The interest rate applicable to borrowings under the Credit Facility is 5.14% at January 31, 2023 and is composed of (i) SOFR, applicable to the period of borrowing for a particular draw of funds from the facility (e.g., one month to maturity, three months to maturity, etc.), plus (ii) the current borrowing spread to SOFR of 0.825% per annum, which consists of a 0.10% SOFR adjustment plus 0.725% per annum, assuming a one month term SOFR borrowing rate. The borrowing spread to SOFR can vary from SOFR plus 0.65% to SOFR plus 1.40% based upon the rating of our unsecured and unsubordinated long-term indebtedness. There is also an annual facility commitment fee of 0.125% of the borrowing capacity under the facility, which can vary from 0.10% to 0.30% based upon the rating of our unsecured and unsubordinated long-term indebtedness. The Credit Facility contains a sustainability-linked pricing component which provides for interest rate margin and commitment fee reductions or increases by meeting or missing targets related to environmental sustainability, specifically greenhouse gas emission reductions, with the adjustment determined annually beginning in July 2023. The Credit Facility also contains a competitive bid option that is available for borrowings of up to 65% of the Credit Facility amount. This option allows banks that are part of the lender consortium to bid to provide us loans at a rate that is lower than the stated pricing provided by the Credit Facility. The competitive bid option may result in lower pricing than the stated rate if market conditions allow.

Prior to the amended and restated Credit Facility, our cost of borrowing was comprised of LIBOR plus 0.775% and an annual facility fee at 0.125%, both as determined by our credit ratings.

We did not have any borrowings outstanding under the Credit Facility and after taking into account the Commercial Paper Program and \$1,914,000 outstanding in letters of credit, we had \$2,248,086,000 available under the Credit Facility as of January 31, 2023. We had \$48,297,000 outstanding in additional letters of credit unrelated to the Credit Facility as of January 31, 2023.

### *Financial Covenants*

We are subject to financial covenants contained in the Credit Facility and the Commercial Paper Program, Term Loan and the indentures under which our unsecured notes were issued. The principal financial covenants include the following:

- limitations on the amount of total and secured debt in relation to our overall capital structure;
- limitations on the amount of our unsecured debt relative to the undepreciated basis of real estate assets that are not encumbered by property-specific financing; and
- minimum levels of debt service coverage.

We were in compliance with these covenants at December 31, 2022.

In addition, some of our secured borrowings include yield maintenance, defeasance, or prepayment penalty provisions, which would result in us incurring an additional charge in the event of a full or partial prepayment of outstanding principal before the

scheduled maturity. These provisions in our secured borrowings are generally consistent with other similar types of debt instruments issued during the same time period in which our borrowings were secured.

#### *Continuous Equity Offering Program*

In May 2019, we commenced CEP V under which we may sell (and/or enter into forward sale agreements for the sale of) up to \$1,000,000,000 of our common stock from time to time. Actual sales will depend on a variety of factors to be determined, including market conditions, the trading price of our common stock and our determinations of the appropriate funding sources. We engaged sales agents for CEP V who receive compensation of up to 1.5% of the gross sales price for shares sold. We expect that, if entered into, we will physically settle each forward sale agreement on one or more dates prior to the maturity date of that particular forward sale agreement, and to receive aggregate net cash proceeds at settlement equal to the number of shares underlying the particular forward agreement multiplied by the forward sale price. However, we may also elect to cash settle or net share settle a forward sale agreement. In connection with each forward sale agreement, we will pay the forward seller, in the form of a reduced initial forward sale price, a commission of up to 1.5% of the sales prices of all borrowed shares of common stock sold. During 2022 and through January 31, 2023, we had no sales under this program. In October 2022, we settled the outstanding forward contracts entered into in December 2021 under CEP V, selling 68,577 shares of common stock for \$229.34 per share and net proceeds of \$15,727,000. As of January 31, 2023, we had \$705,961,000 remaining authorized for issuance under this program.

#### *Forward Equity Offering*

In addition to CEP V, during the year ended December 31, 2022, we completed an underwritten public offering of 2,000,000 shares of common stock for an initial net forward sales price of \$247.30 per share, after offering fees and discounts, offered in connection with forward contracts entered into with certain financial institutions acting as forward purchasers. Assuming full physical settlement of the forward contracts, which we expect to occur no later than December 31, 2023, we will receive approximate proceeds of \$494,200,000 net of offering fees and discounts and based on the initial forward price. The final proceeds will be determined on the date(s) of settlement and are subject to certain customary adjustments for our dividends and a daily interest factor during the term of the forward contracts.

#### *Interest Rate Swap Agreements*

During the year ended December 31, 2022, related to the issuance of our \$350,000,000 unsecured notes due 2033 in November 2022, we terminated \$150,000,000 of forward interest swap agreements designated as cash flow hedges of the interest rate variability on the issuance of unsecured notes, receiving a net payment of \$26,869,000. We have deferred these amounts in accumulated other comprehensive income (loss) on the accompanying Consolidated Balance Sheets, and are recognizing the impact as a component of interest expense, net, over the term of the respective hedged debt.

#### *Stock Repurchase Program*

In July 2020, our Board of Directors approved the 2020 Stock Repurchase Program. Purchases of common stock under the 2020 Stock Repurchase Program may be exercised at our discretion with the timing and number of shares repurchased depending on a variety of factors including price, corporate and regulatory requirements and other corporate liquidity requirements and priorities. The 2020 Stock Repurchase Program does not have an expiration date and may be suspended or terminated at any time without prior notice. During 2022 and through January 31, 2023, we had no repurchases of shares under this program. As of January 31, 2023, we had \$316,148,000 remaining authorized for purchase under this program.

#### *Future Financing and Capital Needs—Debt Maturities and Material Obligations*

One of our principal long-term liquidity needs is the repayment of long-term debt at maturity. For both our unsecured and secured notes, a portion of the principal of these notes may be repaid prior to maturity. Early retirement of our unsecured or secured notes could result in gains or losses on extinguishment. If we do not have funds on hand sufficient to repay our indebtedness as it becomes due, it will be necessary for us to refinance or otherwise provide liquidity to satisfy the debt at maturity. This refinancing may be accomplished by uncollateralized private or public debt offerings, equity issuances, additional debt financing that is secured by mortgages on individual communities or groups of communities or borrowings under our Credit Facility or Commercial Paper Program. In addition, to the extent we have amounts outstanding under the Commercial Paper Program, we are obligated to repay the short-term indebtedness at maturity through either current cash on hand or by incurring other indebtedness, including by way of borrowing under our Credit Facility. Although we believe we will have the capacity to meet our currently anticipated liquidity needs, we cannot assure you that capital from additional debt financing or debt or equity offerings will be available or, if available, that they will be on terms we consider satisfactory.

The following debt activity occurred during 2022:

- In February 2022, we repaid our \$100,000,000 variable rate unsecured term loan at par upon maturity.
- In September 2022, we repaid \$35,276,000 principal amount of secured fixed rate debt with an effective rate of 6.16% in advance of the October 2047 scheduled maturity, recognizing a loss on debt extinguishment of \$1,399,000, composed of prepayment penalties and the non-cash write off of unamortized deferred financing costs.
- In December 2022, we issued \$350,000,000 principal amount of unsecured notes in a public offering under our existing shelf registration statement for proceeds net of underwriting fees of approximately \$346,290,000, before considering the impact of other offering costs. The notes mature in February 2033 and were issued at a 5.00% interest rate, resulting in a 4.37% effective rate including the impact of issuance costs and hedging activity.

The following table details our consolidated debt obligations, including the effective interest rate and contractual maturity dates, and principal payments for periodic amortization and maturities for the next five years, excluding our Credit Facility and Commercial Paper Program and amounts outstanding related to communities classified as held for sale, for debt outstanding at December 31, 2022 and 2021 (dollars in thousands). We are not directly or indirectly (as borrower or guarantor) obligated in any material respect to pay principal or interest on the indebtedness of any unconsolidated entities in which we have an equity or other interest, other than as disclosed related to the AVA Arts District construction loan (see "Investments" for further discussion of the construction loan).

Community	All-In interest rate (1)	Principal maturity date	Balance Outstanding (2)		Scheduled Maturities						
			12/31/2021	12/31/2022	2023	2024	2025	2026	2027	Thereafter	
<b>Tax-exempt bonds</b>											
<i>Fixed rate</i>											
Avalon at Chestnut Hill	— %	Oct-2047 (3)	\$ 35,770	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —
			35,770	—	—	—	—	—	—	—	—
<i>Variable rate</i>											
Avalon Acton	4.70 %	Jul-2040 (4)	45,000	45,000	—	—	—	—	—	—	45,000
Avalon Clinton North	5.35 %	Nov-2038 (4)	147,000	147,000	—	—	—	—	—	700	146,300
Avalon Clinton South	5.35 %	Nov-2038 (4)	121,500	121,500	—	—	—	—	—	600	120,900
Avalon Midtown West	5.29 %	May-2029 (4)	88,300	82,700	6,100	6,800	7,300	8,100	8,800	8,800	45,600
Avalon San Bruno I	5.24 %	Dec-2037 (4)	62,350	60,950	2,200	2,300	2,400	2,500	2,800	2,800	48,750
			464,150	457,150	8,300	9,100	9,700	10,600	12,900	12,900	406,550
<b>Conventional loans</b>											
<i>Fixed rate</i>											
\$250 million unsecured notes	3.00 %	Mar-2023	250,000	250,000	250,000	—	—	—	—	—	—
\$350 million unsecured notes	4.30 %	Dec-2023	350,000	350,000	350,000	—	—	—	—	—	—
\$300 million unsecured notes	3.66 %	Nov-2024	300,000	300,000	—	300,000	—	—	—	—	—
\$525 million unsecured notes	3.55 %	Jun-2025	525,000	525,000	—	—	525,000	—	—	—	—
\$300 million unsecured notes	3.62 %	Nov-2025	300,000	300,000	—	—	300,000	—	—	—	—
\$475 million unsecured notes	3.35 %	May-2026	475,000	475,000	—	—	—	475,000	—	—	—
\$300 million unsecured notes	3.01 %	Oct-2026	300,000	300,000	—	—	—	300,000	—	—	—
\$350 million unsecured notes	3.95 %	Oct-2046	350,000	350,000	—	—	—	—	—	—	350,000
\$400 million unsecured notes	3.50 %	May-2027	400,000	400,000	—	—	—	—	—	400,000	—
\$300 million unsecured notes	4.09 %	Jul-2047	300,000	300,000	—	—	—	—	—	—	300,000
\$450 million unsecured notes	3.32 %	Jan-2028	450,000	450,000	—	—	—	—	—	—	450,000
\$300 million unsecured notes	3.97 %	Apr-2048	300,000	300,000	—	—	—	—	—	—	300,000
\$450 million unsecured notes	3.66 %	Jun-2029	450,000	450,000	—	—	—	—	—	—	450,000
\$700 million unsecured notes	2.69 %	Mar-2030	700,000	700,000	—	—	—	—	—	—	700,000
\$600 million unsecured notes	2.65 %	Jan-2031	600,000	600,000	—	—	—	—	—	—	600,000
\$700 million unsecured notes	2.16 %	Jan-2032	700,000	700,000	—	—	—	—	—	—	700,000
\$400 million unsecured notes	2.03 %	Dec-2028	400,000	400,000	—	—	—	—	—	—	400,000
\$350 million unsecured notes	4.37 %	Feb-2033	—	350,000	—	—	—	—	—	—	350,000
Avalon Walnut Creek	4.00 %	Jul-2066	4,161	4,327	—	—	—	—	—	—	4,327
eaves Los Feliz	3.68 %	Jun-2027	41,400	41,400	—	—	—	—	—	41,400	—



Community	All-In interest rate (1)	Principal maturity date	Balance Outstanding (2)		Scheduled Maturities						
			12/31/2021	12/31/2022	2023	2024	2025	2026	2027	Thereafter	
Leaves Woodland Hills	3.67 %	Jun-2027	111,500	111,500	—	—	—	—	—	111,500	—
Avalon Russett	3.77 %	Jun-2027	32,200	32,200	—	—	—	—	—	32,200	—
Avalon San Bruno III	2.38 %	Mar-2027	51,000	51,000	—	—	—	—	—	51,000	—
Avalon Cerritos	3.35 %	Aug-2029	30,250	30,250	—	—	—	—	—	—	30,250
			<u>7,420,511</u>	<u>7,770,677</u>	<u>600,000</u>	<u>300,000</u>	<u>825,000</u>	<u>775,000</u>	<u>636,100</u>	<u>4,634,577</u>	
<i>Variable rate</i>											
Term Loan - \$100 million	— %	Feb-2022 (5)	100,000	—	—	—	—	—	—	—	—
Term Loan - \$150 million	5.42 %	Feb-2024	150,000	150,000	—	150,000	—	—	—	—	—
			<u>250,000</u>	<u>150,000</u>	<u>—</u>	<u>150,000</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
Total indebtedness - excluding Credit Facility and Commercial Paper			<u>\$ 8,170,431</u>	<u>\$ 8,377,827</u>	<u>\$ 608,300</u>	<u>\$ 459,100</u>	<u>\$ 834,700</u>	<u>\$ 785,600</u>	<u>\$ 649,000</u>	<u>\$ 5,041,127</u>	

- (1) Rates are as of December 31, 2022 and include credit enhancement fees, facility fees, trustees' fees, the impact of interest rate hedges, offering costs, mark to market amortization and other fees.
- (2) Balances outstanding represent total amounts due at maturity, and exclude deferred financing costs and debt discount for the unsecured notes of \$47,695 and \$50,606 as of December 31, 2022 and 2021, respectively, deferred financing costs and debt discount associated with secured notes of \$14,087 and \$16,278 as of December 31, 2022 and 2021, respectively, as reflected on our Consolidated Balance Sheets included elsewhere in this report.
- (3) During 2022, we repaid this borrowing in advance of its scheduled maturity date.
- (4) Financed by variable rate debt, but interest rate is capped through an interest rate protection agreement.
- (5) During 2022, we repaid this borrowing at its scheduled maturity date.

In addition to consolidated debt, we have scheduled contractual obligations associated with (i) ground leases for land underlying current operating or development communities and commercial and parking facilities and (ii) office leases for our corporate headquarters and regional offices of \$15,905,000 for 2023, \$15,631,000 for 2024 and \$361,248,000 thereafter.

#### *Future Financing and Capital Needs—Portfolio and Capital Markets Activity*

We invest in various real estate and real estate related investments, which include (i) the acquisition, development and redevelopment of communities both wholly-owned and through the formation of joint ventures, (ii) other indirect investments in real estate through the SIP, all as further discussed below and (iii) investments in other real estate-related ventures through direct and indirect investments in property technology and environmentally focused companies and investment management funds.

In 2023, we expect to meet our liquidity needs from one or more of a variety of internal and external sources, which may include (i) the settlement of the outstanding forward equity contracts to sell 2,000,000 shares of our common stock, (ii) real estate dispositions, (iii) cash balances on hand as well as cash generated from our operating activities, (iv) borrowing capacity under the Credit Facility, (v) borrowings under the Commercial Paper Program and (vi) secured and unsecured debt financings. Additional sources of liquidity in 2023 may include the issuance of common and preferred equity, including the issuance of shares of our common stock under CEP V. Our ability to obtain additional financing will depend on a variety of factors, such as market conditions, the general availability of credit, the overall availability of credit to the real estate industry, our credit ratings and credit capacity, as well as the perception of lenders regarding our long or short-term financial prospects.

Before beginning new construction or reconstruction activity in 2023, including activity related to communities owned by unconsolidated joint ventures, we plan to source sufficient capital to complete these undertakings, although we cannot assure you that we will be able to obtain such financing. In the event that financing cannot be obtained, we may abandon Development Rights, write off associated pre-development costs that were capitalized and/or forego reconstruction activity. In such instances, we will not realize the increased revenues and earnings that we expected from such Development Rights or reconstruction activity and significant losses could be incurred.

From time to time we use joint ventures to hold or develop individual real estate assets. We generally employ joint ventures to mitigate asset concentration or market risk and secondarily as a source of liquidity. We may also use joint ventures related to mixed-use land development opportunities and new markets where our partners bring development and operational expertise and/or experience to the venture. Each joint venture or partnership agreement has been individually negotiated, and our ability to operate and/or dispose of a community in our sole discretion may be limited to varying degrees depending on the terms of the joint venture or partnership agreement. We cannot assure you that we will achieve our objectives through joint ventures.

In addition, we may invest, through mezzanine loans or other preferred equity investments, in multifamily development projects being undertaken by third parties. In these cases, we do not expect to acquire the underlying real estate but rather to earn a return on our investment (through interest or fixed rate preferred equity returns) and a return of the invested capital generally following completion of construction either on or before a set due date.

In evaluating our allocation of capital within our markets, we sell assets that do not meet our long-term investment criteria or when capital and real estate markets allow us to realize a portion of the value created over our ownership periods and redeploy the proceeds from those sales to develop and redevelop communities. Because the proceeds from the sale of communities may not be immediately redeployed into revenue-generating assets that we develop, redevelop or acquire, the immediate effect of a sale of a community for a gain is to increase net income, but reduce future total revenues, total expenses and NOI until such time as the proceeds have been redeployed into revenue generating assets. We believe that the temporary absence of future cash flows from communities sold will not have a material impact on our ability to fund future liquidity and capital resource needs.

Investments

We invest in consolidated real estate entities, unconsolidated investments in real estate ventures and direct and indirect investments in property technology and environmentally focused companies through investment management funds.

*Consolidated Investments*

During the year ended December 31, 2022, we acquired the following communities containing 16,000 square feet of commercial space (dollars in thousands). See Note 5, "Investments," of the Consolidated Financial Statements included elsewhere in this report for further discussion.

Community Name	Location	Apartment homes	Purchase price
Avalon Flatirons	Lafayette, CO	207	\$ 95,000
Waterford Court	Addison, TX	196	69,500
Avalon Miramar Park Place	Miramar, FL	650	295,000
Avalon Highland Creek	Charlotte, NC	260	76,700
Total acquisitions		1,313	\$ 536,200

During the year ended December 31, 2022, we sold nine wholly-owned communities containing 2,062 apartment homes (dollars in thousands). See Note 6, "Real Estate Disposition Activities," of the Consolidated Financial Statements included elsewhere in this report for further discussion.

Community Name	Location	Period of sale	Apartment homes	Gross sales price	Gain on disposition
Avalon West Long Branch	West Long Branch, NJ	Q122	180	\$ 75,000	\$ 56,434
Avalon Ossining	Ossining, NY	Q122	168	70,000	40,512
Avalon East Norwalk	Norwalk, CT	Q122	240	90,000	51,762
Avalon Green I/Avalon Green II/Avalon Green III	Elmsford, NY	Q322	617	306,000	196,466
Avalon Del Mar Station	Pasadena, CA	Q322	347	172,300	77,141
Avalon Sharon	Sharon, MA	Q322	156	65,650	44,355
Avalon Park Crest	Tysons Corner, VA	Q422	354	145,500	88,156
Total asset sales			2,062	\$ 924,450	\$ 554,826

### *Unconsolidated Investments*

During the year ended December 31, 2022, we had the following investment activity related to our unconsolidated real estate and property technology and environmentally focused investments. See Note 5, "Investments," of the Consolidated Financial Statements included elsewhere in this report for further discussion.

- The U.S. Fund sold its final three communities for \$313,500,000. Our proportionate share of the gain in accordance with GAAP was \$38,144,000. The U.S. Fund repaid the \$115,213,000 of outstanding secured indebtedness at par in advance of the scheduled maturity dates. In conjunction with the final dispositions, we achieved a threshold return resulting in an incentive distribution for the promoted interest based on the returns earned by the U.S. Fund. During the year ended December 31, 2022, we recognized income of \$4,690,000 for the promoted interest, which is reported as a component of income from investments in unconsolidated entities on the accompanying Consolidated Statements of Comprehensive Income.
- Arts District Joint Venture was formed to develop, own, and operate AVA Arts District, an apartment community located in Los Angeles, CA, which is currently under construction and expected to contain 475 apartment homes and 56,000 square feet of commercial space when completed. We have a 25% ownership interest in the venture. As of December 31, 2022, excluding costs incurred in excess of equity in the underlying net assets of the venture, we have an equity investment of \$28,660,000 in the venture. The remaining development costs, representing 60.0% of the total project cost, are expected to be funded by the venture's variable rate construction loan. The venture has drawn \$86,664,000 of \$167,147,000 maximum borrowing capacity of the construction loan as of December 31, 2022. While we guarantee the construction loan on behalf of the venture, any amounts due under the guarantee are obligations of the venture partners in proportion to ownership interest.
- Avalon Alderwood MF Member, LLC ("Avalon Alderwood Place") was formed to develop, own, and operate Avalon Alderwood Place, an apartment community located in Lynnwood, WA, which completed development in 2022 and contains 328 apartment homes. We have a 50% ownership interest in the venture. As of December 31, 2022, we have an equity investment of \$54,938,000 in the venture.
- We invested \$18,714,000 in various property technology and environmentally focused companies directly and indirectly through investment management funds during the year ended December 31, 2022. As of December 31, 2022, we have \$34,299,000 of remaining equity commitments to contribute to these investment management funds, with the timing and amount for these commitments to be fulfilled dependent on if, and when, investment opportunities are identified by the respective funds. During the year ended December 31, 2022, we recognized income and unrealized gains of \$8,315,000 related to these investments, included as a component of income from investments in unconsolidated entities on the Consolidated Statements of Comprehensive Income.

### Structured Investment Program

During the year ended December 31, 2022, we entered into commitments under the SIP in our existing markets for three mezzanine loans of up to \$92,375,000 in the aggregate. The mezzanine loans have a weighted average rate of return of 9.8%, and mature at various dates on or before June 2026. As of January 31, 2023, we have funded \$34,046,000 of these commitments. See Note 5, "Investments," of the Consolidated Financial Statements included elsewhere in this report.

You should carefully review Part I, Item 1A. "Risk Factors" of this Form 10-K for a discussion of the risks associated with our investment activity.

### Forward-Looking Statements

This Form 10-K contains "forward-looking statements" as that term is defined under the Private Securities Litigation Reform Act of 1995. You can identify forward-looking statements by our use of the words "believe," "expect," "anticipate," "intend," "estimate," "assume," "project," "plan," "may," "shall," "will," "pursue" and other similar expressions in this Form 10-K, that predict or indicate future events and trends and that do not report historical matters. These statements include, among other things, statements regarding our intent, belief or expectations with respect to:

- the impact of the Pandemic on our business, results of operations and financial condition;
- our potential development, redevelopment, acquisition or disposition of communities;
- the timing and cost of completion of apartment communities under construction, reconstruction, development or redevelopment;

- the timing of lease-up, occupancy and stabilization of apartment communities;
- the timing and net sales proceeds of condominium sales;
- the pursuit of land on which we are considering future development;
- the anticipated operating performance of our communities;
- cost, yield, revenue, NOI and earnings estimates;
- the impact of landlord-tenant laws and rent regulations;
- our expansion into new markets;
- our declaration or payment of dividends;
- our joint venture and discretionary fund activities;
- our policies regarding investments, indebtedness, acquisitions, dispositions, financings and other matters;
- our qualification as a REIT under the Code;
- the real estate markets in Metro New York/New Jersey, Northern and Southern California, Denver, Colorado, Southeast Florida, Dallas and Austin, Texas and Charlotte and Raleigh-Durham, North Carolina, and markets in selected states in the Mid-Atlantic, New England and Pacific Northwest regions of the United States and in general;
- the availability of debt and equity financing;
- interest rates;
- general economic conditions, including the potential impacts from current economic conditions, including rising interest rates and general price inflation, and the Pandemic;
- trends affecting our financial condition or results of operations;
- adverse regulatory developments that may affect us; and
- the impact of legal proceedings.

We cannot assure the future results or outcome of the matters described in these statements; rather, these statements merely reflect our current expectations of the approximate outcomes of the matters discussed. We do not undertake a duty to update these forward-looking statements, and therefore they may not represent our estimates and assumptions after the date of this report. You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to differ materially from the anticipated future results, performance or achievements expressed or implied by these forward-looking statements. You should carefully review the discussion under Item 1A. "Risk Factors" in this report for further discussion of risks associated with forward-looking statements.

Risks and uncertainties that might cause such differences include those related to the Pandemic, including, among other factors, (i) the Pandemic's effect on the multifamily industry and the general economy, including from measures taken by businesses and the government, such as governmental limitations on the ability of multifamily owners to evict residents who are delinquent in the payment of their rent and (ii) the preferences of consumers and businesses for living and working arrangements both during and after the Pandemic. In addition, the effects of the Pandemic are likely to heighten the following risks, which we routinely face in our business.

Some of the factors that could cause our actual results, performance or achievements to differ materially from those expressed or implied by these forward-looking statements include, but are not limited to, the following:

- we may fail to secure development opportunities due to an inability to reach agreements with third parties to obtain land at attractive prices or to obtain desired zoning and other local approvals;
- we may abandon or defer development opportunities for a number of reasons, including changes in local market conditions which make development less desirable, increases in costs of development, increases in the cost of capital or lack of capital availability, resulting in losses;
- construction costs of a community may exceed our original estimates;
- we may not complete construction and lease-up of communities under development or redevelopment on schedule, resulting in increased interest costs and construction costs and a decrease in our expected rental revenues;
- the timing and net proceeds of condominium sales at The Park Loggia may not equal our current expectations;
- occupancy rates and market rents may be adversely affected by competition and local economic and market conditions which are beyond our control;
- financing may not be available on favorable terms or at all, and our cash flows from operations and access to cost effective capital may be insufficient for the development of our pipeline, which could limit our pursuit of opportunities;
- the impact of new landlord-tenant laws and rent regulations may be greater than we expect;
- our cash flows may be insufficient to meet required payments of principal and interest, and we may be unable to refinance existing indebtedness or the terms of such refinancing may not be as favorable as the terms of existing indebtedness;

- we may be unsuccessful in our management of joint ventures and the REIT vehicles that are used with certain joint ventures;
- laws and regulations implementing rent control or rent stabilization, or otherwise limiting our ability to increase rents, charge fees or evict tenants, may impact our revenue or increase our costs;
- our expectations, estimates and assumptions as of the date of this filing regarding legal proceedings are subject to change;
- the possibility that we may choose to pay dividends in our stock instead of cash, which may result in stockholders having to pay taxes with respect to such dividends in excess of the cash received, if any; and
- investments made under the SIP in either mezzanine debt or preferred equity of third-party multifamily development may not be repaid as expected or the development may not be completed on schedule, which could require us to engage in litigation, foreclosure actions, and/or first party project completion to recover our investment, which may not be recovered in full or at all in such event.

#### Critical Accounting Policies and Estimates

The preparation of financial statements in conformity with GAAP requires management to use judgment in the application of accounting policies, including making estimates and assumptions. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, or different assumptions were made, it is possible that different accounting policies would have been applied, resulting in different financial results or a different presentation of our financial statements. Below is a discussion of the accounting policies that we consider critical to an understanding of our financial condition and operating results that may require complex or significant judgment in their application or require estimates about matters which are inherently uncertain. A discussion of our significant accounting policies, including further discussion of the accounting policies described below, can be found in Note 1, “Organization, Basis of Presentation and Significant Accounting Policies,” of our Consolidated Financial Statements.

#### *Cost Capitalization*

We capitalize costs during the development of assets. Capitalization begins when we determine that development of a future asset is probable and continues until the asset, or a portion of the asset, is delivered and is ready for its intended use. For redevelopment efforts, we capitalize costs either (i) in advance of taking apartment homes out of service when significant renovation of the common area has begun and continue until the redevelopment is completed, or (ii) when an apartment home is taken out of service for redevelopment and continue until the redevelopment is completed and the apartment home is available for a new resident. Rental income and operating expenses incurred during the initial lease-up or post-redevelopment lease-up period are fully recognized in earnings as they accrue.

During the development and redevelopment efforts we capitalize all direct costs and indirect costs which have been incurred as a result of the development and redevelopment activities. These costs include interest and related loan fees, property taxes as well as other direct and indirect costs. Interest is capitalized for any project-specific financing, as well as for general corporate financing to the extent of our aggregate investment in the projects. Indirect project costs, which include personnel and office and administrative costs that are clearly associated with our development and redevelopment efforts, are also capitalized. Capitalized indirect costs associated with our development and redevelopment activities are comprised primarily of compensation related costs for associates dedicated to our development and redevelopment efforts and total \$50,039,000 and \$46,263,000 for 2022 and 2021, respectively. The estimation of the direct and indirect costs to capitalize as part of our development and redevelopment activities requires judgment and, as such, we believe cost capitalization to be a critical accounting estimate.

There may be a change in our operating expenses in the event that there are changes in accounting guidance governing capitalization or changes to our levels of development or redevelopment activity. If changes in the accounting guidance limit our ability to capitalize costs or if we reduce our development and redevelopment activities without a corresponding decrease in indirect project costs, there may be an increase in our operating expenses.

We capitalize pre-development costs incurred in pursuit of Development Rights. These costs include legal fees, design fees and related overhead costs. Future development of these pursuits is dependent upon various factors, including zoning and regulatory approval, rental market conditions, construction costs and availability of capital. Pre-development costs incurred for pursuits for which future development is not yet considered probable are expensed as incurred. In addition, if the status of a Development Right changes, making future development no longer probable, any capitalized pre-development costs are written off with a charge to expense.

Due to the subjectivity in determining whether a pursuit will result in the development of an apartment community, and therefore should be capitalized, the accounting for pursuit costs is a critical accounting estimate. As of December 31, 2022, capitalized pursuit costs associated with Development Rights totaled \$58,489,000.

#### *Abandoned Pursuit Costs & Asset Impairment*

We evaluate our direct and indirect investments in real estate and other long-lived assets for impairment when potential indicators of impairment exist. If events or circumstances indicate that the carrying amount of a property may not be recoverable, we assess its recoverability by comparing the carrying amount of the property to its estimated undiscounted future cash flows. If the carrying amount exceeds the aggregate undiscounted future cash flows, we recognize an impairment loss to the extent the carrying amount exceeds the estimated fair value of the property. We assess land held for development for impairment if our intent changes with respect to the development of the land. We evaluate our unconsolidated investments for impairment, considering both the carrying value of the investment, estimated expected proceeds that it would receive if the entity were dissolved and the net assets were liquidated, as well as our proportionate share of any impairment of assets held by unconsolidated investments.

The assessment of impairment can involve subjectivity in determining if indicators are present and in estimating the future undiscounted cash flows or the fair value of an asset. Estimates of the undiscounted cash flows are sensitive to significant assumptions including future rental revenues, operating expenses, and our intent and ability to hold the related asset, which could be impacted by our expectations about the future.

We expense costs related to abandoned pursuits, which include the abandonment of Development Rights and disposition pursuits. These costs can vary greatly, and the costs incurred in any given period may be significantly different in future years.

Our focus on value creation through real estate development presents an impairment risk in the event of a future deterioration of the real estate and/or capital markets or a decision by us to reduce or cease development. We cannot predict the occurrence of future events that may cause an impairment assessment to be performed, or the likelihood of any future impairment charges, if any. You should also review Item 1A. "Risk Factors" in this Form 10-K.

## **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We are exposed to market risks from our financial instruments primarily from changes in market interest rates. Our financial instruments do not expose us to significant risk from foreign currency exchange rates or commodity or equity prices. We monitor interest rate risk as an integral part of our overall risk management, which recognizes the unpredictability of financial markets and seeks to reduce the potentially adverse effect on our results of operations. Our operating results are affected by changes in interest rates, primarily in short-term SOFR and the SIFMA index as a result of borrowings under our Credit Facility and Commercial Paper Program, outstanding bonds and unsecured notes with variable interest rates. In addition, the fair value of our fixed rate unsecured and secured notes are impacted by changes in market interest rates.

We currently use interest rate protection agreements in the form of interest rate cap agreements for our risk management objectives, as well as for compliance with the requirements of certain lenders, and not for trading or speculative purposes. In addition, we may use interest rate swap agreements for our risk management objectives. During the year ended December 31, 2022, in connection with the issuance of our \$350,000,000 unsecured notes due 2033 in November 2022, we terminated \$150,000,000 of forward interest swap agreements designated as cash flow hedges of the interest rate variability on the issuance of unsecured notes, receiving a net payment of \$26,869,000. In addition, we have interest rate caps that serve to effectively limit the amount of interest rate expense we would incur on a floating rate borrowing. Further discussion of the financial instruments impacted and our exposure is presented below.

As of December 31, 2022 and 2021, we had \$607,150,000 and \$714,150,000, respectively, in variable rate debt outstanding, with no amounts outstanding under our Credit Facility or Commercial Paper Program. If interest rates on the variable rate debt had been 100 basis points higher throughout 2022 and 2021, our annual interest incurred would have increased by approximately \$6,850,000 and \$7,716,000, respectively, based on balances outstanding during the applicable years.

Because the counterparties providing the interest rate cap and swap agreements are major financial institutions which have an A or better credit rating by the Standard & Poor's Ratings Group, we do not believe there is exposure at this time to a default by a counterparty provider.

In addition, changes in interest rates affect the fair value of our fixed rate debt, computed using quoted market prices for our unsecured notes or a discounted cash flow model for our secured notes, considering our current market yields, which impacts the fair value of our aggregate indebtedness. Debt securities and notes payable (including amounts outstanding under our Credit Facility and Commercial Paper Program) with an aggregate principal amount outstanding of \$8,377,827,000 at December 31, 2022 had an estimated aggregate fair value of \$7,207,272,000 at December 31, 2022. Contractual fixed rate debt represented \$6,887,811,000 of the fair value at December 31, 2022. If interest rates had been 100 basis points higher as of December 31, 2022, the fair value of this fixed rate debt would have decreased by approximately \$463,553,000.

## **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The response to this Item 8 is included as a separate section of this Annual Report on Form 10-K. See Item 15.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

- (a) Evaluation of Disclosure Controls and Procedures. As required by Rule 13a-15 under the Securities Exchange Act of 1934, as of the end of the period covered by this report, the Company carried out an evaluation under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. We continue to review and document our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.
  
- (b) Management's Report on Internal Control Over Financial Reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2022 based on the framework in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on that evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2022.

Our internal control over financial reporting as of December 31, 2022 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included elsewhere herein.

**ITEM 9B. OTHER INFORMATION**

None.

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not applicable.



**PART III**

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by Item 10 pertaining to directors and executive officers of the Company and the Company's Code of Conduct is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders scheduled to be held on May 24, 2023.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by Item 11 pertaining to executive compensation is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders scheduled to be held on May 24, 2023.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by Item 12 pertaining to security ownership of management and certain beneficial owners of the Company's common stock is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders scheduled to be held on May 24, 2023, to the extent not set forth below.

The Company maintains the Second Amended and Restated 2009 Equity Incentive Plan (the "2009 Plan") and the 1996 Non-Qualified Employee Stock Purchase Plan (the "ESPP"), pursuant to which common stock or other equity awards may be issued or granted to eligible persons.

The following table gives information about equity awards under the 2009 Plan and the ESPP as of December 31, 2022:

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders (1)	916,545 (2)	\$ 181.85 (3)	5,787,169
Equity compensation plans not approved by security holders (4)	—	N/A	592,075
<b>Total</b>	<b>916,545</b>	<b>\$ 181.85 (3)</b>	<b>6,379,244</b>

(1) Consists of the 2009 Plan.

(2) Includes 64,598 deferred restricted stock units granted under the 2009 Plan, which, subject to vesting requirements, will convert in the future to common stock on a one-for-one basis. Also includes the maximum number of shares that may be issued upon settlement of outstanding Performance Awards awarded to officers and maturing on December 31, 2022, 2023 and 2024. Does not include 188,084 shares of restricted stock that are outstanding and that are already reflected in the Company's outstanding shares.

(3) Excludes performance awards and deferred units granted under the 2009 Plan, which, subject to vesting requirements, will convert in the future to common stock on a one-for-one basis.

(4) Consists of the ESPP.

The ESPP, which was adopted by the Board of Directors on October 29, 1996, has not been approved by our shareholders. A further description of the ESPP appears in Note 9, "Stock-Based Compensation Plans," of the Consolidated Financial Statements set forth in Item 8 of this report.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by Item 13 pertaining to certain relationships and related transactions is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 24, 2023.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

The information required by Item 14 pertaining to the fees paid to and services provided by the Company's principal accountant is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 24, 2023. Our independent public accounting firm is Ernst & Young LLP, Tysons, Virginia, PCAOB Auditor ID 42.

**PART IV**

**ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULE**

**15(a)(1) *Financial Statements***

**Index to Financial Statements**

Consolidated Financial Statements and Financial Statement Schedule:

[Reports of Independent Registered Public Accounting Firm](#) [F-1](#)

[Consolidated Balance Sheets as of December 31, 2022 and 2021](#) [F-4](#)

[Consolidated Statements of Comprehensive Income for the years ended December 31, 2022, 2021 and 2020](#) [F-5](#)

[Consolidated Statements of Equity for the years ended December 31, 2022, 2021 and 2020](#) [F-6](#)

[Consolidated Statements of Cash Flows for the years ended December 31, 2022, 2021 and 2020](#) [F-7](#)

[Notes to Consolidated Financial Statements](#) [F-10](#)

**15(a)(2) *Financial Statement Schedule***

[Schedule III—Real Estate and Accumulated Depreciation](#) [F-39](#)

All other schedules for which provision is made in the applicable accounting regulation of the Securities and Exchange Commission are not required under the related instructions or are inapplicable and therefore have been omitted.

**15(a)(3) *Exhibits***

[The exhibits listed on the accompanying Index to Exhibits are filed as a part of this report.](#)

**ITEM 16. FORM 10-K SUMMARY**

Not Applicable.

## INDEX TO EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>
3(i).1	— <a href="#">Articles of Amendment and Restatement of Articles of Incorporation of the Company, dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-K of the Company filed March 1, 2007.)</a>
3(i).2	— <a href="#">Articles of Amendment, dated as of October 2, 1998. (Incorporated by reference to Exhibit 3(i).2 to Form 10-K of the Company filed March 1, 2007.)</a>
3(i).3	— <a href="#">Articles of Amendment, dated as of May 22, 2013. (Incorporated by reference to Exhibit 3(i).3 to Form 8-K of the Company filed May 22, 2013.)</a>
3(i).4	— <a href="#">Articles of Amendment, dated as of May 14, 2020. (Incorporated by reference to Exhibit 3(i).4 to Form 8-K of the Company filed May 15, 2020.)</a>
3(ii).1	— <a href="#">Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on November 12, 2015, and as further amended on February 16, 2017, November 9, 2017, and May 6, 2019. (Incorporated by reference to Exhibit 3(ii).1 to Form 10-Q of the Company filed August 6, 2019.)</a>
3(ii).2	— <a href="#">Fourth Amendment to the Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on November 10, 2022. (Incorporated by reference to Exhibit 3.1 to Form 8-K of the Company filed November 10, 2022.)</a>
4.1	— <a href="#">Indenture for Senior Debt Securities, 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 Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)</a>
4.2	— <a href="#">Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)</a>
4.3	— <a href="#">Fourth Supplemental Indenture, dated as of September 18, 2006, between the Company and U.S. Bank National Association as Trustee. (Incorporated by reference to Exhibit 4.5 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)</a>
4.4	— <a href="#">Fifth Supplemental Indenture, dated as of November 21, 2014, between the Company and the Bank of New York Mellon, as Trustee. (Incorporated by reference to Exhibit 4.1 to Form 8-K of the Company filed November 21, 2014.)</a>
4.5	— <a href="#">Indenture for Debt Securities, dated as of February 23, 2018, between the Company and The Bank of New York Mellon, as Trustee (Incorporated by reference to Exhibit 4.1 to Form 8-K of the Company filed September 15, 2021.)</a>
4.6	— <a href="#">First Supplemental Indenture, dated as March 26, 2018, between the Company and the Bank of New York Mellon, as Trustee. (Incorporated by reference to Exhibit 4.8 to Form 10-Q of the Company filed May 4, 2018.)</a>
4.7	— <a href="#">Second Supplemental Indenture, dated as of May 29, 2018, between the Company and the Bank of New York Mellon, as Trustee. (Incorporated by reference to Exhibit 4.3 to Form 8-K of the Company, filed May 29, 2018.)</a>
4.8	— <a href="#">Dividend Reinvestment and Stock Purchase Plan of the Company. (Incorporated by reference to the prospectus contained in the Registration Statement on Form S-3DPOS of the Company (File No. 333-87063), filed February 23, 2018.)</a>
4.9	— <a href="#">Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. (Incorporated by reference to Exhibit 4.9 to Form 10-K of the Company filed February 25, 2021.)</a>
4.10	— <a href="#">Form of 2.050% Senior Notes due 2032 (Incorporated by reference to Exhibit 4.4 to Form 8-K of the Company filed September 15, 2021.)</a>

4.11	—	<a href="#">Form of 1.900% Senior Notes due 2028 (Incorporated by reference to Exhibit 4.4 to Form 8-K of the Company filed November 18, 2021.)</a>
4.12	—	<a href="#">Form of 5.000% Senior Notes due 2033 (Incorporated by reference to Exhibit 4.4 to Form 8-K of the Company filed December 7, 2022.)</a>
10.1+	—	<a href="#">AvalonBay Communities, Inc. Second Amended and Restated 2009 Equity Incentive Plan, as restated to reflect the First Amendment, Second Amendment, Third Amendment and Fourth Amendment thereto. (Filed herewith.)</a>
10.2+	—	<a href="#">Form of Stock Grant and Restricted Stock Agreement for use with officers and associates. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed February 22, 2018.)</a>
10.3+	—	<a href="#">Form of Incentive Stock Option/Non-Qualified Stock Option Agreement for use with officers and associates. (Incorporated by reference to Exhibit 10.2 to Form 8-K of the Company filed February 22, 2018.)</a>
10.4+	—	<a href="#">2018 Amended and Restated Directors Deferred Compensation Program. (Incorporated by reference to Exhibit 10.4 to Form 8-K of the Company filed February 22, 2018.)</a>
10.5+	—	<a href="#">Form of Director Restricted Stock Agreement. (Incorporated by reference to Exhibit 10.5 to Form 8-K of the Company filed February 22, 2018.)</a>
10.6+	—	<a href="#">Form of Director Restricted Unit Agreement (deferred stock award). (Incorporated by reference to Exhibit 10.6 of Form 8-K of the Company filed February 22, 2018.)</a>
10.7+	—	<a href="#">Form of Agreement for Grant of Performance-Based Restricted Stock Units with attached Award Terms (subject to changes in the following: weightings; target, threshold and maximum levels of achievement; and metrics used). (Filed herewith.)</a>
10.8+	—	<a href="#">Form of Indemnity Agreement between the Company and its Directors. (Incorporated by reference to Exhibit 10.19 to Form 10-K of the Company filed February 19, 2015.)</a>
10.9+	—	<a href="#">The Company's Officer Severance Plan, as amended and restated on February 25, 2021. (Incorporated by reference to Exhibit 10.2 to Form 10-Q of the Company filed May 5, 2021.)</a>
10.10	—	<a href="#">Sixth Amended and Restated Revolving Loan Agreement, dated as of September 27, 2022, among the Company, as Borrower, Bank of America, N.A., as administrative agent, an issuing bank and a bank, JPMorgan Chase Bank, N.A., as an issuing bank, a bank and a syndication agent, Wells Fargo Bank, N.A., as an issuing bank, a bank and a syndication agent, the co-documentation agents named therein, JPMorgan Chase Bank, N.A., BofA Securities, Inc., and Wells Fargo Securities, LLC as joint bookrunners and joint lead arrangers, and the other bank parties signatory thereto. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed September 29, 2022.)</a>
10.11+	—	<a href="#">Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of January 1, 2011. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed August 6, 2010.)</a>
10.12+	—	<a href="#">First Amendment to Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of November 7, 2011. (Incorporated by reference to Exhibit 10.28 to Form 10-K of the Company filed February 24, 2017.)</a>
10.13+	—	<a href="#">Second Amendment to Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of November 15, 2012. (Incorporated by reference to Exhibit 10.29 to Form 10-K of the Company filed February 24, 2017.)</a>
10.14	—	<a href="#">Archstone Residual JV, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.3 to Form 8-K of the Company filed March 5, 2013.)</a>
10.15	—	<a href="#">Archstone Parallel Residual JV, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.4 to Form 8-K of the Company filed March 5, 2013.)</a>

10.16	—	<a href="#">Archstone Parallel Residual JV 2, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.5 to Form 8-K of the Company filed March 5, 2013.)</a>
10.17	—	<a href="#">Legacy Holdings JV, LLC Limited Liability Company Agreement. (Incorporated by reference to Exhibit 10.6 to Form 8-K of the Company filed March 5, 2013.)</a>
10.18	—	<a href="#">Amended and Restated Term Loan Agreement, dated as of February 28, 2019, among the Company, as Borrower, PNC Bank, National Association, as Administrative Agent and a bank, The Bank of New York Mellon, as a Syndication Agent and a bank, SunTrust Bank, as a Syndication agent and a bank, and a syndicate of other financial institutions, serving as banks. (Incorporated by reference to Exhibit 1.1 to Form 8-K of the Company filed February 28, 2019.)</a>
10.19	—	<a href="#">First Amendment to Amended and Restated Term Loan Agreement, dated as of October 27, 2022, among the Company, as Borrower, PNC Bank, National Association, as Administrative Agent and a bank, The Bank of New York Mellon, as a Syndication Agent and a bank, Truist Bank, as a Syndication agent and a bank, and a syndicate of other financial institutions, serving as banks. (Filed herewith.)</a>
10.20+	—	<a href="#">Employment Agreement between the Company and Benjamin W. Schall, dated as of December 4, 2020 (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed December 10, 2020.)</a>
10.21+	—	<a href="#">Form of Incentive Stock Option/Non-Qualified Stock Option Agreement for use with officers and associates for 2021 Supplemental Awards. (Incorporated by reference to Exhibit 10.3 to Form 10-Q of the Company filed May 5, 2021.)</a>
10.22+	—	<a href="#">Retirement Agreement by and between AvalonBay Communities, Inc. and William M. McLaughlin, dated December 16, 2021. (Incorporated by reference to Exhibit 1.1 to Form 8-K of the Company filed December 16, 2021.)</a>
10.23+	—	<a href="#">Form of Agreement for Grant of Performance-Based Restricted Stock Units with attached Award Terms and noted variations for Mr. Naughton's 2022-2024 award (subject to changes in the following for future agreements: metrics used; target, threshold and maximum levels of achievement for each metric; and weightings between the metrics). (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed May 4, 2022.)</a>
21.1	—	<a href="#">Schedule of Subsidiaries of the Company. (Filed herewith.)</a>
23.1	—	<a href="#">Consent of Ernst &amp; Young LLP. (Filed herewith.)</a>
31.1	—	<a href="#">Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer). (Filed herewith.)</a>
31.2	—	<a href="#">Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer). (Filed herewith.)</a>
32	—	<a href="#">Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer and Chief Financial Officer). (Furnished herewith.)</a>
101	—	The following financial materials from AvalonBay Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2022 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Comprehensive Income, (iii) the Consolidated Statements of Equity, (iv) the Consolidated Statements of Cash Flows and (v) Notes to the Consolidated Financial Statements. (Filed herewith.)
104	—	Cover Page Interactive Data File (embedded within the Inline XBRL document). (Filed herewith.)

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+ Management contract or compensatory plan or arrangement required to be filed or incorporated by reference as an exhibit to this Form 10-K pursuant to Item 15(a)(3) of Form 10-K.

**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.

**AvalonBay Communities, Inc.**

Date: February 24, 2023 By: /s/ BENJAMIN W. SCHALL  
*Benjamin W. Schall, Director, Chief Executive Officer and President*  
*(Principal Executive Officer)*

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Date: February 24, 2023 By: /s/ BENJAMIN W. SCHALL  
Benjamin W. Schall, Director, Chief Executive Officer and President  
(Principal Executive Officer)

Date: February 24, 2023 By: /s/ KEVIN P. O'SHEA  
Kevin P. O'Shea, Chief Financial Officer  
(Principal Financial Officer)

Date: February 24, 2023 By: /s/ KERI A. SHEA  
Keri A. Shea, Senior Vice President—Finance & Treasurer  
(Principal Accounting Officer)

Date: February 24, 2023 By: /s/ GLYN F. AEPPEL  
Glyn F. Aeppel, Director

Date: February 24, 2023 By: /s/ TERRY S. BROWN  
Terry S. Brown, Director

Date: February 24, 2023 By: /s/ ALAN B. BUCKELEW  
Alan B. Buckelew, Director

Date: February 24, 2023 By: /s/ RONALD L. HAVNER, JR.  
Ronald L. Havner, Jr., Director

Date: February 24, 2023 By: /s/ STEPHEN P. HILLS  
Stephen P. Hills, Director

Date: February 24, 2023 By: /s/ CHRISTOPHER B. HOWARD  
Christopher B. Howard, Director

Date: February 24, 2023 By: /s/ RICHARD J. LIEB  
Richard J. Lieb, Director

Date: February 24, 2023 By: /s/ NNENNA LYNCH  
Nnenna Lynch, Director

Date: February 24, 2023 By: /s/ CHARLES E. MUELLER, JR.  
Charles E. Mueller, Jr., Director

Date: February 24, 2023 By: /s/ TIMOTHY J. NAUGHTON  
Timothy J. Naughton, Director (Chairman of the Board of Directors)

Date: February 24, 2023 By: /s/ SUSAN SWANEZY  
Susan Swanezy, Director

Date: February 24, 2023 By: /s/ W. EDWARD WALTER  
W. Edward Walter, Director

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of AvalonBay Communities, Inc.

### Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of AvalonBay Communities, Inc. (the Company) as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income, equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a)(2) (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 24, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the account or disclosure to which it relates.



*Description of the Matter*

***Valuation of Deferred Development Costs and Land Held for Development***

As of December 31, 2022, the Company's capitalized deferred development costs and land held for development totaled \$58.5 million and \$179.2 million, respectively. As discussed in Footnote 1 of the consolidated financial statements, the Company capitalizes costs associated with its development activities when future development is probable to the basis of land held, or if the Company has either not yet acquired the land or if the project is subject to a leasehold interest, the costs are capitalized as deferred development costs. Future development is dependent upon various factors, including zoning and regulatory approvals, rental market conditions, construction costs and the availability of capital.

Auditing the valuation of deferred development costs and land held for development involved a high degree of subjectivity as management's assessment of the probability that future development will occur was highly judgmental and subject to the various factors affecting future development discussed above. The Company's assessment of probability of future development included an analysis of the likelihood of factors outside their control that could prevent the development from occurring and factors that could cause the Company to decide not to pursue or complete the development.

*How We Addressed the Matter in Our Audit*

We obtained an understanding, evaluated the design and tested the operating effectiveness of controls over the Company's process to assess the valuation of deferred development costs and land held for development. For example, we tested controls over the Company's pursuit monitoring process and management's review of the probability assessment related to future development.

Our procedures included, among others, evaluating the Company's determination that the future development is probable. We performed procedures to test the accuracy and completeness of the information included in the Company's qualitative analysis by agreeing data to underlying agreements, communications, minutes of management's quarterly development meetings, and third-party evidence, where available. We further assessed the likelihood of the Company's ability to obtain zoning and regulatory approvals for developments by considering, among other things, the Company's prior experience with other development projects and the current status of the future projects for which pursuit or development rights costs were capitalized or land was held for development. We also met with executives who lead the Company's development team to further understand the probability of future development.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2002.

Tysons, Virginia  
February 24, 2023

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of AvalonBay Communities, Inc.

### Opinion on Internal Control Over Financial Reporting

We have audited AvalonBay Communities, Inc.'s internal control over financial reporting as of December 31, 2022, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). In our opinion, AvalonBay Communities, Inc. (the Company) maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of comprehensive income, equity and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the Index at Item 15(a)(2) and our report dated February 24, 2023 expressed an unqualified opinion thereon.

### Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting in Item 9A. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects.

Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

### Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Ernst & Young LLP

Tysons, Virginia  
February 24, 2023

**AVALONBAY COMMUNITIES, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(Dollars in thousands, except per share data)

	December 31, 2022	December 31, 2021
<b>ASSETS</b>		
Real estate:		
Land and improvements	\$ 4,640,971	\$ 4,564,723
Buildings and improvements	18,804,510	18,198,584
Furniture, fixtures and equipment	1,174,135	1,036,640
	24,619,616	23,799,947
Less accumulated depreciation	(6,878,556)	(6,208,610)
Net operating real estate	17,741,060	17,591,337
Construction in progress, including land	1,072,543	807,101
Land held for development	179,204	147,546
For-sale condominium inventory	32,532	146,535
Real estate assets held for sale, net	—	17,065
Total real estate, net	19,025,339	18,709,584
Cash and cash equivalents	613,189	420,251
Cash in escrow	121,056	123,537
Resident security deposits	36,815	33,757
Investments in unconsolidated entities	212,084	216,390
Deferred development costs	58,489	40,414
Prepaid expenses and other assets	247,461	211,484
Right of use lease assets	143,331	146,599
Total assets	\$ 20,457,764	\$ 19,902,016
<b>LIABILITIES AND EQUITY</b>		
Unsecured notes, net	\$ 7,602,305	\$ 7,349,394
Variable rate unsecured credit facility and commercial paper	—	—
Mortgage notes payable, net	713,740	754,153
Dividends payable	226,022	225,392
Payables for construction	72,802	63,722
Accrued expenses and other liabilities	306,186	296,006
Lease liabilities	162,671	166,497
Accrued interest payable	54,100	50,300
Resident security deposits	63,700	59,787
Liabilities related to real estate assets held for sale	—	304
Total liabilities	9,201,526	8,965,555
Commitments and contingencies		
Redeemable noncontrolling interests	2,685	3,368
Equity:		
Preferred stock, \$0.01 par value; \$25 liquidation preference; 50,000,000 shares authorized at December 31, 2022 and December 31, 2021; zero shares issued and outstanding at December 31, 2022 and December 31, 2021	—	—
Common stock, \$0.01 par value; 280,000,000 shares authorized at December 31, 2022 and December 31, 2021; 139,916,864 and 139,751,926 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively	1,400	1,398
Additional paid-in capital	10,765,431	10,716,414
Accumulated earnings less dividends	485,221	240,821
Accumulated other comprehensive income (loss)	1,424	(26,106)
Total stockholders' equity	11,253,476	10,932,527
Noncontrolling interests	77	566
Total equity	11,253,553	10,933,093
Total liabilities and equity	\$ 20,457,764	\$ 19,902,016

See accompanying notes to Consolidated Financial Statements.

**AVALONBAY COMMUNITIES, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(Dollars in thousands, except per share data)

	For the year ended December 31,		
	2022	2021	2020
<b>Revenue:</b>			
Rental and other income	\$ 2,587,113	\$ 2,291,766	\$ 2,297,442
Management, development and other fees	6,333	3,084	3,819
Total revenue	<u>2,593,446</u>	<u>2,294,850</u>	<u>2,301,261</u>
<b>Expenses:</b>			
Operating expenses, excluding property taxes	630,154	570,853	549,913
Property taxes	288,960	283,089	273,189
Expensed transaction, development and other pursuit costs, net of recoveries	16,565	3,231	12,399
Interest expense, net	230,074	220,415	214,151
Loss on extinguishment of debt, net	1,646	17,787	9,333
Depreciation expense	814,978	758,596	707,331
General and administrative expense	74,064	69,611	60,343
Casualty loss	—	3,119	—
Total expenses	<u>2,056,441</u>	<u>1,926,701</u>	<u>1,826,659</u>
Income from investments in unconsolidated entities	53,394	38,585	6,422
Gain on sale of communities	555,558	602,235	340,444
Gain on other real estate transactions, net	5,039	2,097	440
Net for-sale condominium activity	88	(977)	2,551
Income before income taxes	1,151,084	1,010,089	824,459
Income tax (expense) benefit	(14,646)	(5,733)	3,247
Net income	1,136,438	1,004,356	827,706
Net loss (income) attributable to noncontrolling interests	337	(57)	(76)
Net income attributable to common stockholders	<u>\$ 1,136,775</u>	<u>\$ 1,004,299</u>	<u>\$ 827,630</u>
<b>Other comprehensive income:</b>			
Gain (loss) on cash flow hedges	23,647	993	(17,731)
Cash flow hedge losses reclassified to earnings	3,883	13,151	8,984
Comprehensive income	<u>\$ 1,164,305</u>	<u>\$ 1,018,443</u>	<u>\$ 818,883</u>
<b>Earnings per common share - basic:</b>			
Net income attributable to common stockholders	<u>\$ 8.13</u>	<u>\$ 7.19</u>	<u>\$ 5.89</u>
<b>Earnings per common share - diluted:</b>			
Net income attributable to common stockholders	<u>\$ 8.12</u>	<u>\$ 7.19</u>	<u>\$ 5.89</u>

See accompanying notes to Consolidated Financial Statements.

**AVALONBAY COMMUNITIES, INC.**  
**CONSOLIDATED STATEMENTS OF EQUITY**  
(Dollars in thousands)

	Shares issued		Preferred stock	Common stock	Additional paid-in capital	Accumulated earnings less dividends	Accumulated other comprehensive (loss) income	Total AvalonBay stockholders' equity	Noncontrolling interests	Total equity
	Preferred stock	Common stock								
Balance at December 31, 2019	—	140,643,962	\$ —	\$ 1,406	\$ 10,736,733	\$ 282,913	\$ (31,503)	\$ 10,989,549	\$ 649	\$ 10,990,198
Net income attributable to common stockholders	—	—	—	—	—	827,630	—	827,630	—	827,630
Loss on cash flow hedges, net	—	—	—	—	—	—	(17,731)	(17,731)	—	(17,731)
Cash flow hedge losses reclassified to earnings	—	—	—	—	—	—	8,984	8,984	—	8,984
Change in redemption value and acquisition of noncontrolling interest	—	—	—	—	—	210	—	210	—	210
Noncontrolling interests income distribution and income allocation	—	—	—	—	—	—	—	—	(58)	(58)
Dividends declared to common stockholders (\$6.36 per share)	—	—	—	—	—	(893,152)	—	(893,152)	—	(893,152)
Issuance of common stock, net of withholdings	—	108,499	—	1	(9,571)	(1,427)	—	(10,997)	—	(10,997)
Repurchase of common stock, including repurchase costs	—	(1,225,790)	—	(12)	(93,712)	(90,152)	—	(183,876)	—	(183,876)
Amortization of deferred compensation	—	—	—	—	30,966	—	—	30,966	—	30,966
Balance at December 31, 2020	—	139,526,671	—	1,395	10,664,416	126,022	(40,250)	10,751,583	591	10,752,174
Net income attributable to common stockholders	—	—	—	—	—	1,004,299	—	1,004,299	—	1,004,299
Gain on cash flow hedges, net	—	—	—	—	—	—	993	993	—	993
Cash flow hedge losses reclassified to earnings	—	—	—	—	—	—	13,151	13,151	—	13,151
Change in redemption value of noncontrolling interest	—	—	—	—	—	(1,022)	—	(1,022)	—	(1,022)
Noncontrolling interests income distribution and income allocation	—	—	—	—	—	—	—	—	(25)	(25)
Dividends declared to common stockholders (\$6.36 per share)	—	—	—	—	—	(889,405)	—	(889,405)	—	(889,405)
Issuance of common stock, net of withholdings	—	225,255	—	3	18,047	927	—	18,977	—	18,977
Amortization of deferred compensation	—	—	—	—	33,951	—	—	33,951	—	33,951
Balance at December 31, 2021	—	139,751,926	—	1,398	10,716,414	240,821	(26,106)	10,932,527	566	10,933,093
Net income attributable to common stockholders	—	—	—	—	—	1,136,775	—	1,136,775	—	1,136,775
Gain on cash flow hedges, net	—	—	—	—	—	—	23,647	23,647	—	23,647
Cash flow hedge losses reclassified to earnings	—	—	—	—	—	—	3,883	3,883	—	3,883
Change in redemption value of noncontrolling interest	—	—	—	—	—	(105)	—	(105)	—	(105)
Noncontrolling interest distribution and income allocation	—	—	—	—	—	—	—	—	(489)	(489)
Dividends declared to common stockholders (\$6.36 per share)	—	—	—	—	—	(890,809)	—	(890,809)	—	(890,809)
Issuance of common stock, net of withholdings	—	164,938	—	2	4,577	(1,461)	—	3,118	—	3,118
Amortization of deferred compensation	—	—	—	—	44,440	—	—	44,440	—	44,440
Balance at December 31, 2022	—	139,916,864	\$ —	\$ 1,400	\$ 10,765,431	\$ 485,221	\$ 1,424	\$ 11,253,476	\$ 77	\$ 11,253,553

See accompanying notes to Consolidated Financial Statements.

