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, 2023

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	**77-0404318**
(State or other jurisdiction of incorporation or organization)	(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:

Title of each class	Trading Symbol (s)	Name of each exchange on which registered
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 ý No o

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 o No ý

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 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 ý No o

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 ý No o

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	☒	Accelerated filer	□
Non-accelerated filer	□	Smaller reporting company	□
		Emerging growth company	□

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. o

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). o

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

Yes □ No ý

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, 2023 was $26,794,136,352.

The number of shares of the registrant's Common Stock, par value $.01 per share, outstanding as of January 31, 2024 was 142,025,313.

Documents Incorporated by Reference

Portions of AvalonBay Communities, Inc.'s Proxy Statement for the 2024 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, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. 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," "we," "our" and "us" which terms, unless the context otherwise requires, refer 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 regions 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 are generally 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 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, 2024, we owned or held a direct or indirect ownership interest in:

- 279 operating apartment communities containing 83,655 apartment homes in 12 states and the District of Columbia, of which 271 communities containing 81,408 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.

- 19 wholly-owned development apartment communities that are under construction or completed and in lease-up and are expected to contain an aggregate of 6,539 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 30 communities that, if developed as expected, will contain 10,801 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, operation and asset management 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) efficiently operate our communities to maximize resident satisfaction and shareholder return, (iv) 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 (v) 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 in our existing regions. 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."

We seek to be a leading apartment company in select U.S. markets that are characterized by growing employment in high wage sectors of the economy, higher home prices and a diverse and vibrant quality of life. From an operating perspective, we seek to deliver seamless, personalized experiences for our residents on an efficient and effective basis by our resident-focused on-site associates that are supported by our centralized shared services operating organization and flexible technology platform that incorporates automation and artificial intelligence. 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 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, 2023, we:

- acquired 14 apartment communities, excluding unconsolidated investments;
- disposed of 22 apartment communities, excluding unconsolidated investments;
- realized our pro rata share of the gain from the sale of five communities owned by unconsolidated real estate entities; and
- completed the development of 21 apartment communities, including unconsolidated investments, and the redevelopment of two apartment communities.

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, operating and 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:

- Austin, Texas;
- 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 Antonio, Texas;
- 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 regions where we may have limited resources or scale. 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 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 2023 with respect to all 14 assets, the aggregate amount of the tax protection payments that would have been triggered would have been approximately $44,100,000. 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 regions 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.

Operating & 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;
- employing an innovative and continually evolving operating model that combines effective onsite associates with the capabilities of our centralized shared services center, technology platform and digital offerings and various automation technologies;
- utilizing data science and our operating experience to optimize revenue from the portfolio, including making operating decisions that reduce customer acquisition, transaction and retention costs;
- staggering lease terms such that lease expirations are matched with seasonal demand; and
- delivering high occupancy with premium pricing for various customer segments.

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 lease renewal activity, as well as 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, including in our expansion regions where we may have limited resources or scale.

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. 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:

- Structured Investment Program: while we generally invest in multifamily real estate through fee simple ownership or an equity investment in a joint venture, we operate an investment platform through which we provide mezzanine loans or preferred equity to third-party multifamily developers in our existing regions.

- 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.

- 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.

- 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.

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. Since mid-2023, we have provided various back-office, financial administrative support services for a third party leveraging the economies of scale at our center to produce an additional revenue stream.

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. 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, show appreciation, and champion inclusion and diversity).

At January 31, 2024, we had 3,039 employees, of which approximately 98% were employed on a full-time basis. Approximately 65% 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.

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, 2024, 37% of our associates self-identified as White, 30% as Hispanic, 16% as Black, 6% as Asian, and 11% as other ethnicities, two or more ethnicities or did not respond. At January 31, 2024, 59% of our associates self-identified as male and 41% 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 providing job aids and quick reference guides, web-based courses and videos, in-person and virtual, instructor-led training and on-the-job learning. Our learning management system, AvalonBay University, offers approximately 700 courses providing functional, technical, management, ethics, compliance, cyber-awareness and safety training.

Available 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.

We maintain a website at 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 Exchange Act 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, Compensation Recovery Policy, 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 New York Stock Exchange (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.

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 have recently, and may in the future, 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 or we may impair land held for development, 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 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.

During 2023, we began to provide, through our internally operated shared service center, various back-office, financial administrative support services to a third party for a fee, and we may in the future provide such services to other third parties. There can be no assurance that we will be successful in providing such services, and the provision of such services creates additional sources of risk and potential liability for us with respect to the professional commitments and service levels we undertake when providing such services.

We are exposed to risks associated with investment in technology and environmentally focused venture funds and companies. 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 TRSs 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, 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 make mezzanine loans to borrowers and obtain preferred equity interests in projects owned by third party sponsors as part of our SIP. Some of these instruments may have some recourse to their borrower or sponsor, while others are limited to the collateral securing the loan or the right to remove the sponsor as manager of the venture in preferred equity investments. In the event of a default under these obligations, we may elect to take possession of the collateral securing these interests, or remove a sponsor from management of a preferred equity investment. Borrowers of mezzanine loans may contest our enforcement actions, including, foreclosure, assignment in lieu of foreclosure, or other remedies, and sponsors may contest our removal actions. In addition, borrowers and sponsors may 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 underlying properties may prevent us from realizing an amount equal to our investment upon foreclosure or other remedies even if we make substantial improvements or repairs to maximize such properties' investment potential.