**AVALONBAY COMMUNITIES, INC**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Dollars in thousands)

	For the year ended December 31,		
	2022	2021	2020
<b>Cash flows from operating activities:</b>			
Net income	\$ 1,136,438	\$ 1,004,356	\$ 827,706
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation expense	814,978	758,596	707,331
Amortization of deferred financing costs	8,432	7,462	7,454
Amortization of debt discount	2,786	2,681	1,880
Loss on extinguishment of debt, net	1,646	17,787	9,333
Amortization of stock-based compensation	33,864	25,505	21,603
Equity in loss (income) of, and return on, unconsolidated entities and noncontrolling interests, net of eliminations	5,255	(108)	8,673
Real estate casualty loss	—	1,723	—
Abandonment of development pursuits	5,599	685	9,262
Unrealized gain on terminated cash flow hedges	—	(2,654)	(2,894)
Cash flow hedge losses reclassified to earnings	3,883	7,887	8,984
Gain on sale of real estate assets	(598,741)	(627,637)	(346,041)
Gain on sale of for-sale condominiums	(2,217)	(3,110)	(8,213)
(Decrease) increase in resident security deposits, prepaid expenses and other assets	(7,167)	5,505	(28,675)
Increase in accrued expenses, other liabilities and accrued interest payable	17,176	4,492	3,212
Net cash provided by operating activities	1,421,932	1,203,170	1,219,615
<b>Cash flows from investing activities:</b>			
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(921,203)	(654,861)	(843,907)
Acquisition of real estate assets	(536,838)	(771,692)	—
Capital expenditures - existing real estate assets	(160,313)	(142,688)	(108,531)
Capital expenditures - non-real estate assets	(14,392)	(10,547)	(28,505)
Increase (decrease) in payables for construction	9,080	(29,887)	1,474
Proceeds from sale of real estate, net of selling costs	934,117	850,230	619,773
Proceeds from the sale of for-sale condominiums, net of selling costs	117,266	124,532	202,033
Note receivable lending	(29,352)	(1,210)	(258)
Note receivable payments	4,021	2,435	3,419
Distributions from unconsolidated entities	51,464	63,171	11,157
Investments in unconsolidated entities	(14,269)	(53,536)	(36,088)
Net cash used in investing activities	(560,419)	(624,053)	(179,433)
<b>Cash flows from financing activities:</b>			
Issuance of common stock, net	20,020	31,874	3,464
Repurchase of common stock, net	—	—	(183,876)
Dividends paid	(889,607)	(888,344)	(883,212)
Issuance of mortgage notes payable	—	—	51,000
Repayments of mortgage notes payable, including prepayment penalties	(43,332)	(109,562)	(126,712)
Issuance of unsecured notes	348,565	1,098,643	1,296,581
Repayment of unsecured notes	(100,000)	(462,147)	(958,680)
Payment of deferred financing costs	(14,301)	(8,864)	(11,277)
Receipt (payment) for termination of forward interest rate swaps	26,869	4,751	(25,135)
Acquisition of/payments to noncontrolling interest	(997)	(55)	(68)
Payments related to tax withholding for share-based compensation	(16,989)	(13,463)	(14,917)
Distributions to DownREIT partnership unitholders	(48)	(48)	(48)
Distributions to joint venture and profit-sharing partners	(376)	(306)	(384)
Preferred interest obligation redemption and dividends	(860)	(1,340)	(1,000)
Net cash used in financing activities	(671,056)	(348,861)	(854,264)
Net increase in cash, cash equivalents and cash in escrow	190,457	230,256	185,918
Cash, cash equivalents and cash in escrow, beginning of year	543,788	313,532	127,614
Cash, cash equivalents and cash in escrow, end of year	\$ 734,245	\$ 543,788	\$ 313,532
Cash paid during the year for interest, net of amount capitalized	\$ 212,241	\$ 203,773	\$ 196,848

See accompanying notes to Consolidated Financial Statements.

The following table provides a reconciliation of cash, cash equivalents and cash in escrow reported with the Consolidated Statements of Cash Flows (dollars in thousands):

	For the year ended December 31,		
	2022	2021	2020
Cash and cash equivalents	\$ 613,189	\$ 420,251	\$ 216,976
Cash in escrow	121,056	123,537	96,556
Cash, cash equivalents and cash in escrow shown in the Consolidated Statements of Cash Flows	\$ 734,245	\$ 543,788	\$ 313,532

Supplemental disclosures of non-cash investing and financing activities:

During the year ended December 31, 2022:

- As described in Note 4, "Equity," the Company issued 140,528 shares of common stock as part of the Company's stock-based compensation plans, of which 54,053 shares related to the conversion of performance awards to restricted shares of common stock, and the remaining 86,475 shares valued at \$20,056,000 were issued in connection with new stock grants; 2,810 shares valued at \$593,000 were issued through the Company's dividend reinvestment plan; 72,783 shares valued at \$16,989,000 were withheld to satisfy employees' tax withholding and other liabilities; and 3,701 restricted shares with an aggregate value of \$791,000 previously issued in connection with employee compensation were canceled upon forfeiture.
- Common stock dividends declared but not paid totaled \$224,222,000.
- The Company recorded an increase of \$105,000 in redeemable noncontrolling interest with a corresponding decrease to accumulated earnings less dividends to adjust the redemption value associated with the put options held by joint venture partners and DownREIT partnership units.
- The Company reclassified \$3,883,000 of cash flow hedge losses from other comprehensive income (loss) to interest expense, net, to record the impact of the Company's derivative and hedging activity.

During the year ended December 31, 2021:

- The Company issued 155,836 shares of common stock as part of the Company's stock based compensation plans, of which 56,545 shares related to the conversion of performance awards to restricted shares of common stock, and the remaining 99,291 shares valued at \$17,757,000 were issued in connection with new stock grants; 2,844 shares valued at \$566,000 were issued through the Company's dividend reinvestment plan; 75,780 shares valued at \$13,463,000 were withheld to satisfy employees' tax withholding and other liabilities; and 4,109 restricted shares with an aggregate value of \$804,000 previously issued in connection with employee compensation were canceled upon forfeiture.
- Common stock dividends declared but not paid totaled \$224,012,000.
- The Company recorded an increase of \$1,022,000 in redeemable noncontrolling interest with a corresponding decrease to accumulated earnings less dividends to adjust the redemption value associated with the put options held by joint venture partners and DownREIT partnership units.
- The Company recorded (i) an increase to prepaid expenses and other assets of \$3,204,000, and a corresponding adjustment to accumulated other comprehensive loss and (ii) reclassified \$7,887,000 and \$5,264,000 of cash flow hedge losses from other comprehensive income (loss) to interest expense, net, and loss on extinguishment of debt, net, respectively, to record the impact of the Company's derivative and hedging activity.

During the year ended December 31, 2020:

- The Company issued 165,545 shares of common stock as part of the Company's stock based compensation plans, of which 96,317 shares related to the conversion of performance awards to restricted shares of common stock, and the remaining 69,228 shares valued at \$15,305,000 were issued in connection with new stock grants; 2,747 shares valued at \$458,000 were issued through the Company's dividend reinvestment plan; 74,173 shares valued at \$14,919,000 were withheld to satisfy employees' tax withholding and other liabilities; and 7,683 restricted shares with an aggregate value of \$1,240,000 previously issued in connection with employee compensation were canceled upon forfeiture.

- Common stock dividends declared but not paid totaled \$223,262,000.
- The Company recorded a decrease of \$210,000 in redeemable noncontrolling interest with a corresponding increase to accumulated earnings less dividends to adjust the redemption value associated with the put options held by joint venture partners and DownREIT partnership units.
- The Company recorded (i) an increase in prepaid expenses and other assets of \$4,308,000 and recorded an increase of \$1,413,000 to other comprehensive income and (ii) reclassified \$8,984,000 of cash flow hedge losses from other comprehensive income to interest expense, net, to record the impact of the Company's derivative and hedging activity.
- The Company recorded \$46,875,000 of lease liabilities and offsetting right of use lease assets related to the execution of two new office leases.

See accompanying notes to Consolidated Financial Statements.



**AVALONBAY COMMUNITIES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

1. Organization, Basis of Presentation and Significant Accounting Policies

*Organization and Basis of Presentation*

AvalonBay Communities, Inc. (the “Company,” which term, unless the context otherwise requires, refers to AvalonBay Communities, Inc. together with its subsidiaries), is a Maryland corporation that has elected to be treated as a real estate investment trust (“REIT”) for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the “Code”). The Company focuses on the development, redevelopment, acquisition, ownership and operation of multifamily communities in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Pacific Northwest, and Northern and Southern California, as well as in the Company’s expansion markets of Raleigh-Durham and Charlotte, North Carolina, Southeast Florida, Dallas and Austin, Texas, and Denver, Colorado.

At December 31, 2022, the Company owned or held a direct or indirect ownership interest in 294 operating apartment communities containing 88,475 apartment homes in 12 states and the District of Columbia, of which 18 communities were under development and one was under redevelopment. The Company also owned or held a direct or indirect ownership interest in land or rights to land on which the Company expects to develop an additional 39 communities that, if developed as expected, will contain an estimated 13,312 apartment homes (unaudited).

Capitalized terms used without definition have meanings provided elsewhere in this Form 10-K.

*Principles of Consolidation*

The accompanying Consolidated Financial Statements include the accounts of the Company and its wholly-owned subsidiaries, certain joint venture partnerships, subsidiary partnerships structured as DownREITs and any variable interest entities that qualify for consolidation. All significant intercompany balances and transactions have been eliminated in consolidation.

The Company accounts for joint venture entities and subsidiary partnerships in accordance with the consolidation guidance. The Company evaluates the partnership of each joint venture entity and determines first whether to follow the variable interest entity (“VIE”) or the voting interest entity (“VOE”) model. Once the appropriate consolidation model is identified, the Company then evaluates whether it should consolidate the venture. Under the VIE model, the Company consolidates an investment when it has control to direct the activities of the venture and the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. The Company’s maximum exposure for its VIEs is limited to its investments in the respective VIEs. Under the VOE model, the Company consolidates an investment when (i) it controls the investment through ownership of a majority voting interest if the investment is not a limited partnership or (ii) it controls the investment through its ability to remove the other partners in the investment, at its discretion, when the investment is a limited partnership.

The Company generally uses the equity method of accounting for its investment in joint ventures, including when the Company holds a noncontrolling limited partner interest in a joint venture. Any investment in excess of the Company’s cost basis at acquisition or formation of an equity method venture, will be recorded as a component of the Company’s investment in the joint venture and recognized over the life of the underlying fixed assets of the venture as a reduction to its equity in income from the venture. Investments in which the Company has little or no influence are accounted for using the measurement alternative with the carrying amount of the investment adjusted to fair value when there is an observable transaction indicating a change in fair value.

*Real Estate*

Operating real estate assets are stated at cost and consist of land and improvements, buildings and improvements, furniture, fixtures and equipment, and other costs incurred during their development, redevelopment and acquisition. Significant expenditures which improve or extend the life of an existing asset and that will benefit the Company for periods greater than a year, are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred.

Project costs related to the development, construction and redevelopment of real estate projects (including interest and related loan fees, property taxes and other direct costs) are capitalized as a cost of the project. Indirect project costs that relate to several projects are capitalized and allocated to the projects to which they relate. Indirect costs not clearly related to development, construction and redevelopment activity are expensed as incurred. For development, capitalization (i) begins when the Company has determined that development of the future asset is probable, (ii) can be suspended if there is no current development activity underway, but future development is still probable and (iii) ends when the asset, or a portion of an asset, is delivered and is ready for its intended use, or the Company's intended use changes such that capitalization is no longer appropriate.

For land parcels improved with operating real estate, for which the Company intends to pursue development, the Company generally manages the current improvements until such time as all tenant obligations have been satisfied or eliminated through negotiation, and construction of new apartment communities is ready to begin. Revenue from incidental operations received from the current improvements on land parcels in excess of any incremental costs are recorded as a reduction of total capitalized costs of the respective Development Right and not as part of net income. Incidental operating costs in excess of incidental operating income are expensed in the period incurred.

For redevelopment efforts, the Company capitalizes costs either (i) in advance of taking homes out of service when significant renovation of the common area has begun until the redevelopment is completed, or (ii) when an apartment home is taken out of service for redevelopment until the redevelopment is completed and the apartment home is available for a new resident. Rental income and operating costs incurred during the initial lease-up or post-redevelopment lease-up period are recognized in earnings as incurred.

The Company accounts for acquisitions of real estate in accordance with the authoritative guidance for the initial measurement, which first requires that the Company determine if the real estate investment is the acquisition of an asset or a business combination. Under either model, the Company must identify and determine the fair value of any assets acquired, liabilities assumed and any noncontrolling interest in the acquiree. The Company generally views acquisitions of individual operating communities as asset acquisitions, which results in the capitalization of acquisition costs and the allocation of purchase price to the assets acquired and liabilities assumed, based on the relative fair value of the respective assets and liabilities. For a business combination, the Company records the assets acquired and liabilities assumed based on the fair value of each respective item and expenses all applicable acquisition costs.

Typical assets acquired and liabilities assumed include land, building, furniture, fixtures and equipment, debt and identified intangible assets and liabilities, consisting of the value of above or below market leases and in-place leases. In making estimates of fair values for purposes of allocating purchase price, the Company utilizes various sources, including its own analysis of recently acquired and existing comparable properties in its portfolio and other market data. The purchase price allocation to tangible assets is reflected in real estate assets and depreciated over their estimated useful lives. Any purchase price allocation to intangible assets, other than in-place lease intangibles, is included in prepaid expenses and other assets on the accompanying Consolidated Balance Sheets and amortized over the term of the acquired intangible asset. The Company values land based on a market approach, looking to recent sales of similar properties, adjusting for differences due to location, the state of entitlement as well as the shape and size of the parcel. Improvements to land are valued using a replacement cost approach and consider the structures and amenities included for the communities and is reduced by estimated depreciation. The value for furniture, fixtures and equipment is also determined based on a replacement cost approach, considering costs for both items in the apartment homes as well as common areas and is adjusted for estimated depreciation. The fair value of buildings is estimated using the replacement cost approach, assuming the buildings were vacant at acquisition. The replacement cost approach considers the composition of structures acquired, adjusted for depreciation which considers industry standard information and estimated useful life of the acquired property. The value of the lease-related intangibles considers the estimated cost of leasing the apartment homes as if the acquired building(s) were vacant, as well as the value of the current leases relative to market-rate leases. The in-place lease value is determined using an average total lease-up time, the number of apartment homes and net revenues generated during the lease-up time. Net revenues use market rent considering actual leasing and industry rental rate data. The value of current leases relative to a market-rate lease is based on market comparables. Given the heterogeneous nature of multifamily real estate, the fair values for the land, debt, real estate assets and in-place leases incorporate significant unobservable inputs and therefore are considered to be Level 3 prices within the fair value hierarchy. Consideration for acquisitions is typically in the form of cash unless otherwise disclosed.

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Depreciation is generally calculated on a straight-line basis over the estimated useful lives of the assets, which for buildings and related improvements range from seven years to 30 years and for furniture, fixtures and equipment range from three years to seven years.

#### *For-Sale Condominium Inventory*

The Company presents for-sale condominium inventory at historical cost and evaluates the condominiums for impairment when potential indicators exist, as further discussed under "Casualty and Impairment of Long-Lived Assets" below.

#### *Income Taxes*

The Company elected to be treated as a REIT for federal income tax purposes for its tax year ended December 31, 1994 and has not revoked such election. A REIT is a corporate entity which holds real estate interests and can deduct from its federally taxable income qualifying dividends it pays if it meets a number of organizational and operational requirements, including a requirement that it distribute at least 90% of its adjusted taxable income to stockholders. Therefore, as a REIT, the Company generally will not be subject to corporate level federal income tax on its taxable income if it annually distributes 100% of its taxable income to its stockholders.

The states in which the Company operates have similar tax provisions which recognize the Company as a REIT for state income tax purposes. Management believes that all such conditions for the exemption from income taxes on ordinary income have been or will be met for the periods presented. Accordingly, no provision for federal and state income taxes has been made. If the Company fails to qualify as a REIT in any taxable year, it will be subject to federal corporate income taxes at regular corporate rates and may not be able to qualify as a corporate REIT for four subsequent taxable years. Even if the Company qualifies for taxation as a REIT, the Company may be subject to certain state and local taxes on its income and property, and to federal income and excise taxes on its undistributed taxable income and in certain other instances.

Taxable income from activities performed through taxable REIT subsidiaries ("TRS") is subject to federal, state and local income taxes. The Company recognized income tax expense of \$14,646,000 and \$5,733,000 in 2022 and 2021, respectively, and recorded an income tax benefit of \$3,247,000 in 2020 related to its activities through its TRSs. The income tax expense in 2022 and 2021 was primarily due to the activity at The Park Loggia and other TRS activity. During 2020, the income tax expense was offset by net operating loss carryback provisions under the Coronavirus Aid, Relief and Economic Security Act. As of December 31, 2022 and 2021, the Company did not have any unrecognized tax positions. The Company does not believe that there will be any material changes in its unrecognized tax positions over the next 12 months. The Company is subject to examination by the respective taxing authorities for the tax years 2019 through 2021.

The following summarizes the tax components of the Company's common dividends declared for the years ended December 31, 2022, 2021 and 2020 (unaudited):

	2022	2021	2020
Ordinary income	82 %	55 %	66 %
20% capital gain	15 %	26 %	24 %
Unrecaptured §1250 gain	3 %	19 %	10 %
Total	100 %	100 %	100 %

#### *Deferred Financing Costs*

Deferred financing costs include expenditures necessary to obtain debt financing and are amortized on a straight-line basis, which approximates the effective interest method, over the shorter of the loan term or the related credit enhancement facility, if applicable. Unamortized financing costs are charged to earnings when debt is retired before the maturity date. Accumulated amortization of deferred financing costs for unsecured notes was \$29,815,000 and \$23,705,000 as of December 31, 2022 and 2021, respectively, and related to mortgage notes payable was \$2,040,000 and \$2,300,000 as of December 31, 2022 and 2021, respectively. Deferred financing costs, except for costs associated with line-of-credit arrangements, are presented as a direct deduction from the related debt liability. Accumulated amortization of deferred financing costs for the Company's Credit Facility was \$11,222,000 and \$15,187,000 as of December 31, 2022 and 2021, respectively, and deferred financing costs net of accumulated amortization was included in prepaid expenses and other assets on the accompanying Consolidated Balance Sheets.

*Cash, Cash Equivalents and Cash in Escrow*

Cash and cash equivalents includes all cash and liquid investments with an original maturity of three months or less from the date acquired. Cash in escrow includes principal reserve funds that are restricted for the repayment of specified secured financing and amounts the Company has designated for planned 1031 exchange activity. The majority of the Company's cash, cash equivalents and cash in escrow are held at major commercial banks.

*Interest Rate Contracts*

The Company utilizes derivative financial instruments to manage interest rate risk. See Note 11, "Fair Value," for further discussion of derivative financial instruments.

*Comprehensive Income*

Comprehensive income, as reflected on the Consolidated Statements of Comprehensive Income, is defined as all changes in equity during each period except for those resulting from investments by or distributions to shareholders. Accumulated other comprehensive income (loss), as reflected on the Consolidated Statements of Equity, reflects the effective portion of the cumulative changes in the fair value of derivatives in qualifying cash flow hedge relationships.

*Earnings per Common Share*

Basic earnings per share is computed by dividing net income attributable to common stockholders by the weighted average number of shares outstanding during the period. All outstanding unvested restricted share awards contain rights to non-forfeitable dividends and participate in undistributed earnings with common shareholders and, accordingly, are considered participating securities that are included in the two-class method of computing basic earnings per share ("EPS"). Both the unvested restricted shares and other potentially dilutive common shares, and the related impact to earnings, are considered when calculating earnings per share on a diluted basis. The Company's earnings per common share are determined as follows (dollars in thousands, except per share data):

	For the year ended December 31,		
	2022	2021	2020
<b>Basic and diluted shares outstanding</b>			
Weighted average common shares—basic	139,634,294	139,389,433	140,094,722
Weighted average DownREIT units outstanding	7,500	7,500	7,500
Effect of dilutive securities	333,293	320,466	332,973
Weighted average common shares—diluted	139,975,087	139,717,399	140,435,195
<b>Calculation of Earnings per Share—basic</b>			
Net income attributable to common stockholders	\$ 1,136,775	\$ 1,004,299	\$ 827,630
Net income allocated to unvested restricted shares	(2,091)	(2,100)	(1,955)
Net income attributable to common stockholders—basic	\$ 1,134,684	\$ 1,002,199	\$ 825,675
Weighted average common shares—basic	139,634,294	139,389,433	140,094,722
Earnings per common share—basic	\$ 8.13	\$ 7.19	\$ 5.89
<b>Calculation of Earnings per Share—diluted</b>			
Net income attributable to common stockholders	\$ 1,136,775	\$ 1,004,299	\$ 827,630
Add: noncontrolling interests of DownREIT unitholders in consolidated partnerships, including discontinued operations	48	48	48
Net income attributable to common stockholders—diluted	\$ 1,136,823	\$ 1,004,347	\$ 827,678
Weighted average common shares—diluted	139,975,087	139,717,399	140,435,195
Earnings per common share—diluted	\$ 8.12	\$ 7.19	\$ 5.89

Certain options to purchase shares of common stock in the amount of 291,881 were outstanding as of December 31, 2022, but were not included in the computation of diluted earnings per share because such options were anti-dilutive for the period. All options to purchase shares of common stock outstanding as of December 31, 2021 and 2020 are included in the computation of diluted earnings per share.

#### *Expensed Transaction, Development and Other Pursuit Costs*

The Company capitalizes costs associated with its development activities when future development is probable (“Development Rights”) to the basis of land held, or if the Company has either not yet acquired the land or if the project is subject to a leasehold interest, the costs are capitalized as deferred development costs. Future development of these Development Rights is dependent upon various factors, including zoning and regulatory approval, rental market conditions, construction costs and the availability of capital. Costs incurred for pursuits for which future development is not yet considered probable are expensed as incurred. In addition, if the Company determines a Development Right is no longer probable, the Company recognizes any necessary expense to write down its basis in the Development Right. The Company expensed costs related to development pursuits not yet considered probable for development and the abandonment of Development Rights, as well as costs incurred in pursuing the acquisition or disposition of assets for which such acquisition and disposition activity did not occur, in the amounts of \$16,565,000, \$2,192,000 and \$12,317,000 during the years ended December 31, 2022, 2021 and 2020, respectively. These costs are included in expensed transaction, development and other pursuit costs, net of recoveries on the accompanying Consolidated Statements of Comprehensive Income. The amount for 2022 includes charges of \$10,073,000 primarily related to development opportunities in the Pacific Northwest and Southern California that the Company determined are no longer probable. The amount for 2020 includes the write-off of \$7,264,000 related to a Development Right in New York City that the Company determined is no longer probable. These costs can vary greatly, and the costs incurred in any given period may be significantly different in future periods.

#### *Casualty and Impairment of Long-Lived Assets*

The Company evaluates its real estate and other long-lived assets for impairment when potential indicators of impairment exist. Such assets are stated at cost, less accumulated depreciation and amortization, unless the carrying amount of the asset is not recoverable. If events or circumstances indicate that the carrying amount of an asset may not be recoverable, the Company assesses its recoverability by comparing the carrying amount of the asset to its estimated undiscounted future cash flows. If the carrying amount exceeds the aggregate undiscounted future cash flows, the Company recognizes an impairment loss to the extent the carrying amount exceeds the estimated fair value of the asset. Based on periodic tests of recoverability of long-lived assets, for the years ended December 31, 2022, 2021 and 2020, the Company did not recognize any material impairment losses other than those related to casualty losses from property damage. During the year ended December 31, 2021, the Company recognized a charge of \$3,119,000 related to damage across several communities in our East Coast markets from severe storms and a fire at an operating community, reported as casualty loss on the accompanying Consolidated Statements of Comprehensive Income.

The Company evaluates its for-sale condominium inventory for potential indicators of impairment, considering whether the fair value of the individual for-sale condominium units exceeds the carrying value of those units. For-sale condominium inventory is stated at the lower of cost or fair value. The Company determines the fair value of its for-sale condominium inventory as the estimated sales price less direct costs to sell. For the years ended December 31, 2022, 2021 and 2020, the Company did not recognize any impairment losses on its for-sale condominium inventory.

The Company evaluates its unconsolidated investments for other than temporary impairment, considering both the extent and amount by which the carrying value of the investment exceeds the fair value, and the Company's intent and ability to hold the investment to recover its carrying value. The Company also evaluates its proportionate share of any impairment of assets held by unconsolidated investments. There were no other than temporary impairment losses recognized for any of the Company's investments in unconsolidated real estate entities during the years ended December 31, 2022, 2021 or 2020.

#### *Assets Held for Sale and Discontinued Operations*

The Company presents the assets and liabilities of any communities which have been sold, or otherwise qualify as held for sale, separately in the accompanying Consolidated Balance Sheets. In addition, the results of operations for those assets that meet the definition of discontinued operations are presented as such in the accompanying Consolidated Statements of Comprehensive Income. Real estate assets held for sale are measured at the lower of the carrying amount or the fair value less the cost to sell. Upon the classification of an asset as held for sale, no further depreciation is recorded. Disposals representing a strategic shift in operations (e.g., a disposal of a major geographic area, a major line of business or a major equity method investment) will be presented as discontinued operations, and for those assets qualifying for classification as discontinued operations, the specific components of net income presented as discontinued operations include net operating income, depreciation expense and interest expense, net. For periods prior to the asset qualifying for discontinued operations, the Company reclassifies the results of operations to discontinued operations. In addition, the net gain or loss (including any impairment loss) on the eventual disposal of assets held for sale will be presented as discontinued operations when recognized. A change in presentation for held for sale or discontinued operations has no impact on the Company's financial condition or results of operations. The Company combines the operating, investing and financing portions of cash flows attributable to discontinued operations with the respective cash flows from continuing operations on the accompanying Consolidated Statements of Cash Flows. The Company had no wholly-owned communities that qualified as held for sale presentation at December 31, 2022.

#### *Derivative Instruments and Hedging Activities*

The Company enters into interest rate swap and interest rate cap agreements (collectively, "Hedging Derivatives") for interest rate risk management purposes and in conjunction with certain variable rate secured debt to satisfy lender requirements. The Company does not enter into Hedging Derivatives for trading or other speculative purposes. The Company assesses the effectiveness of qualifying cash flow and fair value hedges, both at inception and on an on-going basis. Hedge ineffectiveness is reported as a component of interest expense, net. The fair values of Hedging Derivatives that are in an asset position are recorded in prepaid expenses and other assets. The fair values of Hedging Derivatives that are in a liability position are included in accrued expenses and other liabilities. The Company does not present or disclose the fair value of Hedging Derivatives on a net basis. Fair value changes for derivatives that are not in qualifying hedge relationships are reported as a component of interest expense, net. For the Hedging Derivatives that qualify as effective cash flow hedges, the Company has recorded the cumulative changes in the fair value of Hedging Derivatives in accumulated other comprehensive income (loss). Amounts recorded in accumulated other comprehensive loss will be reclassified into earnings in the periods in which earnings are affected by the hedged cash flow. The effective portion of the change in fair value of the Hedging Derivatives that qualify as

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effective fair value hedges is reported as an adjustment to the carrying amount of the corresponding hedged item. See Note 11, "Fair Value," for further discussion of derivative financial instruments.

### *Use of Estimates*

The preparation of financial statements in conformity with GAAP requires management to make certain estimates and assumptions. These estimates and assumptions 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.

### *Reclassifications*

Certain reclassifications have been made to amounts in prior years' notes to financial statements to conform to current year presentations as a result of changes in held for sale classification, disposition activity and segment classification.

### *Leases*

The Company is party to leases as both a lessor and a lessee, primarily as follows:

- lessor of residential and commercial space within its apartment communities; and
- lessee under (i) ground leases for land underlying current operating or development communities and certain commercial and parking facilities and (ii) office leases for its corporate headquarters and regional offices.

### Lessee Considerations

The Company assesses whether a contract is or contains a lease based on whether the contract conveys the right to control the use of an identified asset, including specified portions of larger assets, for a period of time in exchange for consideration.

The Company's leases include both fixed and variable lease payments, which are based on an index or rate such as the consumer price index (CPI) or percentage rents based on total sales. When evaluating what payments to include in the measurement of the lease liability, the Company included lease payments that depend on an index or rate only. Variable lease payments are not included in the measurement of the lease liability, but will be recognized as variable lease expense in the period in which they are incurred.

For leases that have options to extend the term or terminate the lease early, the Company only factored the impact of such options into the lease term if the option was considered reasonably certain to be exercised. The Company determined the discount rate associated with its ground and office leases on a lease by lease basis using the Company's actual borrowing rates as well as indicative market pricing for longer term rates and taking into consideration the remaining term of the lease agreements. For leases that are twelve months or less, the Company has elected the practical expedient to not assess these leases under the standard and recognize the lease payments on a straight line basis.

### Lessor Considerations

The Company has determined that the residential and commercial leases at its apartment communities are operating leases. For leases that include rent concessions and/or fixed and determinable rent increases, rental income is recognized on a straight-line basis over the noncancellable term of the lease, which, for residential leases, is generally one year. Some of the Company's commercial leases have renewal options which the Company will only include in the lease term if, at the commencement of the lease, it is reasonably certain that the lessee will exercise this option.

For the Company's leases, which are comprised of a lease component and common area maintenance as a non-lease component, the Company determined that (i) the leases are operating leases, (ii) the lease component is the predominant component and (iii) all components of its operating leases share the same timing and pattern of transfer.

### *Revenue and Gain Recognition*

Under Accounting Standards Codification ("ASC") 606, Revenue from Contracts with Customers, the Company recognizes revenue for the transfer of goods and services to customers for consideration that the Company expects to receive. The majority of the Company's revenue is derived from residential and commercial rental and other lease income, which are accounted for as discussed above, under "Leases". The Company's revenue streams that are not accounted for under ASC 842, Leases, include:

- Management fees - The Company has investment interests in real estate joint ventures, for which the Company may manage (i) the venture, (ii) the associated operating communities owned by the ventures and/or (iii) the construction, development or redevelopment of those communities. For these activities, the Company receives asset management, property management, development and/or redevelopment fee revenue. The performance obligation is the management of the venture, community or other defined task such as the development or redevelopment of the community. While the individual activities that comprise the performance obligation of the management fees can vary day to day, the nature of the overall performance obligation to provide management service is the same and considered by the Company to be a series of services that have the same pattern of transfer to the customer and the same method to measure progress toward satisfaction of the performance obligation. The Company recognizes revenue for fees as earned.
- Non-lease related revenue - The Company recognizes revenue for items not considered to be components of a lease as earned.
- Gains or losses on sales of real estate - The Company accounts for the sale of real estate and any related gain recognition in accordance with the accounting guidance applicable to sales of real estate, which establishes standards for recognition of profit on all real estate sales transactions, other than commercial land sales. The Company recognizes the sale, and associated gain or loss from the disposition when the criteria for the sale of an asset have been met, which include when (i) a contract exists and (ii) the buyer obtained control of the nonfinancial asset that was sold.

The following table details the Company's revenue disaggregated by reportable operating segment, further discussed in Note 8, "Segment Reporting," for the years ended December 31, 2022, 2021 and 2020. The segments are classified based on the individual community's status at December 31, 2022 for the years ended December 31, 2022 and 2021, and at December 31, 2021 for the year ended December 31, 2020. Segment information for total revenue excludes real estate assets that were sold from January 1, 2020 through December 31, 2022, or otherwise qualify as held for sale as of December 31, 2022, as described in Note 6, "Real Estate Disposition Activities." (dollars in thousands):



	Same Store	Other Stabilized Communities	Development/ Redevelopment Communities	Non-allocated (1)	Total
For the year ended December 31, 2022					
Management, development and other fees and other ancillary items	\$ —	\$ —	\$ —	\$ 6,333	\$ 6,333
Non-lease related revenue (2)	10,130	3,750	452	—	14,332
Total non-lease revenue (3)	10,130	3,750	452	6,333	20,665
Lease income (4)	2,240,238	206,591	90,578	—	2,537,407
Total revenue	\$ 2,250,368	\$ 210,341	\$ 91,030	\$ 6,333	\$ 2,558,072
For the year ended December 31, 2021					
Management, development and other fees and other ancillary items	\$ —	\$ —	\$ —	\$ 3,084	\$ 3,084
Non-lease related revenue (2)	7,425	1,879	256	—	9,560
Total non-lease revenue (3)	7,425	1,879	256	3,084	12,644
Lease income (4)	2,020,113	119,780	42,629	—	2,182,522
Total revenue	\$ 2,027,538	\$ 121,659	\$ 42,885	\$ 3,084	\$ 2,195,166
For the year ended December 31, 2020					
Management, development and other fees and other ancillary items	\$ —	\$ —	\$ —	\$ 1,978	\$ 1,978
Non-lease related revenue (2)	7,200	2,056	362	—	9,618
Total non-lease revenue (3)	7,200	2,056	362	1,978	11,596
Lease income (4)	2,018,883	77,375	27,936	—	2,124,194
Business interruption insurance proceeds	379	—	—	—	379
Total revenue	\$ 2,026,462	\$ 79,431	\$ 28,298	\$ 1,978	\$ 2,136,169

- (1) Revenue represents third-party property management, developer fees and miscellaneous income and other ancillary items which are not allocated to a reportable segment.
- (2) Amounts include revenue streams related to leasing activities that are not considered components of a lease, and revenue streams not related to leasing activities including, but not limited to, application fees, renters insurance fees and vendor revenue sharing.
- (3) Represents revenue accounted for under ASC 606.
- (4) Represents residential and commercial rental and other lease income, accounted for under ASC 842.

Due to the nature and timing of the Company's identified revenue streams, there were no material amounts of outstanding or unsatisfied performance obligations as of December 31, 2022.

*Uncollectible Lease Revenue Reserves*

The Company assesses the collectability of its lease revenue and receivables on an on-going basis by (i) assessing the probability of receiving all lease amounts due on a lease by lease basis, (ii) reserving all amounts for those leases where collection of substantially all of the remaining lease payments is not probable and (iii) subsequently, will only recognize revenue to the extent cash is received. If the Company determines that collection of the remaining lease payments becomes probable at a future date, the Company will recognize the cumulative revenue that would have been recorded under the original lease agreement.

In addition to the specific reserves recognized under ASC 842, the Company also evaluates its lease receivables for collectability at a portfolio level under ASC 450, Contingencies – Loss Contingencies. The Company recognizes a reserve under ASC 450 when the uncollectible revenue is probable and reasonably estimable. The Company applies this reserve to the population of the Company’s revenue and receivables not specifically addressed as part of the specific ASC 842 reserve.

The Company recorded an aggregate offset to income for uncollectible lease revenue, net of amounts received from government rent relief programs, for its residential and commercial portfolios of \$49,147,000, \$52,075,000 and \$66,763,000 for the years ended December 31, 2022, 2021 and 2020 under ASC 842 and ASC 450.

*Recently Issued and Adopted Accounting Standards*

In March 2020, the FASB issued ASU 2020-04, Reference Rate Reform (ASC 848). ASC 848 applies to contracts and transactions that refer to LIBOR or other reference rates that are expected to be discontinued due to reference rate reform and includes optional expedients related activities that impact debt, derivatives, and other contracts. The original ASU was effective as of its issuance date and provided temporary relief through December 31, 2022 which was extended through December 31, 2024 with the issuance of ASU 2022-06 in December 2022. In October 2022, the Company amended and restated the Term Loan to update the interest rate benchmark from LIBOR to SOFR and the Company elected to apply the optional expedients in ASC 848 to not apply contract modifications accounting requirements to the Term Loan amendment. The Company continues to evaluate the impact of the standard and may apply other optional expedients if additional changes in the market occur. The Company does not expect ASC 848 will have a material effect on the Company’s financial position or results of operations.

## 2. Interest Capitalized

The Company capitalizes interest during the development and redevelopment of real estate assets. Capitalized interest associated with the Company's development or redevelopment activities totaled \$34,854,000, \$32,687,000 and \$44,157,000 for the years ended December 31, 2022, 2021 and 2020, respectively.

## 3. Debt

The Company's debt, which consists of unsecured notes, variable rate unsecured term loans (the "Term Loans"), mortgage notes payable, the Credit Facility and the Commercial Paper Program, each as defined below, as of December 31, 2022 and 2021 are summarized below. The following amounts and discussion do not include the mortgage notes related to the communities classified as held for sale, if any, as of December 31, 2022 and 2021, as shown in the Consolidated Balance Sheets (dollars in thousands) (see Note 6, "Real Estate Disposition Activities"). The weighted average interest rates in the following table for secured and unsecured notes include costs of financing such as credit enhancement fees, trustees' fees, the impact of interest rate hedges and mark-to-market adjustments.

	December 31, 2022		December 31, 2021	
Fixed rate unsecured notes	\$ 7,500,000	3.3 %	\$ 7,150,000	3.2 %
Term Loans	150,000	5.4 %	250,000	1.1 %
Fixed rate mortgage notes payable—conventional and tax-exempt	270,677	3.4 %	306,281	3.7 %
Variable rate mortgage notes payable—conventional and tax-exempt	457,150	5.3 %	464,150	1.7 %
Total mortgage notes payable and unsecured notes and Term Loans	8,377,827	3.4 %	8,170,431	3.1 %
Credit Facility	—	— %	—	— %
Commercial paper	—	— %	—	— %
Total principal outstanding	8,377,827	3.4 %	8,170,431	3.1 %
Less deferred financing costs and debt discount (1)	(61,782)		(66,884)	
Total	\$ 8,316,045		\$ 8,103,547	

(1) Excludes deferred financing costs and debt discount associated with the Credit Facility and the Commercial Paper Program which are included in prepaid expenses and other assets on the accompanying Consolidated Balance Sheets.

The borrowing capacity under the Credit Facility is impacted by the Commercial Paper Program and the following letters of credit (dollars in thousands):

	December 31, 2022		December 31, 2021	
Letters of credit	\$ 1,914		\$ 11,969	

After taking into account its Commercial Paper Program and letters of credit, the Company had \$2,248,086,000 available under the Credit Facility as of December 31, 2022. In addition, the Company had \$48,740,000 and \$39,581,000 outstanding in additional letters of credit unrelated to the Credit Facility as of December 31, 2022 and 2021, respectively.

During the year ended December 31, 2022:

- In February 2022, the Company repaid its \$100,000,000 variable rate unsecured term loan at par upon maturity.
- In March 2022, the Company established an unsecured commercial paper note program (the "Commercial Paper Program"). Under the terms of the Commercial Paper Program, the Company may issue, from time to time, unsecured commercial paper notes with varying maturities of less than one year. Amounts available under the Commercial Paper Program may be issued, repaid and re-issued from time to time, with the maximum aggregate face or principal amount outstanding at any one time not to exceed \$500,000,000. The Commercial Paper Program is backstopped by the Company's commitment to maintain available borrowing capacity under the Credit Facility in an amount equal to actual borrowings under the Commercial Paper Program. The Company did not have any amounts outstanding under the Commercial Paper Program as of December 31, 2022.

- In September 2022, the Company repaid \$35,276,000 principal amount of its secured fixed rate debt with an effective rate of 6.16% in advance of the October 2047 scheduled maturity, recognizing a loss on debt extinguishment of \$1,399,000, composed of prepayment penalties and the non-cash write off of unamortized deferred financing costs.
- In September 2022, the Company entered into the Sixth Amended and Restated Revolving Loan Agreement (the "Credit Facility") with a syndicate of banks, which replaces its prior credit facility dated as of February 28, 2019. The amended and restated Credit Facility (i) increased the borrowing capacity from \$1,750,000,000 to \$2,250,000,000, (ii) extended the term of the Credit Facility from February 28, 2024 to September 27, 2026, with two six-month extension options available to the Company, provided the Company is not in default and upon payment of a \$1,406,000 extension fee, (iii) amended certain provisions, notably to reduce the capitalization rate used to derive certain financial covenants from 6.0% to 5.75% and (iv) transitioned the benchmark rate from the London Interbank Offered Rate ("LIBOR") to the Secured Overnight Financing Rate ("SOFR"). The Company may elect to expand the Credit Facility to \$3,000,000,000, provided that one or more banks (from the syndicate or otherwise) voluntarily agree to provide the additional commitment. No member of the syndicate of banks can prohibit the increase, which will only be effective to the extent banks (from the syndicate or otherwise) choose to commit to lend additional funds.

The interest rate that would be applicable to borrowings under the Credit Facility is 5.13% at December 31, 2022 and is composed of (i) SOFR, applicable to the period of borrowing for a particular draw of funds from the facility (e.g., one month to maturity, three months to maturity, etc.), plus (ii) the current borrowing spread to SOFR of 0.825% per annum, which consists of a 0.10% SOFR adjustment plus 0.725% per annum, assuming a one month term SOFR borrowing rate. The borrowing spread to SOFR can vary from SOFR plus 0.65% to SOFR plus 1.40% based upon the rating of the Company's unsecured and unsubordinated long-term indebtedness. There is also an annual facility commitment fee of 0.125% of the borrowing capacity under the facility, which can vary from 0.10% to 0.30% based upon the rating of the Company's unsecured and unsubordinated long-term indebtedness. The Credit Facility contains a sustainability-linked pricing component which provides for interest rate margin and commitment fee reductions or increases by meeting or missing targets related to environmental sustainability, specifically greenhouse gas emission reductions, with the adjustment determined annually beginning in July 2023. The Credit Facility also contains a competitive bid option that is available for borrowings of up to 65% of the Credit Facility amount. This option allows banks that are part of the lender consortium to bid to provide the Company loans at a rate that is lower than the stated pricing provided by the Credit Facility. The competitive bid option may result in lower pricing than the stated rate if market conditions allow.

Prior to the amended and restated Credit Facility, the Company's cost of borrowing was comprised of LIBOR plus 0.775% and an annual facility fee at 0.125%, both as determined by the Company's credit ratings.

- In December 2022, the Company issued \$350,000,000 principal amount of unsecured notes in a public offering under its existing shelf registration statement for proceeds net of underwriting fees of approximately \$346,290,000, before considering the impact of other offering costs. The notes mature in February 2033 and were issued at a 5.00% interest rate, resulting in a 4.37% effective rate including the impact of issuance costs and hedging activity.

In the aggregate, secured notes payable mature at various dates from March 2027 through July 2066, and are secured by certain apartment communities (with a net carrying value of \$1,182,381,000, excluding communities classified as held for sale, as of December 31, 2022).

In addition to the Commercial Paper Program, scheduled payments and maturities of secured notes payable and unsecured notes outstanding at December 31, 2022 were as follows (dollars in thousands):

Year	Secured notes principal payments	Secured notes maturities	Unsecured notes and Term Loan maturities	Stated interest rate of unsecured notes and Term Loan
2023	\$ 8,300	\$ —	\$ 350,000	4.200 %
			250,000	2.850 %
2024	9,100	—	300,000	3.500 %
			150,000 (1)	SOFR + 0.95%
2025	9,700	—	525,000	3.450 %
			300,000	3.500 %
2026	10,600	—	475,000	2.950 %
			300,000	2.900 %
2027	12,900	236,100	400,000	3.350 %
2028	17,600	—	450,000	3.200 %
			400,000	1.900 %
2029	8,500	66,250	450,000	3.300 %
2030	9,000	—	700,000	2.300 %
2031	9,600	—	600,000	2.450 %
2032	10,300	—	700,000	2.050 %
Thereafter	74,800	245,077	350,000	5.000 %
			350,000	3.900 %
			300,000	4.150 %
			300,000	4.350 %
	<u>\$ 180,400</u>	<u>\$ 547,427</u>	<u>\$ 7,650,000</u>	

(1) In October 2022, the Company amended the Term Loan transitioning the benchmark rate from LIBOR to SOFR. The borrowing spread to SOFR of 0.95% per annum, consists of a 0.10% SOFR adjustment plus 0.85% per annum.

The Company's unsecured notes are redeemable at the Company's option, in whole or in part, generally at a redemption price equal to the greater of (i) 100% of their principal amount or (ii) the sum of the present value of the remaining scheduled payments of principal and interest discounted at a rate equal to the yield on U.S. Treasury securities with a comparable maturity plus a spread between 10 and 30 basis points depending on the specific series of unsecured notes, plus accrued and unpaid interest to the redemption date.

The Company is subject to financial covenants contained in the Credit Facility and the Commercial Paper Program, the Term Loan and the indentures under which the unsecured notes were issued. The principal financial covenants include the following:

- limitations on the amount of total and secured debt in relation to our overall capital structure;
- limitations on the amount of our unsecured debt relative to the undepreciated basis of real estate assets that are not encumbered by property-specific financing; and
- minimum levels of debt service coverage.

The Company was in compliance at December 31, 2022 with customary covenants under the Credit Facility and the Commercial Paper Program, the Term Loan and the indentures under which the Company's unsecured notes were issued.

#### 4. Equity

As of December 31, 2022 and 2021, the Company's charter had authorized for issuance a total of 280,000,000 shares of common stock and 50,000,000 shares of preferred stock.

During the year ended December 31, 2022, the Company:

- i. issued 8,670 shares of common stock in connection with stock options exercised;
- ii. issued 2,810 shares of common stock through the Company's dividend reinvestment plan;
- iii. issued 140,528 shares of common stock in connection with restricted stock grants and the conversion of performance awards to shares of common stock;
- iv. sold 68,577 shares of common stock under CEP V, as discussed below;
- v. withheld 72,783 shares of common stock to satisfy employees' tax withholding and other liabilities;
- vi. issued 20,837 shares of common stock through the Employee Stock Purchase Plan; and
- vii. canceled 3,701 shares of restricted common stock upon forfeiture.

Deferred compensation granted under the Company's Second Amended and Restated 2009 Equity Incentive Plan (the "2009 Plan") during the year ended December 31, 2022 does not impact the Company's Consolidated Financial Statements until recognized as compensation cost.

In July 2020, the Company's Board of Directors approved a stock repurchase program under which the Company may acquire shares of its common stock in open market or negotiated transactions up to an aggregate purchase price of \$500,000,000 (the "2020 Stock Repurchase Program"). Purchases of common stock under the 2020 Stock Repurchase Program may be exercised at the Company's discretion with the timing and number of shares repurchased depending on a variety of factors including price, corporate and regulatory requirements and other corporate liquidity requirements and priorities. The 2020 Stock Repurchase Program does not have an expiration date and may be suspended or terminated at any time without prior notice. During the year ended December 31, 2022, the Company had no repurchases of shares under this program. As of December 31, 2022, the Company had \$316,148,000 remaining authorized for purchase under this program.

In May 2019, the Company commenced a fifth continuous equity program ("CEP V") under which the Company may sell (and/or enter into forward sale agreements for the sale of) up to \$1,000,000,000 of its common stock from time to time. Actual sales will depend on a variety of factors to be determined by the Company, including market conditions, the trading price of the Company's common stock and the Company's determinations of the appropriate funding sources. The Company engaged sales agents for CEP V who receive compensation of up to 1.5% of the gross sales price for shares sold. The Company expects that, if entered into, it will physically settle each forward sale agreement on one or more dates specified by the Company on or prior to the maturity date of that particular forward sale agreement, in which case the Company will receive aggregate net cash proceeds at settlement equal to the number of shares underlying the particular forward agreement multiplied by the forward sale price. However, the Company may also elect to cash settle or net share settle a forward sale agreement. In connection with each forward sale agreement, the Company will pay the forward seller, in the form of a reduced initial forward sale price, a commission of up to 1.5% of the sales prices of all borrowed shares of common stock sold. During the year ended December 31, 2022, the Company had no sales under this program. During the year ended December 31, 2022, the Company settled the outstanding forward contracts entered into in December 2021 under CEP V, selling 68,577 shares of common stock for \$229.34 per share and net proceeds of \$15,727,000. As of December 31, 2022, the Company had \$705,961,000 remaining authorized for issuance under CEP V.

In addition to CEP V, during the year ended December 31, 2022, the Company completed an underwritten public offering of 2,000,000 shares of its common stock for an initial net forward sales price of \$247.30 per share, after offering fees and discounts, offered in connection with forward contracts entered into with certain financial institutions acting as forward purchasers. Assuming full physical settlement of the forward contracts, which the Company expects to occur no later than December 31, 2023, the Company will receive approximate proceeds of \$494,200,000 net of offering fees and discounts and based on the initial forward price. The final proceeds will be determined on the date(s) of settlement and are subject to certain customary adjustments for the Company's dividends and a daily interest factor during the term of the forward contracts.

## 5. Investments

### *Unconsolidated Investments*

The Company accounts for its investments in unconsolidated entities under the equity method of accounting or under the measurement alternative, as discussed in Note 1, “Organization, Basis of Presentation and Significant Accounting Policies,” under *Principles of Consolidation*. The significant accounting policies of the Company’s unconsolidated investments are consistent with those of the Company in all material respects. Certain of these investments are subject to various buy-sell provisions or other rights which are customary in real estate joint venture agreements. The Company and its partners in these entities may initiate these provisions to either sell the Company’s interest or acquire the interest from the Company’s partner. The Company is responsible for the day-to-day operations of the unconsolidated communities below and is the management agent subject to the terms of management agreements for all communities except for Brandywine Apartments of Maryland, LLC, which is managed by a third party.

The following presents the Company’s activities in unconsolidated investments for the years ended December 31, 2022, 2021 and 2020:

*Archstone Multifamily Partners AC LP (the “U.S. Fund”)*—The Company is the general partner of the U.S. Fund and has a 28.6% combined general partner and limited partner equity interest. The Company acquired its interest in the U.S. Fund as part of the Archstone Acquisition (as defined in Note 5, “Investments in Real Estate Entities,” of the Consolidated Financial Statements in Item 8 in the Company’s Form 10-K filed February 22, 2019). During 2022, the U.S. Fund sold its final three communities, Avalon Grosvenor Tower, Avalon Studio 4121 and Avalon Station 250, containing an aggregate of 671 apartment homes, for \$313,500,000. The Company’s proportionate share of the gains in accordance with GAAP was \$38,144,000. The U.S. Fund repaid the \$115,213,000 of outstanding secured indebtedness at par in advance of the scheduled maturity dates. In conjunction with the final dispositions, the Company achieved a threshold return resulting in an incentive distribution for the promoted interest based on the returns earned by the U.S. Fund. During the year ended December 31, 2022, the Company recognized income of \$4,690,000 for the promoted interest, which is reported as a component of income from investments in unconsolidated entities on the accompanying Consolidated Statements of Comprehensive Income. The U.S. Fund sold one community in 2020, and the Company’s proportionate share of the gains in accordance with GAAP was \$5,157,000. At December 31, 2022 the Company has an equity investment of \$6,109,000 (net of distributions).

*Archstone Multifamily Partners AC JV LP (the “AC JV”)*—The Company had a 20.0% equity interest in the AC JV, and acquired its interest as part of the Archstone Acquisition. During 2021, the AC JV sold its final two communities and the Company’s proportionate share of the gains in accordance with GAAP was \$23,305,000. During 2022, the Company completed the dissolution of the AC JV.

*Legacy JV*—As part of the Archstone Acquisition the Company entered into a limited liability company agreement with Equity Residential, through which it assumed obligations of Archstone in the form of preferred interests, some of which are governed by tax protection arrangements (the “Legacy JV”). The Company has a 40.0% interest in the Legacy JV. During the years ended December 31, 2022, 2021 and 2020, the Legacy JV redeemed certain of the preferred interests and paid accrued dividends, for which the Company contributed \$860,000, \$1,340,000 and \$1,000,000, respectively. At December 31, 2022, the remaining preferred interests had an aggregate liquidation value of \$34,159,000, the Company’s 40.0% share of which was included in accrued expenses and other liabilities in the accompanying Consolidated Balance Sheets.

*NYTA MF Investors LLC (“NYC Joint Venture”)*—During 2018, the Company contributed five wholly-owned communities containing an aggregate of 1,301 apartment homes and 58,000 square feet of commercial space, located in New York City, NY, to a newly formed joint venture with the intent to own and operate the communities. The Company retained a 20.0% equity interest in the venture with the partners sharing in returns in accordance with their ownership interests. NYC Joint Venture has outstanding \$395,189,000 fixed rate mortgage loans that are payable by the venture. The Company has not guaranteed the debt of NYC Joint Venture, nor does the Company have any obligation to fund this debt should NYC Joint Venture be unable to do so. At December 31, 2022 the Company has an equity investment of \$58,157,000 (net of distributions).

*MVP I, LLC*—During 2004, the Company entered into a joint venture agreement with an unrelated third-party to develop Avalon at Mission Bay II, an apartment community located in San Francisco, CA, which completed construction during 2006 and contains 313 apartment homes. The Company has a 25.0% equity interest in the venture. MVP I, LLC has an outstanding \$103,000,000 fixed rate mortgage loan that is payable by the venture. The Company has not guaranteed the debt of MVP I, LLC, nor does the Company have any obligation to fund this debt should MVP I, LLC be unable to do so. The Company has fully recovered its basis as of December 31, 2022.

*Brandywine Apartments of Maryland, LLC (“Brandywine”)*—Brandywine owns a 305 apartment home community located in Washington, D.C. Brandywine is comprised of five members who hold various interests in the joint venture, with the Company having a 28.7% equity interest in Brandywine. Brandywine had an outstanding \$19,731,000 fixed rate mortgage loan that is payable by the venture. The Company has not guaranteed the debt of Brandywine, nor does the Company have any obligation to fund this debt should Brandywine be unable to do so. Excluding costs incurred in excess of equity in the underlying net assets of Brandywine, at December 31, 2022 the Company has an equity investment of \$15,213,000 (net of distributions).

*Avalon Alderwood MF Member, LLC*—During 2019, the Company entered into a joint venture to develop, own, and operate Avalon Alderwood Place, an apartment community located in Lynnwood, WA, which completed construction during 2022 and contains 328 apartment homes. The Company has a 50.0% interest in the venture and, as of December 31, 2022, the Company has a total equity investment of \$54,938,000. The venture is a VIE, though the Company is not the primary beneficiary because it shares control with its venture partner. The Company and its venture partner share decision making authority for all significant aspects of the venture's activities including, but not limited to, changes in the ownership or capital structure, and the operating budget.

*Arts District Joint Venture*—During 2020, the Company entered into a joint venture to develop, own, and operate AVA Arts District, an apartment community located in Los Angeles, CA, which is currently under construction and expected to contain 475 apartment homes (unaudited) and 56,000 square feet (unaudited) of commercial space when completed. As of December 31, 2022, the Company has a 25.0% interest in the venture, and excluding costs incurred in excess of equity in the underlying net assets of the venture, has an equity investment of \$28,660,000. The remaining development costs, representing 60.0% of the total project cost, are expected to be funded by the venture's variable rate construction loan. The venture has drawn \$86,664,000 of \$167,147,000 maximum borrowing capacity of the construction loan as of December 31, 2022. While the Company guarantees the construction loan on behalf of the venture, any amounts due under the guarantee are obligations of the venture partners in proportion to ownership interest. The venture is an unconsolidated VIE as the Company is not the primary beneficiary due to shared control and decision making with its venture partner. The Company and its venture partner share decision making authority for all significant aspects of the venture's activities including, but not limited to, changes in the ownership, changes to the development plan or budget, and major operating decisions including annual business plans.

*Property Technology and Environmental Investments*—Excluding costs incurred in excess of equity, the Company has invested \$36,178,000 in various property technology and environmentally focused companies directly and indirectly through investment management funds. The Company's interest in each individual investment represents less than 10% of the respective venture's equity interests. In addition, as of December 31, 2022, the Company has \$34,299,000 in outstanding equity commitments, with the timing and amount for these commitments to be fulfilled dependent on if, and when, investment opportunities are identified by the respective funds. During the years ended December 31, 2022 and 2021, the Company recognized income and unrealized gains of \$8,315,000 and \$15,908,000, respectively, related to these investments, which was reported as a component of income from investments in unconsolidated entities on the accompanying Consolidated Statements of Comprehensive Income.

*Investments in Consolidated Real Estate Entities*

Details regarding communities acquired in 2022, 2021 and 2020, are summarized in the following table (dollars in thousands):

Community Name	Location	Number of communities	Apartment homes	Purchase price	Retail square feet
Avalon Flatirons	Lafayette, CO	1	207	\$ 95,000	16,000
Waterford Court	Addison, TX	1	196	69,500	—
Avalon Miramar Park Place	Miramar, FL	1	650	295,000	—
Avalon Highland Creek	Charlotte, NC	1	260	76,700	—
<b>Total 2022 acquisitions</b>		<b>4</b>	<b>1,313</b>	<b>\$ 536,200</b>	<b>16,000</b>
<b>Total 2021 acquisitions</b>		<b>7</b>	<b>1,932</b>	<b>\$ 724,500</b>	<b>90,000</b>
<b>Total 2020 acquisitions</b>		<b>—</b>	<b>—</b>	<b>\$ —</b>	<b>—</b>

The Company accounted for these purchases as asset acquisitions and recorded the acquired assets and assumed liabilities, including identifiable intangibles, at their relative fair values based on the purchase price and acquisition costs incurred. The Company used third party pricing or internal models for the value of the land, a valuation model for the value of the building, and an internal model to determine the fair value of the remaining real estate assets and in-place leases. Given the



heterogeneous nature of multifamily real estate, the fair values for the land, debt, real estate assets and in-place leases incorporated significant unobservable inputs and therefore are considered to be Level 3 prices within the fair value hierarchy.

#### Structured Investment Program

In April 2022, the Company established its Structured Investment Program (the “SIP”), a new investment platform through which the Company provides mezzanine loans or preferred equity to third-party multifamily developers in the Company’s existing markets. During the year ended December 31, 2022, the Company entered into commitments for three mezzanine loans of up to \$92,375,000 in the aggregate. The mezzanine loans have a weighted average rate of return of 9.8% and mature at various dates on or before June 2026. At December 31, 2022, the Company had funded \$29,352,000 of these commitments.

The Company evaluates each SIP commitment to determine the classification as a loan or an investment in a real estate development project. As of December 31, 2022, all of the SIP commitments are classified as loans. The Company includes amounts outstanding under the SIP as a component of prepaid expenses and other assets on the accompanying Consolidated Balance Sheets. The Company evaluates the credit risk for each loan on an ongoing basis, estimating the reserve for credit losses using relevant available information from internal and external sources. Market-based historical credit loss data provides the basis for the estimation of expected credit losses, with adjustments, if necessary, for differences in current loan-specific risk characteristics, such as the amount of equity capital provided by a borrower, nature of the real estate being developed or other factors.

For the three existing loans, interest is recognized as earned as interest income, and interest income and any change in the expected credit loss are included as a component of interest expense, net, on the accompanying Consolidated Statements of Comprehensive Income.

#### 6. Real Estate Disposition Activities

Details regarding the real estate sales, which resulted in a gain in accordance with GAAP of \$555,558,000, excluding for-sale residential condominiums at The Park Loggia, are summarized in the following table (dollars in thousands):

Community Name	Location	Period of sale	Apartment homes	Debt	Gross sales price	Net cash proceeds
Avalon West Long Branch	West Long Branch, NJ	Q122	180	\$ —	\$ 75,000	\$ 73,286
Avalon Ossining	Ossining, NY	Q122	168	—	70,000	69,298
Avalon East Norwalk	Norwalk, CT	Q122	240	—	90,000	87,996
Avalon Green I/Avalon Green II/Avalon Green III	Elmsford, NY	Q322	617	—	306,000	303,209
Avalon Del Mar Station	Pasadena, CA	Q322	347	—	172,300	170,226
Avalon Sharon	Sharon, MA	Q322	156	—	65,650	64,671
Avalon Park Crest	Tysons Corner, VA	Q422	354	—	145,500	143,340
Other real estate (1)	multiple	2022	N/A	—	28,685	22,091
Total of 2022 asset sales			2,062	\$ —	\$ 953,135	\$ 934,117
Total of 2021 asset sales			2,404	\$ —	\$ 875,058	\$ 850,230
Total of 2020 asset sales			1,817	\$ —	\$ 634,250	\$ 619,773

(1) Represents the sale of a land parcel, located in West Windsor, NJ.

As of December 31, 2022, the Company had no real estate assets that qualified as held for sale.

*The Park Loggia*

The Park Loggia, located in New York, NY, contains 172 for-sale residential condominiums and 66,000 square feet of commercial space. The Company sold 40, 53 and 70 residential condominiums at The Park Loggia, for gross proceeds of \$126,848,000, \$135,458,000 and \$216,372,000 resulting in a gain in accordance with GAAP of \$2,217,000, \$3,110,000 and \$8,213,000 during the years ended December 31, 2022, 2021 and 2020, respectively. As of December 31, 2022, there were nine residential condominiums remaining to be sold. The Company incurred \$2,129,000, \$4,087,000 and \$5,662,000 during the years ended December 31, 2022, 2021 and 2020, respectively, in marketing, operating and administrative costs. All amounts are included in net for-sale condominium activity, on the accompanying Consolidated Statements of Comprehensive Income. As of December 31, 2022 and 2021, the unsold for-sale residential condominiums at The Park Loggia had an aggregate carrying value of \$32,532,000 and \$146,535,000, respectively, presented as for-sale condominium inventory on the accompanying Consolidated Balance Sheets.

7. Commitments and Contingencies

*Employment Agreements and Arrangements*

At December 31, 2022, the Company has an employment agreement with Benjamin W. Schall, who joined the Company on January 25, 2021 as President and a member of the Board of Directors, and was appointed to the additional role of Chief Executive Officer effective January 3, 2022.

The standard restricted stock and option agreements used by the Company in its compensation program provide that upon an employee's termination without cause or the employee's Retirement (as defined in the agreement), all outstanding stock options and restricted shares of stock held by the employee will vest, and the employee will have up to 12 months or until the fifth anniversary of the grant date, if later, or until the option expiration date, if earlier, to exercise any options then held. Under the agreements, Retirement generally means a termination of employment and other business relationships, other than for cause, after attainment of age 50, provided that (i) the employee has worked for the Company for at least 10 years, (ii) the employee's age at Retirement plus years of employment with the Company equals at least 70, (iii) the employee provides at least six months written notice of intent to retire, and (iv) the employee enters into a one year non-compete and employee non-solicitation agreement.

The Company also has an Officer Severance Program (the "Program"). Under the Program, in the event an officer who is not otherwise covered by a severance arrangement is terminated (other than for cause), or chooses to terminate his or her employment for good reason (as defined), in either case in connection with or within 24 months following a sale event (as defined) of the Company, such officer will generally receive a cash lump sum payment equal to a multiple of the officer's covered compensation (base salary plus annual cash bonus). The multiple is one time for vice presidents and senior vice presidents, two times for executive vice presidents and three times for the chief executive officer. The officer's restricted stock and options would also vest. Costs related to the Program are deferred and recognized over the requisite service period when considered by management to be probable and estimable.

*Legal Contingencies*

The Company recognizes a loss associated with contingent legal matters when the loss is probable and estimable. The Company is involved in various claims and/or administrative proceedings that arise in the ordinary course of its business. While no assurances can be given, the Company does not currently believe that any of these outstanding litigation matters, individually or in the aggregate, will have a material adverse effect on its financial condition or results of operations.

In addition, the Company accounts for recoveries from legal matters as a reduction in the legal and related costs incurred associated with the matter, with recoveries in excess of these costs reported as a gain or, where appropriate, a reduction in the net cost basis of a community to which the suit related. During the year ended December 31, 2022, the Company recognized \$6,000,000 in legal settlement proceeds related to a construction defect at a community, reported as a component of general and administrative expense on the accompanying Consolidated Statements of Comprehensive Income. There were no material receipts during the years ended December 31, 2021 and 2020.

*Lease Obligations*

The Company owns seven apartment communities and two commercial properties, located on land subject to ground leases expiring between July 2046 and April 2106. The Company has purchase options for all ground leases expiring prior to 2062. The ground leases for six of the seven apartment communities and the two commercial properties, are operating leases, with rental expense recognized on a straight-line basis over the lease term. In addition, the Company is party to 13 leases for its corporate and regional offices with varying terms through 2031, all of which are operating leases.

As of December 31, 2022 and 2021, the Company had total operating lease assets of \$114,977,000 and \$118,370,000, respectively, and lease obligations of \$142,602,000 and \$146,377,000, respectively, reported as components of right of use lease assets and lease liabilities, respectively, on the accompanying Consolidated Balance Sheets. The Company incurred costs of \$15,667,000, \$15,458,000 and \$16,011,000 in the years ended December 31, 2022, 2021 and 2020, respectively, related to operating leases.

The Company has one apartment community located on land subject to a ground lease and four leases for portions of parking garages adjacent to apartment communities, that are finance leases. As of December 31, 2022 and 2021, the Company had total finance lease assets of \$28,354,000 and \$28,229,000, respectively, and total finance lease obligations of \$20,069,000 and \$20,120,000, respectively, reported as components of right of use lease assets and lease liabilities on the accompanying Consolidated Balance Sheets.

The following table details the weighted average remaining lease term and discount rates for the Company's ground and office leases:

Weighted-average remaining lease term - finance leases	23 years
Weighted-average remaining lease term - operating leases	38 years
Weighted-average discount rate - finance leases	4.63 %
Weighted-average discount rate - operating leases	4.62 %

The following tables detail the future minimum lease payments under the Company's current leases and a reconciliation of undiscounted and discounted cash flows for operating and finance leases (dollars in thousands):

	Payments due by period					
	2023	2024	2025	2026	2027	Thereafter
Operating Lease Obligations	\$ 14,821	\$ 14,544	\$ 14,482	\$ 14,301	\$ 12,803	\$ 279,529
Finance Lease Obligations	1,084	1,087	1,089	1,091	1,094	36,859
	<u>\$ 15,905</u>	<u>\$ 15,631</u>	<u>\$ 15,571</u>	<u>\$ 15,392</u>	<u>\$ 13,897</u>	<u>\$ 316,388</u>
		<b>Total undiscounted cash flows</b>	<b>Total lease liabilities</b>		<b>Difference between discounted and undiscounted cash flows</b>	
Operating Lease Obligations	\$	350,480	\$	142,602	\$	207,878
Finance Lease Obligations		42,304		20,069		22,235
	<u>\$</u>	<u>392,784</u>	<u>\$</u>	<u>162,671</u>	<u>\$</u>	<u>230,113</u>

## 8. Segment Reporting

The Company's reportable operating segments include Same Store, Other Stabilized and Development/Redevelopment. Annually as of January 1, the Company determines which of its communities fall into each of these categories and generally maintains that classification throughout the year for the purpose of reporting segment operations, unless disposition or redevelopment plans regarding a community change.

- *Same Store* is composed of consolidated communities where a comparison of operating results from the prior year to the current year is meaningful as these communities were owned and had stabilized occupancy as of the beginning of the respective prior year. For the year ended December 31, 2022, Same Store communities are consolidated for financial reporting purposes, had stabilized occupancy as of January 1, 2021, are not conducting or are not probable to conduct substantial redevelopment activities and are not held for sale as of December 31, 2022 or probable for disposition to unrelated third parties within the fiscal year. A community is considered to have stabilized occupancy at the earlier of (i) attainment of 90% physical occupancy or (ii) the one year anniversary of completion of development or redevelopment.
- *Other Stabilized* is composed of completed consolidated communities that the Company owns and that are not Same Store but that had stabilized occupancy, as defined above, as of January 1, 2022, or which were acquired during the years ended December 31, 2022 or 2021. Other Stabilized includes stabilized wholly-owned communities in Charlotte, North Carolina and Dallas, Texas, the two new expansion markets the Company entered in 2021, but excludes communities that are conducting or are probable to conduct substantial redevelopment activities within the fiscal year.
- *Development/Redevelopment* is composed of (i) consolidated communities that are either currently under construction, or were under construction during the fiscal year, which may be partially or fully complete and operating, (ii) consolidated communities where substantial redevelopment is in progress or is probable to begin during the fiscal year and (iii) communities that have been complete for less than one year and have not reached stabilized occupancy, as defined above, as of January 1, 2022.

In addition, the Company owns land for future development and has other corporate assets that are not allocated to an operating segment.

The Company's segment disclosures present the measure(s) used by the chief operating decision maker ("CODM") for assessing each segment's performance. The Company's CODM is comprised of several members of its executive management team who use net operating income ("NOI") as the primary financial measure for Same Store communities and Other Stabilized communities. NOI is defined by the Company as total property revenue less direct property operating expenses (including property taxes), and excluding corporate-level income (including management, development and other fees), corporate-level property management and other indirect operating expenses, expensed transaction, development and other pursuit costs, net of recoveries, interest expense, net, loss on extinguishment of debt, net, general and administrative expense, income from investments in unconsolidated entities, depreciation expense, income tax expense (benefit), casualty loss, gain on sale of communities, gain on other real estate transactions, net, net for-sale condominium activity and net operating income from real estate assets sold or held for sale. The CODM evaluates the Company's financial performance on a consolidated residential and commercial basis. The commercial results attributable to the non-apartment components of the Company's mixed-use communities and other nonresidential operations represent 2.0%, 1.7% and 0.9% of total NOI for the years ended December 31, 2022, 2021 and 2020, respectively. Although the Company considers NOI a useful measure of a community's or communities' operating performance, NOI should not be considered an alternative to net income or net cash flow from operating activities, as determined in accordance with GAAP. NOI excludes a number of income and expense categories as detailed in the reconciliation of NOI to net income.

A reconciliation of NOI to net income for years ended December 31, 2022, 2021 and 2020 is as follows (dollars in thousands):

	For the year ended December 31,		
	2022	2021	2020
Net income	\$ 1,136,438	\$ 1,004,356	\$ 827,706
Property management and other indirect operating expenses, net of corporate income	114,200	98,665	97,443
Expensed transaction, development and other pursuit costs, net of recoveries	16,565	3,231	12,399
Interest expense, net	230,074	220,415	214,151
Loss on extinguishment of debt, net	1,646	17,787	9,333
General and administrative expense	74,064	69,611	60,343
Income from investments in unconsolidated entities	(53,394)	(38,585)	(6,422)
Depreciation expense	814,978	758,596	707,331
Income tax expense (benefit)	14,646	5,733	(3,247)
Casualty loss	—	3,119	—
Gain on sale of communities	(555,558)	(602,235)	(340,444)
Gain on other real estate transactions, net	(5,039)	(2,097)	(440)
Net for-sale condominium activity	(88)	977	(2,551)
Net operating income from real estate assets sold or held for sale	(22,746)	(61,105)	(103,181)
Net operating income	<u>\$ 1,765,786</u>	<u>\$ 1,478,468</u>	<u>\$ 1,472,421</u>

The following is a summary of NOI from real estate assets sold or held for sale for the periods presented (dollars in thousands):

	For the year ended December 31,		
	2022	2021	2020
Rental income from real estate assets sold or held for sale	\$ 35,374	\$ 99,684	\$ 165,092
Operating expenses from real estate assets sold or held for sale	(12,628)	(38,579)	(61,911)
Net operating income from real estate assets sold or held for sale	<u>\$ 22,746</u>	<u>\$ 61,105</u>	<u>\$ 103,181</u>

The primary performance measure for communities under development or redevelopment depends on the stage of completion. While under development, management monitors actual construction costs against budgeted costs as well as lease-up pace and rent levels compared to budget.

The following table details the Company's segment information as of the dates specified (dollars in thousands). The segments are classified based on the individual community's status at December 31, 2022 for the years ended December 31, 2022 and 2021 and at December 31, 2021, for the year ended December 31, 2020. Segment information for the years ended December 31, 2022, 2021 and 2020 has been adjusted to exclude the real estate assets that were sold from January 1, 2020 through December 31, 2022, or otherwise qualify as held for sale as of December 31, 2022, as described in Note 6, "Real Estate Disposition Activities."

	Total revenue	NOI	Gross real estate (1)
<b>For the period ended December 31, 2022</b>			
Same Store			
New England	\$ 344,384	\$ 228,316	\$ 2,881,980
Metro NY/NJ	466,512	324,901	4,115,989
Mid-Atlantic	333,400	227,031	3,203,802
Southeast Florida	38,265	25,003	398,823
Denver, CO	26,848	19,652	321,685
Pacific Northwest	145,255	102,838	1,297,627
Northern California	403,611	288,468	3,687,929
Southern California	492,093	345,463	4,320,634
Total Same Store	<u>2,250,368</u>	<u>1,561,672</u>	<u>20,228,469</u>
Other Stabilized	210,341	141,593	2,973,170
Development / Redevelopment	91,030	62,521	2,367,634
Land Held for Development	N/A	N/A	179,204
Non-allocated (3)	6,333	N/A	155,418
Total	<u>\$ 2,558,072</u>	<u>\$ 1,765,786</u>	<u>\$ 25,903,895</u>
<b>For the period ended December 31, 2021</b>			
Same Store			
New England	\$ 305,627	\$ 196,075	\$ 2,845,834
Metro NY/NJ	415,936	284,819	4,089,024
Mid-Atlantic	310,274	208,505	3,174,279
Southeast Florida	31,703	19,689	395,999
Denver, CO	23,742	16,451	320,435
Pacific Northwest	126,513	85,980	1,288,975
Northern California	371,978	263,101	3,640,220
Southern California	441,765	303,336	4,264,695
Total Same Store (2)	<u>2,027,538</u>	<u>1,377,956</u>	<u>20,019,461</u>
Other Stabilized	121,659	75,422	2,413,391
Development / Redevelopment	42,885	25,090	1,580,653
Land Held for Development	N/A	N/A	147,546
Non-allocated (3)	3,084	N/A	257,536
Total	<u>\$ 2,195,166</u>	<u>\$ 1,478,468</u>	<u>\$ 24,418,587</u>
<b>For the year ended December 31, 2020</b>			
Same Store			
New England	\$ 294,955	\$ 193,754	\$ 2,678,628
Metro NY/NJ	399,686	277,666	3,895,554
Mid-Atlantic	336,264	233,307	3,479,627
Southeast Florida	29,151	15,730	393,926
Denver, CO	21,293	13,796	319,562
Pacific Northwest	110,976	77,324	1,052,903
Northern California	400,934	298,176	3,438,290
Southern California	433,203	299,196	4,226,724
Total Same Store (2)	<u>2,026,462</u>	<u>1,408,949</u>	<u>19,485,214</u>
Other Stabilized	79,431	52,614	1,081,327
Development / Redevelopment	28,298	10,858	1,917,913
Land Held for Development	N/A	N/A	110,142
Non-allocated (3)	1,978	N/A	367,189
Total	<u>\$ 2,136,169</u>	<u>\$ 1,472,421</u>	<u>\$ 22,961,785</u>

(1) Does not include gross real estate either sold or classified as held for sale subsequent to December 31, 2021 and 2020 of \$482,542 and \$955,497, respectively.

(2) Gross real estate for the Company's Same Store includes capitalized additions of approximately \$209,607, \$158,991 and \$126,548 in 2022, 2021 and 2020, respectively.

- (3) Revenue represents third-party property management, developer fees and miscellaneous income and other ancillary items which are not allocated to a reportable segment. Gross real estate includes the for-sale residential condominiums at The Park Loggia, as discussed in Note 6, "Real Estate Disposition Activities."

#### 9. Stock-Based Compensation Plans

The Company's 2009 Plan includes an authorization to issue shares of the Company's common stock, par value \$0.01 per share. At December 31, 2022, the Company had 5,787,169 shares remaining available to issue under the 2009 Plan, exclusive of shares that may be issued to satisfy currently outstanding awards such as stock options or performance awards. The 2009 Plan provides for various types of equity awards to associates, officers, non-employee directors and other key personnel of the Company and its subsidiaries. The types of awards that may be granted under the 2009 Plan include restricted stock, restricted stock units, stock options that qualify as incentive stock options ("ISOs") under Section 422 of the Code, non-qualified stock options, stock appreciation rights and performance awards, among others. No grants of stock options and other awards will be made after May 15, 2027, and no grants of incentive stock options will be made after February 16, 2027.

The Company's current share-based compensation framework is composed of annual restricted stock awards for which one third of the award vests annually over a three-year period and multi-year long term incentive performance awards (the "Performance Awards"). For annual restricted stock awards, in lieu of time-vesting restricted stock, the recipient may elect to receive up to 100% of the award value, in increments of 25%, in the form of stock options, for which one third of the award vests annually over a three-year period. Under the Company's multi-year long term incentive compensation framework, the Company grants a target number of performance awards, with the ultimate award determined by the total shareholder return of the Company's common stock and/or operating performance metrics, measured in each case over a measurement period of up to three years. Performance units granted in 2018 and later years that are earned at the end of the measurement period are settled in fully vested shares of common stock and an amount of cash equal to the dividends that would have been payable, while the performance award was outstanding, on a number of shares equal to the number of units earned. The Company granted supplemental stock options in February 2021, that have a ten-year term and cliff vest on March 1, 2023. The options were granted at an exercise price that equaled the closing stock price on the grant date with recipients having 12 months to exercise the option if terminated without cause, and will have until the expiration date to exercise the options if they retire after the cliff vesting date.

For Performance Awards, after the first year of the performance period, if an employee's employment terminates on account of death, disability, retirement, or termination without cause, the employee vests in a pro rata portion of the award (based on the employee's service time during the performance period), with the vested portion to be earned and converted into shares and the cash amount for the dividends described above at the end of the performance period based on actual achievement under the performance award. For other terminating events, performance awards are generally forfeited.

Information with respect to stock options granted under the 2009 Plan is as follows:

	2009 Plan options	Weighted average exercise price per option
Options Outstanding, December 31, 2019	14,408	\$ 124.05
Exercised	(1,902)	89.17
Granted	—	—
Forfeited	—	—
Options Outstanding, December 31, 2020	12,506	\$ 129.35
Exercised	(2,759)	124.34
Granted (1)	294,115	180.32
Forfeited	(4,713)	180.32
Options Outstanding, December 31, 2021	299,149	\$ 178.71
Exercised	(8,670)	135.78
Granted (2)	9,793	236.14
Forfeited	(6,459)	180.32
Options Outstanding, December 31, 2022	293,813	\$ 181.85
Options Exercisable:		
December 31, 2020	12,506	\$ 129.35
December 31, 2021	9,747	\$ 130.77
December 31, 2022	6,533	\$ 165.51

- (1) Includes 4,847 options from recipient elections to receive a portion of earned restricted stock awards in the form of stock options.  
(2) All options are from recipient elections to receive a portion of earned restricted stock awards in the form of stock options.

The Company used the Black-Scholes Option Pricing model to determine the grant date fair value of options. The assumptions used are as follows:

	2022
Dividend yield	3.0 %
Estimated volatility	27.2 %
Risk free rate	1.85 %
Expected life of options	5 years
Estimated fair value	\$44.22

The following summarizes the exercise prices and contractual lives of options outstanding as of December 31, 2022:

2009 Plan Number of Options	Exercise Price	Weighted Average Remaining Contractual Term (in years)
1,932	\$130.23	0.1
282,088	\$180.32	8.2
9,793	\$236.14	9.1
293,813		

Options outstanding and exercisable at December 31, 2022 had an intrinsic value of \$60,000. Options exercisable had a weighted average contractual life of 0.1 years. The intrinsic value of options exercised under the 2009 Plan during 2022, 2021 and 2020 was \$602,000, \$186,000 and \$251,000, respectively.



Information with respect to performance awards granted is as follows:

	Performance awards	Weighted average grant date fair value per award
Outstanding at December 31, 2019	253,432	\$ 176.27
Granted (1)	77,182	238.03
Change in awards based on performance (2)	18,112	177.26
Converted to restricted stock	(96,317)	177.26
Forfeited	(10,488)	188.52
Outstanding at December 31, 2020	241,921	\$ 195.13
Granted (3)	138,033	191.12
Change in awards based on performance (2)	(37,469)	156.00
Converted to shares of common stock	(56,545)	156.00
Forfeited	(1,418)	207.65
Outstanding at December 31, 2021	284,522	\$ 214.73
Granted (4)	72,783	254.75
Change in awards based on performance (2)	(20,356)	200.92
Converted to shares of common stock	(54,053)	217.33
Forfeited	(3,829)	230.36
Outstanding at December 31, 2022	279,067	\$ 225.46

- (1) The shares of common stock earned was based on the total shareholder return metrics for the Company's common stock for 38,823 performance awards and financial metrics related to operating performance, net asset value and leverage metrics of the Company for 38,359 performance awards.
- (2) Represents the change in the number of performance awards earned based on performance achievement.
- (3) The shares of common stock that may be earned is based on the total shareholder return metrics for the Company's common stock for 69,064 performance awards and financial metrics related to operating performance and leverage metrics of the Company for 68,969 performance awards.
- (4) The shares of common stock that may be earned is based on the total shareholder return metrics for the Company's common stock for 39,972 performance awards and financial metrics related to operating performance and leverage metrics of the Company for 32,811 performance awards.

The Company used a Monte Carlo model to assess the compensation cost associated with the portion of the performance awards granted for which achievement will be determined by using total shareholder return measures. The assumptions used are as follows:

	2022	2021	2020
Dividend yield	2.7%	3.5%	2.8%
Estimated volatility over the life of the plan (1)	16.1% - 36.8%	22.0% - 49.0%	11.1% - 15.5%
Risk free rate	0.72% - 1.68%	0.06% - 0.38%	1.45% - 1.62%
Estimated performance award value based on total shareholder return measure	\$271.98	\$213.16	\$254.72

- (1) Estimated volatility over the life of the plan is using 50% historical volatility and 50% implied volatility.

For the portion of the performance awards granted for which achievement will be determined by using financial metrics, the compensation cost was based on an average grant date value of \$233.94, \$178.38 and \$224.64, for the years ended December 31, 2022, 2021 and 2020, respectively, and the Company's estimate of corporate achievement for the financial metrics.

Information with respect to restricted stock granted is as follows:

	Restricted stock shares	Restricted stock shares weighted average grant date fair value per share	Restricted stock shares converted from performance awards
Outstanding at December 31, 2019	148,326	\$ 181.29	163,111
Granted - restricted stock shares	69,228	221.08	96,317
Vested - restricted stock shares	(79,931)	178.41	(111,325)
Forfeited	(5,899)	196.22	(1,784)
Outstanding at December 31, 2020	131,724	\$ 203.28	146,319
Granted - restricted stock shares	99,291	178.84	—
Vested - restricted stock shares	(69,840)	192.32	(71,692)
Forfeited	(4,109)	195.77	—
Outstanding at December 31, 2021	157,066	\$ 192.90	74,627
Granted - restricted stock shares	86,475	231.93	—
Vested - restricted stock shares	(78,212)	197.51	(48,171)
Forfeited	(3,615)	218.19	(86)
Outstanding at December 31, 2022	161,714	\$ 210.97	26,370

Total employee stock-based compensation cost recognized in income was \$34,131,000, \$25,100,000 and \$21,110,000 for the years ended December 31, 2022, 2021 and 2020, respectively, and total capitalized stock-based compensation cost was \$10,431,000, \$9,472,000 and \$9,974,000 for the years ended December 31, 2022, 2021 and 2020, respectively. At December 31, 2022, there was a total unrecognized compensation cost of \$31,571,000 for unvested restricted stock, stock options and performance awards, which is expected to be recognized over a weighted average period of 1.7 years. Forfeitures are included in compensation cost as they occur.

#### *Employee Stock Purchase Plan*

In October 1996, the Company adopted the 1996 Non-Qualified Employee Stock Purchase Plan (as amended, the “ESPP”). Initially, 1,000,000 shares of common stock were reserved for issuance, and as of December 31, 2022, there are 592,075 shares remaining available for issuance under the ESPP. Employees of the Company generally are eligible to participate in the ESPP if, as of the last day of the applicable purchase period, they have been employed by the Company for at least one calendar month. Under the ESPP, eligible employees can acquire shares of the Company’s common stock through payroll deductions, subject to maximum purchase limitations, during two purchase periods. The first purchase period begins January 1 and ends June 10, and the second purchase period begins July 1 and ends December 10. The purchase price for common stock under the plan is 85% of the lesser of the fair market value of the Company’s common stock on the first or the last day of the applicable purchase period. The offering dates, purchase dates and duration of purchase periods may be changed if the change is announced prior to the beginning of the affected date or purchase period. The Company issued 20,837, 21,362 and 20,161 shares and recognized compensation expense of \$564,000, \$1,609,000 and \$537,000 under the ESPP for the years ended December 31, 2022, 2021 and 2020, respectively. The Company accounts for transactions under the ESPP using the fair value method prescribed by accounting guidance applicable to entities that use employee share purchase plans.

#### 10. Related Party Arrangements

##### *Unconsolidated Entities*

The Company manages unconsolidated real estate entities for which it receives asset management, property management, construction, development and redevelopment fee revenue. From these entities, the Company earned fees of \$6,333,000, \$3,084,000 and \$3,819,000 in the years ended December 31, 2022, 2021 and 2020, respectively. In addition, the Company had outstanding receivables associated with its property, development and construction management roles of \$2,855,000 and \$3,964,000 as of December 31, 2022 and 2021, respectively.

##### *Director Compensation*

Directors of the Company who are also employees receive no additional compensation for their services as a director. Following each annual meeting of stockholders, non-employee directors receive (i) a number of shares of restricted stock (or deferred stock units) having a value of \$175,000 and (ii) a cash payment of \$100,000, payable in equal quarterly installments of \$25,000. The number of shares of restricted stock (or deferred stock units) is calculated based on the closing price on the day of

the award. Non-employee directors may elect to receive all or a portion of cash payments in the form of deferred stock units. Additionally, the Lead Independent Director receives in the aggregate an additional annual fee of \$35,000 payable in equal quarterly installments of \$8,750, the non-employee director serving as the chairperson of the Audit Committee receives additional cash compensation of \$30,000 per year payable in equal quarterly installments of \$7,500, the non-employee director serving as the chairperson of the Compensation Committee receives additional cash compensation of \$25,000 per year payable in equal quarterly installments of \$6,250 and the Nominating and Corporate Governance and Investment and Finance Committee chairpersons receive an additional annual fee of \$20,000 payable in equal quarterly installments of \$5,000.

The Company recorded non-employee director compensation expense relating to restricted stock grants and deferred stock units in the amount of \$2,228,000, \$1,981,000 and \$1,819,000 for the years ended December 31, 2022, 2021 and 2020, respectively, as a component of general and administrative expense. Deferred compensation relating to these restricted stock grants and deferred stock units to non-employee directors was \$794,000, \$696,000 and \$614,000 on December 31, 2022, 2021 and 2020, respectively, reported as a component of prepaid expenses and other assets on the accompanying Consolidated Balance Sheets.

## 11. Fair Value

### Financial Instruments Carried at Fair Value

#### *Derivative Financial Instruments*

The Company uses Hedging Derivatives to manage its interest rate risk. These instruments are carried at fair value in the Company's financial statements. The Company minimizes its credit risk on these transactions by dealing with major, creditworthy financial institutions which have an A or better credit rating by the Standard & Poor's Ratings Group, and monitors the credit ratings of counterparties and the exposure of the Company to any single entity. The Company believes the likelihood of realizing losses from counterparty nonperformance is remote. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, such as interest rate, term to maturity and volatility, the credit valuation adjustments associated with its derivatives use Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by itself and its counterparties. As of December 31, 2022, the Company assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and has determined it is not significant. As a result, the Company has determined that its derivative valuations are classified in Level 2 of the fair value hierarchy.

The following table summarizes the consolidated derivative positions at December 31, 2022 (dollars in thousands):

	<u>Non-designated Hedges</u>	
	<u>Interest Rate Caps</u>	
Notional balance	\$	402,670
Weighted average interest rate (1)		5.3 %
Weighted average swapped/capped interest rate		6.1 %
Earliest maturity date		January 2024
Latest maturity date		November 2026

(1) For debt hedged by interest rate caps, represents the weighted average interest rate on the hedged debt prior to any impact of the associated interest rate caps.

During the year ended December 31, 2022, in connection with the issuance of the Company's \$350,000,000 unsecured notes due 2033 in November 2022, the Company terminated \$150,000,000 of forward interest swap agreements designated as cash flow hedges of the interest rate variability on the issuance of unsecured notes, receiving a net payment of \$26,869,000. The Company has deferred these amounts in accumulated other comprehensive income (loss) on the accompanying Consolidated Balance Sheets, and is recognizing the impact as a component of interest expense, net, over the term of the respective hedged debt.

The Company had five derivatives not designated as hedges at December 31, 2022 for which the fair value changes for the years ended December 31, 2022 and 2021 were not material. During 2022, the Company deferred \$23,647,000 of net gains for the \$150,000,000 forward interest rate swap agreements discussed above, as a component of accumulated other comprehensive income (loss).

The following table summarizes the deferred losses reclassified from accumulated other comprehensive loss into earnings (dollars in thousands):

	For the year ended December 31,		
	2022	2021	2020
Cash flow hedge losses reclassified to earnings	\$ 3,883	\$ 13,151	\$ 8,984

The Company anticipates reclassifying approximately \$1,415,000 of net hedging losses from accumulated other comprehensive loss into earnings within the next 12 months as an offset to the hedged item during this period. The Company did not have any derivatives designated as fair value hedges as of December 31, 2022 and 2021.

#### *Redeemable Noncontrolling Interests*

The Company issued and has outstanding 7,500 units of limited partnership interest in a DownREIT which can be presented for cash redemption as determined by the partnership agreement. Under the DownREIT agreement, for each limited partnership unit, the limited partner is entitled to receive cash in the amount equal to the fair value of the Company's common stock on or about the date of redemption. In lieu of cash redemption, the Company may elect to exchange such units for an equal number of shares of the Company's common stock. The limited partnership units in the DownREIT are valued using the market price of the Company's common stock, a Level 1 price under the fair value hierarchy.

#### *Equity Securities*

The Company has direct equity investments in property technology and environmentally focused companies. These investments are accounted for using the measurement alternative and are valued at the market price of observable transactions, a Level 2 price under the fair value hierarchy.

#### Financial Instruments Not Carried at Fair Value

##### *Cash and Cash Equivalents*

Cash and cash equivalent balances are held with various financial institutions within accounts designed to preserve principal. The Company monitors credit ratings of these financial institutions and the concentration of cash and cash equivalent balances with any one financial institution and believes the likelihood of realizing material losses related to cash and cash equivalent balances is remote. Cash and cash equivalents are carried at their face amounts, which reasonably approximate their fair values and are Level 1 within the fair value hierarchy.

##### *Other Financial Instruments*

Rents and other receivables and prepaid expenses, accounts and construction payable and accrued expenses and other liabilities are carried at their face amounts, which reasonably approximate their fair values. The Company determined that its notes receivables approximate fair value, because interest rates, yields and other terms are consistent with interest rates, yields and other terms currently available for similar instruments and are considered to be a Level 2 price within the fair value hierarchy.

##### *Indebtedness*

The Company values its fixed rate unsecured notes using quoted market prices, a Level 1 price within the fair value hierarchy. The Company values its mortgage notes payable, variable rate unsecured notes, including the Term Loans, and any outstanding amounts under the Credit Facility and Commercial Paper Program using a discounted cash flow analysis on the expected cash flows of each instrument. This analysis reflects the contractual terms of the instrument, including the period to maturity, and uses observable market-based inputs, including interest rate curves. The process also considers credit valuation adjustments to appropriately reflect the Company's nonperformance risk. The Company has concluded that the value of its mortgage notes payable, variable rate unsecured notes, Term Loans and any outstanding amounts under the Credit Facility and Commercial Paper Program are Level 2 prices as the majority of the inputs used to value its positions fall within Level 2 of the fair value hierarchy.

Financial Instruments Measured/Disclosed at Fair Value on a Recurring Basis

The following tables summarize the classification between the three levels of the fair value hierarchy of the Company's financial instruments measured/disclosed at fair value on a recurring basis (dollars in thousands):

Description	Total Fair Value	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>Assets</b>				
Investments				
Equity Securities	\$ 27,027	\$ —	\$ 27,027	\$ —
Notes Receivable, net	28,860	—	28,860	—
Non Designated Hedges				
Interest Rate Caps	455	—	455	—
<b>Total Assets</b>	<b>\$ 56,342</b>	<b>\$ —</b>	<b>\$ 56,342</b>	<b>\$ —</b>
<b>Liabilities</b>				
DownREIT units				
DownREIT units	\$ 1,211	\$ 1,211	\$ —	\$ —
Indebtedness				
Fixed rate unsecured notes	6,653,681	6,653,681	—	—
Mortgage notes payable, Commercial Paper Program and variable rate unsecured notes	553,591	—	553,591	—
<b>Total Liabilities</b>	<b>\$ 7,208,483</b>	<b>\$ 6,654,892</b>	<b>\$ 553,591</b>	<b>\$ —</b>
<b>December 31, 2021</b>				
<b>Assets</b>				
Non Designated Hedges				
Interest Rate Caps	\$ 225	\$ —	\$ 225	\$ —
Interest Rate Swaps - Assets	3,204	—	3,204	—
<b>Total Assets</b>	<b>\$ 3,429</b>	<b>\$ —</b>	<b>\$ 3,429</b>	<b>\$ —</b>
<b>Liabilities</b>				
DownREIT units				
DownREIT units	\$ 1,895	\$ 1,895	\$ —	\$ —
Indebtedness				
Fixed rate unsecured notes	7,624,560	7,624,560	—	—
Mortgage notes payable and variable rate unsecured notes	940,779	—	940,779	—
<b>Total Liabilities</b>	<b>\$ 8,567,234</b>	<b>\$ 7,626,455</b>	<b>\$ 940,779</b>	<b>\$ —</b>

12. Subsequent Events

The Company has evaluated subsequent events, through the date on which this Form 10-K was filed, the date on which these financial statements were issued, and did not identify any items for disclosure.

**AVALONBAY COMMUNITIES, INC.**  
**REAL ESTATE AND ACCUMULATED DEPRECIATION**  
**December 31, 2022**  
**(Dollars in thousands)**

Community	City and state	# of homes	2022						2021	2022	Year of Completion / Acquisition		
			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					Accumulated Depreciation
<b>SAME STORE</b>													
<b>NEW ENGLAND</b>													
Avalon at Lexington eaves	Lexington, MA	198	\$ 2,124	\$ 12,567	\$ 13,708	\$ 2,124	\$ 26,275	\$ 28,399	\$ 19,813	\$ 8,586	\$ 9,564	\$ —	1994
eaves Wilmington	Wilmington, MA	204	2,129	17,567	9,371	2,129	26,938	29,067	19,107	9,960	9,720	—	1999
eaves Quincy	Quincy, MA	245	1,743	14,662	15,448	1,743	30,110	31,853	20,526	11,327	11,181	—	1986/1995
eaves Wilmington West	Wilmington, MA	120	3,318	13,465	4,205	3,318	17,670	20,988	11,628	9,360	8,988	—	2002
Avalon at Newton Highlands	Newton, MA	294	10,905	45,547	19,283	10,905	64,830	75,735	39,376	36,359	38,287	—	2003
Avalon at The Pinehills eaves	Plymouth, MA	192	6,876	30,401	7,869	6,876	38,270	45,146	19,314	25,832	26,023	—	2004
eaves Peabody	Peabody, MA	286	4,645	18,919	16,784	4,645	35,703	40,348	20,622	19,726	20,810	—	1962/2004
Avalon at Bedford Center	Bedford, MA	139	4,258	20,551	5,801	4,258	26,352	30,610	15,691	14,919	16,252	—	2006
Avalon at Chestnut Hill	Chestnut Hill, MA	204	14,572	45,911	14,656	14,572	60,567	75,139	31,634	43,505	45,222	—	2007
Avalon at Lexington Hills	Lexington, MA	387	8,691	79,121	16,687	8,691	95,808	104,499	51,042	53,457	56,981	—	2008
Avalon Acton	Acton, MA	380	13,124	48,695	12,018	13,124	60,713	73,837	29,368	44,469	44,717	45,000	2008
Avalon at the Hingham Shipyard	Hingham, MA	235	12,218	41,656	12,965	12,218	54,621	66,839	27,814	39,025	40,759	—	2009
Avalon Northborough	Northborough, MA	382	8,144	52,184	7,708	8,144	59,892	68,036	26,933	41,103	42,842	—	2009
Avalon Exeter (1)	Boston, MA	187	—	110,028	2,050	—	112,078	112,078	33,238	78,840	81,553	—	2014
Avalon Natick	Natick, MA	407	15,645	64,845	3,720	15,645	68,565	84,210	22,527	61,683	63,017	—	2013
Avalon at Assembly Row (2)	Somerville, MA	195	8,599	52,454	6,316	8,599	58,770	67,369	19,228	48,141	47,574	—	2015
AVA Somerville (2)	Somerville, MA	250	10,944	56,460	5,221	10,944	61,681	72,625	18,840	53,785	53,751	—	2015
AVA Back Bay	Boston, MA	271	9,034	36,540	52,612	9,034	89,152	98,186	49,993	48,193	51,041	—	1968/1998
Avalon Prudential Center II	Boston, MA	266	8,776	35,496	65,456	8,776	100,952	109,728	50,846	58,882	62,442	—	1968/1998
Avalon Prudential Center I (2)	Boston, MA	243	8,002	32,370	57,257	8,002	89,627	97,629	44,234	53,395	55,942	—	1968/1998
eaves Burlington	Burlington, MA	203	7,714	32,499	9,516	7,714	42,015	49,729	14,724	35,005	35,866	—	1988/2012
AVA Theater District	Boston, MA	398	17,072	163,633	769	17,072	164,402	181,474	42,329	139,145	144,600	—	2015
Avalon Burlington	Burlington, MA	312	15,600	60,649	18,843	15,600	79,492	95,092	27,563	67,529	69,047	—	1989/2013
Avalon Marlborough	Marlborough, MA	350	15,367	60,397	1,870	15,367	62,267	77,634	16,696	60,938	62,726	—	2015
Avalon North Station	Boston, MA	503	22,796	247,270	785	22,796	248,055	270,851	49,582	221,269	229,955	—	2017
Avalon Framingham	Framingham, MA	180	9,315	34,631	494	9,315	35,125	44,440	9,092	35,348	36,361	—	2015
Avalon Quincy	Quincy, MA	395	14,694	79,655	324	14,694	79,979	94,673	17,566	77,107	79,785	—	2017
Avalon Easton	Easton, MA	290	3,170	60,837	451	3,170	61,288	64,458	12,768	51,690	53,845	—	2017
Avalon at the Hingham Shipyard II	Hingham, MA	190	8,998	55,366	79	8,998	55,445	64,443	9,027	55,416	57,623	—	2019
Avalon Sudbury	Sudbury, MA	250	20,266	66,555	89	20,266	66,644	86,910	11,418	75,492	78,216	—	2019

**AVALONBAY COMMUNITIES, INC.**  
**REAL ESTATE AND ACCUMULATED DEPRECIATION (Continued)**  
**December 31, 2022**  
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			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					
Avalon Saugus	Saugus, MA	280	\$ 17,809	\$ 72,553	\$ 1,376	\$ 17,809	\$ 73,929	\$ 91,738	\$ 10,248	\$ 81,490	\$ 84,195	\$ —	2019
Avalon Norwood	Norwood, MA	198	9,475	51,351	962	9,475	52,313	61,788	6,625	55,163	56,972	—	2020
AVA North Point	Cambridge, MA	265	31,263	81,196	2,848	31,263	84,044	115,307	12,713	102,594	105,833	—	2018/2019
Avalon Bear Hill	Waltham, MA	324	27,350	94,168	30,868	27,350	125,036	152,386	46,658	105,728	109,409	—	1999/2013
Avalon Wilton on River Rd	Wilton, CT	102	2,116	14,664	7,649	2,116	22,313	24,429	16,472	7,957	8,746	—	1997
Avalon New Canaan	New Canaan, CT	104	4,834	22,990	6,952	4,834	29,942	34,776	19,200	15,576	16,692	—	2002
Avalon Darien	Darien, CT	189	6,926	34,558	9,624	6,926	44,182	51,108	26,610	24,498	26,151	—	2004
<b>TOTAL NEW ENGLAND</b>		<b>9,618</b>	<b>\$ 388,512</b>	<b>\$ 2,062,411</b>	<b>\$ 442,634</b>	<b>\$ 388,512</b>	<b>\$ 2,505,045</b>	<b>\$ 2,893,557</b>	<b>\$ 921,065</b>	<b>\$ 1,972,492</b>	<b>\$ 2,042,688</b>	<b>\$ 45,000</b>	
<b>METRO NY/NJ</b>													
<b>New York City, NY</b>													
Avalon Riverview (3)	Long Island City, NY	372	\$ —	\$ 94,061	\$ 14,584	\$ —	\$ 108,645	\$ 108,645	\$ 75,664	\$ 32,981	\$ 36,280	\$ —	2002
Avalon Riverview North (2) (3)	Long Island City, NY	602	—	165,932	16,997	—	182,929	182,929	91,705	91,224	97,045	—	2008
AVA Fort Greene	Brooklyn, NY	631	83,038	216,802	10,031	83,038	226,833	309,871	97,515	212,356	220,214	—	2010
AVA DoBro (2)	Brooklyn, NY	500	76,127	206,762	816	76,127	207,578	283,705	49,757	233,948	241,072	—	2017
Avalon Willoughby Square	Brooklyn, NY	326	49,635	134,840	819	49,635	135,659	185,294	30,238	155,056	159,575	—	2017
Avalon Brooklyn Bay	Brooklyn, NY	180	9,690	84,361	404	9,690	84,765	94,455	16,975	77,480	78,920	—	2018
Avalon Midtown West	New York, NY	550	154,730	180,253	50,299	154,730	230,552	385,282	78,965	306,317	312,785	82,700	1998/2013
Avalon Clinton North	New York, NY	339	84,069	105,821	15,771	84,069	121,592	205,661	43,663	161,998	164,531	147,000	2008/2013
Avalon Clinton South	New York, NY	288	71,421	89,851	9,113	71,421	98,964	170,385	36,848	133,537	136,009	121,500	2007/2013
<b>Total New York City, NY</b>		<b>3,788</b>	<b>\$ 528,710</b>	<b>\$ 1,278,683</b>	<b>\$ 118,834</b>	<b>\$ 528,710</b>	<b>\$ 1,397,517</b>	<b>\$ 1,926,227</b>	<b>\$ 521,330</b>	<b>\$ 1,404,897</b>	<b>\$ 1,446,431</b>	<b>\$ 351,200</b>	
<b>New York - Suburban</b>													
Avalon Commons (2)	Smithtown, NY	312	\$ 4,679	\$ 28,259	\$ 13,299	\$ 4,679	\$ 41,558	\$ 46,237	\$ 29,974	\$ 16,263	\$ 15,260	\$ —	1997
Avalon Mamaroneck (2)	Mamaroneck, NY	229	6,207	40,657	16,841	6,207	57,498	63,705	37,675	26,030	27,632	—	2000
Avalon Melville	Melville, NY	494	9,228	50,063	23,616	9,228	73,679	82,907	51,555	31,352	34,497	—	1997
Avalon White Plains (2)	White Plains, NY	407	15,391	137,312	2,904	15,391	140,216	155,607	65,496	90,111	94,611	—	2009
Avalon Rockville Centre I	Rockville Centre, NY	349	32,212	78,806	6,946	32,212	85,752	117,964	34,923	83,041	86,730	—	2012
Avalon Garden City	Garden City, NY	204	18,205	49,326	1,580	18,205	50,906	69,111	18,420	50,691	52,000	—	2013
Avalon Huntington Station	Huntington Station, NY	303	21,899	58,437	1,556	21,899	59,993	81,892	17,615	64,277	65,354	—	2014
Avalon Great Neck (2)	Great Neck, NY	191	14,777	65,412	277	14,777	65,689	80,466	14,236	66,230	68,486	—	2017
Avalon Rockville Centre II	Rockville Centre, NY	165	7,534	50,981	11	7,534	50,992	58,526	10,767	47,759	49,801	—	2017
Avalon Somers	Somers, NY	152	5,608	40,591	24	5,608	40,615	46,223	8,330	37,893	39,446	—	2018
Avalon Westbury	Westbury, NY	396	69,620	43,781	16,049	69,620	59,830	129,450	28,891	100,559	102,119	—	2006/2013
<b>Total New York - Suburban</b>		<b>3,202</b>	<b>\$ 205,360</b>	<b>\$ 643,625</b>	<b>\$ 83,103</b>	<b>\$ 205,360</b>	<b>\$ 726,728</b>	<b>\$ 932,088</b>	<b>\$ 317,882</b>	<b>\$ 614,206</b>	<b>\$ 635,936</b>	<b>\$ —</b>	

**AVALONBAY COMMUNITIES, INC.**  
**REAL ESTATE AND ACCUMULATED DEPRECIATION (Continued)**  
**December 31, 2022**  
**(Dollars in thousands)**

Community	City and state	# of homes	2022						2021	2022	Year of Completion / Acquisition		
			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					
<b>New Jersey</b>													
Avalon Cove	Jersey City, NJ	504	\$ 8,760	\$ 82,422	\$ 32,555	\$ 8,760	\$ 114,977	\$ 123,737	\$ 86,719	\$ 37,018	\$ 40,964	\$ —	1997
Avalon at Edgewater I	Edgewater, NJ	168	5,982	24,389	10,833	5,982	35,222	41,204	22,656	18,548	18,802	—	2002
Avalon at Florham Park	Florham Park, NJ	270	6,647	34,906	17,531	6,647	52,437	59,084	34,143	24,941	26,719	—	2001
Avalon North Bergen	North Bergen, NJ	164	8,984	30,994	1,365	8,984	32,359	41,343	11,979	29,364	30,250	—	2012
Avalon at Wesmont Station I	Wood-Ridge, NJ	266	14,682	41,610	3,490	14,682	45,100	59,782	16,711	43,071	44,232	—	2012
Avalon Hackensack at Riverside	Hackensack, NJ	226	9,939	44,619	2,177	9,939	46,796	56,735	15,566	41,169	42,403	—	2013
Avalon at Wesmont Station II	Wood-Ridge, NJ	140	6,502	16,863	655	6,502	17,518	24,020	6,010	18,010	18,486	—	2013
Avalon Bloomingdale	Bloomingdale, NJ	174	3,006	27,801	861	3,006	28,662	31,668	9,144	22,524	23,104	—	2014
Avalon Wharton	Wharton, NJ	247	2,273	48,609	1,612	2,273	50,221	52,494	14,115	38,379	40,062	—	2015
Avalon Bloomfield Station (1) (2)	Bloomfield, NJ	224	10,701	36,430	1,042	10,701	37,472	48,173	9,991	38,182	38,648	—	2015
Avalon Roseland	Roseland, NJ	136	11,288	34,868	589	11,288	35,457	46,745	9,517	37,228	38,006	—	2015
Avalon Princeton	Princeton, NJ	280	26,461	68,003	864	26,461	68,867	95,328	15,585	79,743	82,349	—	2017
Avalon Union	Union, NJ	202	11,695	36,315	687	11,695	37,002	48,697	9,146	39,551	40,338	—	2016
Avalon Hoboken (2)	Hoboken, NJ	217	37,237	90,278	7,395	37,237	97,673	134,910	29,353	105,557	108,658	—	2008/2016
Avalon Maplewood (2)	Maplewood, NJ	235	15,179	49,425	2,159	15,179	51,584	66,763	11,097	55,666	55,898	—	2018
Avalon Boonton	Boonton, NJ	350	3,595	89,407	866	3,595	90,273	93,868	12,349	81,519	84,252	—	2019
Avalon Teaneck (2)	Teaneck, NJ	248	12,588	60,257	88	12,588	60,345	72,933	7,740	65,193	67,328	—	2020
Avalon Piscataway	Piscataway, NJ	360	14,329	75,897	524	14,329	76,421	90,750	12,333	78,417	81,032	—	2019
Avalon at Edgewater II	Edgewater, NJ	240	8,605	60,809	26	8,605	60,835	69,440	11,381	58,059	60,633	—	2018
<b>Total New Jersey</b>		<b>4,651</b>	<b>\$ 218,453</b>	<b>\$ 953,902</b>	<b>\$ 85,319</b>	<b>\$ 218,453</b>	<b>\$ 1,039,221</b>	<b>\$ 1,257,674</b>	<b>\$ 345,535</b>	<b>\$ 912,139</b>	<b>\$ 942,164</b>	<b>\$ —</b>	
<b>TOTAL METRO NY/NJ</b>		<b>11,641</b>	<b>\$ 952,523</b>	<b>\$ 2,876,210</b>	<b>\$ 287,256</b>	<b>\$ 952,523</b>	<b>\$ 3,163,466</b>	<b>\$ 4,115,989</b>	<b>\$ 1,184,747</b>	<b>\$ 2,931,242</b>	<b>\$ 3,024,531</b>	<b>\$ 351,200</b>	
<b>MID-ATLANTIC</b>													
<b>Washington Metro/Baltimore, MD</b>													
Avalon at Foxhall	Washington, D.C.	308	\$ 6,848	\$ 27,614	\$ 21,757	\$ 6,848	\$ 49,371	\$ 56,219	\$ 40,677	\$ 15,542	\$ 17,258	\$ —	1982/1994
Avalon at Gallery Place	Washington, D.C.	203	8,800	39,658	5,500	8,800	45,158	53,958	29,435	24,523	25,166	—	2003
AVA H Street	Washington, D.C.	138	7,425	25,282	374	7,425	25,656	33,081	9,257	23,824	24,488	—	2013
Avalon The Albemarle	Washington, D.C.	234	25,140	52,459	10,411	25,140	62,870	88,010	25,295	62,715	64,905	—	1966/2013
eaves Tunlaw Gardens	Washington, D.C.	166	16,430	22,902	2,892	16,430	25,794	42,224	10,181	32,043	32,683	—	1944/2013
The Statesman	Washington, D.C.	281	38,140	35,352	6,708	38,140	42,060	80,200	17,375	62,825	63,867	—	1961/2013
eaves Glover Park	Washington, D.C.	120	9,580	26,532	2,892	9,580	29,424	39,004	11,844	27,160	28,110	—	1953/2013
AVA Van Ness (2)	Washington, D.C.	269	22,890	58,691	24,387	22,890	83,078	105,968	27,780	78,188	79,841	—	1978/2013
Avalon First and M	Washington, D.C.	469	43,700	153,950	5,314	43,700	159,264	202,964	55,755	147,209	151,706	—	2012/2013
AVA NoMa	Washington, D.C.	438	25,246	114,933	977	25,246	115,910	141,156	26,627	114,529	118,961	—	2018
eaves Washingtonian Center	North Potomac, MD	288	4,047	18,553	6,810	4,047	25,363	29,410	20,343	9,067	9,396	—	1996



**AVALONBAY COMMUNITIES, INC.**  
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			Land and Improvements	Building / Construction in Progress & Improvements	Land and Improvements		Building / Construction in Progress & Improvements	Total	Accumulated Depreciation				
eaves Columbia Town Center	Columbia, MD	392	\$ 8,802	\$ 35,536	\$ 14,625	\$ 8,802	\$ 50,161	\$ 58,963	\$ 29,768	\$ 29,195	\$ 30,532	\$ —	1986/1993
Avalon at Grosvenor Station	Bethesda, MD	497	29,159	52,993	8,558	29,159	61,551	90,710	38,821	51,889	52,971	—	2004
Avalon at Traville	Rockville, MD	520	14,365	55,398	9,046	14,365	64,444	78,809	41,322	37,487	39,119	—	2004
AVA Wheaton	Wheaton, MD	319	6,494	69,027	227	6,494	69,254	75,748	14,527	61,221	63,911	—	2018
Avalon Hunt Valley	Hunt Valley, MD	332	10,872	62,992	39	10,872	63,031	73,903	13,972	59,931	62,309	—	2017
Avalon Laurel	Laurel, MD	344	10,130	61,685	207	10,130	61,892	72,022	14,243	57,779	59,940	—	2017
Avalon Fairway Hills - Meadows	Columbia, MD	192	2,323	9,297	5,386	2,323	14,683	17,006	11,589	5,417	5,685	—	1987/1996
Avalon Fairway Hills - Woods (2)	Columbia, MD	336	3,958	15,839	14,680	3,958	30,519	34,477	20,158	14,319	15,114	—	1987/1996
Avalon Arundel Crossing II	Linthicum Heights, MD	310	12,208	69,888	2,901	12,208	72,789	84,997	15,728	69,269	72,070	—	2018/2018
Kanso Silver Spring	Silver Spring, MD	151	3,471	41,393	1,250	3,471	42,643	46,114	6,462	39,652	41,143	—	2009/2019
Avalon Russett	Laurel, MD	238	10,200	47,524	5,965	10,200	53,489	63,689	20,802	42,887	43,666	32,200	1999/2013
eaves Fair Lakes	Fairfax, VA	420	6,096	24,400	15,035	6,096	39,435	45,531	29,027	16,504	17,084	—	1989/1996
eaves Fairfax City	Fairfax, VA	141	2,152	8,907	5,811	2,152	14,718	16,870	10,592	6,278	6,680	—	1988/1997
Avalon Tysons Corner	Tysons Corner, VA	558	13,851	43,397	16,719	13,851	60,116	73,967	43,585	30,382	31,365	—	1996
Avalon at Arlington Square	Arlington, VA	842	22,041	90,296	35,080	22,041	125,376	147,417	75,700	71,717	74,340	—	2001
eaves Fairfax Towers	Falls Church, VA	415	17,889	74,727	16,575	17,889	91,302	109,191	35,709	73,482	76,565	—	1978/2011
Avalon Mosaic	Fairfax, VA	531	33,490	75,801	516	33,490	76,317	109,807	24,100	85,707	88,179	—	2014
Avalon Potomac Yard	Alexandria, VA	323	24,225	81,982	3,975	24,225	85,957	110,182	25,344	84,838	87,261	—	2014/2016
Avalon Clarendon	Arlington, VA	300	22,573	95,355	9,959	22,573	105,314	127,887	29,789	98,098	102,526	—	2002/2016
Avalon Columbia Pike	Arlington, VA	269	18,830	82,427	4,777	18,830	87,204	106,034	23,252	82,782	86,053	—	2009/2016
Avalon Dunn Loring	Vienna, VA	440	29,377	115,465	8,655	29,377	124,120	153,497	33,255	120,242	124,939	—	2012/2017
eaves Tysons Corner	Vienna, VA	217	16,030	45,420	4,024	16,030	49,444	65,474	20,623	44,851	46,217	—	1980/2013
Avalon Courthouse Place	Arlington, VA	564	56,550	178,032	17,475	56,550	195,507	252,057	71,271	180,786	186,212	—	1999/2013
Avalon Arlington North (2)	Arlington, VA	228	21,600	59,076	6,492	21,600	65,568	87,168	21,703	65,465	65,484	—	2014
Avalon Reston Landing	Reston, VA	400	26,710	83,084	14,387	26,710	97,471	124,181	39,455	84,726	86,367	—	2000/2013
Avalon Falls Church	Falls Church, VA	384	39,544	66,160	203	39,544	66,363	105,907	18,127	87,780	90,052	—	2016
<b>TOTAL MID-ATLANTIC</b>		<b>12,577</b>	<b>\$ 671,186</b>	<b>\$ 2,222,027</b>	<b>\$ 310,589</b>	<b>\$ 671,186</b>	<b>\$ 2,532,616</b>	<b>\$ 3,203,802</b>	<b>\$ 1,003,493</b>	<b>\$ 2,200,309</b>	<b>\$ 2,272,165</b>	<b>\$ 32,200</b>	
<b>DENVER, CO</b>													
Avalon Denver West	Lakewood, CO	252	\$ 8,047	\$ 67,861	\$ 2,972	\$ 8,047	\$ 70,833	\$ 78,880	\$ 17,028	\$ 61,852	\$ 63,993	\$ —	2016/2017
Avalon Meadows at Castle Rock	Castle Rock, CO	240	8,527	64,565	1,451	8,527	66,016	74,543	13,302	61,241	63,941	—	2018/2018
Avalon Red Rocks	Littleton, CO	256	4,461	70,103	1,599	4,461	71,702	76,163	14,852	61,311	64,531	—	2018/2018
Avalon Southlands	Aurora, CO	338	5,101	85,184	1,814	5,101	86,998	92,099	16,797	75,302	79,189	—	2018/2019
<b>TOTAL DENVER, CO</b>		<b>1,086</b>	<b>\$ 26,136</b>	<b>\$ 287,713</b>	<b>\$ 7,836</b>	<b>\$ 26,136</b>	<b>\$ 295,549</b>	<b>\$ 321,685</b>	<b>\$ 61,979</b>	<b>\$ 259,706</b>	<b>\$ 271,654</b>	<b>\$ —</b>	
<b>SOUTHEAST FLORIDA</b>													
Avalon 850 Boca	Boca Raton, FL	370	\$ 21,430	\$ 114,626	\$ 5,039	\$ 21,430	\$ 119,665	\$ 141,095	\$ 27,326	\$ 113,769	\$ 117,970	\$ —	2017/2017

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			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					Accumulated Depreciation
Avalon West Palm Beach	West Palm Beach, FL	290	\$ 9,597	\$ 91,411	\$ 4,854	\$ 9,597	\$ 96,265	\$ 105,862	\$ 18,698	\$ 87,164	\$ 89,736	\$ —	2018/2018
Avalon Bonterra	Hialeah, FL	314	16,655	71,180	3,148	16,655	74,328	90,983	14,219	76,764	79,585	—	2018/2019
Avalon Toscana	Margate, FL	240	9,213	49,936	1,734	9,213	51,670	60,883	8,283	52,600	54,704	—	2016/2019
<b>TOTAL SOUTHEAST FLORIDA</b>		<b>1,214</b>	<b>\$ 56,895</b>	<b>\$ 327,153</b>	<b>\$ 14,775</b>	<b>\$ 56,895</b>	<b>\$ 341,928</b>	<b>\$ 398,823</b>	<b>\$ 68,526</b>	<b>\$ 330,297</b>	<b>\$ 341,995</b>	<b>\$ —</b>	
<b>PACIFIC NORTHWEST</b>													
<b>Seattle, WA</b>													
Avalon at Bear Creek	Redmond, WA	264	\$ 6,786	\$ 27,641	\$ 7,995	\$ 6,786	\$ 35,636	\$ 42,422	\$ 27,864	\$ 14,558	\$ 14,551	\$ —	1998/1998
Avalon Bellevue	Bellevue, WA	201	6,664	24,119	6,067	6,664	30,186	36,850	20,798	16,052	15,632	—	2001
Avalon RockMeadow	Bothell, WA	206	4,777	19,765	4,303	4,777	24,068	28,845	18,337	10,508	11,136	—	2000/2000
Avalon ParcSquare	Redmond, WA	124	3,789	15,139	4,594	3,789	19,733	23,522	14,549	8,973	9,583	—	2000/2000
AVA Belltown	Seattle, WA	100	5,644	12,733	2,391	5,644	15,124	20,768	10,579	10,189	10,404	—	2001
Avalon Meydenbauer	Bellevue, WA	368	12,697	77,450	6,212	12,697	83,662	96,359	41,596	54,763	57,075	—	2008
Avalon Towers Bellevue (3)	Bellevue, WA	397	—	123,029	4,803	—	127,832	127,832	53,615	74,217	76,311	—	2011
AVA Queen Anne	Seattle, WA	203	12,081	41,618	1,607	12,081	43,225	55,306	16,605	38,701	39,983	—	2012
AVA Ballard	Seattle, WA	265	16,460	46,926	1,983	16,460	48,909	65,369	17,124	48,245	49,303	—	2013
Avalon Alderwood I	Lynnwood, WA	367	12,294	55,627	454	12,294	56,081	68,375	16,507	51,868	53,350	—	2015
AVA Capitol Hill	Seattle, WA	249	20,613	59,986	1,276	20,613	61,262	81,875	16,068	65,807	68,283	—	2016
Avalon Esterra Park	Redmond, WA	482	23,178	112,986	1,391	23,178	114,377	137,555	26,241	111,314	115,545	—	2017
Avalon Alderwood II	Redmond, WA	124	5,072	21,418	15	5,072	21,433	26,505	4,893	21,612	22,369	—	2016
Avalon Newcastle Commons I	Newcastle, WA	378	9,649	111,600	1,066	9,649	112,666	122,315	22,172	100,143	105,073	—	2017
Avalon Belltown Towers	Seattle, WA	274	24,638	121,064	1,339	24,638	122,403	147,041	16,634	130,407	135,337	—	2019
AVA Esterra Park	Redmond, WA	323	16,405	74,569	—	16,405	74,569	90,974	11,226	79,748	82,813	—	2019
Avalon North Creek	Bothell, WA	316	13,498	69,015	—	13,498	69,015	82,513	9,198	73,315	76,043	—	2020
Archstone Redmond Lakeview	Redmond, WA	166	10,250	26,842	6,109	10,250	32,951	43,201	14,280	28,921	29,631	—	1987/2013
<b>TOTAL PACIFIC NORTHWEST</b>		<b>4,807</b>	<b>\$ 204,495</b>	<b>\$ 1,041,527</b>	<b>\$ 51,605</b>	<b>\$ 204,495</b>	<b>\$ 1,093,132</b>	<b>\$ 1,297,627</b>	<b>\$ 358,286</b>	<b>\$ 939,341</b>	<b>\$ 972,422</b>	<b>\$ —</b>	
<b>NORTHERN CALIFORNIA</b>													
<b>San Jose, CA</b>													
Avalon Campbell	Campbell, CA	348	\$ 11,830	\$ 47,828	\$ 15,379	\$ 11,830	\$ 63,207	\$ 75,037	\$ 46,203	\$ 28,834	\$ 30,593	\$ —	1995
eaves San Jose	San Jose, CA	442	12,920	53,047	20,367	12,920	73,414	86,334	48,318	38,016	40,169	—	1985/1996
Avalon on the Alameda	San Jose, CA	307	6,119	50,225	14,587	6,119	64,812	70,931	46,548	24,383	26,307	—	1999
Avalon Silicon Valley	Sunnyvale, CA	712	20,713	99,573	37,577	20,713	137,150	157,863	95,676	62,187	66,031	—	1998
Avalon Mountain View	Mountain View, CA	248	9,755	39,393	13,083	9,755	52,476	62,231	39,678	22,553	24,286	—	1986
eaves Creekside	Mountain View, CA	300	6,546	26,263	22,915	6,546	49,178	55,724	34,129	21,595	22,478	—	1962/1997
Avalon at Cahill Park	San Jose, CA	218	4,765	47,600	4,739	4,765	52,339	57,104	35,510	21,594	23,053	—	2002
Avalon Towers on the Peninsula	Mountain View, CA	211	9,560	56,136	15,096	9,560	71,232	80,792	44,274	36,518	38,771	—	2002

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Avalon Morrison Park	San Jose, CA	250	\$ 13,837	\$ 64,534	\$ 1,340	\$ 13,837	\$ 65,874	\$ 79,711	\$ 20,483	\$ 59,228	\$ 61,116	\$ —	2014
Avalon Willow Glen	San Jose, CA	412	46,060	81,957	7,952	46,060	89,909	135,969	37,524	98,445	101,641	—	2002/2013
eaves West Valley	San Jose, CA	873	90,890	132,040	15,865	90,890	147,905	238,795	59,562	179,233	183,523	—	1970/2013
eaves Mountain View at Middlefield	Mountain View, CA	402	64,070	69,018	17,541	64,070	86,559	150,629	36,844	113,785	116,475	—	1969/2013
<b>Total San Jose, CA</b>		<b>4,723</b>	<b>\$ 297,065</b>	<b>\$ 767,614</b>	<b>\$ 186,441</b>	<b>\$ 297,065</b>	<b>\$ 954,055</b>	<b>\$ 1,251,120</b>	<b>\$ 544,749</b>	<b>\$ 706,371</b>	<b>\$ 734,443</b>	<b>\$ —</b>	
<b>Oakland - East Bay, CA</b>													
Avalon Fremont (2)	Fremont, CA	308	\$ 10,746	\$ 43,399	\$ 30,326	\$ 10,746	\$ 73,725	\$ 84,471	\$ 43,673	\$ 40,798	\$ 33,802	\$ —	1992/1994
eaves Dublin	Dublin, CA	204	5,276	19,642	13,088	5,276	32,730	38,006	23,284	14,722	15,563	—	1989/1997
eaves Pleasanton (2)	Pleasanton, CA	456	11,610	46,552	46,070	11,610	92,622	104,232	51,888	52,344	37,696	—	1988/1994
eaves Union City	Union City, CA	208	4,249	16,820	4,859	4,249	21,679	25,928	17,591	8,337	8,726	—	1973/1996
eaves Fremont	Fremont, CA	237	6,581	26,583	12,586	6,581	39,169	45,750	28,989	16,761	16,920	—	1985/1994
Avalon Union City	Union City, CA	439	14,732	104,024	5,892	14,732	109,916	124,648	49,355	75,293	77,029	—	2009
Avalon Walnut Creek (3)	Walnut Creek, CA	422	—	148,846	6,230	—	155,076	155,076	66,021	89,055	93,940	4,327	2010
Avalon Dublin Station	Dublin, CA	253	7,772	72,142	1,225	7,772	73,367	81,139	22,684	58,455	60,905	—	2014
Avalon Dublin Station II	Dublin, CA	252	7,762	76,587	371	7,762	76,958	84,720	18,476	66,244	68,997	—	2016
Avalon Public Market (1)	Emeryville, CA	289	27,394	144,259	261	27,394	144,520	171,914	16,447	155,467	160,339	—	2020
eaves Walnut Creek	Walnut Creek, CA	510	30,320	82,375	18,035	30,320	100,410	130,730	37,901	92,829	96,201	—	1987/2013
Avalon Walnut Ridge I	Walnut Creek, CA	106	9,860	19,850	5,941	9,860	25,791	35,651	9,603	26,048	26,867	—	2000/2013
Avalon Walnut Ridge II	Walnut Creek, CA	360	27,190	57,041	13,967	27,190	71,008	98,198	27,572	70,626	73,389	—	1989/2013
Avalon Berkeley	Berkeley, CA	94	4,500	28,689	108	4,500	28,797	33,297	8,447	24,850	25,777	—	2014
<b>Total Oakland - East Bay, CA</b>		<b>4,138</b>	<b>\$ 167,992</b>	<b>\$ 886,809</b>	<b>\$ 158,959</b>	<b>\$ 167,992</b>	<b>\$ 1,045,768</b>	<b>\$ 1,213,760</b>	<b>\$ 421,931</b>	<b>\$ 791,829</b>	<b>\$ 796,151</b>	<b>\$ 4,327</b>	
<b>San Francisco, CA</b>													
eaves Daly City	Daly City, CA	195	\$ 4,230	\$ 9,659	\$ 21,527	\$ 4,230	\$ 31,186	\$ 35,416	\$ 23,516	\$ 11,900	\$ 12,630	\$ —	1972/1997
AVA Nob Hill	San Francisco, CA	185	5,403	21,567	10,935	5,403	32,502	37,905	23,055	14,850	15,386	—	1990/1995
eaves Foster City	Foster City, CA	288	7,852	31,445	14,038	7,852	45,483	53,335	33,693	19,642	20,622	—	1973/1994
eaves Pacifica	Pacifica, CA	220	6,125	24,796	5,082	6,125	29,878	36,003	24,258	11,745	12,531	—	1971/1995
Avalon Sunset Towers	San Francisco, CA	243	3,561	21,321	17,164	3,561	38,485	42,046	26,806	15,240	16,386	—	1961/1996
Avalon at Mission Bay I	San Francisco, CA	250	14,029	78,452	9,800	14,029	88,252	102,281	59,346	42,935	46,148	—	2003
Avalon at Mission Bay III	San Francisco, CA	260	28,687	119,156	1,334	28,687	120,490	149,177	55,040	94,137	97,713	—	2009
Avalon Ocean Avenue	San Francisco, CA	173	5,544	50,906	2,852	5,544	53,758	59,302	19,969	39,333	40,909	—	2012
AVA 55 Ninth	San Francisco, CA	273	20,267	97,321	1,360	20,267	98,681	118,948	30,591	88,357	91,559	—	2014
Avalon Hayes Valley	San Francisco, CA	182	12,595	81,228	737	12,595	81,965	94,560	22,429	72,131	74,387	—	2015
Avalon Dogpatch	San Francisco, CA	326	23,523	180,698	317	23,523	181,015	204,538	34,164	170,374	177,152	—	2018
Avalon San Bruno I	San Bruno, CA	300	40,780	68,684	8,152	40,780	76,836	117,616	30,967	86,649	89,179	60,950	2004/2013
Avalon San Bruno II	San Bruno, CA	185	23,787	44,934	3,513	23,787	48,447	72,234	17,488	54,746	55,746	—	2007/2013

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Avalon San Bruno III	San Bruno, CA	187	\$ 33,303	\$ 62,910	\$ 3,475	\$ 33,303	\$ 66,385	\$ 99,688	\$ 24,246	\$ 75,442	\$ 77,528	\$ 51,000	2010/2013
<b>Total San Francisco, CA</b>		<b>3,267</b>	<b>\$ 229,686</b>	<b>\$ 893,077</b>	<b>\$ 100,286</b>	<b>\$ 229,686</b>	<b>\$ 993,363</b>	<b>\$ 1,223,049</b>	<b>\$ 425,568</b>	<b>\$ 797,481</b>	<b>\$ 827,876</b>	<b>\$ 111,950</b>	
<b>TOTAL NORTHERN CALIFORNIA</b>		<b>12,128</b>	<b>\$ 694,743</b>	<b>\$ 2,547,500</b>	<b>\$ 445,686</b>	<b>\$ 694,743</b>	<b>\$ 2,993,186</b>	<b>\$ 3,687,929</b>	<b>\$ 1,392,248</b>	<b>\$ 2,295,681</b>	<b>\$ 2,358,470</b>	<b>\$ 116,277</b>	
<b>SOUTHERN CALIFORNIA</b>													
<b>Los Angeles, CA</b>													
AVA Burbank	Burbank, CA	750	\$ 22,483	\$ 28,104	\$ 54,096	\$ 22,483	\$ 82,200	\$ 104,683	\$ 54,963	\$ 49,720	\$ 51,701	\$ —	1961/1997
Avalon Woodland Hills (2)	Woodland Hills, CA	663	23,828	40,372	80,378	23,828	120,750	144,578	62,899	81,679	64,969	—	1989/1997
eaves Warner Center	Woodland Hills, CA	227	7,045	12,986	13,348	7,045	26,334	33,379	20,782	12,597	12,979	—	1979/1998
Avalon Glendale (3)	Glendale, CA	223	—	42,564	3,281	—	45,845	45,845	30,226	15,619	17,077	—	2003
Avalon Burbank	Burbank, CA	401	14,053	56,827	27,657	14,053	84,484	98,537	52,254	46,283	49,142	—	1988/2002
Avalon Camarillo	Camarillo, CA	249	8,446	40,290	3,605	8,446	43,895	52,341	24,832	27,509	28,837	—	2006
Avalon Wilshire	Los Angeles, CA	123	5,459	41,182	6,582	5,459	47,764	53,223	25,420	27,803	29,444	—	2007
Avalon Encino	Encino, CA	131	12,789	49,073	2,652	12,789	51,725	64,514	24,814	39,700	40,653	—	2008
Avalon Warner Place	Canoga Park, CA	210	7,920	44,845	2,920	7,920	47,765	55,685	23,394	32,291	33,748	—	2008
AVA Little Tokyo	Los Angeles, CA	280	14,734	94,001	2,160	14,734	96,161	110,895	28,170	82,725	85,683	—	2015
eaves Phillips Ranch	Pomona, CA	503	9,796	41,740	8,051	9,796	49,791	59,587	20,423	39,164	39,802	—	1989/2011
eaves San Dimas	San Dimas, CA	102	1,916	7,819	2,294	1,916	10,113	12,029	4,443	7,586	7,690	—	1978/2011
eaves San Dimas Canyon	San Dimas, CA	156	2,953	12,428	1,749	2,953	14,177	17,130	6,058	11,072	11,487	—	1981/2011
AVA Pasadena	Pasadena, CA	84	8,400	11,547	6,256	8,400	17,803	26,203	6,398	19,805	20,378	—	1973/2012
eaves Cerritos	Artesia, CA	151	8,305	21,195	2,377	8,305	23,572	31,877	8,490	23,387	23,799	—	1973/2012
Avalon Playa Vista	Los Angeles, CA	309	30,900	72,008	8,859	30,900	80,867	111,767	31,102	80,665	83,342	—	2006/2012
Avalon San Dimas	San Dimas, CA	156	9,141	30,726	378	9,141	31,104	40,245	9,360	30,885	31,660	—	2014
Avalon Glendora	Glendora, CA	281	18,311	64,303	668	18,311	64,971	83,282	16,999	66,283	68,558	—	2016
Avalon West Hollywood	West Hollywood, CA	294	35,214	119,105	1,741	35,214	120,846	156,060	25,584	130,476	135,100	—	2017
Avalon Mission Oaks	Camarillo, CA	160	9,600	37,602	1,936	9,600	39,538	49,138	13,037	36,101	37,252	—	2014
Avalon Chino Hills	Chino Hills, CA	331	16,617	79,829	783	16,617	80,612	97,229	16,756	80,473	82,794	—	2017
AVA North Hollywood	North Hollywood, CA	156	18,408	52,280	2,199	18,408	54,479	72,887	14,315	58,572	60,557	—	2015/2016
Avalon Cerritos	Cerritos, CA	132	8,869	51,452	926	8,869	52,378	61,247	8,380	52,867	54,816	30,250	2017/2019
Avalon Simi Valley	Simi Valley, CA	500	42,020	73,361	11,761	42,020	85,122	127,142	32,554	94,588	95,639	—	2007/2013
AVA Studio City II	Studio City, CA	101	4,626	22,954	7,970	4,626	30,924	35,550	11,254	24,296	25,419	—	1991/2013
Avalon Studio City	Studio City, CA	276	15,756	78,178	19,325	15,756	97,503	113,259	36,842	76,417	80,076	—	2002/2013
Avalon Calabasas	Calabasas, CA	600	42,720	107,642	25,656	42,720	133,298	176,018	60,303	115,715	121,483	—	1988/2013
Avalon Oak Creek	Agoura Hills, CA	336	43,540	79,974	9,930	43,540	89,904	133,444	40,807	92,637	94,193	—	2004/2013
Avalon Santa Monica on Main	Santa Monica, CA	133	32,000	60,770	15,482	32,000	76,252	108,252	27,218	81,034	83,107	—	2007/2013
eaves Old Town Pasadena	Pasadena, CA	96	9,110	15,371	7,378	9,110	22,749	31,859	8,567	23,292	24,050	—	1972/2013

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Community	City and state	# of homes	2022						2021	2022	Year of Completion / Acquisition		
			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					
eaves Thousand Oaks	Thousand Oaks, CA	154	\$ 13,950	\$ 20,211	\$ 6,182	\$ 13,950	\$ 26,393	\$ 40,343	\$ 12,730	\$ 27,613	\$ 28,356	\$ —	1992/2013
eaves Los Feliz	Los Angeles, CA	263	18,940	43,661	13,970	18,940	57,631	76,571	21,693	54,878	56,777	41,400	1989/2013
AVA Toluca Hills	Los Angeles, CA	1,151	86,450	161,256	91,415	86,450	252,671	339,121	85,645	253,476	262,259	—	1973/2013
eaves Woodland Hills	Woodland Hills, CA	884	68,940	90,549	23,653	68,940	114,202	183,142	48,860	134,282	136,985	111,500	1971/2013
Avalon Thousand Oaks Plaza	Thousand Oaks, CA	148	12,810	22,581	3,470	12,810	26,051	38,861	11,202	27,659	28,320	—	2002/2013
Avalon Pasadena	Pasadena, CA	120	10,240	31,558	6,844	10,240	38,402	48,642	14,083	34,559	35,860	—	2004/2013
AVA Studio City I	Studio City, CA	450	17,658	90,715	37,291	17,658	128,006	145,664	44,462	101,202	105,876	—	1987/2013
<b>Total Los Angeles, CA</b>		<b>11,284</b>	<b>\$ 713,947</b>	<b>\$ 1,951,059</b>	<b>\$ 515,223</b>	<b>\$ 713,947</b>	<b>\$ 2,466,282</b>	<b>\$ 3,180,229</b>	<b>\$ 985,319</b>	<b>\$ 2,194,910</b>	<b>\$ 2,249,868</b>	<b>\$ 183,150</b>	
<b>Orange County, CA</b>													
AVA Newport	Costa Mesa, CA	145	\$ 1,975	\$ 3,814	\$ 10,302	\$ 1,975	\$ 14,116	\$ 16,091	\$ 9,357	\$ 6,734	\$ 7,000	\$ —	1956/1996
eaves Mission Viejo	Mission Viejo, CA	166	2,517	9,257	5,365	2,517	14,622	17,139	11,566	5,573	5,715	—	1984/1996
eaves South Coast	Costa Mesa, CA	258	4,709	16,063	14,340	4,709	30,403	35,112	22,063	13,049	13,883	—	1973/1996
eaves Santa Margarita	Rancho Santa Margarita, CA	302	4,607	16,911	13,545	4,607	30,456	35,063	21,406	13,657	14,209	—	1990/1997
eaves Huntington Beach	Huntington Beach, CA	304	4,871	19,745	12,514	4,871	32,259	37,130	26,008	11,122	12,026	—	1971/1997
Avalon Irvine I	Irvine, CA	279	9,911	67,520	5,554	9,911	73,074	82,985	32,419	50,566	51,806	—	2010
Avalon Irvine II	Irvine, CA	179	4,358	40,905	1,324	4,358	42,229	46,587	14,543	32,044	32,748	—	2013
eaves Lake Forest	Lake Forest, CA	225	5,199	21,134	6,724	5,199	27,858	33,057	11,396	21,661	21,175	—	1975/2011
Avalon Baker Ranch	Lake Forest, CA	430	31,689	98,004	811	31,689	98,815	130,504	27,270	103,234	106,390	—	2015
Avalon Irvine III	Irvine, CA	156	11,607	43,973	289	11,607	44,262	55,869	10,904	44,965	46,372	—	2016
eaves Seal Beach	Seal Beach, CA	549	46,790	99,999	38,088	46,790	138,087	184,877	46,975	137,902	142,734	—	1971/2013
Avalon Huntington Beach	Huntington Beach, CA	378	13,055	105,981	979	13,055	106,960	120,015	24,282	95,733	99,415	—	2017
<b>Total Orange County, CA</b>		<b>3,371</b>	<b>\$ 141,288</b>	<b>\$ 543,306</b>	<b>\$ 109,835</b>	<b>\$ 141,288</b>	<b>\$ 653,141</b>	<b>\$ 794,429</b>	<b>\$ 258,189</b>	<b>\$ 536,240</b>	<b>\$ 553,473</b>	<b>\$ —</b>	
<b>San Diego, CA</b>													
AVA Pacific Beach	San Diego, CA	564	\$ 9,922	\$ 40,580	\$ 43,807	\$ 9,922	\$ 84,387	\$ 94,309	\$ 55,929	\$ 38,380	\$ 40,478	\$ —	1969/1997
eaves Mission Ridge	San Diego, CA	200	2,710	10,924	14,213	2,710	25,137	27,847	19,618	8,229	8,771	—	1960/1997
eaves San Marcos	San Marcos, CA	184	3,277	13,385	6,600	3,277	19,985	23,262	7,248	16,014	16,032	—	1988/2011
eaves Rancho Penasquitos	San Diego, CA	250	6,692	27,143	10,468	6,692	37,611	44,303	14,854	29,449	29,601	—	1986/2011
Avalon Vista	Vista, CA	221	12,689	43,328	865	12,689	44,193	56,882	12,433	44,449	46,015	—	2015
eaves La Mesa	La Mesa, CA	168	9,490	28,482	4,325	9,490	32,807	42,297	14,771	27,526	28,691	—	1989/2013
Avalon La Jolla Colony	San Diego, CA	180	16,760	27,694	12,622	16,760	40,316	57,076	16,132	40,944	42,316	—	1987/2013
<b>Total San Diego, CA</b>		<b>1,767</b>	<b>\$ 61,540</b>	<b>\$ 191,536</b>	<b>\$ 92,900</b>	<b>\$ 61,540</b>	<b>\$ 284,436</b>	<b>\$ 345,976</b>	<b>\$ 140,985</b>	<b>\$ 204,991</b>	<b>\$ 211,904</b>	<b>\$ —</b>	
<b>TOTAL SOUTHERN CALIFORNIA</b>		<b>16,422</b>	<b>\$ 916,775</b>	<b>\$ 2,685,901</b>	<b>\$ 717,958</b>	<b>\$ 916,775</b>	<b>\$ 3,403,859</b>	<b>\$ 4,320,634</b>	<b>\$ 1,384,493</b>	<b>\$ 2,936,141</b>	<b>\$ 3,015,245</b>	<b>\$ 183,150</b>	
<b>TOTAL SAME STORE</b>		<b>69,493</b>	<b>\$ 3,911,265</b>	<b>\$ 14,050,442</b>	<b>\$ 2,278,339</b>	<b>\$ 3,911,265</b>	<b>\$ 16,328,781</b>	<b>\$ 20,240,046</b>	<b>\$ 6,374,837</b>	<b>\$ 13,865,209</b>	<b>\$ 14,299,170</b>	<b>\$ 727,827</b>	

**AVALONBAY COMMUNITIES, INC.**  
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Community	City and state	# of homes	2022						2021	2022	Year of Completion / Acquisition		
			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					Accumulated Depreciation
<b>OTHER STABILIZED</b>													
AVA Hollywood at La Pietra Place	Hollywood, CA	695	\$ 99,309	\$ 272,636	\$ 1,608	\$ 99,309	\$ 274,244	\$ 373,553	\$ 26,917	\$ 346,636	\$ 355,102	\$ —	2021
Avalon Walnut Creek II (3)	Walnut Creek, CA	200	—	112,692	285	—	112,977	112,977	9,913	103,064	107,424	—	2020
Avalon Monrovia	Monrovia, CA	154	12,125	56,230	194	12,125	56,424	68,549	3,399	65,150	67,269	—	2021
Avalon Flatirons	Lafayette, CO	207	7,390	86,734	1,423	7,390	88,157	95,547	4,509	91,038	—	—	2020/2022
Avalon Doral	Doral, FL	350	23,392	92,934	—	23,392	92,934	116,326	7,465	108,861	110,622	—	2020
Avalon Fort Lauderdale	Fort Lauderdale, FL	243	20,029	122,092	6,928	20,029	129,020	149,049	8,617	140,432	146,639	—	2020/2021
Avalon Miramar	Miramar, FL	380	17,959	110,866	5,415	17,959	116,281	134,240	10,629	123,611	131,127	—	2018/2021
Avalon Miramar Park Place	Miramar, FL	650	50,919	228,816	14,705	50,919	243,521	294,440	16,679	277,761	—	—	2022/2022
Avalon Acton II	Acton, MA	86	1,720	29,353	—	1,720	29,353	31,073	2,435	28,638	29,737	—	2021
Avalon Marlborough II	Marlborough, MA	123	5,523	36,380	—	5,523	36,380	41,903	3,176	38,727	40,157	—	2020
Avalon Easton II	Easton, MA	44	570	14,051	—	570	14,051	14,621	647	13,974	14,032	—	2021
Kanso Twinbrook	Rockville, MD	238	9,151	56,959	29	9,151	56,988	66,139	4,178	61,961	63,858	—	2021
Avalon Towson	Towson, MD	371	12,906	98,307	—	12,906	98,307	111,213	9,556	101,657	105,108	—	2020
Avalon Arundel Crossing	Linthicum Heights, MD	384	9,933	108,911	2,690	9,933	111,601	121,534	10,841	110,693	115,029	—	2020/2021
Avalon South End	Charlotte, NC	265	13,723	87,712	2,776	13,723	90,488	104,211	6,876	97,335	101,735	—	2020/2021
AVA South End	Charlotte, NC	164	9,367	44,477	687	9,367	45,164	54,531	2,856	51,675	52,667	—	2013/2021
Avalon Hawk (1)	Charlotte, NC	71	2,564	43,837	258	2,564	44,095	46,659	2,010	44,649	46,515	—	2021/2021
Avalon Highland Creek	Charlotte, NC	260	4,586	70,861	1,648	4,586	72,509	77,095	1,423	75,672	—	—	2022/2022
Avalon Princeton Junction	West Windsor, NJ	512	5,585	21,752	34,435	5,585	56,187	61,772	35,920	25,852	22,762	—	1988/1993
Avalon Old Bridge	Old Bridge, NJ	252	6,895	65,090	404	6,895	65,494	72,389	5,237	67,152	69,224	—	2021
Avalon Yonkers	Yonkers, NY	590	28,131	186,513	57	28,131	186,570	214,701	16,263	198,438	206,005	—	2021
Avalon Lakeside	Flower Mound, TX	425	15,073	98,049	5,050	15,073	103,099	118,172	10,210	107,962	112,879	—	2015/2021
Waterford Court	Addison, TX	196	11,174	57,289	1,345	11,174	58,634	69,808	2,628	67,180	—	—	1995/2022
AVA Ballston	Arlington, VA	344	7,291	29,177	27,866	7,291	57,043	64,334	37,278	27,056	25,808	—	1990
Avalon Newcastle Commons II	Newcastle, WA	293	6,981	99,814	146	6,981	99,960	106,941	6,668	100,273	103,269	—	2021
eaves Redmond Campus	Redmond, WA	374	15,665	80,985	32,991	15,665	113,976	129,641	42,785	86,856	91,035	—	1991/2013
The Park Loggia Commercial (6)	New York, NY	N/A	77,393	76,410	8,057	77,393	84,467	161,860	9,567	152,293	148,963	—	2019
<b>TOTAL OTHER STABILIZED</b>		<b>7,871</b>	<b>\$ 475,354</b>	<b>\$ 2,388,927</b>	<b>\$ 148,997</b>	<b>\$ 475,354</b>	<b>\$ 2,537,924</b>	<b>\$ 3,013,278</b>	<b>\$ 298,682</b>	<b>\$ 2,714,596</b>	<b>\$ 2,266,966</b>	<b>\$ —</b>	
<b>REDEVELOPMENT</b>													
AVA Ballston Square	Arlington, VA	714	\$ 71,640	\$ 215,937	\$ 49,986	\$ 71,640	\$ 265,923	\$ 337,563	\$ 93,837	\$ 243,726	\$ 246,835	\$ —	1992/2013
<b>TOTAL REDEVELOPMENT</b>		<b>714</b>	<b>\$ 71,640</b>	<b>\$ 215,937</b>	<b>\$ 49,986</b>	<b>\$ 71,640</b>	<b>\$ 265,923</b>	<b>\$ 337,563</b>	<b>\$ 93,837</b>	<b>\$ 243,726</b>	<b>\$ 246,835</b>	<b>\$ —</b>	
<b>TOTAL CURRENT COMMUNITIES (5)</b>		<b>78,078</b>	<b>\$ 4,458,259</b>	<b>\$ 16,655,306</b>	<b>\$ 2,477,322</b>	<b>\$ 4,458,259</b>	<b>\$ 19,132,628</b>	<b>\$ 23,590,887</b>	<b>\$ 6,767,356</b>	<b>\$ 16,823,531</b>	<b>\$ 16,812,971</b>	<b>\$ 727,827</b>	

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Community	City and state	# of homes	2022						2021	2022	Year of Completion / Acquisition		
			Initial Cost			Total Cost			Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation		Encumbrances	
			Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total					
<b>DEVELOPMENT (4)</b>													
Avalon Brea Place	Brea, CA	653	\$ 72,921	\$ 218,116	\$ 37	\$ 72,921	\$ 218,153	\$ 291,074	\$ 8,655	\$ 282,419	\$ 275,832	\$ —	2022
AVA RiNo	Denver, CO	246	15,152	71,467	—	15,152	71,467	86,619	2,586	84,033	79,421	—	2022
Avalon Woburn	Woburn, MA	350	21,559	97,381	766	21,559	98,147	119,706	4,276	115,430	114,536	—	2022
Avalon 555 President	Baltimore, MD	400	13,168	121,428	5	13,168	121,433	134,601	9,583	125,018	128,827	—	2021
Avalon Foundry Row	Owings Mill, MD	437	11,130	85,522	—	11,130	85,522	96,652	5,041	91,611	90,477	—	2022
Avalon Harbor Isle	Island Park, NY	172	16,472	74,051	—	16,472	74,051	90,523	861	89,662	54,379	—	2022
Avalon West Dublin	Dublin, CA	499	—	—	157,784	—	157,784	157,784	—	157,784	55,994	—	N/A
Avalon Westminster Promenade	Westminster, CO	312	—	—	48,830	—	48,830	48,830	—	48,830	22,949	—	N/A
Avalon Governor's Park	Denver, CO	304	—	—	44,987	—	44,987	44,987	—	44,987	—	—	N/A
Avalon Merrick Park	Miami, FL	254	—	—	85,052	—	85,052	85,052	—	85,052	42,274	—	N/A
Avalon North Andover	North Andover, MA	221	5,233	24,795	29,564	5,233	54,359	59,592	144	59,448	22,363	—	N/A
Avalon Brighton	Boston, MA	180	—	—	76,197	—	76,197	76,197	—	76,197	29,586	—	N/A
Kanso Milford	Milford, MA	162	—	—	15,540	—	15,540	15,540	—	15,540	—	—	N/A
Avalon Annapolis	Annapolis, MD	508	—	—	66,119	—	66,119	66,119	—	66,119	—	—	N/A
Avalon Durham	Durham, NC	336	—	—	33,214	—	33,214	33,214	—	33,214	—	—	N/A
Avalon Montville	Montville, NJ	349	—	—	49,944	—	49,944	49,944	—	49,944	16,790	—	N/A
Avalon Somerville Station (1)	Somerville, NJ	374	9,535	57,837	31,829	9,535	89,666	99,201	731	98,470	52,998	—	N/A
Avalon West Windsor	West Windsor, NJ	535	—	—	30,097	—	30,097	30,097	—	30,097	—	—	N/A
Avalon Princeton Circle	Princeton, NJ	221	—	—	42,622	—	42,622	42,622	—	42,622	16,521	—	N/A
Avalon Harrison	Harrison, NY	143	8,223	44,305	30,234	8,223	74,539	82,762	1,898	80,864	64,175	—	N/A
Avalon Amityville	Amityville, NY	338	—	—	81,899	—	81,899	81,899	—	81,899	45,239	—	N/A
Avalon Bothell Commons	Bothell, WA	467	—	—	126,331	—	126,331	126,331	—	126,331	51,690	—	N/A
Avalon Redmond Campus	Redmond, WA	214	—	—	43,599	—	43,599	43,599	—	43,599	13,364	—	N/A
<b>TOTAL DEVELOPMENT</b>		<b>7,675</b>	<b>\$ 173,393</b>	<b>\$ 794,902</b>	<b>\$ 994,650</b>	<b>\$ 173,393</b>	<b>\$ 1,789,552</b>	<b>\$ 1,962,945</b>	<b>\$ 33,775</b>	<b>\$ 1,929,170</b>	<b>\$ 1,177,415</b>	<b>\$ —</b>	
Land Held for Development		N/A	\$ 179,204	\$ —	\$ —	\$ 179,204	\$ —	\$ 179,204	\$ —	\$ 179,204	\$ 147,546	\$ —	
Corporate Overhead		N/A	9,319	11,414	117,594	9,319	129,008	138,327	77,425	60,902	60,680	7,650,000	
For-sale condominium inventory (5)	New York, NY	N/A	15,918	235,574	(218,960)	15,918	16,614	32,532	—	32,532	146,535	—	2019
2022 Disposed Communities		N/A	—	—	—	—	—	—	—	—	364,437	—	
<b>TOTAL</b>		<b>85,753</b>	<b>\$ 4,836,093</b>	<b>\$ 17,697,196</b>	<b>\$ 3,370,606</b>	<b>\$ 4,836,093</b>	<b>\$ 21,067,802</b>	<b>\$ 25,903,895</b>	<b>\$ 6,878,556</b>	<b>\$ 19,025,339</b>	<b>\$ 18,709,584</b>	<b>\$ 8,377,827</b>	<b>(6)</b>

(1) Some or all of the land or associated parking structure for this community is subject to a finance lease.

(2) This community was under redevelopment for some or all of 2022, with the redevelopment activities not expected to materially impact community operations, and therefore this community is included in the Same Store portfolio and not classified as a Redevelopment Community.

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- (3) Some or all of the land for this community is subject to an operating lease.
- (4) Current and Development Communities excludes Unconsolidated Communities and Unconsolidated Development Communities.
- (5) The Park Loggia is comprised of 172 for-sale residential condominiums, of which 163 have been sold as of December 31, 2022, and 66,000 square feet of commercial space. Real estate related to the sold condominiums is included in costs subsequent to acquisition/construction.
- (6) Balance outstanding represents total amount due at maturity, and excludes deferred financing costs and debt discount associated with the unsecured and secured notes of \$47,695 and \$14,087, respectively.



**AVALONBAY COMMUNITIES, INC.**  
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Amounts include real estate assets held for sale.

Depreciation of AvalonBay Communities, Inc. building, improvements, upgrades and furniture, fixtures and equipment (FF&E) is calculated over the following useful lives, on a straight line basis:

Building and related improvements —30 years

Furniture, fixtures and equipment—not to exceed seven years

The aggregate cost of total real estate for federal income tax purposes was approximately \$24,460,692 at December 31, 2022.

The changes in total real estate assets for the years ended December 31, 2022, 2021 and 2020 are as follows:

	12/31/2022	12/31/2021	12/31/2020
Balance, beginning of period	\$ 24,927,305	\$ 23,962,222	\$ 23,606,872
Acquisitions, construction costs and improvements	1,599,311	1,588,314	860,594
Dispositions, including casualty losses and impairment loss on planned dispositions	(622,721)	(623,231)	(505,244)
Balance, end of period	<u>\$ 25,903,895</u>	<u>\$ 24,927,305</u>	<u>\$ 23,962,222</u>

The changes in accumulated depreciation for the years ended December 31, 2022, 2021 and 2020, are as follows:

	12/31/2022	12/31/2021	12/31/2020
Balance, beginning of period	\$ 6,217,721	\$ 5,728,440	\$ 5,173,883
Depreciation, including discontinued operations	814,978	758,596	707,331
Dispositions, including casualty losses	(154,143)	(269,315)	(152,774)
Balance, end of period	<u>\$ 6,878,556</u>	<u>\$ 6,217,721</u>	<u>\$ 5,728,440</u>

**AVALONBAY COMMUNITIES, INC.**  
**SECOND AMENDED AND RESTATED**  
**2009 EQUITY INCENTIVE PLAN**  
(Restatement)

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the AvalonBay Communities, Inc. Second Amended and Restated 2009 Equity Incentive Plan (the “Plan”). The purpose of the Plan is to encourage and enable the officers, employees, Non-Employee Directors and other key persons (including consultants and prospective employees) of AvalonBay Communities, Inc. (the “Company”) and its Subsidiaries upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company’s welfare will assure a closer identification of their interests with those of the Company and its stockholders, thereby stimulating their efforts on the Company’s behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

“*Act*” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“*Administrator*” means either the Board or the compensation committee of the Board or a similar committee performing the functions of the compensation committee and which is comprised of not less than two Non-Employee Directors who are independent.

“*Award*” or “*Awards*,” except where referring to a particular category of grant under the Plan, shall include Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Units, Restricted Stock Awards, Unrestricted Stock Awards, Cash-Based Awards, Performance Share Awards and Dividend Equivalent Rights.

“*Award Certificate*” means a written or electronic document setting forth the terms and provisions applicable to an Award granted under the Plan. Each Award Certificate is subject to the terms and conditions of the Plan.

“*Board*” means the Board of Directors of the Company.

“*Cash-Based Award*” means an Award entitling the recipient to receive a cash-denominated payment.

“*Cause*” means:

(i) any material or willful breach by the grantee of any agreement to which the grantee and the Company are parties or of any published policy of the Company that is generally applicable to all employees of the Company (or to a subset of employees applicable to grantee, e.g., all officers or employees of a particular business unit), including, but not limited to, policies concerning insider trading, misuse of confidential information, sexual harassment or policies contained in the

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Company's Code of Conduct or Associate Handbook as the same may be amended from time to time; the materiality or willfulness of a breach shall be determined in the sole discretion of the Company;

(ii) any act (other than retirement or other termination of employment) or omission to act by the grantee which may, as determined in the sole discretion of the Company, have a material and adverse effect on the interests of the Company or any Subsidiary or on the grantee's ability to perform services for the Company or any Subsidiary, including, without limitation, the commission of or indictment for any crime (other than ordinary traffic violations);

(iii) any material misconduct or neglect of duties by the grantee in connection with the business or affairs of the Company or any Subsidiary, including without limitation due to alcohol abuse or use of controlled substances other than in accordance with a valid prescription, as determined by the Company in its sole discretion;

(iv) any willful failure, as determined by the Company in its sole discretion, to cooperate fully with a Company internal investigation or an investigation of the Company by regulatory or law enforcement authorities whether or not related to the grantee's employment with the Company (an "Investigation"), after being instructed by the Company (including any instruction by legal, internal audit, or human resources personnel) to cooperate, or the grantee's willful destruction of or knowing and intentional failure to preserve documents or other material (including emails, text messages or electronic data) known by the grantee to be relevant to any investigation; or

(v) any fraud or misappropriation, embezzlement or misuse of funds or property belonging to the Company (including through the misapplication of Company property to personal use or fraudulent expense reimbursement reports);

*provided*, that the following shall apply in connection with and for twenty-four months following a Sale Event: (i) if any act or omission is, in the reasonable judgment of the Company, capable of cure, the grantee first shall have received written notice of the act or omission alleged to constitute Cause and shall have failed to cure after 15 days following such notice from the Company which notice shall specifically identify the act or omission which the Company believes constitutes Cause; and (ii) in the case of an officer, a dismissal of such officer for Cause must be made pursuant to a vote of the Board (after the expiration of any applicable 15 day cure period).

As used in this definition of Cause, an act or omission to act shall be considered "willful" if done, or omitted to be done, by the grantee with knowledge and intent.

The foregoing definition does not in any way limit the Company's ability to terminate the grantee's employment at any time, nor will it limit the Company's ability to terminate the grantee's employment for poor performance or for "Cause" as defined for other purposes by the Company (e.g., with respect to other severance arrangements or guidelines).

"Code" means the Internal Revenue Code of 1986, as amended, and any successor Code, and related rules, regulations and interpretations.

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“*Covered Employee*” means an employee who is a “Covered Employee” within the meaning of Section 162(m) of the Code.

“*Dividend Equivalent Right*” means an Award entitling the grantee to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the grantee.

“*Effective Date*” means the date in 2017 on which the Second Amended and Restated 2009 Equity Incentive Plan is approved by stockholders as set forth in Section 21.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“*Fair Market Value*” of the Stock on any given date means the last reported sale price at which Stock is traded on such date or, if no Stock is traded on such date, the most recent date on which Stock was traded, as reflected on the New York Stock Exchange or, if applicable, any other national exchange on which the Stock is traded.

“*Good Reason*” means the occurrence of any of the following events: (i) a material adverse change in the functions, duties or responsibilities of a grantee’s position (other than a termination of employment for Cause) which would meaningfully reduce the level, importance or scope of such position (provided that a change in the person, position and/or department to whom the grantee is required to report shall not by itself constitute a material adverse change in such grantee’s position); or (ii) the relocation of the office at which a grantee is principally located immediately prior to a Sale Event (the “Original Office”) to a new location outside of the metropolitan area of the Original Office or the failure to locate a grantee’s own office at the Original Office (or at the office to which such office is relocated which is within the metropolitan area of the Original Office); or (iii) a material reduction in the grantee’s base salary and incentive compensation opportunity as in effect immediately prior to the event to which a right to terminate employment for Good Reason relates.

“*Incentive Stock Option*” means any Stock Option designated and qualified as an “incentive stock option” as defined in Section 422 of the Code.

“*Non-Employee Director*” means a member of the Board who is not also an employee of the Company or any Subsidiary.

“*Non-Qualified Stock Option*” means any Stock Option that is not an Incentive Stock Option.

“*Option*” or “*Stock Option*” means any option to purchase shares of Stock granted pursuant to Section 5.

“*Performance-Based Award*” means any Restricted Stock Award, Restricted Stock Units, Performance Share Award or Cash-Based Award granted to a Covered Employee that is intended to qualify as “performance-based compensation” under Section 162(m) of the Code and the regulations promulgated thereunder.

“*Performance Criteria*” means the criteria that the Administrator selects for purposes of establishing the Performance Goal or Performance Goals for an individual for a Performance Cycle. The Performance Criteria (which shall be applicable to the organizational level specified by the Administrator, including, but not limited to, the Company or a unit, division, group, or Subsidiary of the Company) that will be used to establish Performance Goals are limited to the

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following: (i) earnings before interest, taxes, depreciation and amortization; (ii) net income (loss) (either before or after interest, taxes, depreciation and/or amortization); (iii) changes in the market price of the Stock; (iv) cash flow (including, but not limited to, operating cash flow and free cash flow); (v) funds from operations or similar measure; (vi) sales or revenue; (vii) acquisitions or strategic transactions; (viii) operating income (loss); (ix) return on capital, assets, equity, or investment; (x) total stockholder returns or total returns to stockholders; (xi) gross or net profit levels; (xii) productivity; (xiii) expense; (xiv) margins; (xv) operating efficiency; (xvi) customer satisfaction; (xvii) working capital; (xviii) earnings per share of Stock; (xix) lease up performance, net operating income performance or yield on development or redevelopment communities; (xx) leverage (measured as a ratio based on debt, debt net of cash balances, or interest expense to earnings before interest, taxes, depreciation and amortization (EBITDA) or to total market capitalization, or similar measures); and/or (xxi) economic value-added, any of which under the preceding clauses (i) through (xxi) may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group. The Committee may appropriately adjust any evaluation of the Company's or a peer's performance under a Performance Criterion to exclude or minimize the effect of any of the following events that occurs during a Performance Cycle: (I) asset write-downs or impairments, (II) litigation or claim judgments or settlements, (III) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reporting results, (IV) accruals for reorganizations and restructuring programs, (V) any item of an unusual nature or of a type that indicates infrequency of occurrence, or both, including those described in the Financial Accounting Standards Board's authoritative guidance and/or in management's discussion and analysis of financial condition of operations appearing the Company's annual report to stockholders for the applicable year, (VI) special or non-routine dividends, including those that result from large asset sales, and (VII) other items that are typically adjusted, including in earnings releases, third party publications or metrics that are focused on core or recurring operating results and that are based on the above criterion.

*"Performance Cycle"* means one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Criteria will be measured for the purpose of determining a grantee's right to and the payment of a Restricted Stock Award, Restricted Stock Units, Performance Share Award or Cash-Based Award, the vesting and/or payment of which is subject to the attainment of one or more Performance Goals. Each such period shall not be less than 12 months, except to the extent shortened due to the occurrence of certain defined events (e.g., a Sale Event) as set forth in the Plan or in the relevant Award agreement.

*"Performance Goals"* means, for a Performance Cycle, the specific goals established in writing by the Administrator for a Performance Cycle based upon the Performance Criteria.

*"Performance Share Award"* means an Award entitling the recipient to acquire shares of Stock upon the attainment of specified Performance Goals.

*"Restricted Stock Award"* means an Award entitling the recipient to acquire, at such purchase price (which may be zero) as determined by the Administrator, shares of Stock subject to such restrictions and conditions as the Administrator may determine at the time of grant.

*"Restricted Stock Units"* means an Award of phantom stock units to a grantee subject to such restrictions and conditions as the Administrator may determine at the time of grant.

*"Sale Event"* shall mean (i) the sale of all or substantially all of the assets of the Company on a consolidated basis to one or more unrelated persons or entities, or (ii) the sale or other transfer of all or substantially all of the Stock of the Company to one or more unrelated persons or entities (including by way of a merger, reorganization or consolidation in which the

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outstanding shares of Stock are converted into or exchanged for securities of the successor entity) where the stockholders of the Company, immediately prior to such sale or other transfer, would not, immediately after such sale or transfer, beneficially own shares representing in the aggregate more than 50 percent of the voting shares of the acquirer or surviving entity (or its ultimate parent corporation, if any). For this purpose, only voting shares of the acquirer or surviving entity (or its ultimate parent, if any) received by stockholders of the Company in exchange for Stock shall be counted, and any voting shares of the acquirer or surviving entity (or its ultimate parent, if any) already owned by stockholders of the Company prior to the transaction shall be disregarded.

“*Sale Price*” means the value as determined by the Administrator of the consideration payable, or otherwise to be received by stockholders, per share of Stock pursuant to a Sale Event.

“*Section 16 Officer*” means an employee who is subject to the reporting and other provisions of Section 16 of the Exchange Act.

“*Section 409A*” means Section 409A of the Code and the regulations and other guidance promulgated thereunder.

“*Stock*” means the Common Stock, par value \$.01 per share, of the Company, subject to adjustments pursuant to Section 3.

“*Stock Appreciation Right*” means an Award entitling the recipient to receive shares of Stock having a value equal to the excess of the Fair Market Value of the Stock on the date of exercise over the exercise price of the Stock Appreciation Right multiplied by the number of shares of Stock with respect to which the Stock Appreciation Right shall have been exercised.

“*Subsidiary*” means any corporation or other entity (other than the Company) in which the Company has at least a 50 percent interest, either directly or indirectly.

“*Ten Percent Owner*” means an employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10 percent of the combined voting power of all classes of stock of the Company or any parent or subsidiary corporation.

“*Unrestricted Stock Award*” means an Award of shares of Stock free of any restrictions.

## SECTION 2. ADMINISTRATION OF PLAN; ADMINISTRATOR AUTHORITY TO SELECT GRANTEES AND DETERMINE AWARDS

(a) Administration of Plan. The Plan shall be administered by the Administrator, provided that the amount, timing and terms of the grants of Awards to Non-Employee Directors shall be determined by the compensation committee, the nominating and corporate governance committee or similar committee comprised solely of Non-Employee Directors (which determination may, in the discretion of such committee, be conditioned on the subsequent approval of a majority vote or unanimous written consent of either the Non-Employee Directors on the Board or the independent directors on the Board who qualify for service on the compensation committee).

(b) Powers of Administrator. The Administrator shall have the power and authority to grant Awards consistent with the terms of the Plan, including the power and authority:

- (i) to select the individuals to whom Awards may from time to time be granted;
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(ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Stock Appreciation Rights, Restricted Stock Awards, Restricted Stock Units, Unrestricted Stock Awards, Cash-Based Awards, Performance Share Awards and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more grantees;

(iii) to determine the number of shares of Stock to be covered by any Award;

(iv) to determine and modify from time to time the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and grantees, and to approve the forms of Award Certificates;

(v) subject to the provisions of Section 2(g), to accelerate at any time the exercisability or vesting of all or any portion of any Award;

(vi) subject to the provisions of Section 5(c), to extend at any time the period in which Stock Options may be exercised; and

(vii) at any time to adopt, alter and repeal such rules, guidelines and practices for administration of the Plan and for its own acts and proceedings as it shall deem advisable; to interpret the terms and provisions of the Plan and any Award (including related written instruments); to make all determinations it deems advisable for the administration of the Plan; to decide all disputes arising in connection with the Plan; and to otherwise supervise the administration of the Plan.

(c) All decisions and interpretations of the Administrator shall be binding on all persons, including the Company and Plan grantees. The Administrator may, in its discretion, condition any approval or determination on the subsequent approval of a majority vote or unanimous written consent of either the Non-Employee Directors on the Board or the independent directors on the Board who qualify for service on the compensation committee).

(d) Delegation of Authority to Grant Awards. Subject to applicable law, the Administrator, in its discretion, may delegate to the Chief Executive Officer of the Company (or other executive officers of the Company to the extent permitted under applicable law) all or part of the Administrator's authority and duties with respect to the granting of Awards to individuals who are (i) not Section 16 Officers and (ii) not Covered Employees. Any such delegation by the Administrator shall include a limitation as to the amount or value of Awards that may be granted during the period of the delegation and shall contain guidelines as to the determination of the exercise price and the vesting criteria. The Administrator may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Administrator's delegate or delegates that were consistent with the terms of the Plan.

(e) Award Certificate. Awards under the Plan shall be evidenced by Award Certificates that set forth the terms, conditions and limitations for each Award which may include, without limitation, the term of an Award and the provisions applicable in the event employment or service terminates.

(f) Indemnification. Neither the Board nor the Administrator, nor any member of either or any delegate thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Administrator (and any delegate thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent

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permitted by law and/or under the Company's articles or bylaws or any directors' and officers' liability insurance coverage which may be in effect from time to time and/or any indemnification agreement between such individual and the Company.

(g) Minimum Vesting Requirements. Notwithstanding any other provision in the Plan to the contrary, the minimum restriction or vesting period with respect to any Award granted under the Plan to any person (including, without limitation, to an officer, employee, Non-Employee Director or other key person (including a consultant or prospective employee of the Company or any Subsidiary)) shall be no less than one year; provided that, notwithstanding the foregoing, such minimum vesting provision shall not apply in the following cases:

- i. in the case of a grantee's death, disability, retirement or termination of employment without cause, or (in the case of Performance-Based Awards) a Sale Event, and
- ii. in the case of credits of Awards under Dividend Equivalent Rights associated with Restricted Stock Units, and
- iii. in addition to the above exceptions, with respect to Awards made after the Effective Date that result in the issuance of up to 5% of the shares of Stock reserved and available for issuance under the Plan as of the Effective Date pursuant to Section 3(a).

### SECTION 3. STOCK ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Stock Issuable. As of the Effective Date, the maximum number of shares of Stock reserved and available for issuance pursuant to Awards granted under the Plan on or after the Effective Date shall be 8,000,000 shares (an increase of 7,563,450 shares as compared to the number of shares reserved and available for issuance under the Plan as of February 16, 2017, subject to adjustment as provided in Section 3. For purposes of this limitation, the shares of Stock underlying any Awards under this Plan or the Company's 1994 Stock Incentive Plan that are forfeited, canceled or otherwise terminated (other than by exercise) shall be added back to the shares of Stock available for issuance under the Plan. Notwithstanding the foregoing, the following shares of Stock shall not be added to the shares authorized for grant under the Plan: (1) shares tendered or held back upon exercise of an Option or settlement of an Award to cover the exercise price or tax withholding, and (2) shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right upon exercise thereof. In the event the Company repurchases shares of Stock on the open market, such shares shall not be added to the shares of Stock available for issuance under the Plan. Subject to such overall limitations, shares of Stock may be issued up to such maximum number pursuant to any type or types of Award; provided, however, that Stock Options or Stock Appreciation Rights with respect to no more than 600,000 shares of Stock may be granted to any one individual grantee during any one calendar year period, and no more than 8,000,000 Awards made on or after the Effective Date may be made in the form of Incentive Stock Options. The shares available for issuance under the Plan may be authorized but unissued shares of Stock or shares of Stock reacquired by the Company.

(b) Awards to Non-Employee Directors. By their approval of this Plan, the Board and the Stockholders approve Awards awarded under this Plan and all other cash compensation paid by the Company to any Non-Employee Director in any calendar year that shall together have a value up to \$500,000. Notwithstanding the foregoing, total compensation for a non-executive Chairman of the Board for service on the Board (including the value of any Awards

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awarded under this Plan and all other cash compensation for service on the Board) may exceed the dollar limit stated in the prior sentence by up to 50%. For the purpose of these limitations, the value of any Award shall be its grant date fair value, as determined in accordance with ASC 718 or successor provision but excluding the impact of estimated forfeitures related to service-based vesting provisions.

(c) Effect of Awards. The grant of any full value Award (i.e., an Award other than an Option or a Stock Appreciation Right) shall be deemed, for purposes of determining the number of shares of Stock available for issuance under Section 3(a), as an Award of 2.17 shares of Stock for each such share of Stock actually subject to the Award. The grant of an Option or a Stock Appreciation Right shall be deemed, for purposes of determining the number of shares of Stock available for issuance under Section 3(a), as an Award for one share of Stock for each such share of Stock actually subject to the Award. Any forfeitures, cancellation or other termination (other than by exercise) of such Awards shall be returned to the reserved pool of shares of Stock under the Plan in the same manner.

(d) Changes in Stock. Subject to Section 3(e) hereof, if, as a result of any reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar change in the Company's capital stock, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Stock or other securities or paid in satisfaction of a dividend declaration, or, if, as a result of any merger or consolidation, sale of all or substantially all of the assets of the Company, the outstanding shares of Stock are converted into or exchanged for securities of the Company or any successor entity (or a parent or subsidiary thereof), the Administrator shall make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, including the maximum number of shares that may be issued in the form of Incentive Stock Options, (ii) the number of Stock Options or Stock Appreciation Rights that can be granted to any one individual grantee and the maximum number of shares that may be granted under a Performance-Based Award, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, (iv) the repurchase price, if any, per share subject to each outstanding Restricted Stock Award, and (v) the price for each share subject to any then outstanding Stock Options and Stock Appreciation Rights under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options and Stock Appreciation Rights) as to which such Stock Options and Stock Appreciation Rights remain exercisable. The Administrator shall also make equitable or proportionate adjustments in the number of shares subject to outstanding Awards and the exercise price and/or the terms of outstanding Awards to take into consideration cash dividends declared and paid other than in the ordinary course or any other extraordinary corporate event, other than those contemplated by Section 3(e) hereof, to the extent determined to be necessary by the Administrator to avoid distortion in the value of the Awards. The adjustment by the Administrator shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Administrator in its discretion may make a cash payment in lieu of fractional shares.

(e) Sale Event. Except as the Administrator may otherwise specify with respect to particular Awards in the relevant Award Certificate, Awards granted on or after January 1, 2016 that are assumed, continued or substituted in connection with a Sale Event shall become fully vested and nonforfeitable on the date of termination in the event that a grantee's employment or other service relationship with the Company (or its successor) is terminated by the Company (or its successor) without Cause or by the grantee for Good Reason, in either case in connection with or within 24 months following a Sale Event.

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Except as the Administrator may otherwise specify with respect to particular Awards in the relevant Award Certificate, in the case of and subject to the consummation of a Sale Event, the Plan and all outstanding Awards granted hereunder shall terminate, unless provision is made in connection with the Sale Event in the sole discretion of the parties to the Sale Event for either (x) the assumption or continuation of such Awards by the successor entity, or (y) the substitution of such Awards with new Awards of the successor entity or parent thereof, with appropriate adjustment in either case as to the number and kind of shares and, if appropriate, the per share exercise prices, as such parties to the Sale Event shall agree (after taking into account any acceleration hereunder). In the event that outstanding Awards granted hereunder are terminated because they have not been so assumed, continued or substituted, then, except as may be otherwise provided in the relevant Award Certificate, all Options and Stock Appreciation Rights that are not exercisable immediately prior to the effective time of the Sale Event shall become fully exercisable as of the effective time of the Sale Event, all other Awards with time-based vesting, conditions or restrictions shall become fully vested and nonforfeitable as of the effective time of the Sale Event and all Awards with conditions and restrictions relating to the attainment of performance goals may become vested and nonforfeitable in connection with a Sale Event, in each case in the Administrator's discretion or to the extent specified in the relevant Award Certificate. Further, in the event outstanding Awards granted hereunder are terminated because they have not been so assumed, continued or substituted, then (i) the Company shall have the option (in its sole discretion) to make or provide for a cash payment to the grantees holding Options and Stock Appreciation Rights, in exchange for the cancellation thereof, in an amount equal to the difference between (A) the Sale Price multiplied by the number of shares of Stock subject to outstanding Options and Stock Appreciation Rights (to the extent then exercisable (after taking into account any acceleration hereunder) at prices not in excess of the Sale Price) and (B) the aggregate exercise price of all such outstanding Options and Stock Appreciation Rights; or (ii) each grantee shall be permitted, within a specified period of time prior to the consummation of the Sale Event as determined by the Administrator, to exercise all outstanding Options and Stock Appreciation Rights held by such grantee. The Company shall also have the option (in its sole discretion) to make or provide for a cash payment for all other Awards that are terminated because they have not been so assumed, continued or substituted.

(f) Substitute Awards. The Administrator may grant Awards under the Plan in substitution for stock and stock based awards held by employees, directors or other key persons of another corporation in connection with the merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Administrator may direct that the substitute awards be granted on such terms and conditions as the Administrator considers appropriate in the circumstances. Any substitute Awards granted under the Plan shall not count against the share limitation set forth in Section 3(a).

#### SECTION 4. ELIGIBILITY

Grantees under the Plan will be such full or part-time officers and other employees, Non-Employee Directors and key persons (including consultants and prospective employees) of the Company and its Subsidiaries as are selected from time to time by the Administrator in its sole discretion.

#### SECTION 5. STOCK OPTIONS

(a) Grants of Stock Options. Any Stock Option granted under the Plan shall be in such form as the Administrator may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the

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Company or any Subsidiary that is a “subsidiary corporation” within the meaning of Section 424(f) of the Code. To the extent that any Option does not qualify as an Incentive Stock Option, it shall be deemed a Non-Qualified Stock Option.

The Administrator in its discretion may grant Stock Options to eligible employees and key persons of the Company or any Subsidiary. Stock Options granted pursuant to this Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Administrator shall deem desirable. If the Administrator so determines, Stock Options may be granted in lieu of cash compensation or other Awards at the optionee’s election, subject to such terms and conditions as the Administrator may establish.

(b) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5(b) shall be determined by the Administrator at the time of grant but shall not be less than 100 percent of the Fair Market Value on the date of grant. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the option price of such Incentive Stock Option shall be not less than 110 percent of the Fair Market Value on the grant date.

(c) Option Term. The term of each Stock Option shall be fixed by the Administrator, but no Stock Option shall be exercisable more than ten years after the date the Stock Option is granted. In the case of an Incentive Stock Option that is granted to a Ten Percent Owner, the term of such Stock Option shall be no more than five years from the date of grant.

(d) Exercisability; Rights of a Stockholder. Stock Options shall become exercisable at such time or times, whether or not in installments, as shall be determined by the Administrator at or after the grant date. The Administrator may at any time accelerate the exercisability of all or any portion of any Stock Option. An optionee shall have the rights of a stockholder only as to shares acquired upon the exercise of a Stock Option and not as to unexercised Stock Options.

(e) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written or electronic notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods except to the extent otherwise provided in the Option Award Certificate:

(i) In cash, by certified or bank check or other instrument acceptable to the Administrator;

(ii) Through the delivery (or attestation to the ownership following such procedures as the Administrator may prescribe) of shares of Stock beneficially owned by the optionee and that are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date;

(iii) By the optionee delivering to the Company a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company cash or a check payable and acceptable to the Company for the purchase price; provided that in the event the optionee chooses to pay the purchase price as so provided, the optionee and the broker shall comply with such procedures and enter into such agreements of indemnity and other agreements as the Administrator shall prescribe as a condition of such payment procedure; or

(iv) With respect to Stock Options that are not Incentive Stock Options, by a “net exercise” arrangement pursuant to which the Company will reduce the number of shares of Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price.

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Payment instruments will be received subject to collection. The transfer to the optionee on the records of the Company or of the transfer agent of the shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Option Award Certificate or applicable provisions of laws (including the satisfaction of any withholding taxes that the Company is obligated to withhold with respect to the optionee). In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the number of shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of attested shares. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the exercise of Stock Options, such as a system using an internet website or interactive voice response, then the paperless exercise of Stock Options may be permitted through the use of such an automated system.

(f) Annual Limit on Incentive Stock Options. To the extent required for “incentive stock option” treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the shares of Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its parent and subsidiary corporations become exercisable for the first time by an optionee during any calendar year shall not exceed \$100,000. To the extent that any Stock Option exceeds this limit, it shall constitute a Non-Qualified Stock Option.

#### SECTION 6. STOCK APPRECIATION RIGHTS

(a) Exercise Price of Stock Appreciation Rights. The exercise price of a Stock Appreciation Right shall not be less than 100 percent of the Fair Market Value of the Stock on the date of grant.

(b) Grant and Exercise of Stock Appreciation Rights. Stock Appreciation Rights may be granted by the Administrator independently of any Stock Option granted pursuant to Section 5 of the Plan.

(c) Terms and Conditions of Stock Appreciation Rights. Stock Appreciation Rights shall be subject to such terms and conditions as shall be determined from time to time by the Administrator. The term of a Stock Appreciation Right may not exceed ten years.

#### SECTION 7. RESTRICTED STOCK AWARDS

(a) Nature of Restricted Stock Awards. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Award at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award Certificate shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees.

(b) Rights as a Stockholder. Upon the grant of the Restricted Stock Award and payment of any applicable purchase price, a grantee shall have the rights of a stockholder with respect to the voting and dividends of the Restricted Stock, subject to such conditions contained in the Restricted Stock Award Certificate. Unless the Administrator shall otherwise determine, (i) uncertificated Restricted Stock shall be accompanied by a notation on the records of the Company or the transfer agent to the effect that they are subject to forfeiture until such Restricted Stock are vested as provided in Section 7(d) below, and (ii) certificated Restricted Stock shall remain in the possession of the Company until such Restricted Stock is vested as provided in

Section 7(d) below, and the grantee shall be required, as a condition of the grant, to deliver to the Company such instruments of transfer as the Administrator may prescribe.

(c) Restrictions. Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of except as specifically provided herein or in the Restricted Stock Award Certificate. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, if a grantee's employment (or other service relationship) with the Company and its Subsidiaries terminates for any reason, any Restricted Stock that has not vested at the time of termination shall automatically and without any requirement of notice to such grantee from or other action by or on behalf of, the Company be deemed to have been reacquired by the Company at its original purchase price (if any) from such grantee or such grantee's legal representative simultaneously with such termination of employment (or other service relationship), and thereafter shall cease to represent any ownership of the Company by the grantee or rights of the grantee as a stockholder. Following such deemed reacquisition of unvested Restricted Stock that are represented by physical certificates, a grantee shall surrender such certificates to the Company upon request without consideration.

(d) Vesting of Restricted Stock. The Administrator at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed "vested." Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, a grantee's rights in any shares of Restricted Stock that have not vested shall automatically terminate upon the grantee's termination of employment (or other service relationship) with the Company and its Subsidiaries and such shares shall be subject to the provisions of Section 7(c) above.

#### SECTION 8. RESTRICTED STOCK UNITS

(a) Nature of Restricted Stock Units. The Administrator shall determine the restrictions and conditions applicable to each Restricted Stock Unit at the time of grant. Conditions may be based on continuing employment (or other service relationship) and/or achievement of pre-established performance goals and objectives. The terms and conditions of each such Award Certificate shall be determined by the Administrator, and such terms and conditions may differ among individual Awards and grantees. Except in the case of Restricted Stock Units with a deferred settlement date that complies with Section 409A, at the end of the vesting period, the Restricted Stock Units, to the extent vested, shall be settled in the form of shares of Stock. To the extent that an award of Restricted Stock Units is subject to Section 409A, it may contain such additional terms and conditions as the Administrator shall determine in its sole discretion in order for such Award to comply with the requirements of Section 409A.

(b) Election to Receive Restricted Stock Units in Lieu of Compensation. The Administrator may, in its sole discretion, permit a grantee to elect to receive a portion of future cash compensation or other Award otherwise due to such grantee in the form of an award of Restricted Stock Units. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Administrator and in accordance with Section 409A and such other rules and procedures established by the Administrator. Any such future cash compensation that the grantee elects to defer shall be converted to a fixed number of Restricted Stock Units based on the Fair Market Value of Stock on the date the compensation would otherwise have been paid to the grantee if such payment had not been deferred as provided herein. The Administrator shall have the sole right to determine whether and under

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what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Administrator deems appropriate. Any Restricted Stock Units that are elected to be received in lieu of cash compensation shall be fully vested, unless otherwise provided in the Award Certificate.

(c) Rights as a Stockholder. A grantee shall have the rights as a stockholder only as to shares of Stock acquired by the grantee upon settlement of Restricted Stock Units; provided, however, that the grantee may be credited with Dividend Equivalent Rights with respect to the phantom stock units underlying his Restricted Stock Units, subject to such terms and conditions as the Administrator may determine.

(d) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, a grantee's right in all Restricted Stock Units that have not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

#### SECTION 9. UNRESTRICTED STOCK AWARDS

Grant or Sale of Unrestricted Stock. Subject to the limitation set forth in Section 2(g), the Administrator may, in its sole discretion, grant (or sell at par value or such higher purchase price determined by the Administrator) an Unrestricted Stock Award under the Plan. Unrestricted Stock Awards may be granted in respect of past services or other valid consideration, or in lieu of cash compensation due to such grantee.

#### SECTION 10. CASH-BASED AWARDS

Grant of Cash-Based Awards. The Administrator may, in its sole discretion, grant Cash-Based Awards to any grantee in such number or amount and upon such terms, and subject to such conditions, as the Administrator shall determine at the time of grant. The Administrator shall determine the maximum duration of the Cash-Based Award, the amount of cash to which the Cash-Based Award pertains, the conditions upon which the Cash-Based Award shall become vested or payable, and such other provisions as the Administrator shall determine. Each Cash-Based Award shall specify a cash-denominated payment amount, formula or payment ranges as determined by the Administrator. Payment, if any, with respect to a Cash-Based Award shall be made in accordance with the terms of the Award and may be made in cash or in shares of Stock, as the Administrator determines.

#### SECTION 11. PERFORMANCE SHARE AWARDS

(a) Nature of Performance Share Awards. The Administrator may, in its sole discretion, grant Performance Share Awards independent of, or in connection with, the granting of any other Award under the Plan. The Administrator shall determine whether and to whom Performance Share Awards shall be granted, the Performance Goals, the periods during which performance is to be measured, which may not be less than one year except in the case of a Sale Event, and such other limitations and conditions as the Administrator shall determine.

(b) Rights as a Stockholder. A grantee receiving a Performance Share Award shall have the rights of a stockholder only as to shares of Stock actually received by the grantee under the Plan and not with respect to shares subject to the Award but not actually received by the grantee. A grantee shall be entitled to receive shares of Stock under a Performance Share Award only upon satisfaction of all conditions specified in the Performance Share Award Certificate (or in a performance plan adopted by the Administrator).

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(c) Termination. Except as may otherwise be provided by the Administrator either in the Award agreement or, subject to Section 18 below, in writing after the Award is issued, a grantee's rights in all Performance Share Awards shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

## SECTION 12. PERFORMANCE-BASED AWARDS TO COVERED EMPLOYEES

(a) Performance-Based Awards. Any employee or other key person providing services to the Company and who is selected by the Administrator may be granted one or more Performance-Based Awards in the form of a Restricted Stock Award, Restricted Stock Units, Performance Share Awards or Cash-Based Award payable upon the attainment of Performance Goals that are established by the Administrator and related to one or more of the Performance Criteria, in each case on a specified date or dates or over any period or periods determined by the Administrator. The Administrator shall define in an objective fashion the manner of calculating the Performance Criteria it selects to use for any Performance Cycle. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. The Administrator, in its discretion, may adjust or modify the calculation of Performance Goals for such Performance Cycle in order to prevent the dilution or enlargement of the rights of an individual (i) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development, (ii) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company or a peer, or the financial statements of the Company or a peer, or (iii) in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions provided however, that the Administrator may not exercise such discretion in a manner that would increase the Performance-Based Award granted to a Covered Employee. Each Performance-Based Award shall comply with the provisions set forth below.

(b) Grant of Performance-Based Awards. With respect to each Performance-Based Award granted to a Covered Employee, the Administrator shall select, within the first 90 days of a Performance Cycle (or, if shorter, within the maximum period allowed under Section 162(m) of the Code) the Performance Criteria for such grant, and the Performance Goals with respect to each Performance Criterion (including a threshold level of performance below which no amount will become payable with respect to such Award). Each Performance-Based Award will specify the amount payable, or the formula for determining the amount payable, upon achievement of the various applicable performance targets. The Performance Criteria established by the Administrator may be (but need not be) different for each Performance Cycle and different Performance Goals may be applicable to Performance-Based Awards to different Covered Employees.

(c) Payment of Performance-Based Awards. Following the completion of a Performance Cycle, the Administrator shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance Cycle have been achieved and, if so, to also calculate and certify in writing the amount (or the percentage of target achievement) of the Performance-Based Awards earned for the Performance Cycle. The Administrator shall then determine the actual size (or percentage of target achievement) of each Covered Employee's Performance-Based Award, and, in doing so, may reduce or eliminate the amount of the Performance-Based Award for a Covered Employee if, in its sole judgment, such reduction or elimination is appropriate.

(d) Maximum Award Payable. The maximum Performance-Based Award payable to any one Covered Employee under the Plan for a Performance Cycle is 300,000 shares of Stock

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(subject to adjustment as provided in Section 3(c) hereof) or \$4 million in the case of a Performance-Based Award that is a Cash-Based Award.

### SECTION 13. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. A Dividend Equivalent Right may be granted hereunder to any grantee as a component of an award of Restricted Stock Units, Restricted Stock Award, Performance Share Award or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the Award Certificate. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock or additional Restricted Stock Units, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of an Award with performance vesting may provide that such Dividend Equivalent Right shall be settled upon settlement or payment of, or lapse of restrictions on, such other Award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other Award. A Dividend Equivalent Right granted as a component of an Award may also contain terms and conditions different from such other Award.

(b) Interest Equivalents. Any Award under this Plan that is settled in whole or in part in cash on a deferred basis may provide in the grant for interest equivalents to be credited with respect to such cash payment. Interest equivalents may be compounded and shall be paid upon such terms and conditions as may be specified by the grant.

(c) Termination. Except as may otherwise be provided by the Administrator either in the Award Certificate or, subject to Section 18 below, in writing after the Award is issued, a grantee's rights in all Dividend Equivalent Rights or interest equivalents granted as a component of an award of Restricted Stock Units or Restricted Stock Award that has not vested shall automatically terminate upon the grantee's termination of employment (or cessation of service relationship) with the Company and its Subsidiaries for any reason.

### SECTION 14. TRANSFERABILITY OF AWARDS

(a) Transferability. Except as provided in Section 14(b) below, during a grantee's lifetime, his or her Awards shall be exercisable only by the grantee, or by the grantee's legal representative or guardian in the event of the grantee's incapacity. No Awards shall be sold, assigned, transferred or otherwise encumbered or disposed of by a grantee other than by will or by the laws of descent and distribution or pursuant to a domestic relations order. No Awards shall be subject, in whole or in part, to attachment, execution, or levy of any kind, and any purported transfer in violation hereof shall be null and void.

(b) Administrator Action. Notwithstanding Section 14(a), the Administrator, in its discretion, may provide either in the Award Certificate regarding a given Award or by subsequent written approval that the grantee (who is an employee or director) may transfer his or her Awards (other than any Incentive Stock Options or Restricted Stock Units) to his or her immediate family members, to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan and the applicable Award. In no event may an Award be transferred by a grantee for value.

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(c) Family Member. For purposes of Section 14(b), “family member” shall mean a grantee’s child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person sharing the grantee’s household (other than a tenant of the grantee), a trust in which these persons (or the grantee) have more than 50 percent of the beneficial interest, a foundation in which these persons (or the grantee) control the management of assets, and any other entity in which these persons (or the grantee) own more than 50 percent of the voting interests.

(d) Designation of Beneficiary. To the extent permitted by the Administrator, each grantee to whom an Award has been made under the Plan may designate a beneficiary or beneficiaries to exercise any Award or receive any payment under any Award payable on or after the grantee’s death. Any such designation shall be on a form provided for that purpose by the Administrator and shall not be effective until received by the Administrator. If no beneficiary has been designated by a deceased grantee, or if the designated beneficiaries have predeceased the grantee, the beneficiary shall be the grantee’s estate.

#### SECTION 15. TAX WITHHOLDING

(a) Payment by Grantee. Each grantee shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the grantee for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Administrator regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld by the Company with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the grantee. The Company’s obligation to deliver evidence of book entry (or stock certificates) to any grantee is subject to and conditioned on tax withholding obligations being satisfied by the grantee.

(b) Payment in Stock. Subject to approval by the Administrator, a grantee may elect to have the Company’s tax withholding obligation satisfied, in whole or in part, by authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the withholding amount due; provided, however, that to the extent necessary to avoid adverse accounting treatment such share withholding shall not exceed the minimum required tax withholding obligation. The Administrator may also require Awards to be subject to mandatory share withholding up to the required withholding amount. For purposes of share withholding, the Fair Market Value of withheld shares shall be determined in the same manner as the value of Stock includible in income of the Participants.

#### SECTION 16. SECTION 409A AWARDS

To the extent that any Award is determined to constitute “nonqualified deferred compensation” within the meaning of Section 409A (a “409A Award”), the Award shall be subject to such additional rules and requirements as specified by the Administrator from time to time in order to comply with Section 409A. In this regard, if any amount under a 409A Award is payable upon a “separation from service” (within the meaning of Section 409A) to a grantee who is then considered a “specified employee” (within the meaning of Section 409A), then no such payment shall be made prior to the date that is the earlier of (i) six months and one day after the grantee’s separation from service, or (ii) the grantee’s death, but only to the extent such delay is necessary to prevent such payment from being subject to interest, penalties and/or additional tax imposed pursuant to Section 409A. Further, the settlement of any such Award may not be accelerated or postponed except to the extent permitted by Section 409A.

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SECTION 17. TRANSFER, LEAVE OF ABSENCE, ETC.

(a) Termination of Employment. If the grantee's employer ceases to be a Subsidiary, the grantee shall be deemed to have terminated employment for purposes of the Plan.

(b) Transfers; Leaves. For purposes of the Plan, the following events shall not be deemed a termination of employment:

(i) a transfer to the employment of the Company from a Subsidiary or from the Company to a Subsidiary, or from one Subsidiary to another; or

(ii) an approved leave of absence for military service or sickness, or for any other purpose approved by the Company, if the employee's right to re-employment is guaranteed either by a statute or by contract or under the policy pursuant to which the leave of absence was granted or if the Administrator otherwise so provides in writing.

SECTION 18. AMENDMENTS AND TERMINATION

The Board may, at any time, amend or discontinue the Plan and the Administrator may, at any time, amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall adversely affect rights under any outstanding Award without the holder's consent. Except as provided in Section 3(d) or 3(e), without prior stockholder approval, in no event may the Administrator exercise its discretion to reduce the exercise price of outstanding Stock Options or Stock Appreciation Rights or effect repricing through cancellation and re-grants or cancellation of Stock Options or Stock Appreciation Rights in exchange for cash or other Awards. To the extent required under the rules of any securities exchange or market system on which the Stock is listed, to the extent determined by the Administrator to be required by the Code to ensure that Incentive Stock Options granted under the Plan are qualified under Section 422 of the Code, or to ensure that compensation earned under Awards qualifies as performance-based compensation under Section 162(m) of the Code, Plan amendments shall be subject to approval by the Company stockholders entitled to vote at a meeting of stockholders. Nothing in this Section 18 shall limit the Administrator's authority to take any action permitted pursuant to Section 3(d) or 3(e).

SECTION 19. STATUS OF PLAN

With respect to the portion of any Award that has not been exercised and any payments in cash, Stock or other consideration not received by a grantee, a grantee shall have no rights greater than those of a general creditor of the Company unless the Administrator shall otherwise expressly determine in connection with any Award or Awards. In its sole discretion, the Administrator may authorize the creation of trusts or other arrangements to meet the Company's obligations to deliver Stock or make payments with respect to Awards hereunder, provided that the existence of such trusts or other arrangements is consistent with the foregoing sentence.

SECTION 20. GENERAL PROVISIONS

(a) No Distribution. The Administrator may require each person acquiring Stock pursuant to an Award to represent to and agree with the Company in writing that such person is acquiring the shares without a view to distribution thereof.

(b) Delivery of Stock Certificates. Stock certificates to grantees under this Plan shall be deemed delivered for all purposes when the Company or a stock transfer agent of the Company shall have mailed such certificates in the United States mail, addressed to the grantee, at the grantee's last known address on file with the Company. Uncertificated Stock shall be

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deemed delivered for all purposes when the Company or a Stock transfer agent of the Company shall have given to the grantee by electronic mail (with proof of receipt) or by United States mail, addressed to the grantee, at the grantee's last known address on file with the Company, notice of issuance and recorded the issuance in its records (which may include electronic "book entry" records). Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Administrator has determined, with advice of counsel (to the extent the Administrator deems such advice necessary or advisable), that the issuance and delivery of such certificates is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed, quoted or traded. All Stock certificates delivered pursuant to the Plan shall be subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state or foreign jurisdiction, securities or other laws, rules and quotation system on which the Stock is listed, quoted or traded. The Administrator may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Administrator may require that an individual make such reasonable covenants, agreements, and representations as the Administrator, in its discretion, deems necessary or advisable in order to comply with any such laws, regulations, or requirements. The Administrator shall have the right to require any individual to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Administrator.

(c) Stockholder Rights. Until Stock is deemed delivered in accordance with Section 20(b), no right to vote or receive dividends or any other rights of a stockholder will exist with respect to shares of Stock to be issued in connection with an Award, notwithstanding the exercise of a Stock Option or any other action by the grantee with respect to an Award.

(d) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board (or an authorized committee of the Board) from adopting other or additional compensation arrangements, including trusts, and such arrangements may be either generally applicable or applicable only in specific cases, and nothing contained in this Plan shall prevent the Board (or an authorized committee of the Board) from approving other compensation arrangements outside of this Plan for employees and Non-employee Directors. The adoption of this Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(e) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to the Company's insider trading policies and procedures, as in effect from time to time.

(f) Forfeiture of Awards under Sarbanes-Oxley Act. If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, then, to the extent required by law, any grantee who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002 shall reimburse the Company for the amount of any Award received by such individual under the Plan during the 12-month period following the first public issuance or filing with the United States Securities and Exchange Commission, as the case may be, of the financial document embodying such financial reporting requirement.

(g) Clawback Policy. Awards under the Plan shall be subject to the Company's clawback policy, as in effect from time to time.

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SECTION 21. EFFECTIVE DATE OF PLAN; EXPIRATION ON MAY 15, 2027 OF RIGHT TO ISSUE NEW AWARDS UNDER PLAN; EXPIRATION ON FEBRUARY 16, 2027 OF RIGHT TO ISSUE NEW ISO'S UNDER PLAN.

This second amendment and restatement of the Plan became effective upon approval by the stockholders in accordance with applicable state law, the Company's bylaws and articles of incorporation and the applicable rules of the New York Stock Exchange. No grants of Stock Options and other Awards may be made hereunder after May 15, 2027, and no grants of Incentive Stock Options may be made hereunder after February 16, 2027.

SECTION 22. GOVERNING LAW

This Plan and all Awards and actions taken thereunder shall be governed by, and construed in accordance with, the laws of the State of Maryland, applied without regard to conflict of law principles.

DATE APPROVED BY BOARD OF DIRECTORS: April 1, 2009

DATE APPROVED BY STOCKHOLDERS: May 21, 2009

PERFORMANCE GOALS APPROVED BY  
BOARD OF DIRECTORS AND STOCKHOLDERS: May 21, 2014

FIRST AMENDMENT AND RESTATEMENT APPROVED BY BOARD OF DIRECTORS: February 11, 2016

SECOND AMENDMENT AND RESTATEMENT APPROVED BY BOARD OF DIRECTORS: February 16, 2017 ("SECOND AMENDED PLAN")

SECOND AMENDED PLAN APPROVED BY STOCKHOLDERS: May 18, 2017

FIRST AMENDMENT to SECOND AMENDED PLAN APPROVED BY BOARD OF DIRECTORS: February 14, 2019

SECOND AMENDMENT to SECOND AMENDED PLAN APPROVED BY BOARD OF DIRECTORS: March 18, 2020

THIRD AMENDMENT to SECOND AMENDED PLAN APPROVED BY BOARD OF DIRECTORS: September 16, 2020

FOURTH AMENDMENT to SECOND AMENDED PLAN APPROVED BY BOARD OF DIRECTORS: February 23, 2023

RESTATEMENT OF SECOND AMENDED PLAN GIVING EFFECT TO PRIOR AMENDMENTS APPROVED BY BOARD: February 23, 2023

**Exhibit 10.7**

Personal Performance Award Agreement Exhibit  
for the  
Three Year Performance Period Ending December 31, 2025

**Name:** /\$ParticipantName\$/  
**Initial Target Dollar Value of Award:** /\$GrantTxt\$/  
**Date of Grant:** /\$GrantDate\$/

As an officer of Avalonbay Communities, Inc., you have been awarded two performance awards with an aggregate total target dollar value as listed above:

Fifty-five percent of such total dollar value is allocated to a performance award that employs total shareholder return metrics. The number of target units for such award and other information about such award is set forth in **Exhibit A** attached hereto.

Forty-five percent of such total dollar value is allocated to a performance award that employs operating performance metrics. The number of target units for such award and other information about such award is set forth in **Exhibit B** attached hereto.

In consideration of the receipt of such awards, you acknowledge receipt of, and agree to be bound by, the two award agreements attached hereto and the Award Terms attached hereto in **Exhibit C**, the Plan, and any exhibits to the Award Terms (all as defined pursuant to the attached exhibits).

AVALONBAY COMMUNITIES, INC.

Benjamin W. Schall,  
Chief Executive Officer and President

Agreed and Acknowledged:

*The recipient of this award shall agree and acknowledge receipt of this award and its terms through acceptance of the award via the grant acceptance functionality at the recipient's Merrill Lynch Benefits Online account.*

**Personal Performance Award Agreement Exhibit**  
**for**  
**Total Shareholder Return (TSR) Metrics Units**  
**(2023 Award – Maturing December 31, 2025)**

**Name:** /\$ParticipantName\$/

**Date of Grant:** /\$GrantDate\$/

**Dollar Value for TSR Units:** /\$GrantTxt2\$/

**Valuation per Unit** (average closing price of a share of AvalonBay common stock over the 20 trading days immediately prior to the first day of the Performance Period) : /\$GrantTxt4\$/

**Number of TSR Target Units:** /\$AwardsGranted\$/

**Performance Period:** January 1, 2023 – December 31, 2025

**Threshold/Target/Max Multiplier:** 50%/100%/200%

As an officer or associate of AvalonBay Communities, Inc. (“AvalonBay” or the “Company”), you have been awarded Performance-Based Restricted Stock Units (“Units”) that employ total shareholder return (TSR) metrics as outlined below. The award described herein is subject to the “Award Terms of Performance-Based Restricted Stock Units” as most recently approved by the Board of Directors and its Compensation Committee on or before the Date of Grant, a copy of which has been distributed to you with this Award Agreement (the “Award Terms”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Award Terms.

This Personal Performance Award Agreement Exhibit contains specific information about the awards being made this year that employ TSR metrics for the indicated Performance Period as well as information about your specific award.

**TSR Performance Metrics:**

Your award consists initially of the number of Target Units indicated above but you could earn less or more than that number based on the threshold/target/max multiplier above and the terms described herein. The final number of Units you may earn shall be determined following the completion of the Performance Period based on the Total Shareholder Return of a share of AvalonBay common stock over the Performance Period, expressed as an annualized rate of return (i.e., the rate of return which, when compounded annually over the Performance Period, equals the Total Shareholder Return for the period) (“AVB Annualized Performance”).

You have been awarded /\$AwardsGranted\$/ of Target Units that employ TSR-based Performance Metrics. The Performance Metrics that will determine the final number of Units you may earn are as follows:

**1. Relative Metric against the FTSE NAREIT Apartment Index:** Sixty-five percent (65.0%) of the Target Number of TSR Units may be earned based on comparing the AVB Annualized Performance to the annualized total shareholder return of the FTSE NAREIT Equity Apartments Index (Bloomberg ticker: FNAPTTR) (the “Apt Index”) for the Performance Period as follows:

<b><u>AVB Annualized Performance below (-) or above (+) the Apt Index</u></b> <b><u>Return</u></b>	<b><u>Percentage of 65.0% Earned</u></b>
more than -400 basis points below	0%
-400 basis points(threshold*)	50%
0 basis points (target*)	100%
+400 basis points (maximum*)	200%

\*For results between threshold and target, or between target and maximum, the percentage of 65.0% of the Target Number of TSR Units earned shall be based on interpolation. In performing

this calculation, (i) AVB Annualized Performance shall be determined to the nearest whole basis point, (ii) the Apt Index Return shall be determined to the nearest whole basis point, and the difference shall be determined by subtracting the amount determined in clause (ii) from the amount determined in clause (i).

**2. Relative Metric against the FTSE NAREIT Equity REITs Index:** Thirty-five percent (35.0%) of the Target Number of TSR Units may be earned based on comparing the AVB Annualized Performance to the annualized total shareholder return of the FTSE NAREIT Equity REITs Index (Bloomberg ticker: FNRETR)<sup>1</sup> (the “REIT Equity Index”) for the Performance Period as follows:

<b><u>AVB Annualized Performance below (-) or above (+) the REIT Equity Index Return</u></b>	<b><u>Percentage of 35.0% Earned</u></b>
more than -600 basis points below	0%
-600 basis points (threshold*)	50%
0 basis points (target*)	100%
+600 basis points (maximum*)	200%

\*For results between threshold and target, or between target and maximum, the percentage of 35.0% of the Target Number of Units earned shall be based on interpolation. In performing this calculation, (i) AVB Annualized Performance shall be determined to the nearest whole basis point, (ii) the REIT Equity Index Return shall be determined to the nearest whole basis point, and the difference shall be determined by subtracting the amount determined in clause (ii) from the amount determined in clause (i).

It is noted that each performance metric is independent of the others. For example, if the threshold is not achieved for the Apt Index TSR metric, but target performance is achieved for the REIT Equity Index TSR metric, the number of units earned would equal (35% x 100% x Target Number of Units). Earned Units shall be rounded to the nearest whole value.

**Settlement in Unrestricted AvalonBay Common Stock and Payment of Cash Equal to Accrued Dividends Thereon:** Following the end of the Performance Period and the effectiveness of the Compensation Committee’s final determination of (i) the Company’s Total Shareholder Return for the Performance Period and how it compared to the TSR Performance Metrics and goals set forth in this award, and (ii) the number of Units earned by you on account thereof, the earned portion of this Award (i.e., the earned Units) shall be settled with the issuance to you of unrestricted shares of AvalonBay Common Stock effective March 1 of the year following the end of the Performance Period or, if not a business day, the next business day. I.e., for a Performance Period ending December 31, 20XX, your shares of unrestricted stock will be issued March 1, 20XX+1. On or about the time of the issuance of such shares of unrestricted stock to you (but in no event later than March 15 of such year), the Company will pay to you, as additional compensation and subject to tax withholding, cash equal in amount to the dividends that would have been payable on such number of shares for dividend record dates that occurred from the Date of Grant of this award through its settlement date following the end of the Performance Period (for clarification, this is usually 12 dividend record dates if the Date of Grant is in February of the first year of the Performance Period), without any supplement thereto in the nature of interest or compounding thereon.

**Forfeiture of Units; Sale Event:** As provided in the Award Terms, no Units may be earned if your employment (or other business relationship) terminates for any reason prior to the completion of the first year of the Performance Period. Thereafter, you may vest in a portion of the award, to be earned and settled in unrestricted shares of AvalonBay common stock and a cash payment equal in amount to the accrued dividends thereon as described above, if your employment (or other business relationship)

<sup>1</sup> Note: The FTSE NAREIT Equity REITs index (FNRETR) is described by FTSE as spanning the commercial real estate space across the U.S. economy and contains all equity REITs not designated as timber REITs or infrastructure REITs.

terminates due to death, Disability, Retirement, or termination without Cause. The Award terms describe special rules that apply in the event of a Sale Event.

[End of Text]



**Personal Performance Award Agreement Exhibit**  
**For**  
**Operating Metrics**  
**(2023 Award – Maturing December 31, 2025)**

**Name:** /\$ParticipantName\$/  
**Date of Grant:** /\$GrantDate\$/  
**Dollar Value for Operating Metrics Units:** /\$GrantTxt3\$/  
**Valuation per Unit** (average closing price of a share of AvalonBay common stock over the 20 trading days immediately prior to the first day of the Performance Period): /\$GrantTxt4\$/  
**Number of Operating Metrics Target Units:** /\$GrantTxt6\$/  
**Performance Period:** January 1, 2023 – December 31, 2025  
**Threshold/Target/Max Multiplier:** 50%/100%/200%

As an officer or associate of AvalonBay Communities, Inc. (“AvalonBay” or the “Company”), you have been awarded Performance-Based Restricted Stock Units (“Units”) that employ operating performance metrics as outlined below. The award described herein is subject to the “Award Terms of Performance-Based Restricted Stock Units” as most recently approved by the Board of Directors and its Compensation Committee on or before the Date of Grant, a copy of which has been distributed to you with this Award Agreement (the “Award Terms”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Award Terms.

This Personal Performance Award Agreement Exhibit contains specific information about the awards being made this year that employ operating performance metrics for the indicated Performance Period as well as information about your specific award.

**Operating Performance Metrics:**

Your award consists initially of the number of Target Units indicated above but you could earn less or more than that number based on the threshold/target/max multiplier above and the terms described herein. The final number of Units you may earn shall be determined following the completion of the Performance Period based on AvalonBay’s performance on three operating performance metrics measured over the Performance Period.

You have been awarded /\$GrantTxt6\$/ of Target Units that employ operating performance metrics. The Performance Metrics that will determine the final number of Units you may earn are as follows:

- 1. Core Funds from Operations (“Core FFO”) per share growth, measured over the Performance Period and expressed as a compound annual growth rate, as compared against the Peer Group Weighted Average.** Fifty percent (50.0%) of the Target Number of Operating Metric Units may be earned based on comparing AvalonBay’s Core FFO<sup>2</sup> growth as compared to the Peer Group Weighted Average<sup>3</sup>:

<sup>2</sup> The determination of Core FFO and Core FFO per share growth rates for AvalonBay and the Peer Group shall be approved by the Compensation Committee taking into account published Core FFO/share amounts and adjustments deemed appropriate to derive comparable results between the Core FFO and Core FFO per share growth of the Company and its peers, which may include adjustments deemed appropriate in the event of special dividends and distributions to shareholders as a result, for example, of portfolio sales. Core FFO may be calculated (before such adjustments, if any) as presented in the Company’s earnings releases or as presented in third party published reports.

<sup>3</sup> The “Peer Group” consists of the following companies, identified by their stock symbols AIRC, CPT, EQR, ESS, MAA, and UDR. The peer group may be adjusted (including for an interim period during a performance period) as the Compensation Committee of the Board of Directors reasonably deems necessary to take into account unanticipated events (whether announced or occurring before or after the date of this award), such as mergers, acquisitions, corporate reorganizations or splits, going private activity, and/or the resulting effects of any such event.

**AVB Performance Period Core FFO/share growth below (-) or above (+) Percentage of 50.0% Earned the Peer Group Core FFO/share growth**

more than -400 basis points below	0%
-400 basis points (threshold*)	50%
0 basis points (target*)	100%
+400 basis points (maximum*)	200%

\*For results between threshold and target, or between target and maximum, the percentage of 50.0% of the Target Number of Operating Metric Units earned shall be based on interpolation. In performing this calculation, (i) AVB Performance Period Core FFO/share growth shall be determined to the nearest whole basis point, (ii) the Peer Group Core FFO/share growth shall be determined to the nearest whole basis point (using each individual peer company Core FFO/share growth unrounded in determining the average, which is then rounded), and the difference shall be determined by subtracting the amount determined in clause (ii) from the amount determined in clause (i).

**2. Net Debt (i.e., outstanding indebtedness less cash on the balance sheet) divided by Core Earnings before Interest, Depreciation and Amortization (EBITDA), measured at the end of each quarter during the Performance Period and averaged, as compared against the Peer Group Weighted Average of the same calculation over the performance period.** Fifty percent (50.0%) of the Target Number of Operating Metric Units may be earned based on comparing AvalonBay's Net Debt/EBITDA<sup>4</sup> during the performance period as compared to the Peer Group Weighted Average:

**AVB Performance Period Net Debt/Core EBITDA more than or less than the Peer Group average Percentage of 50.0% Earned**

(AVB Net Debt/Core EBITDA calculation minus Peer Group calculation) is more than 1.50	0%
(AVB Net Debt/Core EBITDA calculation minus Peer Group calculation) equals 1.50 (threshold*)	50%
(AVB Net Debt/Core EBITDA calculation minus Peer Group calculation) equals 0 (target*)	100%
(AVB Net Debt/Core EBITDA calculation minus Peer Group calculation) is -1.50 (negative 1.5) or less (i.e., a larger negative number) (maximum*)	200%

\*For results between threshold and target, or between target and maximum, the percentage of 50.0% of the Target Number of Operating Metric Units earned shall be based on interpolation. In performing this calculation, (i) AVB Performance Period Net Debt/Core EBITDA shall be determined to the nearest second decimal point (i.e., 1/100<sup>th</sup>), (ii) the Peer Group average shall be determined to the nearest second decimal point (using each individual peer company Net Debt/Core EBITDA growth unrounded in determining the average, which is then rounded), and the difference shall be determined by subtracting the amount determined in clause (ii) from the amount determined in clause (i).

<sup>4</sup> The determination of Net Debt/Core EBITDA for AvalonBay and the Peer Group shall be approved by the Compensation Committee taking into account published debt, cash and equivalents, and Core EBITDA amounts and adjustments thereto deemed appropriate to derive comparable results between the Net Debt/Core EBITDA of the Company and its peers.

It is noted that each performance metric is independent of the others. For example, if threshold performance is not achieved for the Core FFO metric but target performance is achieved for the Net Debt/Core EBITDA metric, the number of units earned would equal (50% x 100% x Target Number of Operating Units). Earned Units shall be rounded to the nearest whole value. References herein to the Peer Group Weighted Average mean an average of the results of each member of the Peer Group where the performance of each member is weighted in accordance with the equity market capitalization of such member at the beginning of the performance period. To determine the equity market capitalization of each member of the Peer Group as of the beginning of the performance period, (i) the simple average of the closing common stock price of the member over the 20 trading days immediately prior to the first day of the Performance Period shall be multiplied by (ii) the sum of the following as reported by the member as outstanding on the day immediately prior to the first day of the Performance Period (i.e., December 31, 20XX for a performance period beginning on January 1, 20XX+1): (x) the shares of common stock of such member outstanding on such day, and (y) the number of “OP (operating partnership) units” and “DownREIT units” (and other units of interest that are convertible into shares of common stock or a cash amount based on the trading value of common stock) outstanding as of such day and held by third parties other than the member’s publicly traded real estate investment trust. The Compensation Committee may use its discretion to adjust the Peer Group Weighted Average to take into account unanticipated events (whether announced or occurring before or after the date of this award), such as mergers, acquisitions, corporate reorganizations, splits, going private activity, and special dividends and distributions to shareholders as a result, for example, of portfolio sales, which in each case reasonably require, in the Compensation Committee’s determination, an adjustment to the equity market capitalization used for such member to more accurately reflect its equity market capitalization compared to other peers over the performance period.<sup>5</sup>

**Settlement in Unrestricted AvalonBay Common Stock and Payment of Cash Equal to Accrued Dividends Thereon:** Following the end of the Performance Period and the effectiveness of the Compensation Committee’s final determination of (i) the Company’s performance for the Performance Period and how it compared to the Operating Performance Metrics and goals set forth in this award, and (ii) the number of Units earned by you on account thereof, the earned portion of this Award (i.e., the earned Units) shall be settled with the issuance to you of unrestricted shares of AvalonBay Common Stock effective March 1 of the year following the end of the Performance Period or, if not a business day, the next business day. I.e., for a Performance Period ending December 31, 20XX, your shares of unrestricted stock will be issued March 1, 20XX+1. On or about the time of the issuance of such shares of unrestricted stock to you (but in no event later than March 15 of such year), the Company will pay to you, as additional compensation and subject to tax withholding, cash equal in amount to the dividends that would have been payable on such number of shares for dividend record dates that occurred from the Date of Grant of this award through its settlement date following the end of the Performance Period (for clarification, this is usually 12 dividend record dates if the Date of Grant is in February of the first year of the Performance Period), without any supplement thereto in the nature of interest or compounding thereon.

**Forfeiture of Units; Sale Event:** As provided in the Award Terms, no Units may be earned if your employment (or other business relationship) terminates for any reason prior to the completion of the first year of the Performance Period. Thereafter, you may vest in a portion of the award, to be earned and settled in unrestricted shares of AvalonBay common stock and a cash payment equal in amount to the accrued dividends thereon as described above, if your employment (or other business relationship) terminates due to death, Disability, Retirement, or termination without Cause. The Award terms describe special rules that apply in the event of a Sale Event.

[End of Text]

<sup>5</sup> Note: For awards made prior to 2022, a simple average of the Peer Group, rather than the weighted average, applies.

**AWARD TERMS OF  
PERFORMANCE-BASED RESTRICTED STOCK UNITS**

**GRANTED UNDER THE  
AVALONBAY COMMUNITIES, INC.  
SECOND AMENDED AND RESTATED 2009 EQUITY INCENTIVE PLAN**

**(As most recently approved by the Board of Directors and its Compensation Committee on or before the Date of Grant)**

**Introduction** You have been granted performance-based restricted stock units under the AvalonBay Communities, Inc. Second Amended and Restated 2009 Equity Incentive Plan (as the same has or may be amended, the “Plan”), subject to the following Award Terms. This grant is also subject to the terms of (i) your Personal Performance Award Agreement Exhibit(s) (“Personal Exhibit”), as further explained herein, and (ii) the Plan, which is hereby incorporated by reference. To the extent that an Award Term conflicts with the Plan, the Plan shall govern.

**Type of Award** You are being awarded performance-based restricted stock units (the “Units”). Units are bookkeeping entries only, and you shall have no rights as a stockholder of the Company, and no dividend and voting rights, with respect to the Units, nor shall a notional amount be reinvested in respect of “phantom dividends” for the purpose of crediting your account with additional Units.

**Certain Principal**

**Terms** Your Personal Exhibit sets forth certain principal terms about the Units awarded for the applicable Performance Period, such as the performance metrics which will apply to determine the final number of Units earned. The terms included in your Personal Exhibit include the following:

- Date of Grant
- Number of Target Units Awarded
- Performance Period
- Total Shareholder Return and/or Operating Performance Metrics

**No Transfers** You may not sell, gift, or otherwise transfer or dispose of any of the Units.

**Performance Metrics** If you remain an active employee of AvalonBay from the Date of Grant through the last day of the Performance Period, then the number of Units you will earn at the end of the Performance Period will be based upon the performance of (i) the Company’s Total Shareholder Return, and/or (ii) the Company’s performance as measured against certain metrics of operating performance, in each case over the Performance Period and as described in your Personal Exhibit.

The Company’s Total Shareholder Return represents the change in the value of an investment in one share of AvalonBay common stock over the Performance Period, expressed as a percentage, assuming the following:

Beginning Stock Price: average closing price of a share of AvalonBay common stock over the 20 trading days immediately prior to the first day of the Performance Period.

Ending Stock Price: average closing price of a share of AvalonBay common stock over the last 20 trading days of the Performance Period.

Dividends reinvested in additional shares of AvalonBay common stock on the ex dividend date for such dividend at the closing price of a share of AvalonBay common stock.

If the Company's Total Shareholder Return is measured on a relative basis against an index, the Total Shareholder Return of the index will be measured by using a 20 trading day average of the beginning and ending price or level of the index.

The Compensation Committee of the Board of Directors (the "Compensation Committee"), as promptly as practicable (but in no event later than 60 days) following the conclusion of the Performance Period, shall determine (i) the performance of the Company's Total Shareholder Return over the Performance Period as compared against the Performance Metrics established for the period and/or the achievement of other operating metrics by the Company, and (ii) the actual number of Units that are earned by you, which shall be a percentage (from zero to 200%) of the Target Units you are awarded at the beginning of the Performance Period. You shall forfeit any portion of this Award that is not earned upon the conclusion of the Performance Period (i.e., any Target Units you are awarded that are in excess of the number of Units earned at the end of the Performance Period, as determined by the Compensation Committee, shall be forfeited).

**Forfeiture for  
Termination of  
Employment During  
First Year of  
Measurement Period;  
Vesting Provisions  
After**

**First Year** In the event your employment (or other business relationship) terminates for any reason before the completion of the first year of a Performance Period (i.e., for a Performance Period beginning on January 1, 20xx, if your last day of employment or other business relationship is before December 31, 20xx), whether with or without Cause, or by reason of death or Disability or your voluntary departure or Retirement, you shall forfeit all Units and none of the Units shall be earned.

In the event your employment (or other business relationship) terminates on or after the completion of the first year of a performance period (i.e., on or after December 31, 20xx for a Performance Period beginning on January 1, 20xx)<sup>5</sup>, then the following shall apply:

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<sup>5</sup> If your employment with the Company began after the first day of the performance period, this provision will only apply if, on the date of termination, you have been employed with the Company for at least one year.

(A) In the event your employment (or other business relationship) terminates on account of any of the following (each, a “Qualifying Termination”):

- death,
- Disability (as defined in the Company’s standard form of Restricted Stock Agreement as in effect on March 1 of the first year of the Performance Period and thereafter, if applicable, subsequently amended (the “Restricted Stock Agreement Form” or, if not defined therein, as defined in the Plan)),
- Retirement (as defined in the Restricted Stock Agreement Form or, if not defined therein, as defined in the Plan), or
- termination without Cause (as defined in the Restricted Stock Agreement Form or, if not defined therein, as defined in the Plan),

then you shall vest in a percentage of the Performance Award (carried out to the nearest hundredth percentage point), such percentage (the “Percentage”) equaling the number of days of employment served during the Performance Period divided by the total number of days in the Performance Period. Thereafter, when the Performance Period ends, you shall earn the Percentage of the Units that otherwise would have been earned by you had your employment or other business relationship continued through to the end of the Performance Period, and such pro rated number of earned Units shall be settled in unrestricted shares of AvalonBay Common Stock and a cash payment on account of cumulative dividends as described in the related Performance Award Agreement. The Company may require, as a condition to your retaining an interest in the Performance Award following a termination of employment or other business relationship, that you sign and deliver, and do not revoke, a Separation Agreement (as defined in the Restricted Stock Agreement Form (but with a 24 month employee non-solicitation provision instead of a 12 month employee non-solicitation provision) or, if not defined therein, as defined in the Plan) within 30 days of the termination of your employment. For example, with respect to a Performance Award with 1000 target Units, if

- (i) your employment (or other business relationship) terminates in a Qualifying Termination after the completion of one year of service during the Performance Period and you sign a Separation Agreement as described above,
- (ii) you served for 45% of the Performance Period, and
- (iii) it is determined that 150% of target is achieved for that award,

then after the Performance Period is completed you would receive 675 fully vested and unrestricted shares of Company common stock (1000 target Units x 150% achievement x 45% vesting = 675) and a cash payment (subject to tax withholding) on account of the dividends earned on such number of shares during the Performance Period.

- (B) In the event your employment (or other business relationship) terminates on account of any reason other than those listed in (A) immediately above (and thus including a termination with Cause or a resignation by you that is not by reason of Retirement), then you shall forfeit all Units and none of the Units shall be earned.

For purposes hereof, a business relationship shall include (i) serving on the Company's Board of Directors, which service preceded or began immediately following a termination of employment, or (ii) a consulting arrangement between you and the Company that immediately follows termination of employment or termination from the Board of Directors, but only if so stated in a written consulting or other agreement executed by the Company and you, and in such case as described in the preceding clauses (i) or (ii) you shall not be considered to have suffered a termination of employment or other business relationship until the termination of such service on the Board of Directors and/or consulting arrangement.

#### **Leaves of**

**Absence** In the event that you take a leave of absence during the Performance Period, then, unless prohibited by law, the Company may adjust, in its sole discretion and up to a full forfeiture, the percentage of Units that are earned hereunder to equitably reflect (in the sole discretion of the Company) such absence. Without limiting the foregoing, it is noted that such adjustment may be made, in the sole discretion of the Company, by prorating the number of Units that would otherwise be earned without a leave of absence by:

- (i) the portion of the year worked without a leave of absence during the last year of the Performance Period (e.g., if nine months are worked during the last year of the Performance Period, there may be a 25% downward adjustment in the percentage of Units that are earned (3 months absence divided by 12 months in the last year of the performance period), or
- (ii) the portion of the Performance Period worked without a leave of absence (e.g., if three months are missed due to a leave of absence during a 36 month Performance Period there may be an 8.33% downward adjustment in the percentage of Units that are earned (3 months absence divided by 36 months in the Performance Period)).

**Sale Event** If a Sale Event occurs during the Performance Period, then all outstanding Performance Awards shall vest at their target value (i.e., target number of units) and one unrestricted share of AvalonBay Common Stock shall be issued to you as of the date of the Sale Event for each Unit so earned, and the Company shall

promptly pay to you, subject to tax withholding, an amount of cash equal to the dividends that would have been payable on such number of shares during the Performance Period up until the date of the Sale Event based on New York Stock Exchange ex-dividend dates (and not dividend payment dates) that occurred during the Performance Period, without any supplement thereto in the nature of interest or compounding thereon.

(It is noted that in the event that you acquired a vested interest in a Performance Award on account of a Qualifying Termination, and thereafter a Sale Event is completed, then only the percentage of the award that vested upon the Qualifying Termination shall convert at target into shares of unrestricted stock, and the cash payment related to dividend accrual shall be based on such number).

**Notices** Any notice to be given under the terms of this Award Agreement to the Company shall be addressed to the Company in care of its Secretary, and any notice to be given to you shall be addressed to you at your address as set forth in the Company's records. Either party may hereafter designate a different address for notices to be given to it or him or her.

**Titles** Titles and captions are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Award Agreement. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Plan or as the context otherwise reasonably indicates.

**Amendment** This Award Agreement may be amended only by a writing executed by the parties hereto which specifically states that it is amending this Award Agreement.

**Governing Law** The laws of the State of Maryland shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Award Agreement regardless of the law that might be applied under principles of conflicts of laws.

**Data Privacy Consent** In order to administer the Plan and this Award Agreement and to implement or structure future equity grants, the Company, its subsidiaries and affiliates and certain agents thereof (together, the "Relevant Companies") may process any and all personal or professional data, including but not limited to Social Security or other identification number, home address and telephone number, date of birth and other information that is necessary or desirable for the administration of the Plan and/or this Award Agreement (the "Relevant Information"). By entering into this Award Agreement, you (i) authorize the Company to collect, process, register and transfer to the Relevant Companies all Relevant Information; (ii) waive any privacy rights you may have with respect to the Relevant Information; (iii) authorize the Relevant Companies to store and transmit such information in electronic form; and (iv) authorize the transfer of the Relevant Information to any jurisdiction in which the Relevant Companies consider appropriate. You shall have access to, and the right to change, the Relevant Information. Relevant Information will only be used in accordance with applicable law.



- Electronic Delivery** The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. You hereby consent to receive such documents by electronic delivery and agree to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company. By electronically accepting the Award Agreement and participating in the Plan, you agree to be bound by the terms and conditions in the Plan and this Award Agreement.
- Non-Solicitation** By accepting an award of Units, you agree that, for a period of at least twenty-four (24) months following your termination of employment with the Company for any reason, you will not, without the prior written consent of the Company, solicit or attempt to solicit for employment with or on behalf of any other person, firm or entity any employee of the Company or any of its affiliates or any other 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 such affiliates.
- Recoupment Policy** The Company's Board of Directors has adopted a Policy for Recoupment of Incentive Compensation (the "Recoupment Policy"), which may be amended from time to time and is available on the Company's website at [www.AvalonBay.com/investors](http://www.AvalonBay.com/investors) under "Corporate Governance Documents". By accepting an award of Units, you agree that you have had an opportunity to review the Recoupment Policy and further agree to be bound by the terms of the Recoupment Policy, including without limitation all provisions relating to the recoupment of Incentive Compensation as defined in the Recoupment Policy.
- Tax Withholding** The Company's obligation (i) to issue or deliver to you any certificate or certificates for unrestricted shares of AvalonBay Common Stock ("Stock") in settlement of earned Units or (ii) to pay to you any dividends or make any distributions with respect to the shares of Stock issued in settlement of earned Units, is in each case expressly conditioned on the Company's satisfaction of its obligation, if any, to withhold taxes. You shall, not later than the date as of which the receipt of shares of Stock in settlement of earned Units becomes a taxable event for Federal income tax purposes, pay to the Company or make arrangements satisfactory to the Administrator for payment of any Federal, state, and local taxes required by law to be withheld on account of such taxable event. The Company shall satisfy any required minimum tax withholding obligation with respect to shares of Stock (or such greater tax withholding as the Administrator may approve) by withholding, from shares of Stock to be issued or released by the transfer agent in connection with the settlement of Units, a number of shares of Stock with an aggregate Fair Market Value that would satisfy the withholding amount due (with the resulting number being rounded up to the nearest whole share of Stock). In addition, by acceptance of this Award, you agrees that for all outstanding Awards not yet vested under the Plan, the Company shall satisfy any required minimum tax withholding obligation with respect to shares of Stock (or such greater tax withholding as the Administrator may approve) by withholding from shares of Stock to be issued under such awards a number of shares of Stock with an aggregate Fair Market Value that would satisfy the minimum tax

withholding amount due (with the resulting number being rounded up to the nearest whole share of Stock).

**Amendment of Prior  
Outstanding Award  
Terms; Acknowledgment  
and Acceptance**

**of Award.** You agree that, to the extent the terms in these Award Terms (including any terms relating to accelerated vesting and conditions thereto, but in no event including (i) the number of units, (ii) the vesting schedule or calendar of vesting dates of units (or shares upon settlement of units or a cash payment equal to accrued dividends thereon), or (iii) the metrics or calculations for determining performance achievement) conflict with the Award Terms in any previously awarded and agreed to performance award agreement that is still outstanding (i.e., unforfeited and the performance period not yet complete), the provisions in these Award Terms shall apply. You also acknowledge that you may be required to evidence your acknowledgement of this award and agreement to the terms hereof by accepting this award in the Company's stock plan administrator's system, which acceptance may be required within a certain number of days from the grant date hereof in accordance with instructions and/or announcements provided by the Company to you and failing to accept this award within the Company's stock plan administrator's system within such number of days may constitute grounds for forfeiture of this award in the Company's sole and absolute discretion.

**Counterparts** This Award Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**AMENDMENT NO. 1 TO AMENDED AND RESTATED TERM LOAN AGREEMENT**

This **AMENDMENT NO. 1 TO AMENDED AND RESTATED TERM LOAN AGREEMENT**, dated as of October 27, 2022 (this “**Amendment No. 1**”), is by and among AvalonBay Communities, Inc., a corporation organized under the laws of the State of Maryland (the “**Borrower**”), the several lenders signatory hereto (collectively, the “**Banks**”), and PNC Bank, National Association, as administrative agent for the Banks (in such capacity, the “**Administrative Agent**”). Reference is made to that certain Amended and Restated Term Loan Agreement, dated as of February 28, 2019 (the “**Loan Agreement**”), by and among the Borrower, the Banks party thereto and the Administrative Agent. Capitalized terms used herein without definition shall have the same meanings as set forth in the Loan Agreement, as amended hereby.

**RECITALS**

**WHEREAS**, the Borrower has requested that the Banks make certain amendments to the Loan Agreement to, among other things, implement SOFR pricing for the Loans, and the Banks are willing to make such changes as set forth herein;

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

**SECTION 1. AMENDMENTS TO LOAN AGREEMENT.** As of the Amendment Effective Date (as defined in Section 3 hereof), the Loan Agreement (excluding the Exhibits and Schedules) is hereby amended as set forth on Exhibit A attached hereto such that all of the newly inserted bold, double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text) and any formatting changes reflected therein shall be deemed to be inserted and reflected in the text of the Loan Agreement and all of the deleted stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) shall be deemed to be deleted from the text of the Loan Agreement. Each outstanding LIBOR Loan (as defined in the Loan Agreement prior to the effectiveness of this Amendment No. 1) shall be converted to a Daily SOFR Loan on the Amendment Effective Date and each Bank agrees to waive any amounts that would have otherwise been payable pursuant to Section 3.05 of the Loan Agreement as a result of the conversion of any LIBOR Loans on the Amendment Effective Date.

**SECTION 2. REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

In order to induce the Banks and Administrative Agent to enter into this Amendment No. 1, the Borrower represents and warrants to each Bank and Administrative Agent that the following statements are true, correct and complete:

(i) The execution and delivery of this Amendment No. 1 and the Loan Agreement as amended by this Amendment No. 1 (the “**Amended Loan Agreement**”) (collectively, the “**Amendment Documents**”) and the performance of the obligations required to be performed by the Borrower hereunder and thereunder are within the Borrower’s corporate powers, have been authorized by all necessary corporate action, and do not and will not (a) require the consent or approval of its shareholders or such consent or approval has been obtained,

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(b) contravene either its certificate of incorporation or by-laws, (c) to the best of Borrower's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law (including, without limitation, Regulation U), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it, (d) result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which it may be a party or by which it or its properties may be bound or affected except for consents which have been obtained, (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of its properties now owned or hereafter acquired or (f) to the best of Borrower's knowledge, cause it to be in default under any such Law, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument; to the best of its knowledge, Borrower is in material compliance with all Laws applicable to it and its properties;

(ii) each Amendment Document and this Amendment No. 1 has been duly executed and delivered by the Borrower, is in full force and effect as of the Amendment Effective Date and is a legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally;

(iii) each of the representations and warranties of the Borrower contained in the Amended Loan Agreement, this Amendment No. 1, and the other Loan Documents are true and correct in all material respects as of the date as of which they were made and are true and correct in all material respects at and as of the date of this Amendment No. 1 (except to the extent that such representations and warranties relate expressly to an earlier date); and

(iv) no Default or Event of Default exists on the date hereof (before and after giving effect to this Amendment No. 1).

### **SECTION 3. CONDITIONS TO EFFECTIVENESS**

This Amendment No. 1 shall become effective only upon the satisfaction of the following conditions precedent (the "**Amendment Effective Date**"):

- A. The Borrower, the Administrative Agent, and each of the Banks shall have indicated their consent hereto by the execution and delivery of the signature pages hereof to the Administrative Agent.
  - B. The Administrative Agent shall have received an officer's certificate of the Borrower (i) certifying as to its organizational documents, and attaching a good standing certificate from the State of Maryland dated as of a recent date and (ii) certifying as to resolutions and incumbency of officers with respect to this Amendment No. 1 and the transactions contemplated hereby.
  - C. The Administrative Agent shall have received all reasonable out-of-pocket costs and expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel for which the Borrower agrees it is responsible
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pursuant to Section 12.04 of the Loan Agreement), incurred in connection with this Amendment No. 1.

- D.** Upon satisfaction of the foregoing conditions, the Administrative Agent shall deliver written notice to the Borrower and the Banks of the Amendment Effective Date.

#### **SECTION 4. MISCELLANEOUS**

##### **A. Reference to and Effect on the Loan Agreement and the Other Loan Documents.**

(i) On and after the effective date of this Amendment No. 1, each reference in the Loan Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Loan Agreement and each reference in the other Loan Documents to the “Loan Agreement”, “thereunder”, “thereof” or words of like import referring to the Loan Agreement shall mean and be a reference to the Amended Loan Agreement. This Amendment No. 1 shall constitute a Loan Document for all purposes under the Loan Agreement.

(ii) Except as specifically amended by this Amendment No. 1, the Loan Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(iii) The execution, delivery and performance of this Amendment No. 1 shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent or any Bank under, the Loan Agreement or any of the other Loan Documents.

**B. Headings.** Section and subsection headings in this Amendment No. 1 are included herein for convenience of reference only and shall not affect the interpretation or construction of this Amendment No. 1.

**C. Applicable Law.** THIS AMENDMENT NO. 1 AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**D. Counterparts; Effectiveness.** This Amendment No. 1 may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Amendment No. 1 (other than the provisions of Section 1 hereof, the effectiveness of which is governed by Section 3 hereof) shall become effective upon the execution of a counterpart hereof by the Borrower and the Banks. Delivery of an executed counterpart of a signature page of this Amendment No. 1 by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment No. 1. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to

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this Amendment No. 1 and/or any document to be signed in connection with this Amendment No. 1 and the transactions contemplated hereby shall be deemed to include Electronic Signatures (as defined below), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be. As used herein, “**Electronic Signatures**” means any electronic symbol or process attached to, or associated with, any contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

**E.. Jurisdictions; Immunities; Waiver of Jury Trial.** The provisions of Section 12.15 of the Loan Agreement shall apply to this Amendment No. 1 and are hereby incorporated by reference.

*[Signature Pages to Follow]*

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**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

AVALONBAY COMMUNITIES, INC.

By: /s/ Nika Dufour

Name: Nika Dufour

Title: Vice President, Capital Markets

PNC BANK, NATIONAL ASSOCIATION, Individually and as Administrative Agent

By: /s/ Katie Chowdhry

Name: Katie Chowdhry

Title: Senior Vice President

THE BANK OF NEW YORK MELLON

By: /s/ Carol Murray

Name: Carol Murray

Title: Director

TRUIST BANK

By: /s/ C. Vincent Hughes, Jr.

Name: C. Vincent Hughes, Jr.

Title: Director

TD BANK, N.A.

By: /s/ William M. Brandt, Jr.

Name: William M. Brandt, Jr.

Title: Vice President

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**AMENDED AND RESTATED  
TERM LOAN AGREEMENT**

dated as of February 28, 2019

among

AVALONBAY COMMUNITIES, INC.,  
as Borrower,

PNC BANK, NATIONAL ASSOCIATION,  
as Administrative Agent and a Bank

THE BANK OF NEW YORK MELLON and ~~SUNTRUST~~ **TRUIST** BANK  
each as a Bank and a Syndication Agent,  
THE OTHER BANKS SIGNATORY HERETO,  
each as a Bank,  
and  
PNC CAPITAL MARKETS LLC,  
THE BANK OF NEW YORK MELLON, and  
~~SUNTRUST ROBINSON HUMPHREY~~ **TRUIST SECURITIES**, INC.,  
as Joint Bookrunners and Joint Lead Arrangers

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## SCHEDULES

SCHEDULE 1 - Loan Commitments

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AMENDED AND RESTATED TERM LOAN AGREEMENT dated as of February 28, 2019 (this “*Agreement*”) among AVALONBAY COMMUNITIES, INC., a corporation organized and existing under the laws of the State of Maryland (“*Borrower*”); PNC BANK, NATIONAL ASSOCIATION (“*PNC*”), THE BANK OF NEW YORK MELLON (“*BNYM*”) and ~~SUNTRUST~~TRUIST BANK (“*SunTrustTruist*”), and the other lenders signatory hereto, as Banks; and PNC BANK, NATIONAL ASSOCIATION, as administrative agent for the Banks (in such capacity, together with its successors in such capacity, “*Administrative Agent*”; PNC, BNYM, ~~SunTrust~~Truist, the other lenders signatory hereto, and such other lenders who from time to time become Banks pursuant to Section 2.15, 3.07 or 12.05, each a “*Bank*” and collectively, the “*Banks*”).

Borrower, PNC, BNYM, ~~SunTrust~~Truist, certain of the Banks and the Administrative Agent entered into that certain Term Loan Agreement (the “*Existing Loan Agreement*”), dated as of February 28, 2017 (the “*Original Closing Date*”) and now desire to amend and restate the Existing Loan Agreement in its entirety in accordance with the terms and provisions contained herein. Accordingly, in consideration of the premises and the mutual agreements, covenants and conditions hereinafter set forth, Borrower, Administrative Agent and each of the Banks agree as follows:

## ARTICLE I

### DEFINITIONS; ETC.

**Section 1.01 Definitions.** As used in this Agreement the following terms have the following meanings:

“*Acquisition*” means the acquisition by Borrower, directly or indirectly, of an interest in multi-family real estate.

“*Acquisition Asset*” means any improved real property asset that has been owned by any of the Borrower, its Consolidated Businesses or any UJV for fewer than eighteen (18) months, unless the Borrower has made a one-time election (by written notice to the Administrative Agent) to no longer treat such asset as an Acquisition Asset for purposes of this Agreement.

“*Additional Costs*” has the meaning specified in Section 3.01.

“*Administrative Agent*” has the meaning specified in the preamble.

“*Administrative Agent’s Office*” means Administrative Agent’s address located at 500 First Ave., P7-PFSC-04-V, Pittsburgh, PA 15219, or such other address in the United States as Administrative Agent may designate by written notice to Borrower and the Banks.

“*Administrative Questionnaire*” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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“*Affected Bank*” has the meaning specified in Section 3.07.

**“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.**

“*Affected Loan*” has the meaning specified in Section 3.04.

“*Affiliate*” means, with respect to any Person (the “first Person”), any other Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the first Person; or (2) 10% or more of the beneficial interest in which is directly or indirectly owned or held by the first Person. The term “control” means the possession, directly or indirectly, of the power, alone, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“*Agent Parties*” has the meaning specified in Section 12.07(c).

“*Agreement*” has the meaning specified in the preamble.

“*Applicable Lending Office*” means, for each Bank and for its ~~LIBORSOFR~~ Loan or Base Rate Loan, as applicable, the lending office of such Bank (or of an Affiliate of such Bank) designated as such on its Administrative Questionnaire or in the applicable Assignment and Acceptance, or such other office of such Bank (or of an Affiliate of such Bank) as such Bank may from time to time specify to Administrative Agent and Borrower as the office by which its ~~LIBORSOFR~~ Loan or Base Rate Loan, as applicable, is to be made and maintained.

“*Applicable Margin*” means, with respect to Base Rate Loans and ~~LIBORSOFR~~ Loans that are Tranche A Loans or Tranche B Loans, as applicable, the respective rates per annum determined at any time, based on the range into which Borrower’s Credit Rating then falls, in accordance with the following table (any change in Borrower’s Credit Rating causing it to move to a different range on the table shall effect an immediate change in the Applicable Margin):

Tranche A Loans:

<b>Range of Borrower’s Credit Rating (S&amp;P/Moody’s or other agency equivalent)</b>	<b>Applicable Margin for Base Rate Loans (% per annum)</b>	<b>Applicable Margin for <del>LIBORSOFR</del> Loans (% per annum)</b>
A/A2 or better	0.00%	0.85%
A-/A3	0.00%	0.90%
BBB+/Baa1	0.00%	0.95%
BBB/Baa2	0.10%	1.10%
BBB-/Baa3	0.35%	1.35%
Below BBB-/Baa3 or unrated	0.75%	1.75%

Tranche B Loans:

(i) From the Original Closing Date until February 28, 2019:

<b>Range of Borrower's Credit Rating (S&amp;P/Moody's or other agency equivalent)</b>	<b>Applicable Margin for Base Rate Loans (% per annum)</b>	<b>Applicable Margin for <del>LIBORS</del>SOFR Loans (% per annum)</b>
A/A2 or better	0.45%	1.45%
A-/A3	0.50%	1.50%
BBB+/Baa1	0.55%	1.55%
BBB/Baa2	0.65%	1.65%
BBB-/Baa3	0.90%	1.90%
Below BBB-/Baa3 or unrated	1.45%	2.45%

(ii) From and after February 28, 2019:

<b>Range of Borrower's Credit Rating (S&amp;P/Moody's or other agency equivalent)</b>	<b>Applicable Margin for Base Rate Loans (% per annum)</b>	<b>Applicable Margin for <del>LIBORS</del>SOFR Loans (% per annum)</b>
A/A2 or better	0.00%	0.80%
A-/A3	0.00%	0.85%
BBB+/Baa1	0.00%	0.90%
BBB/Baa2	0.00%	1.00%
BBB-/Baa3	0.25%	1.25%
Below BBB-/Baa3 or unrated	0.65%	1.65%

“*Approved Fund*” has the meaning specified in Section 12.05.

“*Approved Revolver Modification*” has the meaning specified in Section 12.02.

“*Arrangers*” means, collectively, PNC Capital Markets LLC, BNYM, and ~~SunTrust Robinson-Humphrey~~ Truist Securities, Inc., as Joint Lead Arrangers.

“*Assignee*” has the meaning specified in Section 12.05.

“*Assignment and Acceptance*” means an Assignment and Acceptance, substantially in the form of **EXHIBIT E**, or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent pursuant to which a Bank assigns and an Assignee assumes rights and obligations in accordance with Section 12.05.

“*Authorization Letter*” means a letter agreement executed by Borrower in the form of **EXHIBIT A**.

“*AVB Revolver Facility*” has the meaning specified in Section 12.02.



“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable EEA-Resolution Authority in respect of any liability of an EEA ~~Affected~~ Financial Institution.

“**Bail-In Legislation**” means, ~~(a)~~ (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act of 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**Bank**” and “**Banks**” have the respective meanings specified in the preamble.

“**Bank Parties**” means Administrative Agent and the Banks.

“**Bank Reply Period**” has the meaning specified in Section 12.02.

“**Banking Day**” means ~~(1) any day other than a Saturday, Sunday or other day on which commercial banks are not authorized or required to close in New York City and (2) whenever such day relates to a LIBOR Loan, an Interest Period with respect to a LIBOR Loan, or notice with respect to a LIBOR Loan, a day on which dealings in Dollar deposits are also carried out in the London interbank market and banks are open for business in London~~ under laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located.

“**Base Rate**” means, for any day, a fluctuating rate per annum equal to the highest of ~~(1a) the Federal Funds Rate plus ½ of 1%, (b) the rate of interest in effect for such day plus .50%, (2) the Prime Rate for such day or (3) the LIBOR Base Rate for an Interest Period of one month for such day plus 1.0%~~ as publicly announced from time to time by PNC Bank, National Association as its “prime rate,” (c) Term SOFR plus 1.00% and (d) 1.00%. The “prime rate” is a rate set by PNC Bank, National Association based upon various factors including PNC Bank, National Association’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by PNC Bank, National Association shall take effect at the opening of business on the day specified in the public announcement of such change. If the Base Rate is being used as an alternate rate of interest pursuant to Section 3.02 hereof, then the Base Rate shall be the greater of clauses (1a), (b) and (2d) above and shall be determined without reference to clause (3c) above.

“**Base Rate Loan**” means all or any portion (as the context requires) of a Bank’s Loan which shall accrue interest at a rate determined in relation to the Base Rate.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Benefit Plan**” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**BNYM**” has the meaning specified in the preamble.

“**Borrower**” has the meaning specified in the preamble.

“**Borrower Material**” has the meaning in Section 6.09.

“**Borrower’s Accountants**” means Ernst & Young, or such other accounting firm(s) of nationally-recognized standing selected by Borrower and reasonably acceptable to the Administrative Agent.

“**Borrower’s Credit Rating**” means the rating assigned from time to time to Borrower’s unsecured and unsubordinated long-term indebtedness by, respectively, S&P, Moody’s and/or one or more other nationally-recognized rating agencies reasonably approved by Administrative Agent. If such a rating is assigned by only one (1) such rating agency, it must be either S&P or Moody’s. If such a rating is assigned by two (2) such rating agencies, at least one (1) must be S&P or Moody’s, and “Borrower’s Credit Rating” shall be the higher of said ratings, except if the aforesaid ratings are greater than one (1) rating level apart, in which case “Borrower’s Credit Rating” shall be the ~~average of said ratings~~ **rating one level below the higher rating**. If such a rating is obtained from more than two (2) such rating agencies, “Borrower’s Credit Rating” shall be the higher of the lowest two (2) ratings, if at least one (1) of such two (2) is either S&P or Moody’s; if neither of the two (2) lowest ratings is from S&P or Moody’s, then “Borrower’s Credit Rating” shall be the lower of the ratings from S&P and Moody’s. Unless such indebtedness of Borrower is rated by either S&P or Moody’s, “Borrower’s Credit Rating” shall be considered unrated for purposes of this Agreement.

“**Borrower’s Principals**” means the officers and directors of Borrower at any applicable time.

“**Borrower’s Share of UJV Combined Outstanding Indebtedness**” means the sum of the indebtedness of each of the UJVs contributing to UJV Combined Outstanding Indebtedness multiplied by Borrower’s respective beneficial fractional interests in each such UJV.

“**Capitalization Value**” means, as of the end of any calendar quarter, the sum, without double-counting, of (1) Combined EBITDA attributable to Wholly-Owned Assets (other than Acquisition Assets and Construction-in-Process) (less all leasing commissions and management and development fees, net of any expenses applicable thereto, contributing to such Combined EBITDA) for ~~such quarter annualized (i.e., multiplied by four (4))~~ **the period of four quarters then ended**, capitalized at a rate of ~~6.005.75%~~ **5.75%** per annum (i.e., divided by ~~6.005.75%~~ **5.75%**), (2) Combined EBITDA attributable to Borrower’s beneficial interest in the UJVs (other than with respect to Acquisition Assets or Construction-in-Process) (less all leasing commissions and management and development fees, net of any expenses applicable thereto, contributing to such Combined EBITDA) for ~~such quarter annualized (i.e., multiplied by four (4))~~ **the period of four quarters then ended**, capitalized at a rate of ~~6.005.75%~~ **5.75%** per annum (i.e., divided by ~~6.005.75%~~ **5.75%**), (3) such leasing commissions and management and development fees for such ~~quarter~~ **period of**

four quarters as were subtracted from Combined EBITDA pursuant to clauses (1) and (2) above, ~~annualized, (i.e., multiplied by four (4)),~~ capitalized at a rate of 15% per annum (i.e., divided by 15%), (4) unrestricted Cash and Cash Equivalents of Borrower and its Consolidated Businesses, as of the end of such quarter, as reflected in Borrower's Consolidated Financial Statements; provided that no such unrestricted Cash and Cash Equivalents will be added to Capitalization Value if such unrestricted Cash and Cash Equivalents have been deducted from Total Outstanding Indebtedness or Secured Indebtedness in the calculation of the financial covenants in Section 8.01 or Section 8.04, (5) the aggregate book value (on a cost basis) of land held for future development and Construction-in-Process of Borrower and its Consolidated Businesses plus Borrower's beneficial interest in the book value (on a cost basis) of land held for future development and Construction-in-Process of the UJVs (after taking into account any impairments recognized in Borrower's financial statements in the immediately preceding fiscal quarter), (6) the aggregate book value (on a cost basis) of Acquisition Assets of Borrower and its Consolidated Businesses plus Borrower's beneficial interest in the book value (on a cost basis) of Acquisition Assets of the UJVs (after taking into account any impairments recognized in Borrower's financial statements in the immediately preceding fiscal quarter), (7) the value (at the lower of cost or market in accordance with GAAP) of Performing Notes held by Borrower and its Consolidated Businesses, (8) Eligible Cash 1031 Proceeds, plus (9) without duplication of amounts included in items (2), (3), (6) and (7) that are attributable to UJVs, the aggregate book value of the Borrower's and its Consolidated Businesses' loans to and investments in minority interests (including preferred equity investments) in other Persons (after taking into account any impairments recognized in the Borrower's financial statements in the immediately preceding fiscal quarter);

provided that the sum of items (2), (5), (7) and (9) above shall not exceed ~~30~~40% of Capitalization Value.

**"Cash and Cash Equivalents"** means (1) cash, (2) direct obligations of the United States Government, including, without limitation, treasury bills, notes and bonds, (3) interest-bearing or discounted obligations of federal agencies and government-sponsored entities or pools of such instruments offered by Approved Banks and dealers, including, without limitation, Federal Home Loan Mortgage Corporation participation sale certificates, Government National Mortgage Association modified pass through certificates, Federal National Mortgage Association bonds and notes, and Federal Farm Credit System securities, (4) time deposits, domestic and eurodollar certificates of deposit, bankers' acceptances, commercial paper rated at least A-1 by S&P and P-1 by Moody's and/or guaranteed by an Aa rating by Moody's, an AA rating by S&P or better rated credit, floating rate notes, other money market instruments and letters of credit each issued by Approved Banks, (5) obligations of domestic corporations, including, without limitation, commercial paper, bonds, debentures and loan participations, each of which is rated at least AA by S&P and/or Aa2 by Moody's and/or guaranteed by an Aa rating by Moody's, an AA rating by S&P or better rated credit, (6) obligations issued by states and local governments or their agencies, rated at least MIG-1 by Moody's and /or SP-1 by S&P and /or guaranteed by an irrevocable letter of credit of an Approved Bank, (7) repurchase agreements with major banks and primary government security dealers fully secured by the United States Government or agency collateral equal to or exceeding the principal amount on a daily basis and held in safekeeping and (8) real estate loan pool participations, guaranteed by an AA rating given by S&P or an Aa2 rating given by Moody's or better rated credit. For purposes of this definition, "Approved Bank" means a financial institution which has (x) (A) a minimum net worth of \$500,000,000 and/or (B) total assets of at least \$10,000,000,000 and (y) a minimum long-term debt rating of A+ by S&P or A1 by Moody's.

“**Closing Date**” means the date this Agreement has been executed by all parties.

“**CME**” means CME Group Benchmark Administration Limited.

“**Code**” means the Internal Revenue Code of 1986, as amended, including the rules and regulations promulgated thereunder.

“**Combined Debt Service**” means, for any period of time, (1) Borrower’s share of total debt service (including principal) paid or payable by Borrower and its Consolidated Businesses during such period (other than ~~(x)~~ debt service on construction loans until completion of the relevant construction and other capitalized interest and (y) the amortization of financing fees paid in a prior period) plus a deemed annual capital expense charge of \$150 per apartment unit owned by Borrower or its Consolidated Businesses plus (2) Borrower’s beneficial interest in ~~the sum of~~ ~~(a)~~ total debt service (including principal) paid or payable by the UJVs during such period (other than ~~(x)~~ debt service on construction loans until completion of the relevant construction and other capitalized interest and (y) the amortization of financing fees paid in a prior period) plus ~~(b)~~ a deemed annual capital expense charge of \$150 per apartment unit owned by the UJVs plus (3) preferred dividends and distributions paid or payable by Borrower and its Consolidated Businesses during such period plus (4) non-cash interest expense with respect to convertible debt of the Borrower and its Consolidated Businesses during such period. For the avoidance of doubt, Combined Debt Service shall not include (1) principal repayment at maturity of existing financings, (2) principal payments resulting from refinancing, condemnation, hazard insurance or other loan payoffs, (3) imposition deposits, real estate taxes, insurance or other lender-held escrow amounts, (4) swap settlements, or (5) prepayment penalties for prepayment of financings prior to maturity.

“**Combined EBITDA**” means, for any period of time, the sum, without duplication, of (1) Borrower’s share of revenues less operating expenses, general and administrative expenses and property taxes before Interest Expense, income taxes, gains or losses on the sale of real estate and/or marketable securities and depreciation and amortization for Borrower and its Consolidated Businesses, and adjusted to exclude gains and losses from extraordinary or non-recurring items, extinguishment or forgiveness of debt, write-ups or write-downs, acquisition costs for consummated acquisitions, non-cash revenue and non-cash expense attributable to straight lining of rents and (2) Borrower’s beneficial interest in revenues less operating expenses, general and administrative expenses and property taxes before Interest Expense, income taxes, gains or losses on the sale of real estate and/or marketable securities and depreciation and amortization (after eliminating appropriate intercompany amounts) applicable to each of the UJVs, and adjusted to exclude gains and losses from extraordinary or non-recurring items, extinguishment or forgiveness of debt, write-ups or write-downs, acquisition costs for consummated acquisitions, non-cash revenue and non-cash expense attributable to straight lining of rents, in all cases as reflected in Borrower’s Consolidated Financial Statements.

“**Communication**” means this Agreement, any Loan Document and any document, any amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to any Loan Document.

“**Conforming Changes**” means, with respect to the use, administration of or any conventions associated with SOFR or any proposed Successor Rate, Daily SOFR, or Term SOFR, as applicable, any conforming changes to the definitions of “Base Rate”, “Daily SOFR”, “SOFR”, “Term SOFR” and “Interest Period”, timing and frequency of determining

rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of “Banking Day” and “U.S. Government Securities Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“**Consolidated Business**” means, individually, each Affiliate of Borrower who is or should be included in Borrower’s Consolidated Financial Statements in accordance with GAAP.

“**Consolidated Subsidiary**” means, individually, each Subsidiary of Borrower who is or should be included in Borrower’s Consolidated Financial Statements in accordance with GAAP.

“**Consolidated Financial Statements**” means, with respect to any Person, the consolidated balance sheet and related consolidated statement of operations, accumulated deficiency in assets and cash flows, and footnotes thereto, of such Person, prepared in accordance with GAAP.

“**Consolidated Outstanding Indebtedness**” means, as of any time, Borrower’s share of all indebtedness and liability for borrowed money, secured or unsecured, of Borrower and its Consolidated Businesses, including mortgage and other notes payable but excluding any indebtedness which is margin indebtedness on cash and cash equivalent securities, all as reflected in Borrower’s Consolidated Financial Statements.

“**Consolidated Tangible Net Worth**” means, at any date, Borrower’s share of the consolidated stockholders’ equity of Borrower and its Consolidated Businesses less their consolidated Intangible Assets, all determined as of such date. For purposes of this definition, “**Intangible Assets**” means with respect to any such intangible assets, the amount (to the extent reflected in determining such consolidated stockholders’ equity) of (1) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of assets of a going concern business made within twelve (12) months after the acquisition of such business) subsequent to September 30, 1994 in the book value of any asset (other than real property assets) owned by Borrower or a Consolidated Business and (2) all debt discount and expense, deferred charges, goodwill, patents, trademarks, service marks, trade names, anticipated future benefit of tax loss carry-forwards, copyrights, organization or developmental expenses and other intangible assets (in each case, not adjusted for depreciation).

“**Construction-in-Process**” means a property on which construction of improvements (excluding non-revenue generating capital expenditures and excluding costs incurred prior to construction, all as set forth in the Consolidated Financial Statements) has commenced and is proceeding to completion in the ordinary course but has not yet been completed (as such completion shall be evidenced by a temporary or permanent certificate of occupancy permitting use of the entirety of such property). Any such property shall be treated as Construction-in-Process until ~~12~~**24** months from the date of completion (as evidenced by a certificate of occupancy or its equivalent permitting use of such property by the general public), unless the Borrower has made a one-time election (by written notice to the Administrative Agent) to no longer treat such property as Construction-in-Process for purposes of this Agreement.

“**Contingent Obligations**” means, without duplication, Borrower’s share of (1) any contingent obligations of Borrower or its Consolidated Businesses required to be shown on the balance sheet of Borrower and its Consolidated Businesses in accordance with GAAP and (2) any obligation required to be disclosed in the footnotes to Borrower’s Consolidated Financial Statements, guaranteeing partially or in whole any non-Recourse Debt, lease, dividend or other obligation, exclusive of contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets) and guarantees of non-monetary obligations (other than guarantees of completion) which have not yet been called on or quantified, of Borrower or any of its Consolidated Businesses or of any other Person. The amount of any Contingent Obligation described in clause (2) shall be deemed to be (a) with respect to a guaranty of interest or interest and principal, or operating income guaranty, the net present value (using the Base Rate as a discount rate) of the sum of all payments required to be made thereunder (which in the case of an operating income guaranty shall be deemed to be equal to the debt service for the note secured thereby), through (i) in the case of an interest or interest and principal guaranty, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder) or (ii) in the case of an operating income guaranty, the date through which such guaranty will remain in effect and (b) with respect to all guarantees not covered by the preceding clause (a), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming Borrower and/or one or more of its Consolidated Businesses is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent Borrower’s Consolidated Financial Statements required to be delivered pursuant to this Agreement. Notwithstanding anything contained herein to the contrary, guarantees of completion, of environmental indemnities and relating to fraud, misappropriation, bankruptcy filings and other “bad act” indemnities shall not be deemed to be Contingent Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty shall be deemed to be a Contingent Obligation in an amount equal to any such claim. Subject to the preceding sentence, (1) in the case of a joint and several guaranty given by Borrower or one of its Consolidated Businesses and another Person (but only to the extent such guaranty is recourse, directly or indirectly to Borrower), the amount of the guaranty shall be deemed to be 100% thereof unless and only to the extent that such other Person has delivered Cash and Cash Equivalents to secure all or any part of such Person’s guaranteed obligations and (2) in the case of joint and several guarantees given by a Person in which Borrower owns an interest (which guarantees are non-recourse to Borrower), to the extent the guarantees, in the aggregate, exceed 10% of Capitalization Value, the amount in excess of 10% shall be deemed to be a Contingent Obligation of Borrower. Notwithstanding anything contained herein to the contrary, “Contingent Obligations” shall be deemed not to include guarantees of unadvanced funds under any indebtedness of Borrower or its Consolidated Businesses or of construction loans to the extent the same have not been drawn. All matters constituting “Contingent Obligations” shall be calculated without duplication.

“*Continue*”, “*Continuation*” and “*Continued*” refer to the continuation pursuant to Section ~~2.11~~**2.12** of a ~~LIBOR~~**Term SOFR** Loan as a ~~LIBOR~~**Term SOFR** Loan from one Interest Period to the next Interest Period.

“*Continuing Directors*” has the meaning specified in Section 9.01(11).

“*Convert*”, “*Conversion*” and “*Converted*” refer to a conversion pursuant to Section 2.11 of a Base Rate Loan into a ~~LIBOR~~**Term SOFR** Loan or a ~~LIBOR~~**Term SOFR** Loan into a Base Rate Loan, each of which may be accompanied by the transfer by a Bank (at its sole discretion) of all or a portion of its Loan from one Applicable Lending Office to another.

“*Covenant Finance Lease*” means a Finance Lease for which the Borrower determines (a) it is reasonably certain in the future to exercise any purchase option (if applicable) set forth in such Finance Lease or (b) such Finance Lease will transfer ownership of the underlying asset to lessee by the end of the lease term.

“*Covered Entity*” has the meaning specified in Section **12.23**.

**“Daily Simple SOFR” with respect to any applicable determination date means the SOFR published on such date on the Federal Reserve Bank of New York’s website (or any successor source).**

**“Daily SOFR” means the rate per annum equal to Daily Simple SOFR determined five (5) U.S. Government Securities Business Days prior to such day pursuant to the definition thereof plus the SOFR Adjustment. Any change in Daily SOFR shall be effective from and including the date of such change without further notice. If the rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.**

**“Daily SOFR Loan” means a Loan that bears interest at a rate based on Daily SOFR.**

“*Debt*” means (1) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services (including trade obligations); (2) obligations as lessee under Covenant Finance Leases; (3) current liabilities in respect of unfunded vested benefits under any Plan; (4) obligations in respect of letters of credit issued for the account of any Person; (5) all obligations arising under bankers’ or trade acceptance facilities; (6) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase any of the items included in this definition, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss; (7) all obligations secured by any Lien on property owned by the Person whose Debt is being measured, whether or not the obligations have been assumed; and (8) all obligations under any agreement providing for contingent participation or other hedging mechanisms with respect to interest payable on any of the items described above in this definition.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“**Default**” means any event which with the giving of notice or lapse of time, or both, would become an Event of Default.

“**Default Rate**” means a rate per annum equal to: (1) with respect to Base Rate Loans or Daily SOFR Loans, a variable rate 2% above the rate of interest then in effect thereon (including the Applicable Margin); and (2) with respect to ~~LIBOR~~Term SOFR Loans a fixed rate 2% above the rate(s) of interest in effect thereon (including the Applicable Margin) at the time of Default until the end of the then current Interest Period therefor and, thereafter, a variable rate 2% above the rate of interest for a Base Rate Loan.

“**Defaulting Lender**” means, subject to Section 2.16(b), any Bank that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three Banking Days of the date required to be funded by it hereunder unless such Bank notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Bank’s reasonable determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) has notified the Borrower, or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder (unless such writing or public statement relates to such Bank’s obligation to fund a Loan hereunder and states that such position is based on such Bank’s reasonable determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Banking Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations (provided that such Bank shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law or the subject of a Bail-In Action, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Bank shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Bank or any direct or indirect parent company thereof by a Governmental Authority so long as such equity interest does not result in or provide such Bank with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Bank (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Bank. Notwithstanding anything to the contrary in clauses (a) through (d) above, any determination by the Administrative Agent that a Bank is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Bank shall be deemed to be a Defaulting Lender (subject to Section 2.16(b) upon delivery of written notice of such determination to the Borrower and each Bank).

“**Designated Jurisdiction**” means any country, region or territory to the extent that such country, region or territory itself is the subject of any Sanction.



“**Disposition**” means a sale (whether by assignment, transfer, **Division** or Finance Lease) of an asset.

**“Dividing Person” has the meaning assigned to it in the definition of “Division.”**

**“Division” means the division of the assets, liabilities and/or obligations of a Person (the “Dividing Person”) among two or more Persons (whether pursuant to a “plan of division” or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.**

“**Dollars**” and the sign “\$” mean lawful money of the United States of America.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent;

“**EEA Member Country**” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“**EEA Resolution Authority**” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Elect**” and “**Election**” refer to election, if any, by Borrower pursuant to Section 2.11 to have all or a portion of an advance of the Loans be outstanding as ~~LIBOR~~**Term SOFR** Loans.

**“Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.**

“**Eligible Cash 1031 Proceeds**” means the cash proceeds held by a “qualified intermediary” from the sale of real property of Borrower and its Consolidated Businesses, which proceeds are intended to be used by such qualified intermediary to acquire one or more “replacement properties” that are of “like-kind” to such real property in an exchange that qualifies as a tax-free exchange under Section 1031 of the Code, and no portion of which proceeds Borrower or any Affiliate has the right to receive, pledge, borrow or otherwise obtain the benefits of until such time as provided under the applicable “exchange agreement” (as such terms in quotations are defined in Treasury Regulations Section 1.1031(k)-1(g) (4) (the “**Regulations**”)) or until such exchange is terminated. Upon the cash proceeds no longer being held by such qualified intermediary pursuant to the Regulations or otherwise no longer qualifying under the Regulations for like-kind exchange treatment, such proceeds shall cease being Eligible Cash 1031 Proceeds.

“**Environmental Discharge**” means any discharge or release of any Hazardous Materials in violation of any applicable Environmental Law.

“**Environmental Law**” means any applicable Law relating to pollution or the environment, including Laws relating to noise or to emissions, discharges, releases or threatened

releases of Hazardous Materials into the work place, the community or the environment, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

**“Environmental Notice”** means any written complaint, order, citation or notice from any Person (1) affecting or relating to Borrower’s compliance with any Environmental Law in connection with any activity or operations at any time conducted by Borrower, (2) relating to (a) the existence of any Hazardous Materials contamination or Environmental Discharges or threatened Hazardous Materials contamination or Environmental Discharges at any of Borrower’s locations or facilities or (b) remediation of any Environmental Discharge or Hazardous Materials at any such location or facility or any part thereof; or (3) relating to any violation or alleged violation by Borrower of any relevant Environmental Law.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, including the rules and regulations promulgated thereunder.

**“ERISA Affiliate”** means any corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as Borrower, or any trade or business which is under common control (within the meaning of Section 414(c) of the Code) with Borrower, or any organization which is required to be treated as a single employer with Borrower under Section 414(m) or 414(o) of the Code.

**“EU Bail-In Legislation Schedule”** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**“Event of Default”** has the meaning specified in Section 9.01.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Bank, its Applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Bank, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Bank with respect to an applicable interest in a Loan or Loan Commitment pursuant to a law in effect on the date on which (i) such Bank acquires such interest in the Loan or Loan Commitment (other than pursuant to an assignment request by the Borrower under Section 3.07) or (ii) such Bank changes its Applicable Lending Office, except in each case to the extent that, pursuant to Section 3.10(a) or (c), amounts with respect to such Taxes were payable either to such Bank’s assignor immediately before such Bank became a party hereto or to such Bank immediately before it changed its Applicable Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.10(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

**“Existing Loan Agreement”** has the meaning specified in the recitals.

**“Existing Tranche A Loans”** has the meaning specified in Section 2.01(b).

**“Existing Tranche B Loans”** has the meaning specified in Section 2.01(c).

**“FATCA”** means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any successor provisions thereof that are substantially comparable and not materially more onerous to comply with) and any regulations (whether temporary or proposed)

that are issued thereunder and official governmental interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“**Federal Funds Rate**” means, for any day, the rate per annum ~~equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published~~**calculated** by the Federal Reserve Bank of New York ~~on the Banking Day next succeeding such day; provided that (a) if such day is not a Banking Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Banking Day as so~~**based on such day’s federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and** published on the next succeeding Banking Day, (b) if no such rate is so published on such next succeeding Banking Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to PNC on such day on such transactions as determined by the Administrative Agent and (c) if such rate is ~~by the Federal Reserve Bank of New York as the federal funds effective rate; provided that if the Federal Funds Rate as so determined would be~~ less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Fee Letters**” means, collectively, the letter agreements between the Borrower and (a) PNC and PNC Capital Markets, LLC dated as of January 24, 2019, (b) SunTrust and Suntrust Robinson Humphrey, Inc. dated as of January 28, 2019 and (c) BNYM dated as of February 14, 2019, respectively.

“**Finance Lease**” means any lease which is capitalized on the books of the lessee in accordance with GAAP.

“**Fiscal Year**” means each period from January 1 to December 31.

“**Foreign Bank**” means any Bank that is organized under the Laws of a jurisdiction other than the United States or any State thereof.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time, applied on a basis consistent with those used in the preparation of the financial statements referred to in Section 5.13 (except for changes concurred in by Borrower’s Accountants).

“**Good Faith Contest**” means the contest of an item if: (1) the item is diligently contested in good faith, and, if appropriate, by proceedings timely instituted; (2) reserves that are adequate based on reasonably foreseeable likely outcomes are established with respect to the contested item; (3) during the period of such contest, the enforcement of any contested item is effectively stayed, delayed or postponed; and (4) the failure to pay or comply with the contested item during the period of the contest is not likely to result in a Material Adverse Change.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, and any agency, authority, central bank, regulatory body, court or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“*Hazardous Materials*” means any pollutant, effluents, emissions, contaminants, toxic or hazardous wastes or substances, as any of those terms are defined from time to time in or for the purposes of any relevant Environmental Law, including asbestos fibers and friable asbestos, polychlorinated biphenyls, and any petroleum or hydrocarbon-based products or derivatives.

“*Impacted Loans*” has the meaning specified in Section 3.02(a).

“*Increased Amount Date*” has the meaning specified in Section 2.15(c)(iv).

“*Indemnified Taxes*” means (a) Taxes other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document and (b) to the extent not otherwise described in (a) above, Other Taxes.

“*Indemnitee*” has the meaning specified in Section 12.04.

“*Information*” has the meaning specified in Section 12.17.

“*Interest Expense*” means, for any period of time, Borrower’s share of the consolidated interest expense (without deduction of consolidated interest income, and excluding (x) interest expense on construction loans and (y) other capitalized interest expense in respect of either construction activity or construction loans, in any such case under clauses (x) or (y), only until completion of the relevant construction, and (z) any costs, fees, unamortized deferred financing costs and/or prepayment penalties incurred in connection with the prepayment of financings) of Borrower and its Consolidated Businesses, including, without limitation or duplication (or, to the extent not so included, with the addition of), (1) the portion of any rental obligation in respect of any Covenant Finance Lease obligation allocable to interest expense in accordance with GAAP; (2) the amortization of Debt discounts; (3) the amortization of interest rate swap agreements; and (4) the interest expense and items listed in clauses (1) through (3) above applicable to each of the UJVs multiplied by Borrower’s respective beneficial interests in the UJVs, in all cases as reflected in Borrower’s Consolidated Financial Statements.

“*Interest Period*” means, with respect to any ~~LIBOR~~Term SOFR Loan, the period commencing on the date ~~the same is advanced,~~ ~~Converted from a Base Rate Loan or Continued, as the case may be, and ending, as Borrower may select pursuant to Section 2.04, on the numerically corresponding day in the first, second or third calendar month thereafter, or, with the consent of all Banks, seven (7) days or 6~~such Term SOFR Loan is disbursed or converted to or continued as a Term SOFR Loan and ending on the date one, three or six months thereafter, as selected by the Borrower in its Ratable Loan Notice (in the case of each requested Interest Period, subject to availability); provided that each (i) any such Interest Period which commences on that would otherwise end on a day that is not a Banking Day shall be extended to the next succeeding Banking Day unless, in the case of a Term SOFR Loan, such Banking Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Banking Day; (ii) any such Interest Period pertaining to a Term SOFR Loan that begins on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month at the end of such Interest Period) shall end on the last Banking Day of the appropriate calendar month at the end of such Interest Period; and (iii) no Interest Period shall extend beyond the Maturity Date.

“*IRS*” means the Internal Revenue Service.

“**Law**” means any federal, state or local statute, law, rule, regulation, ordinance, order, code, or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative order, consent decree or judgment.

“**LIBOR**” has the meaning specified in the definition of LIBOR Base Rate.

“**LIBOR Base Rate**” means:

(a) for any Interest Period with respect to a LIBOR Loan, the rate per annum equal to the London Interbank Offered Rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period) (“**LIBOR**”), as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period;

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Banking Days prior to such date for Dollar deposits with a term of one month commencing that day; and

(c) if the LIBOR Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“**LIBOR Interest Rate**” means, for any LIBOR Loan, a rate per annum determined by Administrative Agent to be equal to the quotient of (1) the LIBOR Base Rate for such LIBOR Loan for the Interest Period therefor divided by (2) one minus the LIBOR Reserve Requirement for such LIBOR Loan for such Interest Period.

“**LIBOR Loan**” means all or any portion (as the context requires) of any Bank’s Loan which shall accrue interest at rate(s) determined in relation to LIBOR Interest Rate(s).

“**LIBOR Reserve Requirement**” means, for any LIBOR Loan, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period for such LIBOR Loan under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against “Eurocurrency liabilities” (as such term is used in Regulation D). Without limiting the effect of the foregoing, the LIBOR Reserve Requirement shall also reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (1) any category of liabilities which includes deposits by reference to which the LIBOR Base Rate is to be determined as provided in the definition of “LIBOR Base Rate” in this Section 1.01 or (2) any category of extensions of credit or other assets which include loans the interest rate on which is determined on the basis of rates referred to in said definition of “LIBOR Base Rate”.

“**LIBOR Screen Rate**” means the LIBOR quote on the applicable screen page the Administrative Agent designates to determine LIBOR (or such other commercially available

source providing such quotations as may be designated by the Administrative Agent from time to time).

~~“LIBOR Successor Rate” has the meaning specified in Section 3.02(e).~~

~~“LIBOR Successor Rate Conforming Changes” has the meaning specified in Section 3.02(e).~~

“*Lien*” means any mortgage, deed of trust, pledge, negative pledge, security interest, hypothecation, assignment for collateral purposes, deposit arrangement, lien (statutory or other), or other security agreement or charge of any kind or nature whatsoever of any third party (excluding any right of setoff but including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Law of any jurisdiction to evidence any of the foregoing and carriers, warehousemen, mechanics and other similar inchoate liens that have not been insured against in a manner reasonably satisfactory to Administrative Agent).

“*Loan*” means a Tranche A Loan or a Tranche B Loan made by a Bank pursuant to Section 2.01 or Section 2.15, as applicable.

“*Loan Commitment*” means, with respect to each Bank, its Tranche A Commitment or Tranche B Commitment, as applicable.

“*Loan Documents*” means this Agreement, the Notes, the Authorization Letter, the Solvency Certificate, the Fee Letters and any guaranty executed and delivered pursuant to clause (y) of the definition of “Unencumbered Assets” in Section 1.01 and any amendments, modifications or supplements hereto or to any other Loan Document or waivers hereof or to any other Loan Document.

“*Material Adverse Change*” means an effect resulting from any circumstance or event or series of circumstances or events, of whatever nature, which does or could reasonably be expected to, on more than an interim basis, either (1) materially and adversely impair the ability of Borrower and its Consolidated Businesses, taken as a whole, to fulfill its material obligations under the Loan Documents or (2) cause a Default or an Event of Default.

~~“*Material Affiliates*” means the Affiliates of Borrower described on EXHIBIT C, together with (or excluding) any Affiliates of Borrower which are hereafter from time to time reasonably determined by Administrative Agent to be material (or no longer material), upon written notice to Borrower, based on the most recent Borrower’s Consolidated Financial Statements.~~

“*Maturity Date*” means the Tranche A Maturity Date or the Tranche B Maturity Date, as applicable.

“*Moody’s*” means Moody’s Investors Service, Inc.

“*Multiemployer Plan*” means a Plan defined as such in Section 3(37) of ERISA to which contributions have been made by Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA.

“**New Bank**” has the meaning specified in Section 2.15(b).

“**New Note**” has the meaning specified in Section 2.15(b).

“**Note**” has the meaning specified in Section 2.07.

“**Obligations**” means each and every obligation, covenant and agreement of Borrower, now or hereafter existing, contained in this Agreement, and any of the other Loan Documents, whether for principal, reimbursement obligations, interest, fees, expenses, indemnities or otherwise, and any amendments or supplements thereto, extensions or renewals thereof or replacements therefor, including but not limited to all indebtedness, obligations and liabilities of Borrower to Administrative Agent and any Bank now existing or hereafter incurred under or arising out of or in connection with the Notes, this Agreement, the other Loan Documents, and any documents or instruments executed in connection therewith; in each case whether direct or indirect, joint or several, absolute or contingent, liquidated or unliquidated, now or hereafter existing, renewed or restructured, whether or not from time to time decreased or extinguished and later increased, created or incurred, and including all indebtedness of Borrower, under any instrument now or hereafter evidencing or securing any of the foregoing.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Original Closing Date**” has the meaning specified in the recitals.

“**Other Connection Taxes**” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.07).

“**Parent**” means, with respect to any Bank, any Person controlling such Bank.

“**Participant**” and “**Participation**” have the respective meanings specified in Section 12.05.

“**Participant Register**” has the meaning specified in Section 12.05.

“**Patriot Act**” has the meaning specified in Section 12.16.

“**Payor**” has the meaning specified in Section 10.12(a).

“**PBGC**” means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

~~“**Performing Notes**” means mortgage notes and notes receivable which are not more than thirty (30) days past due or otherwise in default; provided, that, in the case of mortgage notes and notes receivable that generate cash and non-cash payments, such mortgage notes and notes receivable shall be treated as Performing Notes whose value is determined solely by reference to the cash payments and references to the income generated by the Performing Notes shall include only the cash payments which have current payments payable in cash.~~

“**Performing Notes**” means mortgage notes and notes receivable which are not more than thirty (30) days past due or otherwise in default.

“**Permitted Investments**” means any one or more of the following “cash,” “cash items,” or “government securities” within the meaning of Section 856(c)(4)(A) of the Code: (a) direct obligations of the United States of America, or any agency thereof, or obligations fully guaranteed as to payment of principal and interest by the United States of America, or any agency thereof, provided such obligations are backed by the full faith and credit of the United States of America, and provided, however, that any such investment must have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change; (b) U.S. dollar denominated time deposits in U.S. financial institutions that are either member banks of the Federal Reserve System or are state-chartered banks regulated by the Federal Deposit Insurance Corporation; and (c) money market funds that are subject to regulation under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., and comply with the requirements of Rule 2a-7 thereof, as amended.

“**Person**” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

“**Plan**” means any employee benefit or other plan established or maintained, or to which contributions have been made, by Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA or to which Section 412 of the Code applies.

“**Platform**” has the meaning specified in Section 6.09.

“**PNC**” has the meaning specified in the preamble.

~~“**Prime Rate**” means the variable per annum rate of interest designated from time to time by the Person serving as the Administrative Agent at its principal office as its “prime rate” (it being understood that the “prime rate” is a reference rate for pricing some loans based on various factors and does not necessarily represent the lowest or best rate being charged to any customer). Any change in such prime rate shall take effect at the opening of business on the day specified in the public announcement of such change.~~

“**Pro Rata Share**” means, for purposes of this Agreement and with respect to each Bank, a fraction, the numerator of which is the amount of such Bank’s outstanding Loan and the denominator of which is the total amount of all outstanding Loans.

“**Prohibited Transaction**” means any transaction proscribed by Section 406 of ERISA or Section 4975 of the Code and to which no statutory or administrative exemption applies.



“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Lender**” has the meaning specified in Section 6.09.

“**Ratable Loan Notice**” means a notice of (a) a borrowing of Loans, (b) a Conversion of Loans, or (c) a Continuation of ~~LIBOR~~**Term SOFR** Loans, pursuant to Section 2.04 or Section 2.13, which shall be substantially in the form of **Exhibit I** or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

“**Recipient**” means the Administrative Agent or any Bank.

“**Recourse Debt**” means Debt, recourse for the payment of which (other than customary exceptions for fraud, misappropriation, bankruptcy filing and other “bad acts”, environmental liability and other similar and customary exceptions to non-recourse liability) is not limited to specified collateral encumbered by Liens securing such Debt (or, in the case of a Person that is a “special purpose entity”, recourse is not limited to the assets of such “special purpose entity”).

“**Register**” has the meaning specified in Section 12.05.

“**Regulation D**” means Regulation D of the Board of Governors of the Federal Reserve System.

“**Regulation T**” means Regulation T of the Board of Governors of the Federal Reserve System.

“**Regulation U**” means Regulation U of the Board of Governors of the Federal Reserve System.

“**Regulation X**” means Regulation X of the Board of Governors of the Federal Reserve System.

“**Regulatory Change**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority. Notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (b) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Regulatory Change”, regardless of the date enacted, adopted, issued or implemented.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“*Relevant Documents*” has the meaning specified in Section 11.02.

**“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.**

“*Replacement Bank*” has the meaning specified in Section 3.07.

“*Replacement Notice*” has the meaning specified in Section 3.07.

“*Reportable Event*” means any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty (30) day notice period is waived under subsections .13, .14, .16, .18, .19 or .20 of PBGC Reg. §2615.

“*Required Banks*” means the Banks holding at least 51% of the then aggregate unpaid principal amount of the Loans; provided that the portion of the Loans held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Banks.

“*Required Payment*” has the meaning specified in Section 10.12(a).

**“Rescindable Amount” has the meaning specified in Section 10.12(b).**

**“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.**

“*Responsible Officer*” means the chief executive officer, president, chief financial officer, treasurer, **vice president, capital markets**, assistant treasurer or controller of the Borrower and, solely for purposes of notices given pursuant to Article II, any other officer of the Borrower so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer of the Borrower designated in or pursuant to an agreement between the Borrower and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of the Borrower shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of the Borrower and such Responsible Officer shall be conclusively presumed to have acted on behalf of the Borrower.

“***S&P***” means Standard and Poor’s Financial Services LLC, a division of McGraw-Hill Financial, Inc.

“***Sanction(s)***” means any sanction administered or enforced by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“***HMT***”) or other relevant sanctions authority.

“***Scheduled Unavailability Date***” has the meaning specified in Section 3.02(***eb***)(ii).

“***Secured Indebtedness***” means that portion of Total Outstanding Indebtedness that is secured by a Lien.

**“SOFR” means the Secured Overnight Financing Rate as administered by the Federal Reserve Bank of New York (or a successor administrator).**

**“SOFR Adjustment” with respect to Daily SOFR or Term SOFR means 0.10% (10 basis points).**

**“SOFR Loan” means a Daily SOFR Loan and/or a Term SOFR Loan, as the context may require.**

**“Solvency Certificate”** means a certificate in the form of **EXHIBIT D**, to be delivered by Borrower pursuant to the terms of this Agreement.

**“Solvent”** means, when used with respect to any Person, that the fair value of the property of such Person, on a going concern basis, is greater than the total amount of liabilities (including, without limitation, contingent liabilities) of such Person.

**“SunTrust”** has the meaning specified in the preamble.

**“Supplemental Note”** has the meaning specified in **Section 2-153.02(b)**.

**“Syndication Agents”** means, collectively, BNYM and ~~SunTrust~~**Truist**.

**“Taxes”** means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges in the nature of taxes imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Term SOFR”** means:

**(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment for such Interest Period; and**

**(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;**

**provided that if the Term SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than zero, the Term SOFR shall be deemed zero for purposes of this Agreement.**

**“Term SOFR Loan”** means a Loan that bears interest at a rate based on **clause (a) of the definition of Term SOFR.**

**“Term SOFR Screen Rate”** means the **forward-looking SOFR term rate** administered by **CME** (or any **successor administrator satisfactory to the Administrative Agent**) and published on the applicable **Reuters** screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time).

**“Total Outstanding Indebtedness”** means, at any time, the sum, without duplication, of (1) Consolidated Outstanding Indebtedness; (2) Borrower’s Share of UJV Combined Outstanding Indebtedness; and (3) Contingent Obligations.

**“Tranche A Commitment”** means, with respect to any Bank, the obligation of such Bank to make or maintain Tranche A Loans in the principal amount set forth opposite its name in Schedule 1 attached hereto and made a part hereof, and **“Tranche A Commitments”** means the aggregate principal amount of the Tranche A Commitments of all the Banks, the initial maximum amount of which shall be \$100,000,000.

**“Tranche A Loan”** means any Loan made or deemed made by the Banks pursuant to Section 2.01(b) and shall include any incremental Tranche A Loan made pursuant to Section 2.15, and **“Tranche A Loans”** means the aggregate principal amount of the Tranche A Loans of all the Banks.

**“Tranche A Maturity Date”** means February 28, 2022.

**“Tranche B Commitment”** means, with respect to any Bank, the obligation of such Bank to make or maintain Tranche B Loans in the principal amount set forth opposite its name in Schedule 1 attached hereto and made a part hereof, and **“Tranche B Commitments”** means the aggregate principal amount of the Tranche B Commitments of all the Banks, the initial maximum amount of which shall be \$150,000,000.

**“Tranche B Loan”** means any Loan made or deemed made by the Banks pursuant to Section 2.01(c), and shall include any incremental Tranche B Loan made pursuant to Section 2.15 and **“Tranche B Loans”** means the aggregate principal amount of the Tranche B Loans of all the Banks.

**“Tranche B Maturity Date”** means February 28, 2024.

~~**“U.S. Tax Compliance Certificate”** has the meaning specified in Section 3.10(e)(ii)(B)(3).~~

~~**“Truist”** has the meaning specified in the preamble.~~

**“Type”** means, with respect to a Loan, its character as a Base Rate Loan, a Term SOFR Loan or a Daily SOFR Loan.

**“UJV Combined Outstanding Indebtedness”** means, as of any time, all indebtedness and liability for borrowed money, secured or unsecured, of the UJVs, on a combined basis, including mortgage and other notes payable but excluding any indebtedness which is margin indebtedness on cash and cash equivalent securities, all as reflected in the balance sheets of each of the UJVs, prepared in accordance with GAAP.

“*UJVs*” means the unconsolidated joint ventures (including general and limited partnerships) in which Borrower owns a beneficial interest and which are accounted for under the equity method in Borrower’s Consolidated Financial Statements.

**“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.**

**“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.**

“*Unanimous Bank Notices*” has the meaning specified in Section 9.02.

“*Unencumbered*” means, with respect to any asset, that such asset is not, and the direct or indirect interests of Borrower therein are not, subject to any negative pledge or Lien to secure all or any portion of Secured Indebtedness.

“*Unencumbered Asset Value*” means, as of the end of any calendar quarter, without duplication, (1) Unencumbered Wholly-Owned Combined EBITDA for ~~such quarter, annualized (i.e., multiplied by~~**the period of four (4) quarters then ended**, capitalized at a rate of ~~6.005.75%~~**5.75%** per annum (i.e., divided by ~~6.005.75%~~), plus (2) Unencumbered Non-Wholly-Owned Combined EBITDA for ~~such quarter, annualized (i.e., multiplied by four (4))~~**the period of four quarters then ended**, capitalized at a rate of ~~6.005.75%~~ per annum (i.e., divided by ~~6.005.75%~~), plus (3) the aggregate book value (on a cost basis) of Unencumbered Land and Construction-in-Process (after taking into account any impairments recognized in Borrower’s financial statements in the immediately preceding fiscal quarter), plus (4) the aggregate book value (on a cost basis) of Unencumbered Assets of Borrower and its Consolidated Business which are Acquisition Assets plus Borrower’s beneficial interest in the book value (on a cost basis) of Unencumbered Assets of the UJVs that are Acquisition Assets (and for which Borrower substantially controls the financing and sale) (after taking into account any impairments recognized in Borrower’s financial statements in the immediately preceding fiscal quarter), plus (5) unrestricted Cash and Cash Equivalents of Borrower and its Consolidated Businesses, as of the end of such quarter, as reflected in Borrower’s Consolidated Financial Statements, to the extent the same are Unencumbered; provided that no such unrestricted Cash and Cash Equivalents will be added to Unencumbered Asset Value if such unrestricted Cash and Cash Equivalents have been deducted from Unsecured Indebtedness in the calculation of the financial covenant in Section 8.03, plus (6) the value of all Eligible Cash 1031 Proceeds, to the extent the same are Unencumbered, plus (7) the value (at the lower of cost or market in accordance with GAAP) of Performing Notes **and investments in minority interests (including preferred equity investments) in other Persons** held by Borrower and its Consolidated Businesses, to the extent the same are Unencumbered; provided that the sum of clauses (2), (3) and (7) above shall not exceed 30% of Unencumbered Asset Value.

“*Unencumbered Assets*” are income-producing assets, reflected on Borrower’s Consolidated Financing Statements, owned (in whole or in part), directly or indirectly by

Borrower which (1) are Unencumbered and (2) have been improved by buildings or other improvements that have been issued a certificate of occupancy (or its equivalent) and are fully operational. Notwithstanding the foregoing, if an asset that would otherwise qualify as an Unencumbered Asset is owned by a Consolidated Business that has any Recourse Debt, such asset shall not constitute, and may not be treated as, an Unencumbered Asset unless and until the earlier to occur of (x) such Recourse Debt has been repaid in full in cash and all loan documents evidencing such Recourse Debt have been terminated (other than customary provisions relating to contingent obligations in such loan documents intended to survive such termination) and (y) such Consolidated Business executes and delivers to the Administrative Agent, for the benefit of the Administrative Agent and the Banks, a guaranty of the Obligations in substantially the form of **EXHIBIT G** attached hereto.

**“Unencumbered Land and Construction-in-Process”** means all land held for future development and Construction-in-Process reflected on Borrower’s Consolidated Financial Statements, which are wholly-owned, directly or indirectly, by Borrower and are Unencumbered.

**“Unencumbered Non-Wholly-Owned Combined EBITDA”** means that portion of Combined EBITDA attributable to Unencumbered Assets that are not Unencumbered Wholly-Owned Assets but for which the Borrower substantially controls the sale or financing of such Unencumbered Asset (assuming general and administrative expense is allocated proportionately to Unencumbered Assets).

**“Unencumbered Wholly-Owned Assets”** means Unencumbered Assets which are Wholly-Owned Assets.

**“Unencumbered Wholly-Owned Combined EBITDA”** means that portion of Combined EBITDA attributable to Unencumbered Wholly-Owned Assets (assuming general and administrative expense is allocated proportionately to Unencumbered Wholly-Owned Assets).

**“Unsecured Indebtedness”** means that portion of Total Outstanding Indebtedness that is not secured by a Lien.

**“U.S. Government Securities Business Day” means any Banking Day, except any Banking Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.**

**“U.S. Tax Compliance Certificate”** has the meaning specified in Section 3.10(e)(ii)(B)(3).

**“Wholly-Owned Assets”** means income-producing assets, which are reflected on Borrower’s Consolidated Financial Statements, and are wholly-owned, directly or indirectly, by Borrower.

**“Withholding Agent”** means the Borrower and the Administrative Agent.

**“Write-Down and Conversion Powers”** means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule-, **and (b)**

**with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.**

**Section 1.02 Accounting Terms.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time, and all financial data required to be delivered hereunder shall be prepared in accordance with GAAP; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Banks request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision shall have been amended in accordance herewith.

**Section 1.03 Computation of Time Periods.** Except as otherwise provided herein, in this Agreement, in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and words “to” and “until” each means “to but excluding”.

**Section 1.04 Rules of Construction.** Except as provided otherwise, when used in this Agreement (1) “or” is not exclusive; (2) a reference to a Law includes any amendment, modification or supplement to, or replacement of, such Law; (3) a reference to a Person includes its permitted successors and permitted assigns; (4) all terms used in the singular shall have a correlative meaning when used in the plural and vice versa; (5) a reference to an agreement, instrument or document shall include such agreement, instrument or document as the same may be amended, modified or supplemented from time to time in accordance with its terms and as permitted by the Loan Documents; (6) all references to Articles, Sections or Exhibits shall be to Articles, Sections and Exhibits of this Agreement unless otherwise indicated; (7) “hereunder”, “herein”, “hereof” and the like refer to this Agreement as a whole; and (8) all Exhibits to this Agreement shall be incorporated into this Agreement. Any reference herein to a merger, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar terms shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

**Section 1.05 Interest Rates.** The Administrative Agent does not warrant, nor accept responsibility, nor, ~~in the absence of Administrative Agent’s gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable~~

~~judgment, shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “LIBOR Base Rate”~~any reference rate referred to herein or with respect to any comparable or successor rate thereto: rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any such rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Bank or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

~~Section 1.06~~ Section 1.06 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.07 Rounding. Any financial ratios required to be maintained by the Borrower pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

## ARTICLE II

### THE LOANS

#### Section 2.01 Loans; Purpose.

(a) [Reserved].

(b) Tranche A Loans. Pursuant to the Existing Loan Agreement, each of the Banks with a Tranche A Commitment thereunder have made term loans designated as “Tranche A Loans” to the Borrower in the aggregate principal amount of \$100,000,000 (the “*Existing Tranche A Loans*”) and such Existing Tranche A Loans are outstanding on the date hereof and shall continue to be outstanding under this Agreement as “Tranche A Loans”. As of the Closing Date, each Bank will continue to have a Tranche A Commitment as set forth in Schedule 1 attached hereto. Notwithstanding the foregoing, any incremental Tranche A Loans shall be made in accordance with Section 2.15.



(c) Tranche B Loans. Pursuant to the Existing Loan Agreement, each of the Banks with a Tranche B Commitment thereunder have made term loans designated as “Tranche B Loans” to the Borrower in the aggregate principal amount of \$150,000,000 (the “**Existing Tranche B Loans**”) and such Existing Tranche B Loans are outstanding on the date hereof and shall continue to be outstanding under this Agreement as “Tranche B Loans”. As of the Closing Date, each Bank will continue to have a Tranche B Commitment as set forth in Schedule 1 attached hereto. Notwithstanding the foregoing, any incremental Tranche B Loans shall be made in accordance with Section 2.15.

(d) The obligations of the Banks under this Agreement are several, and no Bank shall be responsible for the failure of any other Bank to make any advance of a Loan to be made by such other Bank. However, the failure of any Bank to make any advance of the Loan to be made by it hereunder on the date specified therefor shall not relieve any other Bank of its obligation to make any advance of its Loan specified hereby to be made on such date.

(e) Borrower shall use the proceeds of the Loans for general capital and working capital requirements of Borrower and its Consolidated Businesses and UJVs (which shall include, but not be limited to, Acquisitions and/or costs incurred in connection with the development, construction or reconstruction of multi-family real estate properties). In no event shall proceeds of the Loans be used directly or indirectly, for purchasing or carrying margin stock (within the meaning of Regulation U) or in a manner that would violate Regulation T, Regulation U, or Regulation X or in connection with a hostile acquisition.

## Section 2.02 [Reserved].

**Section 2.03 Procedures for Advances.** In the case of an advance of the Loans hereunder on any Increased Amount Date, Borrower shall submit to Administrative Agent an irrevocable request for such advance by (A) telephone, or (B) a Ratable Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Ratable Loan Notice. Each Ratable Loan Notice shall state the amount requested and certify the purpose, in general terms, for which such advance is to be used, no later than 11:00 a.m. on the date, (x) in the case of advances of Base Rate Loans **and Daily SOFR Loans**, which is the same Banking Day as the advance is to be made, and (y), in the case of advances of ~~LIBOR~~ **Term SOFR** Loans, which is three (3) Banking Days, prior to the date the advance is to be made; ~~provided, however, that if the Borrower wishes to request a borrowing of LIBOR Loans having an Interest Period other than one (1), two (2) or three (3) months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four (4) Banking Days prior to the requested date of such borrowing, Conversion or Continuation, whereupon the Administrative Agent shall give prompt notice to the Banks of such request and determine whether the requested Interest Period is acceptable to all of them. If Borrower so requests an Interest Period other than one (1), two (2) or three (3) months in duration, not later than 11:00 a.m., three (3) Banking Days before the requested date of such borrowing, Conversion or Continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Banks. Administrative Agent, on the Banking Day of its receipt and approval of the request for advance, will so notify the Banks either by telephone or by electronic mail.~~ Not later than 11:00 a.m. (or 2:00 p.m. in the case of Base Rate **Loans and Daily SOFR** Loans) on the date of each advance, each Bank shall, through its Applicable Lending Office and subject to the conditions of this Agreement, make the amount to be advanced

by it on such day available to Administrative Agent, at Administrative Agent's Office and in immediately available funds for the account of Borrower. The amount of the advance requested by the Borrower (or, if less, the portion of such requested amount that shall have been paid to the Administrative Agent by the Banks in accordance with the terms hereof) shall, subject to the conditions of this Agreement, be made available to Borrower, in immediately available funds, by Administrative Agent's crediting an account of Borrower designated by Borrower and maintained with Administrative Agent at Administrative Agent's Office.

**Section 2.04 Interest Periods; Renewals.** In the case of the ~~LIBOR~~**Term SOFR** Loans, Borrower shall select an Interest Period of any duration in accordance with the definition of Interest Period in Section 1.01, subject to the following limitations: (1) no Interest Period may extend beyond the Tranche A Maturity Date or Tranche B Maturity Date, as applicable; and (2) if an Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next Banking Day, unless such Banking Day would fall in the next calendar month, in which event such Interest Period shall end on the immediately preceding Banking Day. Only an aggregate of six (6) discrete segments of a Bank's Loans bearing interest at a ~~LIBOR Interest Rate~~ **Term SOFR**, for a designated Interest Period, pursuant to a particular Election, Conversion or Continuation, may be outstanding at any one time (each such segment of each Bank's Loans corresponding to a proportionate segment of each of the other Banks' Loans). Upon notice to Administrative Agent as provided in Section 2.13, Borrower may Continue any ~~LIBOR~~**Term SOFR** Loan on the last day of the Interest Period of the same or different duration in accordance with the limitations provided above. If Borrower shall fail to give notice to Administrative Agent of such a Continuation, such ~~LIBOR~~**Term SOFR** Loan shall automatically become a ~~LIBOR~~**Term SOFR** Loan with an Interest Period of one (1) month on the last day of the current Interest Period. Administrative Agent shall notify each of the Banks, either by telephone or by electronic mail, at least two (2) Banking Days prior to the termination of the Interest Period in question in the event of such failure by Borrower to give such notice of Continuation. **Any Daily SOFR Loans shall automatically Continue as such on each successive day until the Borrower gives notice to Administrative Agent of the Conversion of such Loan to a Term SOFR Loan or to a Base Rate Loan.**

**With respect to SOFR, Daily SOFR or Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Banks reasonably promptly after such amendment becomes effective**

**Section 2.05 Interest.** Borrower shall pay interest to Administrative Agent for the account of the applicable Bank on the outstanding and unpaid principal amount of the Loans, at a rate per annum as follows: (1) for Base Rate Loans at a rate equal to the Base Rate plus the Applicable Margin and, (2) for ~~LIBOR~~**Term SOFR** Loans **for each Interest Period** at a rate equal to the applicable ~~LIBOR~~**Term SOFR for such Interest Rate Period plus the Applicable Margin and (3) for Daily SOFR Loans at a rate equal to Daily SOFR** plus the Applicable Margin. Any principal amount not paid when due (when scheduled, at acceleration or otherwise) shall bear interest thereafter, payable on demand, at the Default Rate.

The interest rate on Base Rate Loans shall change when the Base Rate changes **and the interest rate on Daily SOFR Loans shall change when Daily SOFR changes**. Interest on Base Rate Loans and ~~LIBOR~~**Term SOFR** Loans shall not exceed the maximum amount permitted under applicable Law. Interest shall be calculated for the actual number of days elapsed on the basis of, **in the case of Base Rate Loans, three hundred sixty-five (365) or three hundred and sixty six (366) days, as the case may be,** three hundred sixty (360) days.

Accrued interest shall be due and payable in arrears upon and with respect to any payment or prepayment of principal and, (x) in the case of Base Rate Loans **and Daily SOFR Loans**, on the first Banking Day of each calendar month **and the Maturity Date**, and (y) in the case of ~~LIBOR~~**Term SOFR** Loans, at the expiration of the Interest Period applicable thereto and if the Interest Period for such ~~LIBOR~~**Term SOFR** Loan exceeds three months, each other date that falls every three months after the beginning of such Interest Period, **and the Maturity Date provided, however,** that interest accruing at the Default Rate shall be due and payable on demand.

**Section 2.06 Fees.** Borrower agrees to pay to and for the accounts of the parties specified therein, the fees provided for in the Fee Letters.

**Section 2.07 Notes.** At the request of such Bank, each Tranche A Loan and Tranche B Loan made by a Bank under this Agreement shall be evidenced by, and repaid with interest in accordance with, a separate promissory note of Borrower in the form of **EXHIBIT B** duly completed and executed by Borrower, in the principal amount equal to such Bank's Loan Commitment, payable to such Bank for the account of its Applicable Lending Office (each such note, as the same may hereafter be amended, modified, extended, severed, assigned, renewed or restated from time to time, including any new or substitute notes pursuant to Section 2.15, 3.07 or 12.05, a "**Note**"). The Notes shall mature, and all outstanding principal and accrued interest and other sums thereunder shall be paid in full, on the applicable Maturity Date, as the same may be accelerated. Each Bank is hereby authorized by Borrower to endorse on the schedule attached to each Note held by it, the amount of each advance and each payment of principal received by such Bank for the account of its Applicable Lending Office(s) on account of such Loan, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of such Loan made by such Bank. The failure by Administrative Agent or any Bank to make such notations with respect to the Loans or each advance or payment shall not limit or otherwise affect the obligations of Borrower under this Agreement or the Notes. In case of any loss, theft, destruction or mutilation of any Bank's Note, Borrower shall, upon its receipt of an affidavit of an officer of such Bank as to such loss, theft, destruction or mutilation and an appropriate indemnification, execute and deliver a replacement Note to such Bank in the same principal amount and otherwise of like tenor as the lost, stolen, destroyed or mutilated Note.

**Section 2.08 Repayments; Prepayments.**

(a) Borrower promises to pay on the Tranche A Maturity Date, and there shall become absolutely due and payable on the Tranche A Maturity Date, all of the Tranche A Loans outstanding on such date, together with any and all accrued and unpaid interest thereon. Borrower promises to pay on the Tranche B Maturity Date, and there shall become absolutely due and payable on the Tranche B Maturity Date, all of the Tranche B Loans outstanding on such date, together with any and all accrued and unpaid interest thereon.

(b) **[Reserved]**.

(c) Except as set forth in clause (b) above, without prepayment premium or penalty, but subject to Section 3.05, Borrower may, upon notice to Administrative Agent prior to 11:00 a.m. on the Banking Day of repayment in the case of the Base Rate Loans **and Daily SOFR Loans**, and at least three (3) Banking Days' notice to Administrative Agent (who shall provide such notice, promptly upon receipt, to each of the Banks) in the case of ~~LIBOR~~**Term SOFR** Loans, prepay the Loans, provided that (1) any partial prepayment under this Section shall be in integral multiples of \$500,000; (2) a ~~LIBOR~~**Term SOFR** Loan may be prepaid at any time, subject, however, to the provisions of Section 3.05; (3) each prepayment under this Section shall include all interest accrued on the amount of principal prepaid through the date of prepayment and (4) each prepayment under this Section shall be applied to the Tranche A Loans and the Tranche B Loans as elected by Borrower.

(d) Any Loans that are repaid or prepaid may not be reborrowed.

**Section 2.09 [Reserved].**

**Section 2.10 Method of Payment.** Borrower shall make each payment under this Agreement and under the Notes not later than 11:00 a.m. on the date when due in Dollars to Administrative Agent at Administrative Agent's Office in immediately available funds. Administrative Agent will thereafter, on the day of its receipt of each such payment, cause to be distributed to each Bank (1) such Bank's appropriate share determined pursuant to Section 10.15 of the payments of principal and interest in like funds for the account of such Bank's Applicable Lending Office; and (2) fees payable to such Bank in accordance with the terms of this Agreement. In the event Administrative Agent fails to pay funds received from Borrower to the Banks on the date on which Borrower is credited with payment, Administrative Agent shall pay interest on such amounts at the Federal Funds Rate until such payment to the Banks is made. Borrower hereby authorizes Administrative Agent and the Banks, if and to the extent payment by Borrower is not made when due under this Agreement or under the Notes, to charge from time to time against any account Borrower maintains with Administrative Agent or any Bank any amount so due to Administrative Agent and/or the Banks. Except to the extent provided in this Agreement, whenever any payment to be made under this Agreement or under the Notes is due on any day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall in such case be included in the computation of the payment of interest and other fees, as the case may be.

**Section 2.11 Elections, Conversions or Continuation of Loans.** Subject to the provisions of Article III and Sections 2.04 and 2.12, Borrower shall have the right to Elect to have all or a portion of any advance of the Loans be ~~LIBOR~~**Base Rate Loans, Term SOFR Loans or Daily SOFR** Loans, to Convert ~~Base Rate~~ Loans **of one Type** into ~~LIBOR~~ Loans, to ~~Convert LIBOR Loans into Base Rate Loans of another Type, to Continue Term SOFR Loans as Term SOFR Loans~~, or to Continue ~~LIBOR~~**Daily SOFR** Loans as ~~LIBOR~~**Daily SOFR** Loans, at any time or from time to time, provided that (1) Borrower shall give Administrative Agent notice of each such Election, Conversion or Continuation as provided in Section 2.13; and (2) a ~~LIBOR~~**Term SOFR** Loan may be Converted or Continued only on the last day of the applicable Interest Period for such ~~LIBOR~~**Term SOFR** Loan. Except as otherwise provided in this Agreement, each Election, Continuation and Conversion shall be applicable to each Bank's Loan in accordance with its Pro Rata Share.

**Section 2.12 Minimum Amounts.** With respect to the Loans (or any portion thereof), each Election and each Conversion shall be in an amount at least equal to \$1,000,000 and in integral multiples of \$500,000.

**Section 2.13 Certain Notices Regarding Elections, Conversions and Continuations of Loans.** Notices by Borrower to Administrative Agent of Elections, Conversions and Continuations of ~~LIBOR~~**Term SOFR** Loans shall be irrevocable, may be given by (A) telephone, or (B) a Ratable Loan Notice (provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Ratable Loan Notice) and shall be effective only if received by Administrative Agent not later than 10:30 a.m. on the number of Banking Days prior to the date of the relevant Election, Conversion or Continuation specified below:

Number of Banking Days Prior Notice  
-----

**Conversions of Daily SOFR Loans into**

~~Conversions into Base Rate Loans~~ **or Conversions of Base**

**Rate Loans into Daily SOFR Loans** same Banking day

**Conversions of Term SOFR Loans into**

**Base Rate Loans or Daily SOFR Loans three (3)**

Elections of, Conversions into or

Continuations as, ~~LIBOR~~**Term SOFR** Loans three (3)

; provided, however, that ~~(x)~~ notwithstanding the foregoing, advances of Loans shall be governed by Section 2.04 and (y) if the Borrower wishes to request Conversion or Continuation of ~~LIBOR~~ Loans having an Interest Period other than one (1), two (2) or three (3) months in duration as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four (4) Banking Days prior to the requested date of such borrowing, Conversion or Continuation, whereupon the Administrative Agent shall give prompt notice to the Banks of such request and determine whether the requested Interest Period is acceptable to all of them. If Borrower so requests an Interest Period other than one (1), two (2) or three (3) months in duration, not later than 11:00 a.m., three (3) Banking Days before the requested date of such borrowing, Conversion or Continuation, the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Banks. Promptly following its receipt of any such notice, and no later than the close of business on the Banking Day of such receipt, Administrative Agent shall so advise the Banks either by telephone or by electronic mail. Each such notice of Election shall specify the portion of the amount of the advance that is to be ~~LIBOR~~**Term SOFR** Loans (subject to Section 2.12) and the duration of the Interest Period applicable thereto (subject to Section 2.04); each such notice of Conversion shall specify the ~~LIBOR~~**Term SOFR Loans, Daily SOFR** Loans or Base Rate Loans to be Converted; and each such notice of Conversion or Continuation shall specify the date of Conversion or Continuation (which shall be a Banking Day), the amount thereof (subject to Section 2.12) and the duration of the Interest Period applicable thereto (subject to Section 2.04). In the event that Borrower fails to Elect to have any

portion of an advance of the Loans be ~~LIBOR~~**Term SOFR** Loans, the entire amount of such advance shall constitute Base Rate Loans. In the event that Borrower fails to Continue ~~LIBOR~~**Term SOFR** Loans within the time period and as otherwise provided in this Section, such ~~LIBOR~~**Term SOFR** Loans will automatically become ~~LIBOR~~**Term SOFR** Loans with an Interest Period of one (1) month on the last day of the then current applicable Interest Period for such ~~LIBOR~~**Term SOFR** Loans. Administrative Agent shall notify each of the Banks, either by telephone or by electronic mail, at least two (2) Banking Days prior to the termination of the Interest Period in question in the event of such failure by Borrower.

**Section 2.14 Late Payment Premium.** Borrower shall, at Administrative Agent's option (or if directed by the Required Banks) and upon notice to Borrower, pay to Administrative Agent for the account of the Banks a late payment premium in the amount of four percent (4%) of any payments of interest under the Loans made more than ten (10) days after the due date thereof, which shall be due with any such late payment.

**Section 2.15 Incremental Term Loans.**

(a) Borrower may, by written notice to the Banks during the period from the Original Closing Date to the date that is six (6) months prior to the Tranche A Maturity Date (with respect to an increase in the Tranche A Loan) or during the period from the Original Closing Date to the date that is six (6) months prior the Tranche B Maturity Date (with respect to an increase in the Tranche B Loan), request incremental Loan Commitments in an amount not to exceed the aggregate amount of \$250,000,000 (such that the aggregate amount of all initial Loans and incremental Loans made hereunder shall not exceed \$500,000,000) from any additional lender or any existing Bank willing in its sole discretion to provide such incremental Loans to the Borrower.

(b) In connection with increases to the Loan Commitments of any or all of the Banks as provided in paragraph (a) above, Borrower shall, at the request of the applicable Bank, execute supplemental Notes (a "**Supplemental Note**") evidencing such increases, as well as such other confirmatory modifications to this Agreement as Administrative Agent shall reasonably request. In connection with the addition of lender(s) pursuant to paragraph (a) above (each, a "**New Bank**"), (i) Borrower, Administrative Agent and each New Bank shall execute an Acceptance Letter in the form of **EXHIBIT F**, (ii) if the New Bank so requests Borrower shall execute a Note to each New Bank in the amount of the New Bank's Loan Commitment (a "**New Note**") and (iii) Borrower and Administrative Agent (with the consent of only the New Banks and those Banks increasing their Loan Commitments) shall execute such confirmatory modifications to this Agreement as Administrative Agent shall reasonably request, whereupon the New Bank shall become, and have the rights and obligations of, a "Bank", with a Loan Commitment in the amount set forth in such Acceptance Letter. The Banks shall have no right of approval with respect to a New Bank's becoming a Bank or the amount of its Loan Commitment, provided, however, that Administrative Agent and the Borrower shall have such right of approval, not to be unreasonably withheld, unless such New Bank is a Bank or an Affiliate of a Bank. Each Supplemental Note and New Note shall constitute "Notes" for all purposes of this Agreement.

(c) Borrower's notice under this Section 2.15 shall set forth:

- (i) the amount of the incremental Loan Commitments being requested, which must be at least \$50,000,000;

- (ii) whether such increase is to the Tranche A Commitment or to the Tranche B Commitment;
  - (iii) the identity of the proposed incremental Bank(s); and
  - (iv) the date on which such incremental Loan Commitments are requested to become effective (the “**Increased Amount Date**”), which shall be a date not less than ten (10) Banking Days, nor more than thirty (30) Banking Days after the date on which such notice is delivered to the Banks.
- (d) Upon receipt of such notice, Administrative Agent shall promptly send a copy of such notice to each Bank.
- (e) Notwithstanding the foregoing, no incremental Loan Commitment shall become effective under this Section 2.15 and no incremental Loans shall be made unless:
- (i) on the date of such effectiveness, the conditions set forth in Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a financial officer of Borrower;
  - (ii) the Administrative Agent shall have received new Note(s), customary legal opinions, board resolutions and other customary closing certificates and documentation as required by the relevant amendment or other documentation and, to the extent required by the Administrative Agent, consistent with those delivered on the Closing Date under Section 4.01 and such additional customary documents and filings as the Administrative Agent may reasonably require; and
  - (iii) Borrower shall be in pro forma compliance with the covenants set forth in Article VIII after giving effect to such incremental Loan Commitments, the Loans to be made thereunder and the application of the proceeds therefrom as if made and applied on such date.
- (f) The terms and provisions of the new Loans and new Loan Commitments shall be identical to the applicable existing Loans; provided that, the fees payable by the Borrower upon any increase of the Loan Commitments shall be agreed upon by the Borrower, the Administrative Agent, the New Banks and those existing Banks increasing their Loan Commitments. This Agreement shall be amended by the Administrative Agent, Borrower, the New Banks and those existing Banks increasing their Loan Commitments (but without the consent of any other Banks) to the extent (but only to the extent) necessary to reflect the existence and terms of the applicable incremental Loan Commitments and incremental Loans, and fees associated therewith.
- (g) Nothing in this Section 2.15 shall constitute or be deemed to constitute an agreement or commitment by any Bank to increase its Loans or Loan Commitment hereunder.

**Section 2.16 Defaulting Lenders.** (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Bank becomes a Defaulting Lender, then, until such time as that Bank is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) **Waivers and Amendments.** That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Banks" and Section 12.02.

(ii) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 12.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows:

first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder;

second, as Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent;

third, to the payment of any amounts owing to the Banks as a result of any judgment of a court of competent jurisdiction obtained by any Bank against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement;

fourth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and

fifth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction;

provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by that Defaulting Lender, and each Bank irrevocably consents thereto.

(b) **Defaulting Lender Cure.** If the Borrower and the Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Bank will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Banks or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans to be held on a pro rata basis by the Banks in accordance with their Pro Rata Shares, whereupon that Bank will cease to be a Defaulting Lender; provided that no adjustments



will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Bank was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Bank will constitute a waiver or release of any claim of any party hereunder arising from that Bank's having been a Defaulting Lender.

### ARTICLE III

#### YIELD PROTECTION; ILLEGALITY, ETC.

**Section 3.01 Additional Costs.** Borrower shall pay directly to each Bank from time to time on demand such amounts as such Bank may determine to be necessary to compensate it for any increased costs incurred by it **or reduction of the amount received or receivable by it** which are attributable to its making, Converting, Continuing or maintaining any Loan, or its obligation to make, Convert, Continue or maintain a Loan hereunder, or any reduction in any amount receivable by such Bank hereunder in respect of any Loan or such obligations (such increases in costs and reductions in amounts receivable being herein called "**Additional Costs**"), in each case resulting from any Regulatory Change which:

(1) subjects any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(2) ~~(other than to the extent the LIBOR Reserve Requirement is taken into account in determining the LIBOR Rate at the commencement of the applicable Interest Period)~~ imposes or modifies any reserve, special deposit, compulsory loan, deposit insurance or assessment, minimum capital, capital ratio or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Bank ~~(including any LIBOR Loan or any deposits referred to in the definition of "LIBOR Interest Rate" in Section 1.01)~~, or any commitment of such Bank (including such Bank's Loan Commitment hereunder); or

(3) imposes any other condition, cost or expense (other than Taxes) affecting this Agreement, the Loans or the Notes (or any of such extensions of credit or liabilities or the London interbank market).

Without limiting the effect of the provisions of the first paragraph of this Section, in the event that, by reason of any Regulatory Change, any Bank either (1) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Bank which includes deposits by reference to which ~~the LIBOR Interest Rate~~ **SOFR** is determined as provided in this Agreement or a category of extensions of credit or other assets of such Bank which includes loans based on ~~the LIBOR Interest Rate~~ **SOFR** or (2) becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold, then, if such Bank so elects by notice to Borrower (with a copy to Administrative Agent), the obligation of such Bank to permit Elections of, to Continue, or to Convert Base Rate Loans into, ~~LIBOR~~ **SOFR** Loans shall be suspended (in which case the

provisions of Section 3.04 shall be applicable) until such Regulatory Change ceases to be in effect.

Determinations and allocations by a Bank for purposes of this Section of the effect of any Regulatory Change pursuant to the first or second paragraph of this Section, on its costs or rate of return of making or maintaining its Loan or portions thereof or on amounts receivable by it in respect of its Loan or portions thereof, and the amounts required to compensate such Bank under this Section, shall be included in a calculation of such amounts given to Borrower and shall be conclusive absent manifest error.

**Section 3.02 Section 3.02 Inability to Determine Rates.**

(a) If in connection with any request for a ~~LIBOR Loan (or a Conversion or Continuation thereof)~~ **Term SOFR Loan or Daily SOFR Loan or a conversion of Base Rate Loans or Daily SOFR Loans to Term SOFR Loans or Daily SOFR Loans or a continuation of any Term SOFR Loans, as applicable,** (i) the Administrative Agent determines that ~~(A) Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such LIBOR Loan, or (which determination shall be conclusive absent manifest error) that (A) no Successor Rate has been determined in accordance with Section 3.02(b), and the circumstances under clause (i) of Section 3.02(b) or the Scheduled Unavailability Date has occurred,~~ **(A) no Successor Rate has been determined in accordance with Section 3.02(b), and the circumstances under clause (i) of Section 3.02(b) or the Scheduled Unavailability Date has occurred,** ~~(B) (x) adequate and reasonable means do not otherwise exist for determining the LIBOR Interest Rate~~ **Term SOFR** for any requested Interest Period with respect to a proposed ~~LIBOR~~ **Term SOFR** Loan or in connection with an existing or proposed Base Rate Loan and ~~(y) the circumstances described in Section 3.02(c)(i) do not apply (in each case with respect to this clause (i), "Impacted Loans") or (C) adequate and reasonable means do not otherwise exist for determining Daily SOFR in connection with an existing or proposed Daily SOFR Loan,~~ or (ii) the Administrative Agent or the Required Banks ~~reasonably determine (which determination shall be conclusive) that the LIBOR Interest Rate for any~~ **determine that for any reason that Term SOFR for any** requested Interest Period **or Daily SOFR** with respect to a proposed ~~LIBOR~~ Loan does not adequately and fairly reflect the cost to such Banks of funding such ~~LIBOR~~ Loan, the Administrative Agent will promptly so notify the Borrower and each Bank.

Thereafter, ~~(x) the obligation of the Banks to make or maintain LIBOR Loans~~ **Term SOFR Loans or Daily SOFR Loans, or to convert Base Rate Loans or Daily SOFR Loans to Term SOFR Loans or Daily SOFR Loans,** shall be suspended (to the extent of the affected ~~LIBOR Loan~~ **Term SOFR Loans, Daily SOFR Loans,** or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the ~~LIBOR Base Rate~~ **Term SOFR** component of the Base Rate, the utilization of the ~~LIBOR Base Rate~~ **Term SOFR** component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (or, in the case of a determination by the Required Banks described in clause (ii) of this ~~Section 3.02~~ **3.03**(a), until the Administrative Agent upon instruction of the Required Banks) revokes such notice.

Upon receipt of such notice, ~~(i) the Borrower may revoke any pending request for a borrowing of, Conversion or Continuation of LIBOR or~~ **conversion to, or continuation of Term SOFR Loans or Daily SOFR** Loans (to the extent of the affected ~~LIBOR Loan~~ **Term SOFR Loans, Daily SOFR Loans,** or Interest Periods) or, failing that, will be deemed to have

converted such request into a request for a ~~borrowing~~Loan of Base Rate Loans in the amount specified therein; **(ii) any outstanding Term SOFR Loans shall be deemed to have been converted to Base Rate Loans immediately at the end of their respective applicable Interest Period and (iii) any outstanding Daily SOFR Loans shall immediately be deemed to have been converted to Base Rate Loans.**

~~(b) Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (i) of Section 3.02(a), the Administrative Agent, in consultation with the Borrower, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (i) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (i) of the first sentence of Section 3.02(a), (ii) the Administrative Agent or the Required Banks notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Banks of funding the Impacted Loans, or (iii) any Bank determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Bank or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Bank to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.~~

**(eb) Replacement of SOFR or Successor Rate.** Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Borrower or Required Banks notify the Administrative Agent (with, in the case of the Required Banks, a copy to the Borrower) that the Borrower or Required Banks (as applicable) have determined, that:

**(i) ~~(i)~~ adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period ~~one month, three month and six month interest periods of Term SOFR~~, including, without limitation, because the ~~LIBOR~~Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or**

**(ii) ~~(ii)~~ the ~~CME or any successor~~ administrator of the ~~LIBOR~~Term SOFR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent ~~or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity~~, has made a public statement identifying a specific date after which ~~LIBOR or the LIBOR~~one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall ~~or will~~ no longer be made available, or ~~permitted to be used for determining the interest rate of loans (U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one month, three month and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the "Scheduled Unavailability Date")~~; or**

(iii) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.02, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

**then, on a date and time determined by the Administrative Agent (any such date, the “Term SOFR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any Loan Document with Daily SOFR for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the “Successor Rate”).**

**If the Successor Rate is Daily SOFR, all interest payments will be payable on a monthly basis.**

~~then, reasonably promptly after such determination by~~ **Notwithstanding anything to the contrary herein, (i) if the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable determines that Daily SOFR is not available on or prior to the Term SOFR Replacement Date, or (ii) if the events or circumstances of the type described in Section 3.02(b)(i) or (ii) have occurred with respect to Daily SOFR or the Successor Rate then in effect, then in each case,** the Administrative Agent and the Borrower may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein); **solely for the purpose of replacing Term SOFR, Daily SOFR or any then current Successor Rate in accordance with this Section 3.02 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate** giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities **syndicated and agented in the United States** for such alternative benchmarks ~~(benchmark, and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated credit facilities syndicated and agented in the United States for such benchmark, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate, a “LIBOR and adjustments, shall constitute a “Successor Rate”); together with any proposed LIBOR-Successor Rate-Conforming Changes (as defined below) and any, Any~~ such amendment shall become effective at 5:00 p.m. on the fifth Banking Day after the Administrative Agent shall have posted such proposed amendment to all Banks and the Borrower unless, prior to such time, Banks comprising the Required Banks have delivered to the Administrative Agent written notice that such Required Banks ~~do not accept~~ **object to** such amendment. ~~Such LIBOR~~

**The Administrative Agent will promptly (in one or more notices) notify the Borrower and each Bank of the implementation of any Successor Rate.**

**Any** Successor Rate shall be applied in a manner consistent with market practice; **provided** that to the extent such market practice is not administratively feasible for the

Administrative Agent, such ~~LIBOR~~ Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

~~If no LIBOR Successor Rate has been determined and the circumstances under clause (i) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Borrower and each Bank. Thereafter, (x) the obligation of the Banks to make or maintain LIBOR Loans shall be suspended, (to the extent of the affected LIBOR Loan or Interest Periods), and (y) the LIBOR Base Rate component shall no longer be utilized in determining the Base Rate. Upon receipt of such notice, the Borrower may revoke any pending request for a borrowing of, Conversion or Continuation of LIBOR Loans (to the extent of the affected LIBOR Loan or Interest Periods) or, failing that, will be deemed to have converted such request for a LIBOR Loan into a request for a borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.~~

Notwithstanding anything else herein, ~~if at any definition of LIBOR time any~~ Successor Rate shall provide that in no event shall such ~~LIBOR Successor Rate~~ **as so determined would otherwise** be less than zero ~~for %~~, **the Successor Rate will be deemed to be zero% for the purposes of this Agreement and the other Loan Documents.**

~~For purposes hereof, "LIBOR Successor Rate Conforming Changes" means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of the Administrative Agent in consultation with the Borrower, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement).~~

**In connection with the implementation of a Successor Rate, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such Conforming Changes to the Borrower and the Banks reasonably promptly after such amendment becomes effective.**

~~**Section 3.03 Section 3.03 Illegality.** Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful **If** any Bank determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Bank or its ~~Applicable~~ **applicable** Lending Office to honor its obligation to make or maintain a LIBOR Loan hereunder, to allow Elections or Continuations of a LIBOR Loan or to Convert a Base Rate Loan into a LIBOR Loan, then such Bank shall promptly notify Administrative Agent and Borrower thereof and such Bank's obligation to make or maintain a LIBOR Loan, or to permit Elections of, to Continue, or to Convert its Base Rate Loan into, a LIBOR Loan ~~make, maintain~~~~

or fund Loans whose interest is determined by reference to SOFR, Term SOFR or Daily SOFR, or to determine or charge interest rates based upon SOFR, Term SOFR or Daily SOFR, then, upon notice thereof by such Bank to the Borrower (through the Administrative Agent), (a) any obligation of such Bank to make or continue Term SOFR Loans or Daily SOFR Loans or to convert Base Rate Loans or Daily SOFR Loans to Term SOFR Loans or Daily SOFR Loans shall be suspended (in which case the provisions of Section 3.04 shall be applicable) until such time as such Bank may again make and maintain a LIBOR Loan. In addition, and (b) if such notice from a Bank asserts the illegality of such Bank making or maintaining Base Rate Loans the interest rate on which is determined by reference to the ~~LIBOR Base Rate~~ Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Bank shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the ~~LIBOR Base Rate~~ Term SOFR component of the Base Rate, in each case until such Bank notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, upon demand from such Bank (with a copy to the Administrative Agent), prepay or, if applicable, convert all Term SOFR Loans of such Bank to Base Rate Loans (the interest rate on which Base Rate Loans of such Bank shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Bank may lawfully continue to maintain such Term SOFR Loan to such day, or immediately, if such Bank may not lawfully continue to maintain such Term SOFR Loan, (ii) the Borrower shall, upon demand from such Bank (with a copy to the Administrative Agent) immediately prepay, or, if applicable, convert all Daily SOFR Loans of such Bank to Base Rate Loans (the interest rate on which Base Rate Loans of such Bank shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate) and (iii) if such notice asserts the illegality of such Bank determining or charging interest rates based upon SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Bank without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Bank that it is no longer illegal for such Bank to determine or charge interest rates based upon SOFR. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 3.05.

**Section 3.04 Treatment of Affected Loans.** If the obligations of any Bank to make or maintain a ~~LIBOR~~ Term SOFR Loan, or to permit an Election of a ~~LIBOR~~ Term SOFR Loan, to Continue its ~~LIBOR~~ Term SOFR Loan, or to Convert its Base Rate Loan into a ~~LIBOR~~ Term SOFR Loan, are suspended pursuant to Sections 3.01 or 3.03 (each ~~LIBOR~~ Term SOFR Loan so affected being herein called an “*Affected Loan*”), such Bank’s Affected Loan shall be automatically Converted into a Base Rate Loan on the last day of the then current Interest Period for the Affected Loan (or, in the case of a Conversion (or conversion) required by Sections 3.01 or 3.03, on such earlier date as such Bank may specify to Borrower).

To the extent that such Bank’s Affected Loan has been so Converted (or the interest rate thereon so converted), all payments and prepayments of principal which would otherwise be applied to such Bank’s Affected Loan shall be applied instead to its Base Rate Loan and such Bank shall have no obligation to Convert its Base Rate Loan into a ~~LIBOR~~ Term SOFR Loan.

**Section 3.05 Certain Compensation.** Other than in connection with a Conversion of an Affected Loan, Borrower shall pay to Administrative Agent for the account of the applicable Bank, upon the request of such Bank through Administrative Agent which request includes a calculation of the amount(s) due, such amount or amounts as shall be sufficient (in the reasonable opinion of such Bank) to compensate it for any non-administrative, actual loss, cost or expense which such Bank reasonably determines is attributable to:

(1) any payment or prepayment of a ~~LIBOR~~**Term SOFR** Loan made by such Bank, or any Conversion or Continuation of a ~~LIBOR~~**Term SOFR** Loan made by such Bank, in any such case on a date other than the last day of an applicable Interest Period, whether by reason of acceleration or otherwise; or

(2) any failure by Borrower for any reason to Convert a Base Rate Loan or a ~~LIBOR~~**Term SOFR** Loan or Continue a ~~LIBOR~~**Term SOFR** Loan to be Converted or Continued by such Bank on the date specified therefor in the relevant notice under Section 2.13; or

(3) any failure by Borrower to borrow (or to qualify for a borrowing of) a ~~LIBOR~~**Term SOFR** Loan which would otherwise be made hereunder on the date specified in the relevant Election notice under Section 2.13.

Without limiting the foregoing, such compensation shall include any loss incurred in obtaining, liquidating or employing deposits from third parties, but excluding loss of margin for the period after the date of such payment, prepayment, Conversion or Continuation (or failure to Convert, Continue or borrow). A determination of any Bank as to the amounts payable pursuant to this Section shall be conclusive absent manifest error. No Bank shall make any request pursuant to this Section 3.05 unless such amounts due to, and costs incurred by, such Bank are equal to or greater than \$100.

**Section 3.06 Capital or Liquidity Adequacy.** If any Bank shall have determined that, after the date hereof, any Regulatory Change regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on capital of such Bank (or its Parent) as a consequence of such Bank's obligations hereunder to a level below that which such Bank (or its Parent) could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount deemed by such Bank to be material, then from time to time, within fifteen (15) days after demand by such Bank (with a copy to Administrative Agent), Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank (or its Parent) for such reduction. A certificate of any Bank claiming compensation under this Section, setting forth in reasonable detail the basis therefor, shall be conclusive absent manifest error.

**Section 3.07 Substitution of Banks.** If any Bank (an "*Affected Bank*") (1) makes demand upon Borrower for (or if Borrower is otherwise required to pay) Additional Costs pursuant to Section 3.01 or additional amounts under Section 3.06 or (2) is unable to make or maintain a ~~LIBOR~~**Term SOFR** Loan as a result of a condition described in Section 3.03, or (3) if Borrower is required to pay any Indemnified Taxes or additional amounts to any Bank or any Governmental Authority for the account of any Bank pursuant to Section 3.10, or (4) becomes a Defaulting Lender, Borrower may, within ninety (90) days of receipt of such demand or notice (or the occurrence of such other event causing Borrower to be required to pay Additional Costs or causing said Section 3.03 to be applicable) or such Bank becoming a Defaulting Lender, as the

case may be, give written notice (a “**Replacement Notice**”) to Administrative Agent and to each Bank of Borrower’s intention either (x) to prepay in full the Affected Bank’s Note(s) and to terminate the Affected Bank’s entire Loan Commitment or (y) to replace the Affected Bank with another financial institution (the “**Replacement Bank**”) designated in such Replacement Notice. In the event Borrower opts to give the notice provided for in clause (x) above, and if the Affected Bank shall not agree within thirty (30) days of its receipt thereof to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03, if applicable, then, so long as no Default or Event of Default shall exist, Borrower may terminate the Affected Bank’s entire Loan Commitment, provided that in connection therewith it pays to the Affected Bank all outstanding principal and accrued and unpaid interest under the Affected Bank’s Note(s), together with all other amounts, if any, due from Borrower to the Affected Bank, including all amounts properly demanded and unreimbursed under Sections 3.01 and 3.05.

In the event Borrower opts to give the notice provided for in clause (y) above, and if (i) Administrative Agent shall, within thirty (30) days of its receipt of the Replacement Notice, notify Borrower and each Bank in writing that the Replacement Bank is reasonably satisfactory to Administrative Agent and (ii) the Affected Bank shall not, prior to the end of such thirty (30)-day period, agree to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03 or clause (2) of Section 3.02, if applicable, then the Affected Bank shall, so long as no Default or Event of Default shall exist, assign its Note(s) and all of its rights and obligations under this Agreement to the Replacement Bank, and the Replacement Bank shall assume all of the Affected Bank’s rights and obligations, pursuant to an agreement, substantially in the form of an Assignment and Acceptance, executed by the Affected Bank and the Replacement Bank. In connection with such assignment and assumption, the Replacement Bank shall pay to the Affected Bank an amount equal to the outstanding principal amount under the Affected Bank’s Note(s) plus all interest accrued thereon, plus all other amounts, if any (other than the Additional Costs in question), then due and payable to the Affected Bank; provided, however, that prior to or simultaneously with any such assignment and assumption, Borrower shall have paid to such Affected Bank all amounts properly demanded and unreimbursed under Sections 3.01 and 3.05. Upon the effective date of such assignment and assumption, the Replacement Bank shall become a Bank party to this Agreement and shall have all the rights and obligations of a Bank as set forth in such Assignment and Acceptance, and the Affected Bank shall be released from its obligations hereunder, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this Section, a substitute Note shall be issued to the Replacement Bank by Borrower, in exchange for the return of the Affected Bank’s Note. The obligations evidenced by such substitute note shall constitute “Obligations” for all purposes of this Agreement and the other Loan Documents. In connection with Borrower’s execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite corporate action to authorize Borrower’s execution and delivery of the substitute notes and any related documents. Each Replacement Bank shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to a reduction in or exemption from deduction or withholding of any United States federal income or withholding taxes in accordance with Section 3.10. Each Replacement Bank shall be deemed to have made the representations contained in, and shall be bound by the provisions of, Section 3.10.



Borrower, Administrative Agent and the Banks shall execute such modifications to the Loan Documents as shall be reasonably required in connection with and to effectuate the foregoing.

**Section 3.08 Applicability.** The provisions of this Article III shall be applied to Borrower so as not to discriminate against Borrower vis-a-vis similarly situated customers of the Banks.

**Section 3.09 Time for Notices.** No Bank shall be entitled to compensation under Section 3.01 or Section 3.06 for any costs incurred or reduction suffered with respect to any date unless such Bank shall have notified the Borrower that it will demand compensation for such costs or reduction (such notice to provide a computation of such costs or reductions) not more than one hundred twenty (120) days after such Bank has obtained actual knowledge of an event entitling it to such compensation, except that if such event giving rise to compensation is retroactive, then the one hundred twenty (120) day period referred to above shall be extended to include the period of retroactive effect.

**Section 3.10 Taxes.**

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.10) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by the Borrower.** Without limiting or duplicating the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) **Tax Indemnifications.**

(i) **Indemnification by Borrower.** The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.10) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Bank (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Bank, shall be conclusive absent manifest error.

(ii) **Indemnification by the Banks.** Each Bank shall severally indemnify (A) the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Bank (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified

Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Bank's failure to comply with the provisions of Section 12.05 relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Bank, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and (B) the Administrative Agent and the Borrower, within ten (10) days after demand therefor, for any Taxes attributable to such Bank's failure to comply with Section 3.10(e) that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Bank by the Administrative Agent or the Borrower shall be conclusive absent manifest error. Each Bank hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Bank under any Loan Document or otherwise payable by the Administrative Agent to the Bank from any other source against any amount due to the Administrative Agent under this clause (c)(ii).

(d) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.10, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Banks; Tax Documentation. (i) Any Bank that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, or as required by applicable law, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Bank, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Bank is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.10(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Bank's reasonable judgment such completion, execution or submission would subject such Bank to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Bank.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person, as defined in Section 7701(a)(30) of the Code,

(A) any Bank that is a U.S. Person, as defined in Section 7701(a)(30) of the Code, shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative

Agent), executed originals of IRS Form W-9 certifying that such Bank is exempt from U.S. federal backup withholding tax;

(B) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Bank claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Bank claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of **EXHIBIT H-1** to the effect that such Foreign Bank is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10-percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “*U.S. Tax Compliance Certificate*”) and (y) executed originals of IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable); or

(4) to the extent a Foreign Bank is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable), a U.S. Tax Compliance Certificate substantially in the form of **EXHIBIT H-2** or **EXHIBIT H-3**, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Bank is a partnership and one or more direct or indirect partners of such Foreign Bank are claiming the portfolio interest exemption, such Foreign Bank may provide a U.S. Tax Compliance Certificate substantially in the form of **EXHIBIT H-4** on behalf of each such direct and indirect partner;

(C) any Foreign Bank shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Bank becomes a Bank under this Agreement (and from time to time thereafter upon the reasonable request of Borrower or the Administrative Agent), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Bank under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Bank were

to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Bank shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Bank has complied with such Bank's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Bank agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Bank, or have any obligation to pay to any Bank, any refund of Taxes withheld or deducted from funds paid for the account of such Bank, as the case may be. If the Administrative Agent, any Bank determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 3.10 (including by the payment of additional amounts pursuant to this Section 3.10), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent or such Bank, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Administrative Agent or such Bank, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Bank in the event the Administrative Agent or such Bank is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (f) the amount of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require the Administrative Agent or any Bank to make available its tax returns (or any other information relating to its taxes that it deems confidential) to, or to file for or pursue any refund of Taxes on behalf of, the Borrower or any other Person.

(g) Defined Terms. For purposes of this Section, the term "applicable Laws" includes FATCA.

**Section 3.11 Designation of a Different Lending Office.** Each Bank may make any Loan to the Borrower through any Applicable Lending Office, provided that the exercise of such option shall not affect the Borrower's obligation to repay such Loan in accordance with the terms of this Agreement. If any Bank requests compensation under Section 3.01 or 3.06, or requires

the Borrower to pay any Indemnified Taxes or additional amounts to any Bank or any Governmental Authority for the account of any Bank pursuant to Section 3.10, then such Bank shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Bank, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01, 3.06 or 3.10, as the case may be, in the future, and (ii) would not subject such Bank to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Bank. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Bank in connection with any such designation or assignment.

#### ARTICLE IV

#### CONDITIONS PRECEDENT

**Section 4.01 Conditions Precedent to the Closing Date.** The effectiveness of this Agreement and the deemed making of the Loans by the Banks hereunder are subject to the condition precedent that Administrative Agent shall have received and approved on or before the Closing Date each of the following documents and each of the following requirements shall have been fulfilled:

- (1) Fees and Expenses. The payment of (a) all fees and expenses incurred by Syndication Agents and Administrative Agent (including, without limitation, the reasonable fees and expenses of legal counsel) and (b) those fees specified in the Fee Letters to be paid by Borrower on or before the Closing Date;
- (2) Loan Agreement and Notes. This Agreement and the Notes for each of the Banks signatory hereto which has requested such Note(s), each duly executed by Borrower;
- (3) Financial Statements. Audited Borrower's Consolidated Financial Statements as of and for the year ended December 31, 2018;
- (4) Evidence of Formation of Borrower. Certified (as of the Closing Date) copies of Borrower's certificate of incorporation and by-laws, with all amendments thereto, and a certificate of the Secretary of State of the jurisdiction of formation as to its good standing therein;
- (5) Evidence of All Corporate Action. Certified (as of the Closing Date) copies of all documents evidencing the corporate action taken by Borrower authorizing the execution, delivery and performance of the Loan Documents and each other document to be delivered by or on behalf of Borrower pursuant to this Agreement;
- (6) Incumbency and Signature Certificate of Borrower. A certificate (dated as of the Closing Date) of the secretary of Borrower certifying the names and true signatures of each person authorized to sign on behalf of Borrower;
- (7) Solvency Certificate. A duly executed Solvency Certificate;
- (8) Opinion of Counsel for Borrower. A favorable opinion, dated the Closing Date, of Goodwin Procter LLP, counsel for Borrower, as to such matters as Administrative Agent may reasonably request;

- (9) Authorization Letter. The Authorization Letter, duly executed by Borrower;
- (10) **[Reserved]**;
- (11) Certificate. The following statements shall be true and Administrative Agent shall have received a certificate dated the Closing Date signed by a duly authorized signatory of Borrower stating, to the best of the certifying party's knowledge, the following:
- (a) All representations and warranties contained in this Agreement and in each of the other Loan Documents are true and correct on and as of the Closing Date as though made on and as of such date;
  - (b) No Default or Event of Default has occurred and is continuing, or could result from the transactions contemplated by this Agreement and the other Loan Documents; and
  - (c) No Material Adverse Change exists on and as of the Closing Date;
- (12) Fee Letters. The Fee Letters, duly executed by Borrower;
- (13) Covenant Compliance. A covenant compliance certificate of the sort required by paragraph (3) of Section 6.09 for the most recent calendar quarter for which Borrower is required to report financial results;
- (14) Know-Your-Customer Information. (x) Upon the written request of any Bank made at least ten (10) days prior to the Closing Date, the Borrower shall have provided to such Bank the documentation and other information that such Bank reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act, in each case at least five (5) days prior to the Closing Date and (y) at least five (5) days prior to the Closing Date, if the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, the Borrower shall have delivered, to each Bank that so requests in writing, a Beneficial Ownership Certification in relation to the Borrower (it being acknowledged by the Administrative Agent and the Banks party hereto that, as of the Closing Date, as a publicly traded company listed on the New York Stock Exchange, the information required to be provided in the Borrower's requisite Beneficial Ownership Certification shall be limited to the information that such Banks are required to obtain under the Beneficial Ownership Regulation in respect of such publicly traded companies); and
- (15) Additional Materials. Such other approvals, documents, instruments or opinions as Administrative Agent may reasonably request.

**Section 4.02 Conditions Precedent to Each Advance.** The obligation of each Bank to make each advance of the Loans shall be subject to satisfaction of the following conditions precedent on any Increased Amount Date (if applicable):

- (1) All conditions of Section 4.01 shall have been and remain satisfied as of the date of such advance;

(2) No Default or Event of Default shall have occurred and be continuing as of the date of the advance or would result from the making of such advance;

(3) Each of the representations and warranties contained in this Agreement and in each of the other Loan Documents shall be true and correct in all material respects as of the date of the advance (or in the case of any representation or warranty that is qualified as to “materiality”, “Material Adverse Change” or similar language, shall be true and correct in all respects after giving effect to such qualification), except for representations and warranties which are expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; and

(4) Administrative Agent shall have received a request for an advance in accordance with Section 2.03.

**Section 4.03 Deemed Representations.** Each request by Borrower for, and acceptance by Borrower of, an advance of proceeds of the Loans shall constitute a representation and warranty by Borrower as to the satisfaction of the conditions in clauses (2) and (3) of Section 4.02, as of both the date of such request and the date of such advance or issuance.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and each Bank as follows:

**Section 5.01 Due Organization.** Borrower is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has the power and authority to own its assets and to transact the business in which it is now engaged, and, if applicable, is duly qualified for the conduct of business and in good standing under the Laws of each other jurisdiction in which such qualification is required and where the failure to be so qualified would cause a Material Adverse Change.

**Section 5.02 Power and Authority; No Conflicts; Compliance With Laws.** The execution, delivery and performance of the obligations required to be performed by Borrower of the Loan Documents are within the Borrower’s corporate powers, have been authorized by all necessary corporate action, and do not and will not (a) require the consent or approval of its shareholders or such consent or approval has been obtained, (b) contravene either its certificate of incorporation or by-laws, (c) to the best of Borrower’s knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law (including, without limitation, Regulation T, Regulation U or Regulation X), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it, (d) result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which it may be a party or by which it or its properties may be bound or affected except for consents which have been obtained, (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of its properties now owned or hereafter acquired or (f) to the best of Borrower’s knowledge, cause it to be in default under any such Law, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument; to the best of its knowledge, Borrower is in compliance with all Laws applicable to it and its properties where failure to be in compliance with such Laws could reasonably be expected to result in a Material Adverse Change.

**Section 5.03 Legally Enforceable Agreements.** Each Loan Document has been duly executed and delivered by the Borrower and is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.

**Section 5.04 Litigation.** There are no actions, suits or proceedings pending or, to its knowledge, threatened against Borrower or any of its Affiliates before any court or arbitrator or any Governmental Authority which are reasonably likely to result in a Material Adverse Change or challenge the validity or enforceability of any of the Loan Documents.

**Section 5.05 Good Title to Properties.** Borrower and each of its ~~Material Affiliates~~ **Consolidated Subsidiaries** have good, marketable and legal title to all of the properties and assets each of them purports to own (including, without limitation, those reflected in the Consolidated Financial Statements referred to in Section 5.13), only with exceptions which do not materially detract from the use thereof in Borrower's and such ~~Material Affiliate's~~ **Consolidated Subsidiary's** business, and except to the extent that any such properties and assets have been encumbered or disposed of since the date of such financial statements without violating any of the covenants contained in Article VII or elsewhere in this Agreement. Borrower and its ~~Material Affiliates~~ **Consolidated Subsidiaries** enjoy peaceful and undisturbed possession of all ground leased property necessary in any material respect in the conduct of their respective businesses. All such ground leases are valid and subsisting and are in full force and effect.

**Section 5.06 Taxes.** Borrower has filed all tax returns (federal, state and local) required to be filed by it and has paid all taxes, assessments and governmental charges and levies due and payable without the imposition of a penalty, including interest and penalties, except to the extent they are the subject of a Good Faith Contest. Borrower qualifies as a real estate investment trust under the Code.

**Section 5.07 ERISA.** Borrower is in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred with respect to any Plan which could result in liability of Borrower; no notice of intent to terminate a Plan has been filed nor has any Plan been terminated within the past five (5) years; no circumstance exists which constitutes grounds under Section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; Borrower and the ERISA Affiliates have not completely or partially withdrawn under Sections 4201 or 4204 of ERISA from a Multiemployer Plan; Borrower and the ERISA Affiliates have met the minimum funding requirements of Section 412 of the Code and Section 302 of ERISA of each with respect to the Plans of each and there is no material "Unfunded Current Liability" (as such quoted term is defined in ERISA) with respect to any Plan established or maintained by each; and Borrower and the ERISA Affiliates have not incurred any liability to the PBGC under ERISA (other than for the payment of premiums under Section 4007 of ERISA). No part of the funds to be used by Borrower in satisfaction of its obligations under this Agreement constitute "plan assets" of any "employee benefit plan" within the meaning of ERISA or of any "plan" within the meaning of Section 4975(e)(1) of the Code, as interpreted by the IRS and the U.S. Department of Labor in rules, regulations, releases, bulletins or as interpreted under applicable case law.

**Section 5.08 No Default on Outstanding Judgments or Orders, Etc.** Borrower and each of its ~~Material Affiliates~~ **Consolidated Subsidiaries** have satisfied all judgments which are not being appealed or which are not fully covered by insurance, and are not in default with



respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other Governmental Authority, commission, board, bureau, agency or instrumentality, domestic or foreign, where the failure to satisfy such judgments or any such default thereunder (a) could reasonably be expected to cause a Material Adverse Change or (b) could reasonably be expected to cause an Event of Default under Article IX of this Agreement (without considering or giving effect to any grace periods applicable thereto).

**Section 5.09 No Defaults on Other Agreements.** Except as disclosed to Administrative Agent in writing (who shall provide such information, promptly upon receipt, to each of the Banks), Borrower is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any partnership, trust or other restriction which is likely to result in a Material Adverse Change. Borrower is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument which is likely to result in a Material Adverse Change. Borrower and each of its ~~Material Affiliates~~**Consolidated Subsidiaries** are in compliance in all material respects with all Laws applicable to it, except where no Material Adverse Change could reasonably be expected to occur as a result of such non-compliance.

**Section 5.10 Government Regulation.** Borrower is not subject to regulation under the Investment Company Act of 1940 or any statute or regulation limiting its ability to incur indebtedness for money borrowed as contemplated hereby. The Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock.

**Section 5.11 Environmental Protection.** To the best of Borrower's knowledge, none of Borrower's or its ~~Material Affiliates~~**Consolidated Subsidiaries**' properties contains any Hazardous Materials that, under any Environmental Law currently in effect, (1) would impose liability on Borrower that is likely to result in a Material Adverse Change or (2) is likely to result in the imposition of a Lien on any material assets of Borrower ~~or its Material Affiliates~~**and its Consolidated Subsidiaries (taken as a whole)**, in each case if not properly handled in accordance with applicable Law or not covered by insurance or a bond, in either case reasonably satisfactory to Administrative Agent. To the best of Borrower's knowledge, neither it nor any of its ~~Material Affiliates~~**Consolidated Subsidiaries is in** violation of, or subject to any existing, pending or threatened ~~material~~**investigation or proceeding by any Governmental Authority under any Environmental Law, in each case, that is likely to result in a Material Adverse Change.**

**Section 5.12 Solvency.** Borrower is, and upon consummation of the transactions contemplated by this Agreement, the other Loan Documents and any other documents, instruments or agreements relating thereto, will be, Solvent.

**Section 5.13 Financial Statements.** The Borrower's Consolidated Financial Statements most recently delivered to the Banks pursuant to the terms of this Agreement are in all material respects complete and correct and fairly present the financial condition of the subject thereof as of the dates of and for the periods covered by such statements, all in accordance with GAAP. There has been no Material Adverse Change since the date of such most recently delivered Borrower's Consolidated Financial Statements.

**Section 5.14 Valid Existence of Affiliates Consolidated Subsidiaries.** ~~At the Closing Date, the only Material Affiliates of Borrower are listed on EXHIBIT C. Each Material Affiliate~~**Except where no Material Adverse Change could reasonably be expected to occur, each Consolidated Subsidiary** is a corporation, partnership or limited liability company duly organized and existing in good standing under the Laws of the jurisdiction of its formation. ~~As to each Material Affiliate, its correct name, the jurisdiction of its formation, Borrower's percentage of beneficial interest therein, and the type of business in which it is primarily engaged, are set forth on said EXHIBIT C. Borrower and each of its Material Affiliates have~~**Except where no Material Adverse Change could reasonably be expected to occur, each Consolidated Subsidiary** ~~has~~ the power to own ~~theirs~~ respective properties and to carry on ~~theirs~~ respective businesses now being conducted. Each ~~Material Affiliate~~**Consolidated Subsidiary** is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the respective businesses conducted by it or its respective properties, owned or held under lease, make such qualification necessary and where the failure to be so qualified would cause a Material Adverse Change.

**Section 5.15 Insurance.** Borrower and each of its ~~Material Affiliates~~**Consolidated Subsidiaries** have in force paid insurance with financially sound and reputable insurance companies or associations, including customary self-insured retention amounts, in such amounts and covering such risks as are usually carried by companies engaged in the same type of business and similarly situated.

**Section 5.16 Accuracy of Information; Full Disclosure.** Neither this Agreement nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of Borrower to Administrative Agent or any Bank in connection with the negotiation of this Agreement or the consummation of the transactions contemplated hereby, or required herein to be furnished by or on behalf of Borrower (other than projections which are made by Borrower in good faith), contains any untrue or misleading statement of a material fact or omits a material fact necessary to make the statements herein or therein not misleading. To the best of Borrower's knowledge, there is no fact which Borrower has not disclosed to Administrative Agent and the Banks in writing which materially affects adversely nor, so far as Borrower can now foresee, will materially affect adversely the business affairs or financial condition of Borrower or the ability of Borrower to perform this Agreement and the other Loan Documents. As of the Closing Date, the information included in any Beneficial Ownership Certification, if applicable, is true and correct in all respects.

**Section 5.17 OFAC.** None of the Borrower, any of its Consolidated Businesses, or any of its ~~Material Affiliates~~**Consolidated Subsidiaries**, or, to the knowledge of the Borrower, any director, officer, employee or affiliate thereof, is an individual or entity that is, or is owned or controlled by one or more individuals or entities that are (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. The Borrower and its ~~Material Affiliates~~**Subsidiaries** have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

**Section 5.18 Anti-Corruption Laws.** The Borrower, its Consolidated Businesses and its ~~Material Affiliates~~**Consolidated Subsidiaries** have conducted their businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, and, to the extent the same are applicable to the Borrower and/or its Consolidated Businesses or to the extent that a Bank notifies Borrower that the same are applicable to the Loans, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions and, to the extent applicable, have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

**Section 5.19 EEA Affected Financial Institution.** The Borrower is not an ~~EEA Affected~~ Financial Institution.

**Section 5.20 Covered Entities. The Borrower is not a Covered Entity.**

## ARTICLE VI

### AFFIRMATIVE COVENANTS

So long as any of the Loans or any other Obligations shall remain unpaid or the Loan Commitments remain in effect, or any other amount is owing by Borrower to any Bank Party hereunder or under any other Loan Document, Borrower shall, and, in the case of Sections 6.01 through 6.07, inclusive, and Section ~~6.106.11~~, shall cause each of its ~~Material Affiliates~~**Consolidated Subsidiaries** to:

**Section 6.01 Maintenance of Existence.** Preserve and maintain its legal existence and good standing in the jurisdiction of its organization, and qualify and remain qualified as a foreign entity in each other jurisdiction in which such qualification is required except to the extent that failure to be so qualified in such other jurisdictions **do any of the foregoing (other than the preservation and maintenance of Borrower's legal existence and good standing in the jurisdiction of its organization)** is not likely to result in a Material Adverse Change.

**Section 6.02 Maintenance of Records.** Keep adequate records and books of account, in which complete entries will be made reflecting all of its financial transactions, in accordance with GAAP.

**Section 6.03 Maintenance of Insurance.** At all times, maintain and keep in force insurance with financially sound and reputable insurance companies or associations, including customary self-insured retention amounts, in such amounts and covering such risks as are usually carried by companies engaged in the same type of business and similarly situated and will provide satisfactory evidence of the same as reasonably requested by Administrative Agent. In connection with the foregoing, it is understood that Borrower's earthquake insurance coverage in place as of the Closing Date is acceptable to Administrative Agent.

**Section 6.04 Compliance with Laws; Payment of Taxes.** Comply in all material respects with all Laws applicable to it or to any of its properties or any part thereof, such compliance to include, without limitation, paying before the same become delinquent all material taxes, assessments and governmental charges imposed upon it or upon its property, except to the extent they are the subject of a Good Faith Contest.

**Section 6.05 Right of Inspection.** At any reasonable time and from time to time upon reasonable notice, permit Administrative Agent or any Bank or any agent or representative thereof to examine and make copies and abstracts from its records and books of account and visit its properties and to discuss its affairs, finances and accounts with the independent accountants of Borrower.

**Section 6.06 Compliance With Environmental Laws.** Comply in all material respects with all applicable Environmental Laws and timely pay or cause to be paid all costs and expenses incurred in connection with such compliance, except to the extent there is a Good Faith Contest.

**Section 6.07 Maintenance of Properties.** Do all things reasonably necessary to maintain, preserve, protect and keep its properties in good repair, working order and condition except where the cost thereof is not in Borrower's best interests and the failure to do so would not result in a Material Adverse Change.

**Section 6.08 Payment of Costs.** Pay all costs and expenses required for the satisfaction of the conditions of this Agreement.

**Section 6.09 Reporting and Miscellaneous Document Requirements.** Furnish directly to Administrative Agent (who shall provide, promptly upon receipt, to each of the Banks):

(1) **Annual Financial Statements**. As soon as available and in any event within ninety (90) days after the end of each Fiscal Year, Borrower's Consolidated Financial Statements as of the end of and for such Fiscal Year, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior Fiscal Year and audited by Borrower's Accountants (without a "going concern" or other extraordinary qualification or exception);

(2) **Quarterly Financial Statements**. As soon as available and in any event within forty-five (45) days after the end of each calendar quarter (other than the last quarter of the Fiscal Year), the unaudited Borrower's Consolidated Financial Statements as of the end of and for such calendar quarter, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior Fiscal Year;

(3) **Certificate of No Default and Financial Compliance**. Within ninety (90) days after the end of each Fiscal Year and within forty-five (45) days after the end of each of the first, second, and third calendar quarters, a certificate of Borrower's chief financial officer or treasurer (a) stating that, to the best of his or her knowledge, no Default or Event of Default has occurred and is continuing, or if a Default or Event of Default has occurred and is continuing, specifying the nature thereof and the action which is proposed to be taken with respect thereto; (b) stating that the covenants contained in Sections 7.03 and 7.04 and in Article VIII have been complied with (or specifying those that have not been complied with) and including computations demonstrating such compliance (or non-compliance); and (c) setting forth the details of all items comprising Capitalization Value, Unencumbered Asset Value, Total Outstanding Indebtedness, Secured Indebtedness, Interest Expense and Unsecured Indebtedness (including amount, maturity, interest rate and amortization requirements with respect to all Indebtedness);

(4) Certificate of Borrower's Accountants. Simultaneously with the delivery of the annual financial statements required by paragraph (1) of this Section, (a) a statement of Borrower's Accountants who audited such financial statements comparing the computations set forth in the financial compliance certificate required by paragraph (3) of this Section to the audited financial statements required by paragraph (1) of this Section and (b) when the audited financial statements required by paragraph (1) of this Section have a qualified auditor's opinion, a statement of Borrower's Accountants who audited such financial statements of whether any Default or Event of Default has occurred and is continuing;

(5) Notice of Litigation. Promptly after the commencement and knowledge thereof, notice of all actions, suits, and proceedings before any court or arbitrator, affecting Borrower which, if determined adversely to Borrower is likely to result in a Material Adverse Change;

(6) Notices of Defaults and Events of Default. As soon as possible and in any event within ten (10) days after Borrower becomes aware of the occurrence of a material Default or any Event of Default, a written notice (which notice shall state that it is a "Notice of Default") setting forth the details of such Default or Event of Default and the action which is proposed to be taken with respect thereto;

(7) Material Adverse Change. As soon as is practicable and in any event within five (5) days after knowledge of the occurrence of any event or circumstance which is likely to result in or has resulted in a Material Adverse Change, written notice thereof;

(8) Offices. Thirty (30) days' prior written notice of any change in the chief executive office or principal place of business of Borrower;

(9) Environmental and Other Notices. As soon as possible and in any event within ten (10) days after receipt, copies of all Environmental Notices received by Borrower which are not received in the ordinary course of business and which relate to a situation which is likely to result in a Material Adverse Change;

(10) Insurance Coverage. Promptly, such information concerning Borrower's insurance coverage as Administrative Agent may reasonably request;

(11) Proxy Statements, Etc. Promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which Borrower or its ~~Material Affiliates~~ **Consolidated Subsidiaries** sends to its shareholders, and copies of all regular, periodic and special reports, and all registration statements which Borrower or its ~~Material Affiliates~~ **Consolidated Subsidiaries** files with the Securities and Exchange Commission or any Governmental Authority which may be substituted therefor, or with any national securities exchange;

(12) ~~Operating Statements~~. ~~As soon as available and in any event within forty five (45) days after the end of each calendar quarter, an operating statement for each property directly or indirectly owned in whole or in part by Borrower;~~ **[Reserved]**;

(13) Beneficial Ownership Updates. Promptly following any written request therefor, information and documentation as the Administrative Agent (or any Bank through the Administrative Agent) may reasonably request, as required by the Beneficial Ownership Regulation; and

(14) General Information. Promptly (i) such other information respecting the condition or operations, financial or otherwise, of Borrower or any properties of Borrower as Administrative Agent may from time to time reasonably request in writing and (ii) such other information and documentation reasonably requested in writing by the Administrative Agent or any Bank for purposes of compliance with requirements under applicable “know your customer” and anti-money laundering rules and regulations including the Patriot Act and the Beneficial Ownership Regulation, if applicable.

Documents required to be delivered pursuant to Sections 6.09(1), (2) or (11) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address; or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Bank and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Bank that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Bank and (ii) the Borrower shall notify the Administrative Agent and each Bank (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Bank shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Syndication Agents will make available to the Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “**Borrower Materials**”) by posting the Borrower Materials on IntraLinks or another similar electronic system (the “**Platform**”) and (b) certain of the Banks may be “public-side” Banks (i.e., Banks that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “**Public Lender**”). The Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Syndication Agents, and the Banks to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws or any confidentiality agreement entered into by any Bank; (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent and the Syndication Agents shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”

**Section 6.10 Anti-Corruption Laws.** Conduct its businesses in compliance with the United States Foreign Corrupt Practices Act of 1977, and to the extent the same are applicable to the Borrower and/or its Consolidated Businesses or to the extent a Bank notifies Borrower that the same are applicable to the Loans, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions, and, to the extent applicable, maintain policies and procedures designed to promote and achieve compliance with such laws.

## ARTICLE VII

### NEGATIVE COVENANTS

So long as any of the Loans or any other Obligations shall remain unpaid, or the Loan Commitments remain in effect, or any other amount is owing by Borrower to any Bank Party hereunder or under any other Loan Document, Borrower shall not do any or all of the following:

**Section 7.01 Mergers Etc.** Merge or consolidate with (except where Borrower is the surviving entity), or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired).

**Section 7.02 [Reserved].**

**Section 7.03 Sale of Assets.** Effect (i) a Disposition of any of its now owned or hereafter acquired assets (including equity interests therein), including assets in which Borrower owns a beneficial interest through its ownership of interests in joint ventures, if after giving effect to such Disposition, a Default or Event of Default would exist, or (ii) the granting of a Lien on any Unencumbered Wholly-Owned Assets or Unencumbered Land and Construction-In-Process, if after granting such Lien, a Default or Event of Default would exist provided however, that (a) the Borrower may lease or sublease its assets, as lessor or sublessor (as the case may be), in the ordinary course of its business, and (b) the Borrower or any of its subsidiaries may sell, transfer or dispose of such assets to the Borrower or to another subsidiary of the Borrower, as the case may be.

**Section 7.04 Distributions.** During the existence of any Event of Default, make, declare or pay, directly or indirectly, any dividend or distribution to any of its equity holders in an amount greater than the minimum dividend or distribution required under the Code to maintain the real estate investment trust status of Borrower under the Code and to avoid the payment of federal income and excise taxes, as evidenced by a detailed certificate of Borrower's chief financial officer or treasurer reasonably satisfactory in form and substance to Administrative Agent.

**Section 7.05 Sanctions.** Knowingly directly or indirectly use the proceeds of any Loan or lend, contribute or otherwise make available such proceeds to any Consolidated Business, joint venture partner or other Person, to fund any activities of or business with any Person, or in any country or territory, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Bank, Arranger, Administrative Agent or otherwise) of Sanctions.

**Section 7.06 Anti-Corruption Laws.** Directly or indirectly use the proceeds of any Loan for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, or, to the extent the same are applicable to the Borrower and/or its Consolidated Businesses or to the extent a Bank notifies Borrower that the same are applicable to the Loans, the UK Bribery Act 2010 and other similar anti-corruption legislation in other jurisdictions.

## ARTICLE VIII

### FINANCIAL COVENANTS

So long as any of the Loans or any other Obligations **shall** remain unpaid, or the Loan Commitments **shall** remain in effect, or any other amount is owing by Borrower to any Bank Party under this Agreement or under any other Loan Document, Borrower shall not permit or suffer any or all of the following:

**Section 8.01 Relationship of Total Outstanding Indebtedness to Capitalization Value.** As of the last day of any fiscal quarter, the ratio of Total Outstanding Indebtedness (net of, as of such date of determination, the amount of unrestricted Cash and Cash Equivalents ~~in excess of \$20,000,000~~ to the extent that there is an equivalent amount of Total Outstanding Indebtedness that matures within twenty-four (24) months of such date of determination) to Capitalization Value to exceed sixty percent (60%); provided that such ratio may exceed sixty percent (60%) from time to time following an acquisition by Borrower and its Affiliates of real property assets so long as (a) such ratio does not exceed sixty-five percent (65%), (b) such ratio ceases to exceed sixty percent (60%) within four (4) quarters after each date such ratio first exceeded sixty percent (60%), and (c) the Borrower provides a certificate of its chief financial officer or treasurer to the Administrative Agent when such ratio first exceeds sixty percent (60%) and when such ratio ceases to exceed sixty percent (60%).

**Section 8.02 Relationship of Combined EBITDA to Combined Debt Service.** As of the last day of any fiscal quarter, the ratio of (1) Combined EBITDA to (2) Combined Debt Service (each for the twelve (12)-month period ending on such last day of such quarter), to be less than 1.50 to 1.00.

**Section 8.03 Ratio of Unsecured Indebtedness to Unencumbered Asset Value.** As of the last day of any fiscal quarter, the ratio of (1) Unsecured Indebtedness (net of, as of such date of determination, the amount of unrestricted Cash and Cash Equivalents ~~in excess of \$20,000,000~~ to the extent that there is an equivalent amount of Unsecured Indebtedness that matures within twenty-four (24) months of such date of determination) to (2) Unencumbered Asset Value to exceed sixty-five percent (65%).

**Section 8.04 Relationship of Secured Indebtedness to Capitalization Value.** As of the last day of any fiscal quarter, Secured Indebtedness (net of, as of such date of determination, the amount of unrestricted Cash and Cash Equivalents ~~in excess of \$20,000,000~~ to the extent that there is an equivalent amount of Secured Indebtedness that matures within twenty-four (24) months of such date of determination) to exceed forty percent (40%) of Capitalization Value.



**ARTICLE IX**  
**EVENTS OF DEFAULT**

**Section 9.01 Events of Default.** Any of the following events shall be an “Event of Default”:

(1) If Borrower shall fail to pay the principal of any Loans as and when due, and such failure to pay shall continue unremedied for five (5) days after the due date of such amount; or fail to pay interest accruing on any Loans as and when due, and such failure to pay shall continue unremedied for five (5) days after written notice by Administrative Agent of such failure to pay; or fail to pay any fee or any other amount due under this Agreement, any other Loan Document or the Fee Letters, as and when due and such failure to pay shall continue unremedied for two (2) Banking Days after written notice by Administrative Agent of such failure to pay; or

(2) If any representation or warranty made by Borrower in this Agreement or in any other Loan Document or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with a Loan Document shall prove to have been incorrect in any material respect on or as of the date made; or

(3) If Borrower shall fail (a) to perform or observe any term, covenant or agreement contained in Section 2.01(e), Article VII or Article VIII; or (b) to perform or observe any term, covenant or agreement contained in this Agreement (other than obligations specifically referred to elsewhere in this Section 9.01) or any Loan Document, or any other document executed by Borrower and delivered to Administrative Agent or the Banks in connection with the transactions contemplated hereby and such failure under this clause (b) shall remain unremedied for thirty (30) consecutive calendar days after notice thereof (or such shorter cure period as may be expressly prescribed in the applicable document); provided, however, that if any such default under clause (b) above cannot by its nature be cured within such thirty (30) day, or shorter, as the case may be, grace period and so long as Borrower shall have commenced cure within such thirty (30) day, or shorter, as the case may be, grace period and shall, at all times thereafter, diligently prosecute the same to completion, Borrower shall have an additional period, not to exceed sixty (60) days, to cure such default; in no event, however, is the foregoing intended to effect an extension of either the Tranche A Maturity Date or Tranche B Maturity Date; or

(4) If Borrower or any Consolidated Business shall fail (a) to pay any Recourse Debt of the Borrower or such Consolidated Business (other than the payment obligations described in paragraph (1) of this Section) in an amount equal to or greater than \$150,000,000 when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) after the expiration of any applicable grace period, or (b) to perform or observe any material term, covenant, or condition under any agreement or instrument relating to any such Debt, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, after the giving of notice or the lapse of time, or both (other than in cases where, in the judgment of the Required Banks, meaningful discussions likely to result in (i) a waiver or cure of the failure to perform or observe, or (ii) otherwise averting such acceleration are in progress between Borrower and the obligee of such Debt), the

maturity of such Debt, or any such Debt shall be declared to be due and payable, or required to be prepaid or repurchased (other than by a regularly scheduled or otherwise required prepayment), prior to the stated maturity thereof; or

(5) If Borrower, or any ~~Material Affiliate~~**Subsidiary** of Borrower to which ~~\$100,000,000~~**five percent (5%)** or more of Capitalization Value is attributable, shall (a) generally not, or be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (b) make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (c) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation Law of any jurisdiction, whether now or hereafter in effect; or (d) have had any such petition or application filed or any such proceeding shall have been commenced, against it, in which an adjudication or appointment is made or order for relief is entered, or which petition, application or proceeding remains undismissed or unstayed for a period of ninety (90) days or more; or (e) be the subject of any proceeding under which all or a substantial part of its assets may be subject to seizure, forfeiture or divestiture; or (f) by any act or omission indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (g) suffer any such custodianship, receivership or trusteeship for all or any substantial part of its property, to continue undischarged for a period of ninety (90) days or more; or

(6) If one or more judgments, decrees or orders for the payment of money in an amount in excess of five percent (5%) of Consolidated Tangible Net Worth (excluding any such judgments, decrees or orders which are fully covered by insurance) in the aggregate shall be rendered against Borrower or any of its ~~Material Affiliates~~**Consolidated Subsidiaries**, and any such judgments, decrees or orders shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal; or

(7) If any of the following events shall occur or exist with respect to Borrower or any ERISA Affiliate: (a) any Prohibited Transaction involving any Plan; (b) any Reportable Event with respect to any Plan; (c) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan; (d) any event or circumstance which would constitute grounds for the termination of, or for the appointment of a trustee to administer, any Plan under Section 4042 of ERISA, or the institution by the PBGC of proceedings for any such termination or appointment under Section 4042 of ERISA; or (e) complete or partial withdrawal under Section 4201 or 4204 of ERISA from a Multiemployer Plan or the reorganization, insolvency, or termination of any Multiemployer Plan; and in each case above, if such event or conditions, if any, could in the reasonable opinion of any Bank subject Borrower to any tax, penalty, or other liability to a Plan, Multiemployer Plan, the PBGC or

otherwise (or any combination thereof) which in the aggregate exceeds or is likely to exceed ~~\$50,000~~**150,000,000**; or

(8) If at any time Borrower is not a qualified real estate investment trust under Sections 856 through 860 of the Code or is not a publicly traded company listed on the New York Stock Exchange; or

(9) If at any time any portion of Borrower's assets constitute plan assets for ERISA purposes (within the meaning of C.F.R. §2510.3-101); or

(10) If, in the reasonable judgment of all of the Banks (and the basis for such determination is provided to Borrower in writing in reasonable detail), there shall occur a Material Adverse Change; or

(11) If, during any period of up to twelve (12) consecutive months commencing on or after the Closing Date, individuals who were directors of Borrower at the beginning of such period (the "***Continuing Directors***"), plus any new directors whose election or appointment was approved by a majority of the Continuing Directors then in office, shall cease for any reason to constitute a majority of the Board of Directors of Borrower; or

(12) If, through any transaction or series of related transactions, any Person (including Affiliates of such Person) shall acquire beneficial ownership, directly or indirectly, of securities of Borrower (or of securities convertible into securities of Borrower) representing twenty-five (25%) or more of the combined voting power of all securities of Borrower entitled to vote in the election of directors; or

(13) Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than in accordance with the terms hereof or thereof, or satisfaction in full of all the Obligations, is revoked, terminated, cancelled or rescinded, without the prior written approval of Administrative Agent and such number or percentage of Banks as shall be required hereunder; or the Borrower commences any legal proceeding at law or in equity to contest, or make unenforceable, cancel, revoke or rescind any of the Loan Documents, or any court or any other governmental or regulatory agency of competent jurisdiction shall make a determination that, or issue a judgment, order, decree or ruling to the effect that, any one or more of the Loan Documents is illegal, invalid or unenforceable as to any material terms thereof.

**Section 9.02 Remedies.** If an Event of Default has occurred and is continuing (other than an Event of Default with respect to the Borrower described in Section 9.01(5)), the Administrative Agent, at the request of the Required Banks, shall by notice to the Borrower take any or all of the following actions, at the same or different times: (i) terminate the Loan Commitments, and thereupon the Loan Commitments shall terminate immediately, (ii) declare the Loans and other Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans and such other Obligations so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower and (iii) exercise any remedies provided in any of the Loan Documents or by law; and in case of any Event of Default with respect to the Borrower described in Section 9.01(5), the Loan Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Notwithstanding the foregoing, if an Event of Default under Section 9.01(10) shall occur and be continuing, Administrative Agent shall not be entitled to exercise the foregoing remedies until (1) it has received a written notice from all of the Banks (the “*Unanimous Bank Notices*”) (i) requesting Administrative Agent exercise such remedies and (ii) indicating each Bank’s conclusion in its reasonable judgment that a Material Adverse Change has occurred and (2) Administrative Agent has provided notice to Borrower, together with copies of all of the Unanimous Bank Notices.

## ARTICLE X

### ADMINISTRATIVE AGENT; RELATIONS AMONG BANKS

#### **Section 10.01 Appointment, Powers and Immunities of Administrative Agent.**

(a) Each Bank hereby irrevocably appoints and authorizes Administrative Agent to act as its agent hereunder and under any other Loan Document with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and any other Loan Document, together with such other powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Banks, and the Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Banks (or such other number or

percentage of the Banks as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Banks (or such other number or percentage of the Banks as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 12.02 and 9.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**Section 10.02 Reliance by Administrative Agent.** Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any certification, notice or other communication (including any thereof by telephone, telex, telegram, cable, electronic message, or internet or intranet website posting) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Bank, the Administrative Agent may presume that such condition is satisfactory to such Bank unless the Administrative Agent shall have received notice to the contrary from such Bank prior to the making of such Loan. Administrative Agent may deem and treat each Bank as the holder of the Loan made by it for all purposes hereof and shall not be required to deal with any Person who has acquired a Participation in any Loan or Participation from a Bank. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Banks or all Banks, as required by this Agreement, and such instructions of the Required Banks or all Banks, as the case may be, and any action taken or failure to act pursuant thereto, shall be binding on all of the Banks and any other holder of all or any portion of any Loan or Participation. The Administrative Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

**Section 10.03 Defaults.** Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default or Event of Default unless Administrative Agent has received notice from a Bank or Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, Administrative Agent shall give prompt notice thereof to the Banks. Administrative Agent, following consultation with the Banks, shall (subject to Section 10.07 and Section 12.02) take such action with respect to such Default or Event of Default which is continuing as shall be directed by the Required Banks; provided that, unless and until Administrative Agent shall have received such directions, Administrative Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Banks; and provided further that Administrative Agent shall not send a notice of default or acceleration to Borrower without the approval of the Required Banks. In no event shall Administrative Agent be required to take any such action which it determines to be contrary to Law or to the Loan Documents. Each of the Banks acknowledges and agrees that no individual Bank may separately enforce or exercise any of the provisions of any of the Loan Documents, including, without limitation, the Notes, other than through Administrative Agent.

**Section 10.04 Rights of Administrative Agent as a Bank.** With respect to its Loan Commitment and the Loan provided by it, Administrative Agent in its capacity as a Bank hereunder shall have the same rights and powers hereunder as any other Bank and may exercise the same as though it were not acting as Administrative Agent, and the term "Bank" or "Banks" shall, unless the context otherwise indicates, include Administrative Agent in its capacity as a Bank. Administrative Agent and its Affiliates may (without having to account therefor to any Bank) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with Borrower (and any Affiliates of Borrower) as if it were not acting as Administrative Agent and without any duty to account therefor to the Banks.

**Section 10.05 Indemnification of Administrative Agent.** Each Bank agrees to indemnify Administrative Agent (to the extent not reimbursed under Section 12.04 or under the applicable provisions of any other Loan Document, but without limiting the obligations of Borrower under Section 12.04 or such provisions), for its Pro Rata Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of this Agreement, any other Loan Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which Borrower is obligated to pay under Section 12.04) or under the applicable provisions of any other Loan Document or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided that no Bank shall be liable for (1) any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified as determined by a court of competent jurisdiction in a final and non-appealable judgment, (2) any loss of principal or interest with respect to Administrative Agent's Loan or (3) any loss suffered by Administrative Agent in connection with a swap or other interest rate hedging arrangement entered into with Borrower.

**Section 10.06 Non-Reliance on Administrative Agent and Other Banks.** Each Bank agrees that it has, independently and without reliance on Administrative Agent, **the Arrangers** or any other Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower and the decision to enter into this Agreement and that it will, independently and without reliance upon Administrative Agent, **the Arrangers** or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Loan Document. Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or to inspect the properties or books of Borrower. Except for notices, reports and other documents and information expressly required to be furnished to the Banks by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of Borrower (or any Affiliate of Borrower) which may come into the possession of Administrative Agent or any of its Affiliates. Administrative Agent shall not be required to file this Agreement, any other Loan Document or any document or instrument referred to herein or therein, for record or give notice of this Agreement, any other Loan Document or any document or instrument referred to herein or therein, to anyone.

**Section 10.07 Failure of Administrative Agent to Act.** Except for action expressly required of Administrative Agent hereunder, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of the Banks under Section 10.05 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. If any indemnity furnished by the Banks to Administrative Agent for any purpose shall, in the reasonable opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent may call for additional indemnity and cease, or not commence, to do the action indemnified against until such additional indemnity is furnished.

**Section 10.08 Resignation of Administrative Agent.** Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Banks and Borrower and, provided that no Default or Event of Default exists, subject to Borrower's reasonable approval (and Borrower shall promptly respond to Administrative Agent with respect to any such requested resignation). Administrative Agent may be removed as administrative agent by Required Banks and Borrower upon thirty (30) days' prior written notice if (x) the Person serving as Administrative Agent shall have an aggregate unused Loan Commitment and Loans as of any date less than 5% of the total Loan Commitment plus the aggregate Loans as of such date, (y) the Person serving as Administrative Agent is a Defaulting Lender, or (z) the Person serving as Administrative Agent engages in gross negligence or willful misconduct in its performance of its duties as Administrative Agent as determined by a court of competent jurisdiction by final and nonappealable judgment. In the case of any removal of Administrative Agent, Borrower and the Banks shall be promptly notified thereof. Upon any such resignation or removal of Administrative Agent, the Required Banks shall have the right to appoint a successor Administrative Agent, which appointment shall, provided no Default or Event of Default exists, be subject to Borrower's approval, which approval shall not be unreasonably withheld or delayed (except that Borrower shall, in all events, be deemed to have approved each Bank and any of its Affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed by the Required Banks and shall have accepted such appointment within thirty (30) days after the Required Banks' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be one of the Banks, if any Bank shall be willing to serve, and otherwise shall be an eligible Assignee; provided that if Administrative Agent shall notify Borrower and the Banks that no Bank has accepted such appointment, then such resignation or removal shall nonetheless become effective in accordance with such notice or, in the case of removal, at the end of such thirty (30) day period and (1) Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made to each Bank directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Banks so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of Administrative Agent as if each such Bank were itself Administrative Agent. The Required Banks or the retiring Administrative Agent, as the case may be, shall upon the appointment of a successor Administrative Agent promptly so notify Borrower and the other Banks. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving Borrower and each Bank prior written notice.

**Section 10.09 Amendments Concerning Agency Function.** Notwithstanding anything to the contrary contained herein, Administrative Agent shall not be bound by any waiver, amendment, supplement or modification hereof or of any other Loan Document which affects its duties, rights, and/or function hereunder or thereunder unless it shall have given its prior written consent thereto.



**Section 10.10 Liability of Administrative Agent.** Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Bank to perform its obligations hereunder or to any Bank on account of the failure of Borrower to perform its obligations hereunder or under any other Loan Document.

**Section 10.11 Transfer of Agency Function.** Without the consent of Borrower or any Bank, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States, provided that Administrative Agent shall promptly notify Borrower and the Banks thereof.

**Section 10.12 Non-Receipt of Funds by Administrative Agent.** (a) Unless Administrative Agent shall have received notice from a Bank or Borrower (either one as appropriate being the “*Payor*”) prior to the date on which such Bank is to make payment hereunder to Administrative Agent of the proceeds of a Loan or Borrower is to make payment to Administrative Agent, as the case may be (either such payment being a “*Required Payment*”), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in full to Administrative Agent, Administrative Agent may assume that the Required Payment has been made in full to Administrative Agent on such date, and Administrative Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Administrative Agent, the recipient of such payment shall repay to Administrative Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount, at the customary rate set by Administrative Agent for the correction of errors among Banks for three (3) Banking Days and thereafter at the Base Rate.

**(b) With respect to any payment that the Administrative Agent makes for the account of the Banks hereunder as to which the Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “Rescindable Amount”): (1) the Borrower has not in fact made such payment; (2) the Administrative Agent has made a payment in excess of the amount so paid by the Borrower (whether or not then owed); or (3) the Administrative agent has for any reason otherwise erroneously made such payment; then each of the Banks severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Bank, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Bank with respect to any amount owing under this clause (b) shall be conclusive, absent manifest error.**

**(bc)** If, after Administrative Agent has paid each Bank’s share of any payment received or applied by Administrative Agent in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Administrative Agent, whether pursuant to any bankruptcy or insolvency Law, sharing of payments clause of any loan agreement or otherwise, such Bank shall, at Administrative Agent’s request, promptly

return its share of such payment or application to Administrative Agent, together with such Bank's proportionate share of any interest or other amount required to be paid by Administrative Agent with respect to such payment or application. In addition, if a court of competent jurisdiction shall adjudge that any amount received and distributed by Administrative Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Administrative Agent its share of the amount so adjudged to be repaid or shall pay over to the same in such manner and to such Persons as shall be determined by such court. The provisions of this Section 10.12(b) shall survive payment in full of the Obligations and termination of this Agreement

**Section 10.13 [Reserved].**

**Section 10.14 [Reserved].**

**Section 10.15 Pro Rata Treatment.** Except to the extent otherwise provided, each advance of proceeds of the Loans shall be made by the Banks, ratably according to the amounts of their respective applicable Loan Commitments. Except as otherwise expressly provided in this Agreement, each payment in respect of principal or interest under the Loans shall be applied to such obligations owing to the Banks pro rata according to the respective amounts then due and owing to the Banks.

**Section 10.16 Sharing of Payments Among Banks.** If a Bank shall obtain payment of any principal of or interest on any Loan or other Obligation made by it through the exercise of any right of setoff, banker's lien, counterclaim, or by any other means (including direct payment), and such payment results in such Bank receiving a greater payment than it would have been entitled to had such payment been paid directly to Administrative Agent for disbursement to the Banks, then such Bank shall promptly purchase for cash from the other Banks Participations in the Loans made by or other Obligations owed to the other Banks in such amounts, and make such other adjustments from time to time as shall be equitable to the end that all the Banks shall share ratably the benefit of such payment. To such end the Banks shall make appropriate adjustments among themselves (by the resale of Participations sold or otherwise) if such payment is rescinded or must otherwise be restored. Borrower agrees that any Bank so purchasing a Participation in the Loans made by or other Obligations owed to other Banks may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such Participation. Nothing contained herein shall require any Bank to exercise any such right or shall affect the right of any Bank to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness of Borrower.

**Section 10.17 Possession of Documents.** Each Bank shall keep possession of its own Note(s). Administrative Agent shall hold all the other Loan Documents and related documents in its possession and maintain separate records and accounts with respect thereto, and shall permit the Banks and their representatives access at all reasonable times to inspect such Loan Documents, related documents, records and accounts.

**Section 10.18 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents, Managing Agents or Co-Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Bank hereunder.

**Section 10.19 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or reimbursement obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, reimbursement obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Banks and the Administrative Agent under this Agreement) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under this Agreement.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Bank to authorize the Administrative Agent to vote in respect of the claim of any Bank in any such proceeding.

**Section 10.20 Certain ERISA Matters.** (a) Each Bank (x) represents and warrants, as of the date such Person became a Bank party hereto, to, and (y) covenants, from the date such Person became a Bank party hereto to the date such Person ceases being a Bank party hereto, for the benefit of, the Administrative Agent and the Arrangers and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:

(i) such Bank is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Bank's

entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Loan Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Bank's entrance into, participation in, administration of and performance of the Loans, the Loan Commitments and this Agreement,

(iii) (A) such Bank is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Bank to enter into, participate in, administer and perform the Loans, the Loan Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Loan Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Bank, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Bank's entrance into, participation in, administration of and performance of the Loans, the Loan Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Bank.

(ah) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Bank or (2) a Bank has provided another representation, warranty and covenant in accordance with sub-clause (iv) in the immediately preceding clause (a), such Bank further (x) represents and warrants, as of the date such Person became a Bank party hereto, to, and (y) covenants, from the date such Person became a Bank party hereto to the date such Person ceases being a Bank party hereto, for the benefit of, the Administrative Agent and the Arrangers and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent or the Arrangers is a fiduciary with respect to the assets of such Bank involved in such Bank's entrance into, participation in, administration of and performance of the Loans, the Loan Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

**Section 10.21 Recovery of Erroneous Payments. Without limitation of any other provision in this Agreement, if at any time the Administrative Agent makes a payment hereunder in error to any Bank, whether or not in respect of an Obligation due and owing by the Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Bank receiving a Rescindable Amount severally agrees to repay to the Administrative Agent forthwith on demand the Rescindable Amount received by such Bank in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with**

**banking industry rules on interbank compensation. Each Bank irrevocably waives any and all defenses, including any “discharge for value” (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. The Administrative Agent shall inform each Bank promptly upon determining that any payment made to such Bank comprised, in whole or in part, a Rescindable Amount.**

## ARTICLE XI

### NATURE OF OBLIGATIONS

**Section 11.01 Absolute and Unconditional Obligations.** Borrower acknowledges and agrees that its obligations and liabilities under this Agreement and under the other Loan Documents shall be absolute and unconditional irrespective of (1) any lack of validity or enforceability of any of the Obligations, any Loan Documents, or any agreement or instrument relating thereto; (2) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from any Loan Documents or any other documents or instruments executed in connection with or related to the Obligations; (3) any exchange or release of any collateral, if any, or of any other Person from all or any of the Obligations; or (4) any other circumstances which might otherwise constitute a defense available to, or a discharge of, Borrower or any other Person in respect of the Obligations.

The obligations and liabilities of Borrower under this Agreement and other Loan Documents shall not be conditioned or contingent upon the pursuit by any Bank or any other Person at any time of any right or remedy against Borrower or any other Person which may be or become liable in respect of all or any part of the Obligations or against any collateral or security or guarantee therefor or right of setoff with respect thereto.

**Section 11.02 Non-Recourse to Borrower's Principals.** Notwithstanding anything to the contrary contained herein, in any of the other Loan Documents, or in any other instruments, certificates, documents or agreements executed in connection with the Loans (all of the foregoing, for purposes of this Section, hereinafter referred to, individually and collectively, as the "**Relevant Documents**"), no recourse under or upon any Obligation, representation, warranty, promise or other matter whatsoever shall be had against any of Borrower's Principals and each Bank expressly waives and releases, on behalf of itself and its successors and assigns, all right to assert any liability whatsoever under or with respect to the Relevant Documents against, or to satisfy any claim or obligation arising thereunder against, any of Borrower's Principals or out of any assets of Borrower's Principals, provided, however, that nothing in this Section shall be deemed to (1) release Borrower from any personal liability pursuant to, or from any of its respective obligations under, the Relevant Documents, or from personal liability for its fraudulent actions or fraudulent omissions; (2) release any of Borrower's Principals from personal liability for its or his own fraudulent actions or fraudulent omissions; (3) constitute a waiver of any obligation evidenced or secured by, or contained in, the Relevant Documents or affect in any way the validity or enforceability of the Relevant Documents; or (4) limit the right of Administrative Agent and/or the Banks to proceed against or realize upon any collateral hereafter given for the Loans or other Obligations or any and all of the assets of Borrower (notwithstanding the fact that any or all of Borrower's Principals have an ownership interest in Borrower and, thereby, an interest in the assets of Borrower) or to name Borrower (or, to the extent that the same are required by applicable Law or are determined by a court to be necessary parties in connection with an action or suit against Borrower or any collateral hereafter given for the Loans or other Obligations, any of Borrower's Principals) as a party defendant in, and to enforce against any collateral hereafter given for the Loans or other Obligations and/or assets of Borrower any judgment obtained by Administrative Agent and/or the Banks with respect to, any action or suit under the Relevant Documents so long as no judgment shall be taken (except to the extent taking a judgment is required by applicable Law or determined by a court to be necessary to preserve Administrative Agent's and/or Banks' rights against any collateral hereafter given for the Loans or other Obligations or Borrower, but not otherwise) or shall be enforced against Borrower's Principals or their assets.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.01 Binding Effect of Request for Advance.** Borrower agrees that, by its acceptance of any advance of proceeds of the Loans under this Agreement, it shall be bound in all respects by the request for advance submitted on its behalf in connection therewith with the same force and effect as if Borrower had itself executed and submitted the request for advance and whether or not the request for advance is executed and/or submitted by an authorized person.

**Section 12.02 Amendments and Waivers.** Except as provided in Section 3.02(c), amendment or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower (or, in the case of any guaranty executed and delivered pursuant to clause (y) of the definition of "Unencumbered Assets" in Section 1.01, the guarantor referred to therein) therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Banks and, solely for purposes of its acknowledgment thereof, Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall (1) increase the Loan Commitment of any Bank or extend the expiration date of the Loan Commitment of any Bank without the written consent of such Bank; (2) reduce the principal of, or interest on, the Loans or any fees due hereunder or any other amount due

hereunder or under any Loan Document, without the written consent of each Bank affected thereby; (3) extend the Tranche A Maturity Date or the Tranche B Maturity Date or otherwise postpone any date fixed for any payment of principal of, or interest on, the Loans or any fees due hereunder or under any Loan Document, in each case without the written consent of each Bank affected thereby; (4) change the definition of “Required Banks” without the written consent of each Bank; (5) amend Section 10.15, Section 10.16, this Section or any other provision requiring the written consent of all the Banks, without the written consent of each Bank; (6) waive any default under paragraph (5) of Section 9.01 without the written consent of each Bank or (7) release all or substantially all of the guaranties executed and delivered pursuant to clause (y) of the definition of “Unencumbered Assets” in Section 1.01 without the written consent of each Bank; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Banks or each affected Bank may be effected with the consent of the applicable Banks other than Defaulting Lenders), except that (x) the Loan Commitment of any Defaulting Lender may not be increased or extended without the consent of such Bank and (y) any waiver, amendment or modification requiring the consent of all Banks or each affected Bank that by its terms affects any Defaulting Lender more adversely than other affected Banks shall require the consent of such Defaulting Lender. Any advance of proceeds of the Loans made prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to Administrative Agent and the Banks, shall not constitute a waiver of any Default or Event of Default or a waiver of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances. Neither any failure or delay on the part of Administrative Agent or any Bank to exercise any right hereunder nor any single or partial exercise of any right or power hereunder or any abandonment or discontinuance of steps to enforce such right or power shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. All communications from Administrative Agent to the Banks requesting the Banks’ determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Bank, (ii) shall be accompanied by a description of the matter or thing as to which such determination, approval, consent or disapproval is requested and (iii) shall include Administrative Agent’s recommended course of action or determination in respect thereof. Each Bank shall reply promptly, but in any event within ten (10) Banking Days (or five (5) Banking Days with respect to any decision to accelerate or stop acceleration of the Loans and other Obligations) after receipt of the request therefor by Administrative Agent (the “**Bank Reply Period**”). Unless a Bank shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Bank Reply Period, such Bank shall be deemed to have approved or consented to such recommendation or determination. Notwithstanding anything to the contrary set forth in this Section 12.02, so long as either (i) no Event of Default is continuing or (ii) such Approved Revolver Modification (defined below) or Approved Revolved Modifications would cure all existing Events of Default, the Borrower, Administrative Agent and the Banks agree that (1) if any Bank is party to both this Agreement and that certain ~~Fifth~~**Sixth** Amended and Restated Revolving Loan Agreement dated as of ~~February 28, 2019~~**September 27, 2022** by and among Borrower, Bank of America, N.A., as Administrative Agent, JPMorgan Chase Bank, N.A., Wells Fargo Bank, N.A., and the other lenders signatory thereto (the “**AVB**

*Revolver Facility*”), and (2) any future modifications or replacements to or of the AVB Revolver Facility have been approved by the requisite lenders then parties to the AVB Revolver Facility (each, an “*Approved Revolver Modification*” and collectively, the “*Approved Revolver Modifications*”); then such Bank shall be deemed to have agreed to a similar modification to the terms common between this Agreement and the AVB Revolver Facility, as so modified, without further action hereunder.

**Section 12.03 Usury.** Anything herein to the contrary notwithstanding, the obligations of Borrower under this Agreement and the Loans shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of Law applicable to a Bank limiting rates of interest which may be charged or collected by such Bank.

**Section 12.04 Expenses; Indemnification.** Borrower agrees (i) to reimburse Administrative Agent and Syndication Agents on demand for all reasonable costs, expenses, and charges (including, without limitation, all reasonable fees and charges of engineers, appraisers and legal counsel) incurred by it in connection with the Loans and the preparation, execution, delivery and administration of the Loan Documents and any amendment or waiver with respect thereto, and (ii) to reimburse each of the Banks for reasonable legal costs, expenses and charges incurred by each of the Banks in connection with the performance or enforcement of this Agreement, the Notes, or any other Loan Documents (including such costs, expenses and charges incurred during any work-out or restructuring of the Loans); provided, however, that Borrower is not responsible for costs, expenses and charges incurred by the Bank Parties in connection with the administration or syndication of the Loans (other than the fees required by the Fee Letters). Borrower agrees to indemnify Administrative Agent, each Arranger and each Bank and their respective Affiliates, directors, officers, employees, advisors and agents (each such Person, an “*Indemnitee*”) from, and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses, except for Taxes (the indemnification for which is addressed in Section 3.10), incurred by any of them arising out of or by reason of (x) any claims by brokers due to acts or omissions by Borrower, (y) the execution, delivery and performance of this Agreement and the other Loan Documents (including the Indemnitee’s reliance on any Communications executed using an Electronic Signature, or in the form of an Electronic Record) or the transactions contemplated hereby and thereby or (z) any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Borrower of the proceeds of the Loans, including without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation or litigation or other proceedings; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower or any of its Affiliates against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if the Borrower or such Affiliate has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this



Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct and actual damages resulting from such Indemnitee's breach of Section 12.17. To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any transaction, agreement or instrument contemplated hereby, any Loan or the use of the proceeds thereof.

The obligations of Borrower under this Section and under Article III shall survive the repayment of all amounts due under or in connection with any of the Loan Documents and the termination of the Loans, provided, however, that in the case of Article III, such obligations shall survive only for a period of ninety (90) days after such repayment and termination.

**Section 12.05 Assignment; Participation.** This Agreement shall be binding upon, and shall inure to the benefit of, Borrower, Administrative Agent, the Banks and their respective successors and permitted assigns. Borrower may not assign or transfer its rights or obligations hereunder without the prior written consent of each Bank (and any attempted assignment or transfer without such consent shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Indemnitees, Participants to the extent provided in this Section 12.05 and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent or the Banks) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Any Bank may, without the consent of the Borrower or the Administrative Agent, at any time grant to one or more banks or other institutions (other than a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person), a Defaulting Lender or the Borrower or any of the Borrower's Affiliates or Consolidated Businesses) (each a "**Participant**") participating interests in its Loan (each a "**Participation**"). In the event of any such grant by a Bank of a Participation to a Participant, whether or not Borrower or Administrative Agent was given notice, such Bank shall remain responsible for the performance of its obligations hereunder, and Borrower and Administrative Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations hereunder. Any agreement pursuant to which any Bank may grant such a participating interest shall provide that such Bank shall retain the sole right and responsibility to enforce the obligations of Borrower hereunder and under any other Loan Document including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided that such participation agreement may provide that such Bank will not agree to any modification, amendment or waiver of this Agreement described in the first proviso to Section 12.02 without the consent of the Participant. Any Participant hereunder shall have the same benefits as any Bank with respect to the yield protection, and increased cost and tax provisions of Article III, but a Participant shall not be entitled to receive any greater payment than the Bank granting such Participation would have been entitled to receive. Each Bank that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Bank shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the

Participant Register shall be conclusive absent manifest error, and such Bank shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Subject to the conditions set forth below, any Bank may assign to one or more assignees (an “*Assignee*”) all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loan Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld, conditioned or delayed) of:

(i) the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Bank, an Affiliate of a Bank, an Approved Fund or, if an Event of Default has occurred and is continuing, any other Assignee; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Banking Days after having received written notice thereof requesting the Borrower’s approval and containing a legend that states “REQUEST FOR APPROVAL - FAILURE TO OBJECT TO THIS REQUEST WITHIN FIVE (5) BANKING DAYS SHALL BE DEEMED APPROVAL”;

(ii) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Loan Commitment or Loan to an Assignee that is (A) a Bank holding Loans immediately prior to giving effect to such assignment, (B) an Affiliate of such Bank, or (C) an Approved Fund with respect to such Bank.

Such assignments shall be subject to the following additional conditions:

(1) except in the case of an assignment to a Bank or an Affiliate of a Bank or any Approved Fund or an assignment of the entire remaining amount of the assigning Bank’s Loan Commitment or Loans, the amount of the Loan Commitment or Loans of the assigning Bank subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(2) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Bank’s rights and obligations under this Agreement, except that this clause (2) shall not prohibit any Bank from assigning all or a portion of its rights and obligations among separate tranches of Loans on a non-*pro rata* basis;

(3) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of \$3,500;

(4) the Assignee, if it shall not be a Bank, shall deliver to the Administrative Agent an Administrative Questionnaire in which the Assignee designates one or more contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Related

Parties or its securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws; and

(5) no such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Consolidated Businesses, or (B) to any Defaulting Lender or any of its Consolidated Businesses, or any Person who, upon becoming a Bank hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person).

For the purposes of this Section 12.05, the term "**Approved Fund**" has the following meaning:

"**Approved Fund**" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Bank, (b) an Affiliate of a Bank or (c) an entity or an Affiliate of an entity that administers or manages a Bank.

Upon (i) execution and delivery of such Assignment and Acceptance, (ii) payment by such Assignee to the Bank of an amount equal to the purchase price agreed between the Bank and such Assignee and (iii) payment of the fee described in paragraph (3) above, such Assignee shall be a Bank Party to this Agreement and shall have all the rights and obligations of a Bank as set forth in such Assignment and Acceptance, and the assigning Bank shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this paragraph, substitute Note(s) shall be issued to the assigning Bank and Assignee by Borrower, in exchange for the return of the original Note(s). The obligations evidenced by such substitute notes shall constitute "Obligations" for all purposes of this Agreement and the other Loan Documents. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. The Assignee shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any Taxes in accordance with Section 3.10. Each Assignee shall be deemed to have made the representations contained in, and shall be bound by the provisions of, Section 3.10.

Any Bank may at any time pledge or assign or grant a security interest in all or any portion of its rights under this Agreement to secure obligations of such Bank, including without limitation any pledge or assignment or grant to secure obligations to a Federal Reserve Bank, and this Section 12.05 shall not apply to any such pledge or assignment or grant of a security interest; provided that no such pledge or assignment or grant of a security interest shall release a Bank from any of its obligations hereunder or substitute any such pledgee or assignee or grantee for such Bank as a party hereto.

Borrower recognizes that in connection with a Bank's selling of Participations or making of assignments, any or all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower or the Loans may be exhibited to and retained by any such Participant or Assignee or prospective Participant or Assignee. In connection with a Bank's delivery of any financial statements and appraisals to any such Participant or Assignee or prospective Participant or Assignee, such Bank shall also indicate that the same are delivered on a confidential basis. Borrower agrees to provide all assistance reasonably requested by a Bank to

enable such Bank to sell Participations or make assignments of its Loan as permitted by this Section. Each Bank agrees to provide Borrower with notice of all Participations sold by such Bank to other than its Affiliates. Any Bank or Participant may pledge its Loans or Participations as collateral in accordance with applicable law.

The Administrative Agent, acting solely for this purpose as an agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it (**or the equivalent thereof in electronic form**) and a register for the recordation of the names and addresses of the Banks, and the Loan Commitments of, and principal amounts of the Loans and any accrued and unpaid interest and any other amounts thereon, owing to, each Bank pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Banks may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Bank hereunder for all purposes of this Agreement, notwithstanding notice to the contrary and no transfer of an interest in the Loans shall be effective unless and until recorded in the Register. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Bank as a Defaulting Bank. The Register shall be available for inspection by the Borrower and any Bank, at any reasonable time and from time to time upon reasonable prior notice. This paragraph shall be construed so that the Loans are at all times maintained in "registered form" for purposes of the Code and any applicable regulations (and any other relevant or successor provisions of the Code or such regulations).

**Section 12.06 Documentation Satisfactory.** All documentation required from or to be submitted on behalf of Borrower in connection with this Agreement and the documents relating hereto shall be subject to the prior approval of, and be satisfactory in form and substance to, Administrative Agent, its counsel and, where specifically provided herein, the Banks. In addition, the persons or parties responsible for the execution and delivery of, and signatories to, all of such documentation, shall be acceptable to, and subject to the approval of, Administrative Agent and its counsel and the Banks.

**Section 12.07 Notices.**

(a) Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, and except as otherwise provided in this Agreement, notices shall be given to Administrative Agent by telephone (**to the extent permitted hereby**), confirmed by writing, and to the Banks and to Borrower **by electronic mail**, by ordinary mail or overnight courier, receipt confirmed, addressed to such party at (x) its address on the signature page of this Agreement, in the case of the Administrative Agent or the Borrower or (y) the address, electronic mail address or telephone number specified in its Administrative Questionnaire, in the case of a Bank. Notices shall be effective (1) if by telephone, at the time of such telephone conversation, (2) if given by mail, three (3) days after mailing; and (3) if given by overnight courier, upon receipt. Notices delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) **Electronic Communications.** Notices and other communications to the Banks hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Bank

pursuant to Article II if such Bank, has notified the Administrative Agent that it is incapable of receiving notices under such section by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Banking Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor. **provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.**

(c) The Platform. THE PLATFORM (AS DEFINED IN SECTION 6.09) IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS (AS DEFINED IN SECTION 6.09) OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent, the Syndication Agents or any of their Related Parties (collectively, the "*Agent Parties*") have any liability to Borrower, any Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Borrower's or the Administrative Agent's or the Syndication Agents' transmission of Borrower Materials through the internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to Borrower, any Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, electronic mail address, telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Bank may change its address, electronic mail address, telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Bank agrees to notify the Administrative Agent from time to

time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Bank.

(e) Reliance by Administrative Agent and Banks. Absent its gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable judgment, the Administrative Agent and the Banks shall be entitled to rely and act upon any notices (including telephonic notices and Ratable Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Bank and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower, except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that such Person acted with gross negligence or willful misconduct. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**Section 12.08 Setoff**. Borrower agrees that, in addition to (and without limitation of) any right of setoff, bankers' lien or counterclaim a Bank may otherwise have, each Bank shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Borrower at any of such Bank's offices, in Dollars or in any other currency, against any amount payable by Borrower to such Bank under this Agreement or such Bank's Note(s), or any other Loan Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and Administrative Agent thereof; provided that such Bank's failure to give such notice shall not affect the validity thereof, and provided further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Banks, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

Payments by Borrower hereunder or under the other Loan Documents shall be made without setoff or counterclaim.

**Section 12.09 Table of Contents; Headings**. Any table of contents and the headings and captions hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

**Section 12.10 Severability**. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction. Without limiting the foregoing provisions of this Section 12.10, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

**Section 12.11 Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

**Section 12.12 Integration.** The Loan Documents, the Fee Letters set forth the entire agreement among the parties hereto relating to the transactions contemplated thereby and supersede any prior oral or written statements or agreements with respect to such transactions.

**Section 12.13 Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of Laws, other than sections 5-1401 and 5-1402 of the New York General Obligations Law).

**Section 12.14 Waivers.** In connection with the obligations and liabilities as aforesaid, Borrower hereby waives (1) promptness and diligence; (2) notice of any actions taken by any Bank Party under this Agreement, any other Loan Document or any other agreement or instrument relating thereto except to the extent otherwise provided herein; (3) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section, might constitute grounds for relieving Borrower of its obligations hereunder; (4) any requirement that any Bank Party protect, secure, perfect or insure any Lien on any collateral or exhaust any right or take any action against Borrower or any other Person or any collateral; (5) any right or claim of right to cause a marshalling of the assets of Borrower; and (6) all rights of subrogation or contribution, whether arising by contract or operation of law (including, without limitation, any such right arising under the Federal Bankruptcy Code) or otherwise by reason of payment by Borrower, either jointly or severally, pursuant to this Agreement or other Loan Documents.

**Section 12.15 Jurisdiction; Immunities.** Borrower, Administrative Agent and each Bank hereby irrevocably submit to the exclusive jurisdiction of any New York State or ~~United States Federal~~ court sitting in New York County or the United States District Court for the Southern District of New York sitting in New York County, and any appellate court from any thereof, over any action or proceeding arising out of or relating to this Agreement, the Notes or any other Loan Document. Borrower, Administrative Agent, and each Bank irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or United States Federal court. Borrower, Administrative Agent, and each Bank irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Borrower, Administrative Agent or each Bank, as the case may be, at the addresses specified herein. Borrower, Administrative Agent and each Bank agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Borrower, Administrative Agent and each Bank further waive any objection to venue in the State of New York and any objection to an action or proceeding in the State of New York on the basis of forum non conveniens. Borrower, Administrative Agent and each Bank agree that any action or proceeding brought against Borrower, Administrative Agent or any Bank, as the case may be, shall be brought only in a New York State court sitting in New York County or ~~at the~~ United States Federal District Court for the Southern District of New York court sitting in New York County, to the extent permitted or not expressly prohibited by applicable Law.

Nothing in this Section shall affect the right of Borrower, Administrative Agent or any Bank to serve legal process in any other manner permitted by Law.

To the extent that Borrower, Administrative Agent or any Bank have or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Borrower, Administrative Agent and each Bank hereby irrevocably waive such immunity in respect of its obligations under this Agreement, the Notes and any other Loan Document.

BORROWER, ADMINISTRATIVE AGENT AND EACH BANK WAIVE ANY RIGHT EACH SUCH PARTY MAY HAVE TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT WITH RESPECT TO THIS AGREEMENT, THE NOTES, THE OTHER LOAN DOCUMENTS, THE LOANS OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 12.16 USA Patriot Act.** Each Bank hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub.L.107-56 (signed into law October 26, 2001)) (the "*Patriot Act*"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Bank to identify Borrower in accordance with the Patriot Act.

**Section 12.17 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent and the Banks agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, consultants, trustees, advisors and representatives in connection with the transactions contemplated by this Agreement (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any Assignee of or Participant in, or any prospective Assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

In addition, the Administrative Agent and the Banks may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Banks in connection with the administration of this Agreement, the other Loan Documents, and the Loans.



For purposes of this Section, "Information" means all information received from the Borrower or any Consolidated Business relating to the Borrower or any Consolidated Business or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Bank on a nonconfidential basis prior to disclosure by the Borrower or any Consolidated Business, provided that, in the case of information received from the Borrower or any Consolidated Business after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent and the Banks acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Consolidated Business, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

**Section 12.18 Survival of Representations and Warranties.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Bank, regardless of any investigation made by the Administrative Agent or any Bank or on their behalf and notwithstanding that the Administrative Agent or any Bank may have had notice or knowledge of any Default at the time of any credit extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied. Notwithstanding the foregoing, any representation or warranty made hereunder and specified to be made as of a certain date shall continue to be interpreted as having been made only as of such date.

**Section 12.19 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers, and the Banks are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers, and the Banks, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each Arranger and each Bank is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Bank has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers and the Banks and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent, any Arranger, nor any Bank has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, any Arranger or any Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

~~**Section 12.20 Section 12.20 Electronic Execution of Assignments and Certain Other Documents; Electronic Records; Counterparts.**~~ The words "execute", "execution", "signed", "signature" and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Acceptances, amendments or other modifications, Notices of Conversion/Continuation, requests for advances, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

**. This Agreement, any Loan Document and any other Communication, including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The Borrower and each of the Administrative Agent and the Bank Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will**

constitute the legal, valid and binding obligation of such Person enforceable against such Person in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Bank Parties may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is not under any obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by such Person pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Bank Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the Borrower and/or any Bank Party without further verification and (b) upon the request of the Administrative Agent or any Bank Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with the Administrative Agent’s reliance on any Electronic Signature transmitted by telecopy, emailed .pdf or any other electronic means). The Administrative Agent shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any Communication (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution or signed using an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

The Borrower and each Bank Party hereby waives (i) any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement and/or any other Loan Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and (ii) waives any claim against the Administrative Agent, each Bank Party and each Related Party for any liabilities arising solely from the Administrative Agent’s and/or any Bank Party’s reliance on or use of Electronic Signatures, including any liabilities arising as a result of the failure of the Loan Parties to use any available security.

**measures in connection with the execution, delivery or transmission of any Electronic Signature.**

**Section 21.1 Acknowledgement and Consent to Bail-In of EEA Affected Financial Institutions.** Solely to the extent any Bank that is an ~~EEA Affected~~ Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Bank that is an ~~EEA Affected~~ Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the ~~write-down and conversion powers of an EEA~~ **Write-Down and Conversion Powers of the applicable** Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~ **the applicable** Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Bank that is an ~~EEA Affected~~ Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such ~~EEA Affected~~ Financial Institution, its parent ~~entity~~ **undertaking**, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the ~~write-down and conversion powers of any EEA~~ **Write-Down and Conversion Powers of the applicable** Resolution Authority.

**Section 12.22 Transitional Arrangements.**

(a) **Existing Loan Agreement Superseded.** This Agreement shall supersede the Existing Loan Agreement in its entirety, except as provided in this Section 12.22. On the Closing Date, the rights and obligations of the parties under the Existing Loan Agreement and the “Notes” defined therein shall be subsumed within and be governed by this Agreement and the Notes and continue as “Obligations” hereunder (except to the extent repaid on the Closing Date). The Banks’ interests in such Obligations shall be reallocated on the Closing Date in accordance with each Bank’s applicable Loan Commitments. On the Closing Date, each Person listed on Schedule 1 attached to this Agreement shall be a Bank under this Agreement with the Tranche A Commitment and/or Tranche B Commitment set forth opposite its name on such Schedule 1.

(b) **Return and Cancellation of Notes.** Upon its receipt of the Notes to be delivered hereunder on the Closing Date, each Bank will promptly return to Borrower, marked “Cancelled” or “Replaced”, the notes of Borrower held by such Bank pursuant to the Existing Loan Agreement.

(c) Interest and Fees Under Existing Loan Agreement. All interest and all commitment, facility and other fees and expenses owing or accruing under or in respect of the Existing Loan Agreement shall be calculated as of the Closing Date (prorated in the case of any fractional periods), and shall be paid on the Closing Date in accordance with the methods specified in the Existing Loan Agreement as if such agreement was still in effect.

Section 12.23 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any swap contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(b) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(c) As used in this Section 12.23, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a

“covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

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**SUBSIDIARY LIST (BY JURISDICTION)**

**California**

San Francisco Bay Partners II, Ltd.

**Connecticut**

Smithtown Galleria Associates Limited Partnership  
Town Close Associates Limited Partnership

**Delaware**

650 North Sherman, LLC  
1865 Broadway For-Sale, LLC  
1865 Broadway Retail, LLC  
4100 Massachusetts Avenue Solar, LLC  
Acton Solar Avalon, LLC  
Alameda Financing, L.P.  
Alexander City Park, LLC  
Archstone Communities LLC  
Archstone DC Master Holdings LLC  
Archstone DC One Holdings LLC  
Archstone Del Mar Station LLC  
Archstone East 39th Street (Nominee) GP LLC  
Archstone East 39th Street (Nominee) LP  
Archstone East 39th Street Holdings GP LLC  
Archstone East 39th Street Holdings LP  
Archstone East 39th Street Land LLC  
Archstone East 39th Street Principal GP LLC  
Archstone East 39th Street Principal LP  
Archstone Grosvenor Tower GP LLC  
Archstone Grosvenor Tower LP  
Archstone Grosvenor Tower REIT GP LLC  
Archstone Grosvenor Tower REIT LP  
Archstone HoldCO CM LLC  
Archstone Huntington Beach College Park LLC  
Archstone Huntington Beach Member LLC  
Archstone Legacy Place GP LLC  
Archstone Legacy Place LP  
Archstone Legacy Place REIT GP LLC  
Archstone Legacy Place REIT LP  
Archstone Lincoln Towers LLC  
Archstone Master Property Holdings LLC  
Archstone Multifamily Partners AC Asset Manager LLC  
Archstone Multifamily Partners AC CM LLC  
Archstone Multifamily Partners AC Funding GP LLC

Archstone Multifamily Partners AC Funding LP  
Archstone Multifamily Partners AC GP LLC  
Archstone Multifamily Partners AC Investor I LLC  
Archstone Multifamily Partners AC Investor II LLC  
Archstone Multifamily Partners AC JV Asset Manager LLC  
Archstone Multifamily Partners AC LP  
Archstone Multifamily Series II LLC  
Archstone Multifamily Series III LLC  
Archstone Multifamily Series IV LLC  
Archstone North Capitol Hill 2 GP LLC  
Archstone North Capitol Hill 2 LP  
Archstone North Capitol Hill GP LLC  
Archstone North Capitol Hill LP  
Archstone Northcreek LLC  
Archstone Oak Creek I LLC  
Archstone Oak Creek II LLC  
Archstone Oakwood Toluca Hills LLC  
Archstone Old Town Pasadena LLC  
Archstone Parallel Residual JV 2, LLC  
Archstone Parallel Residual JV, LLC  
Archstone Parkland Gardens LLC  
Archstone Property Holdings GP LLC  
Archstone Property Holdings LLC  
Archstone Redmond Campus LLC  
Archstone Residual JV, LLC  
Archstone San Bruno III LLC  
Archstone San Bruno III-B LLC  
Archstone San Mateo Holdings LP  
Archstone Smith Corporate Holdings LLC  
Archstone Studio 4041 GP LLC  
Archstone Studio 4041 LP  
Archstone Studio 4041 REIT GP LLC  
Archstone Studio 4041 REIT LP  
Archstone Texas Land Holdings LLC  
Archstone Thousand Oaks LLC  
Archstone Trademark JV, LLC  
Archstone Tysons Corner LLC  
Archstone Westbury (Nominee) GP LLC  
Archstone Westbury (Nominee) LP  
Archstone Westbury GP LLC  
Archstone Westbury Holdings GP LLC  
Archstone Westbury Holdings LP  
Archstone Westbury LP  
Archstone Westbury Principal GP LLC  
Archstone Westbury Principal LP  
Archstone-Smith Unitholder Services LLC



Aria at Laurel Hill, LLC  
Arlington Square Financing, LLC  
ASN 50th Street LLC  
ASN Bear Hill LLC  
ASN Calabasas I LLC  
ASN Calabasas II LLC  
ASN La Jolla Colony LLC  
ASN Lake Mendota Investments LLC  
ASN Long Beach LLC  
ASN Los Feliz LLC  
ASN Meadows at Russett I LLC  
ASN Meadows at Russett II LLC  
ASN Monument Park LLC  
ASN Mountain View LLC  
ASN Pasadena LLC  
ASN Redmond Lakeview LLC  
ASN Redmond Park LLC  
ASN San Jose LLC  
ASN Tanforan Crossing I LLC  
ASN Tanforan Crossing II LLC  
ASN Thousand Oaks Plaza LLC  
ASN Walnut Ridge LLC  
ASN Woodland Hills East LLC  
AVA Arts District CM, LLC  
AVA Arts District Developer, LLC  
AVA Arts District GP, LLC  
AVA Arts District TRS, LLC  
AVA Arts District, L.P.  
AVA Brewers Hill, LLC  
AVA Burbank Solar, LLC  
AVA Capitol Hill, LLC  
AVA Hyattsville Crossing, LLC  
AVA Lawrence Street, LLC  
AVA Ninth, L.P.  
AVA Pacific Beach Solar, LLC  
AVA Pasadena Solar, LLC  
AVA SC I Solar, LLC  
AVA SC II Solar, LLC  
AVA Toluca Hills Solar, LLC  
Avalon 210 Wall, LLC  
Avalon 55 Ninth, LLC  
Avalon 645 North Grant, LLC  
Avalon 657 North Grant, LLC  
Avalon 850 Boca, LLC  
Avalon Addison, L.P.  
Avalon Addison GP, LLC

Avalon Alameda Solar, LLC  
Avalon Alderwood CM, LLC  
Avalon Alderwood MF, LLC  
Avalon Alderwood MF Member, LLC  
Avalon Alderwood Phase I, LLC  
Avalon Alderwood PM, LLC  
Avalon Alexander, LLC  
Avalon Aliso Viejo Commons GP, LLC  
Avalon Aliso Viejo Commons, L.P.  
Avalon Amityville, LLC  
Avalon Amityville II, LLC  
Avalon Arboretum, L.P.  
Avalon Arundel Crossing, LLC  
Avalon at 318 I Street, LLC  
Avalon at 318 I Street Solar, LLC  
Avalon at Ballston, LLC  
Avalon at Florham Park, LLC  
Avalon at Mission Bay III, L.P.  
Avalon at Pacific Bay, L.P.  
Avalon at Providence Park, LLC  
Avalon Baker Ranch, L.P.  
Avalon Ballard, LLC  
Avalon Beacon Square, LLC  
Avalon Belltown, LLC  
Avalon Bloomfield Station Solar, LLC  
Avalon Bloomingdale Solar, LLC  
Avalon Bonterra, LLC  
Avalon Boonton Solar, LLC  
Avalon Bothell Commons, LLC  
Avalon Brea Place, LLC  
Avalon Brea Place Member, LLC  
Avalon Brea Place (Phase I), LLC  
Avalon Brea Place (Phase II), LLC  
Avalon Burbank Solar, LLC  
Avalon Burlington, LLC  
Avalon Campbell Solar, LLC  
Avalon Cerritos, L.P.  
Avalon Chino Hills, L.P.  
Avalon Columbia Pike, LLC  
Avalon Columbus Circle, LLC  
Avalon Columbus Circle Retail, LLC  
Avalon Denver West, LLC  
Avalon Doral, LLC  
Avalon DownREIT V, L.P.  
Avalon Dublin Station II, L.P.  
Avalon East Harbor, LLC

Avalon Element, LLC  
Avalon Encino, L.P.  
Avalon Exeter, LLC  
Avalon Fair Lakes, LLC  
Avalon Fairfax City, LLC  
Avalon Flatirons, LLC  
Avalon Florham Solar, LLC  
Avalon Foundry Row, LLC  
Avalon Framingham, LLC  
Avalon Ft. Lauderdale, LLC  
Avalon Glendora, L.P.  
Avalon Gold, LLC  
Avalon Great Neck, LLC  
Avalon Green II, LLC  
Avalon Grosvenor, L.P.  
Avalon Hackensack, LLC  
Avalon Hawk, L.P.  
Avalon Hawk GP, LLC  
Avalon Highland Creek GP, LLC  
Avalon Highland Creek, L.P.  
Avalon Hoboken, LLC  
Avalon Hoboken TRS, LLC  
Avalon Hoboken JV, LLC  
Avalon Hollywood, L.P.  
Avalon Hollywood GP, LLC  
Avalon Hub South End, L.P.  
Avalon Hub South End GP, LLC  
Avalon Hunt Valley, LLC  
Avalon HVTC, LLC  
Avalon Ironwood at Red Rocks, LLC  
Avalon Irvine III, L.P.  
Avalon Irvine, L.P.  
Avalon La Jolla Solar, LLC  
Avalon La Mesa Solar, LLC  
Avalon Lake Norman GP, LLC  
Avalon Lake Norman, L.P.  
Avalon Lakeside, L.P.  
Avalon Lakeside, LLC  
Avalon Laurel, LLC  
Avalon Maplewood Solar, LLC  
Avalon Marlborough, LLC  
Avalon Merrick Park, LLC  
Avalon Merrick Park Member, LLC  
Avalon Milazzo, L.P.  
Avalon Miramar, LLC  
Avalon Miramar Park Place I, LLC

Avalon Miramar Park Place II, LLC  
Avalon Mission Oaks, L.P.  
Avalon Monrovia, LLC  
Avalon Morningside Fee, LLC  
Avalon Morrison Park, L.P.  
Avalon Mosaic II, LLC  
Avalon Mosaic, LLC  
Avalon Nashua, LLC  
Avalon Natick Solar, LLC  
Avalon New Canaan, LLC  
Avalon Newport, L.P.  
Avalon Norden Place, LLC  
Avalon North Creek, LLC  
Avalon Oak Road, L.P.  
Avalon Oak Road GP, LLC  
Avalon Ocean Avenue, L.P.  
Avalon Old Bridge, LLC  
Avalon Old Bridge Solar, LLC  
Avalon Ossining, LLC  
Avalon Overlake, LLC  
Avalon Overlake Phase II, LLC  
Avalon Park Crest, LLC  
Avalon Piscataway, LLC  
Avalon Piscataway Solar, LLC  
Avalon Pleasanton, L.P.  
Avalon Pleasanton GP, LLC  
Avalon PM Solar, LLC  
Avalon Portico at Silver Spring Metro, LLC  
Avalon Potomac Yard, LLC  
Avalon Princeton, LLC  
Avalon Princeton Solar, LLC  
Avalon Public Market, L.P.  
Avalon Public Market Parcel C, LLC  
Avalon Queen Anne, LLC  
Avalon Rancho Vallecitos, L.P.  
Avalon Ridge at Wheatlands, LLC  
Avalon Riverview I, LLC  
Avalon Riverview North, LLC  
Avalon Rockwell & Lanes, LLC  
Avalon Roseland, LLC  
Avalon Roseland Solar, LLC  
Avalon Rutherford, L.P.  
Avalon Rutherford GP, LLC  
Avalon San Dimas, L.P.  
Avalon SC Solar, LLC  
Avalon Shipyard, LLC

Avalon Somers, LLC  
Avalon Somerville Station Solar, LLC  
Avalon Somerville Station Urban Renewal, LLC  
Avalon SoMi, LLC  
Avalon SoMi Investor, LLC  
Avalon Stuart, LLC  
Avalon Studio 77, L.P.  
Avalon Teaneck, LLC  
Avalon Three30Five, L.P.  
Avalon Three30Five GP, LLC  
Avalon Toscana, LLC  
Avalon Towers Bellevue, LLC  
Avalon Towson, LLC  
Avalon Union City, L.P.  
Avalon Union Solar, LLC  
Avalon Upper Falls Limited Partnership  
Avalon Upper Falls, LLC  
Avalon Villa Bonita, L.P.  
Avalon Villa San Dimas, L.P.  
Avalon Vista, L.P.  
Avalon Vista Solar, LLC  
Avalon Walnut Creek II, L.P.  
Avalon Walnut Creek II GP, LLC  
Avalon Watch, LLC  
Avalon West Dublin, L.P.  
Avalon West Dublin GP, LLC  
Avalon West Dublin QRS, LLC  
Avalon West Hollywood, L.P.  
Avalon West Long Branch, LLC  
Avalon West Windsor, LLC  
Avalon West Windsor Venture, LLC  
Avalon Westminster Promenade, LLC  
Avalon Wharton Solar, LLC  
Avalon White Plains II, LLC  
Avalon Willoughby West, LLC  
Avalon Wilshire, L.P.  
Avalon Woodland Hills, L.P.  
Avalon WP I, LLC  
Avalon WP II, LLC  
Avalon WP III, LLC  
Avalon WP IV, LLC  
Avalon WP V, LLC  
Avalon WP VI, LLC  
Avalon Yonkers ATI Site, LLC  
Avalon Yonkers Sun Sites, LLC  
AvalonBay BT Investor, LLC

AvalonBay Trade Zone Village, LLC  
AVB-Griffin JV, LLC  
AVB 1865 Broadway, LLC  
AVB 1865 Developer, LLC  
AVB Albemarle, LLC  
AVB Albemarle Solar, LLC  
AVB Balboa, LLC  
AVB BG Investment, LLC  
AVB Bloomfield Station Urban Renewal, LLC  
AVB Boonton Bondholder, LLC  
AVB Bowery II, LLC  
AVB Brandywine Member, LLC  
AVB Cerritos, LLC  
AVB Consulate, LLC  
AVB Del Rey, L.P.  
AVB EIP Investor, LLC  
AVB Gallery Place Solar, LLC  
AVB Glover Park, LLC  
AVB Harbor Isle, LLC  
AVB Harrison, LLC  
AVB Investor, LLC  
AVB La Mesa GP LLC  
AVB La Mesa II GP LLC  
AVB La Mesa II LP  
AVB La Mesa LP  
AVB Legacy DownREIT, LLC  
AVB LoHi Investor, LLC  
AVB Manager II, LLC  
AVB Market Common, LLC  
AVB ME Investor, LLC  
AVB Meadows, LLC  
AVB Morningside Ground Tenant, LLC  
AVB Morningside Park, LLC  
AVB Morningside Tenant, LLC  
AVB North Capitol Hill Solar, LLC  
AVB NP II JV GP, LLC  
AVB NP II JV Investor, LLC  
AVB NY Investor, LLC  
AVB NY Portfolio CM, LLC  
AVB Old Tappan Investor, LLC  
AVB Opera Warehouse GP, LLC  
AVB Opera Warehouse TRS, LLC  
AVB Opera Warehouse, L.P.  
AVB Pleasant Hill Investor, LLC  
AVB Portals Investor, LLC  
AVB Prop Tech, LLC

AVB Residual Parallel II, LLC  
AVB Reston Investor, LLC  
AVB Santa Monica on Main GP LLC  
AVB Santa Monica on Main LP  
AVB Simi Valley GP LLC  
AVB Simi Valley LP  
AVB Southwest Berkeley GP LLC  
AVB Southwest Berkeley LP  
AVB Statesman, LLC  
AVB Statesman Solar, LLC  
AVB Studio City GP LLC  
AVB Studio City III-A GP LLC  
AVB Studio City III-A LP  
AVB Studio City III-B GP LLC  
AVB Studio City III-B LP  
AVB Studio City III-C GP LLC  
AVB Studio City III-C LP  
AVB Studio City LP  
AVB Trademark, LLC  
AVB Tunlaw Gardens, LLC  
AVB VA Construction, LLC  
AVB Van Ness Solar, LLC  
AVB Walnut Creek GP LLC  
AVB Walnut Creek LP  
AVB Walnut Creek Station GP LLC  
AVB Walnut Creek Station LP  
AVB West Chelsea, LLC  
AVB Willow Glen GP LLC  
AVB Willow Glen LP  
AVBQ, LLC  
Bay Countrybrook L.P.  
Bay Pacific Northwest, L.P.  
Bellevue Financing, LLC  
Bloomingdale Urban Renewal, LLC  
Boonton Urban Renewal, LLC  
Bowery Place I Low-Income Operator, LLC  
Bowery Place I Manager, LLC  
BPR Sudbury Development LLC  
Brighton Avalon, LLC  
Cahill Park Solar, LLC  
CG-N Affordable LLC  
CG-N Affordable Manager LLC  
CG-S Affordable LLC  
CG-S Affordable Manager LLC  
Clinton Green North, LLC  
Clinton Green South, LLC

Clinton Green Theatre, LLC  
CNH Solar Avalon, LLC  
Courthouse Hill LLC  
Crescent Financing, LLC  
Crest Financing, L.P.  
CVP II, LLC  
Darien Financing, LLC  
Dermot Clinton Green, LLC  
Doral AVB Member, LLC  
Dublin Station Solar, LLC  
Dublin Station II Solar, LLC  
Eaves Artesia, L.P.  
Eaves Burlington, LLC  
Eaves Burlington Solar, LLC  
Eaves Creekside Solar, LLC  
Eaves Dublin Solar, LLC  
Eaves OT Pasadena Solar, LLC  
Eaves Pleasanton Solar, LLC  
Eaves Rancho Solar, LLC  
Eaves San Jose Solar, LLC  
Eaves Warner Center Solar, LLC  
Eaves WC Solar, LLC  
Eaves WV Solar, LLC  
Edgewater Financing, LLC  
Fairfax Towers Financing, L.P.  
Foster City Solar, LLC  
Garden City Apartments, LLC  
Garden City SF, LLC  
Garden City Townhomes, LLC  
Hayes Valley, L.P.  
Laurel Hill Private Sewer Treatment Facility, LLC  
Legacy Holdings JV, LLC  
Lexford Properties, L.P.  
Maplewood Urban Renewal, LLC  
Mark Pasadena Financing, L.P.  
Marlborough Solar Avalon, LLC  
Mission Bay North Financing, L.P.  
Monrovia Solar, LLC  
Montville Urban Renewal, LLC  
Morrison Park Solar, LLC  
Mountain View Middlefield Solar, LLC  
MVP I, LLC  
NC Commons Solar, LLC  
Newburyport Avalon, LLC  
Newcastle Construction Management, LLC  
Newcastle For Sale, LLC



Newcastle Joint Venture, LLC  
Newcastle Multifamily Rental, LLC  
Newton HL Solar Avalon, LLC  
North Andover Avalon, LLC  
North Andover II Avalon, LLC  
North Bergen Residential Urban Renewal, LLC  
North Bergen Retail Urban Renewal, LLC  
North Point II Apartments, LLC  
North Point II JV, LP  
North Point II REIT, LLC  
Northtown Multifamily, L.P.  
Northtown Multifamily GP, LLC  
Norwalk Retail, LLC  
NYTA MF Investors, LLC  
OEC Holdings LLC  
PHVP I GP, LLC  
PHVP I, LP  
Pleasant Hill Manager, LLC  
Pleasant Hill Transit Village Associates LLC  
Post Road Iron Works Development, LLC  
Princeton SC Residential Urban Renewal, LLC  
Princeton Thanet Road Urban Renewal, LLC  
Quincy Avalon, LLC  
Reservoir Community Partners, LLC  
Ridgefield Park Urban Renewal, LLC  
San Bruno III Financing, L.P.  
Saugus Avalon, LLC  
Saugus Avalon Retail, LLC  
Saugus Avalon CP Retail, LLC  
Shady Grove Road Financing, LLC  
Sheepshead Bay Road Lender, LLC  
Sheepshead Bay Road Manager, LLC  
Sheepshead Bay Road Owner, LLC  
Sheepshead Bay Road Partner, LLC  
Sheepshead Bay Road PM, LLC  
Silicon Valley Financing, LLC  
Smith Property Holdings Consulate L.L.C.  
Smith Property Holdings Five (D.C.) L.P.  
Smith Property Holdings One (D.C.) L.P.  
Smith Property Holdings Reston Landing L.L.C.  
Sudbury Land Avalon, LLC  
Towson Circle North, LLC  
Union Urban Renewal, LLC  
Wesmont Station Residential I Urban Renewal, LLC  
Wesmont Station Residential II Urban Renewal, LLC  
Wesmont Station Retail I Urban Renewal, LLC

Wesmont Station Retail II Urban Renewal, LLC  
West LA Commons, LLC  
Wharton Urban Renewal, LLC  
Willow Glen Solar, LLC  
WN Ridge I Solar, LLC  
WN Ridge II Solar, LLC  
Woburn Avalon, LLC  
Woburn Solar, LLC  
Woodland Hills Solar, LLC

**District of Columbia**

4100 Massachusetts Avenue Associates, L.P.

**Maryland**

Archstone  
Archstone Inc.  
Archstone Multifamily Series I Trust  
Avalon 4100 Massachusetts Avenue, Inc.  
Avalon Acton, Inc.  
Avalon at Chestnut Hill, Inc.  
Avalon at Great Meadow, Inc.  
Avalon BFG, Inc.  
Avalon Chase Glen, Inc.  
Avalon Chase Grove, Inc.  
Avalon Chino Hills Manager, Inc.  
Avalon Collateral, Inc.  
Avalon Commons, Inc.  
Avalon DownREIT V, Inc.  
Avalon Fairway Hills I Associates  
Avalon Fairway II, Inc.  
Avalon Glendora Manager, Inc.  
Avalon Grosvenor LLC  
Avalon Hayes Valley Manager, Inc.  
Avalon Mission Oaks Manager, Inc.  
Avalon Natick, Inc.  
Avalon Oaks, Inc.  
Avalon Oaks West, Inc.  
Avalon Promenade, Inc.  
Avalon Public Market GP, Inc.  
Avalon Sharon, Inc.  
Avalon Studio 77 GP, Inc.  
Avalon Symphony Woods, Inc.  
Avalon Twinbrook Station, Inc.  
Avalon Upper Falls Limited Dividend Corporation

Avalon West Hollywood Manager, Inc.  
AvalonBay Assembly Row, Inc.  
AvalonBay Construction Services, Inc.  
AvalonBay Grosvenor, Inc.  
AvalonBay NYC Development, Inc.  
AvalonBay Trville, LLC  
AVB Development Transactions, Inc.  
AVB NC QRS, Inc.  
AVB Northborough, Inc.  
AVB Realty Management Services, Inc.  
AVB Service Provider, Inc.  
Bay Asset Group, Inc.  
Bay Development Partners, Inc.  
Bay GP, Inc.  
Brandywine Apartments of Maryland, LLC  
California Multiple Financing, Inc.  
California San Bruno III Financing, Inc.  
CCC Service Provider, Inc.  
Easton Avalon, Inc.  
Georgia Avenue, Inc.  
Hingham Shipyard Avalon II, Inc.  
Juanita Construction, Inc.  
Lexington Ridge-Avalon, Inc.  
Milford Avalon, Inc.  
Norwood Avalon, Inc.  
Pomorum Holdings, Inc.  
Smith Realty Company  
Sudbury Avalon, Inc.

**Massachusetts**

855 Broadway Licensee, LLC  
AvalonBay BFG Limited Partnership

**New Jersey**

Town Cove Jersey City Urban Renewal, Inc.

**New York**

Avalon Huntington Former S Corp

**Virginia**

Hillwood Square Mutual Association  
Pomorum Renters Insurance Agency, LLC

**FOREIGN ENTITIES:**

Pomorum Insurance Company Ltd. (Bermuda)  
Pomorum Renters Insurance Company, Ltd. (Bermuda)

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the following Registration Statements:

- (1) Registration Statements and Related Prospectuses (Forms S-3 No. 333-253532, No. 333-87063 and No. 333-107413) of AvalonBay Communities, Inc., and
- (2) Registration Statements (Forms S-8 No. 333-216221, No. 333-161258 and No. 333-16837) pertaining to AvalonBay Communities, Inc.'s Deferred Compensation Plan, AvalonBay Communities, Inc. 2009 Stock Option and Incentive Plan and AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated and 1996 Non-Qualified Employee Stock Purchase Plan, respectively,

of our reports dated February 24, 2023, with respect to the consolidated financial statements of AvalonBay Communities, Inc. and the effectiveness of internal control over financial reporting of AvalonBay Communities, Inc. included in this Annual Report (Form 10-K) of AvalonBay Communities, Inc. for the year ended December 31, 2022.

/s/ Ernst & Young LLP

Tysons, Virginia  
February 24, 2023

## CERTIFICATION

I, Benjamin W. Schall, certify that:

1. I have reviewed this annual report on Form 10-K of AvalonBay Communities, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a - 15(e) and 15d - 15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a - 15(f) and 15d - 15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2023

/s/ BENJAMIN W. SCHALL

Benjamin W. Schall  
Chief Executive Officer and President  
(Principal Executive Officer)

## CERTIFICATION

I, Kevin P. O'Shea, certify that:

1. I have reviewed this annual report on Form 10-K of AvalonBay Communities, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a - 15(e) and 15d - 15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a - 15(f) and 15d - 15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2023

/s/ KEVIN P. O'SHEA

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Kevin P. O'Shea  
Chief Financial Officer  
(Principal Financial Officer)

**CERTIFICATION**

The undersigned officers of AvalonBay Communities, Inc. (the "Company") hereby certify that the Company's annual report on Form 10-K to which this certification is attached (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 24, 2023

/s/ BENJAMIN W. SCHALL

Benjamin W. Schall  
Chief Executive Officer and President  
(Principal Executive Officer)

/s/ KEVIN P. O'SHEA

Kevin P. O'Shea  
Chief Financial Officer  
(Principal Financial Officer)

This certification is being furnished and not filed, and shall not be incorporated into any document for any purpose, under the Securities Exchange Act of 1934 or the Securities Act of 1933.