We cannot be certain that our estimate of future credit losses will be adequate over time 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 or improvement 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. Further, events involving limited liquidity, defaults, non-performance or other adverse developments that affect the lenders under our Credit Facility, the dealers under our Commercial Paper Program, financial institutions where we have deposits, transactional counterparties or other companies in the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks, could result in losses or defaults by these institutions or counterparties or could lead to market-wide liquidity problems. Disruptions and uncertainty with respect to financial institutions, including as a result of recent bank failures and liquidity concerns, may negatively impact our ability to refinance existing indebtedness and access additional financing at reasonable terms or at all or may cause us or our transactional counterparties to be unable to complete transactions as intended, all of which could have a material adverse effect on our financial condition and results of operations.

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, 2023, 4.6% 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 or reliance on various tax regulations" 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 our business practices, cause us to incur additional costs and expose us to new risks. 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. This has included or may in the future include expanding mandatory and voluntary reporting, diligence, and disclosure on topics such as climate change, human capital, labor and risk oversight, and could expand the nature, scope, and complexity of matters that we are required to control, assess and report, which may prove difficult, expensive and time consuming. 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. We have communicated certain initiatives and goals regarding ESG matters and we may in the future communicate revised or additional initiatives or goals. If we fail to satisfy the expectations of investors, residents and other stakeholders, our initiatives are not executed as planned, or we do not satisfy our goals, our reputation and financial results could be adversely affected.

Risks related to 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, screen 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, the Biden Administration published a white paper entitled the *Blueprint for a Renters Bill of Rights* and various federal agencies have engaged in 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, charge non-rent fees, screen and 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.

We face risks related to multifamily rental antitrust, regulatory scrutiny and new litigation. Lawsuits, government investigations and proposed legislation relating to antitrust matters in the multifamily rental market are ongoing and may impact the Company, whether or not we are found directly liable for an antitrust violation. For example, a purported class action has been brought by private litigants against RealPage, Inc., a provider of revenue management systems, and numerous multifamily rental companies; while we were originally named as a defendant, the Company was voluntarily dismissed without prejudice from this case after explaining to plaintiffs' counsel why the Company believed that these cases were without merit as they pertained to the Company. Subsequently, on November 1, 2023, the District of Columbia filed a lawsuit in the Superior Court of the District of Columbia against RealPage, Inc. and 14 owners and/or operators of multifamily housing in the District of Columbia, including the Company, alleging that the defendants violated the District of Columbia Antitrust Act by unlawfully agreeing to use RealPage, Inc. revenue management systems and sharing sensitive data. While the Company intends to vigorously defend against this lawsuit, given the early stage of the District of Columbia's lawsuit, the Company is unable to predict the outcome or estimate the amount of loss, if any, that may result from the lawsuit. The Company is also aware that governmental investigations regarding antitrust matters in the multifamily industry are ongoing. Municipalities other than the

District of Columbia or federal agencies may also bring suits against multifamily rental providers. Regardless of whether the Company remains named in the District of Columbia lawsuit or any other lawsuits or becomes the focus of any governmental investigation, the Company may incur substantial costs related to these lawsuits, whether as a defendant or as a third-party witness. As well, settlements by RealPage, Inc. or other defendants in such cases could impact the multifamily industry in ways that have an adverse effect on the Company. In addition, state and federal legislation has been introduced that could regulate the use by multifamily apartment rental companies of third party algorithmic revenue management systems, and if legislation of this type passes, the impact on the Company is difficult to predict. Lawsuits, government investigations and new legislation related to antitrust matters may, among other things, be costly to comply with, result in negative publicity, require significant management time and attention and subject us to remedies or burdensome requirements that adversely affect our business.

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 regions 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 or who are working remotely 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.

- Impacts on the general economy and our industry caused by (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 1.5% of our total revenue in 2023. 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, continued at an elevated level in 2023 and may continue at the present level or increase. 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). However, 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 such 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 TRSs that a REIT could not engage in directly. We also use TRSs to hold certain assets that we believe would be subject to the 100% prohibited transaction tax if sold at a gain outside of a TRS or to engage in activities that generate non-qualifying REIT income. Our TRSs 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 ("IRS") 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 TRSs is subject to certain restrictions, and we 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 federal income tax on their taxable income as regular corporations. 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 IRS 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 have owned and may in the future own interests in subsidiaries that have elected (or will elect) to be taxed as REITs under the Code. These subsidiary REITs were or will be 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 property, which could potentially adversely impact our status as a REIT unless we own the property 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, sea level rise, the effects of declines in available water supplies and changes in precipitation, temperature and wildfire exposure, all of which may result in physical damage to and/or a decrease in demand for properties located in areas 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. Further, laws and regulations at the federal, state and local level requiring climate-related disclosures, including the rules proposed by the SEC and the legislation recently enacted in the state of California, may increase compliance and data collection costs if, and when, such laws and regulations become effective.

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 environmental, health and safety 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 how 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 Exchange Act) 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, including risks related to the multifamily rental antitrust litigation discussed below. 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 confidential and 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. Cyber-attacks can include third parties gaining access to data using stolen or inferred credentials, computer malware, viruses, spamming, phishing attacks, ransomware, and other deliberate attacks and attempts to gain unauthorized access to our or our vendors' data or information technology systems. Although our and our vendors' information technology systems are 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. These threats, in turn, may lead to increased costs to protect our information systems, detect and respond to threats, and recover from cyber incidents. Our insurance program may not be adequate to cover all losses relating to such events.

There can be no assurance that we will be able to prevent unauthorized access to 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 vendors, as a result of cyber-attacks or other security incidents, could materially adversely impact our operations and financial position, including disruption of our operations caused by an inability to access network systems, 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 business and our websites used by residents and prospective residents, including requirements related to accessibility of our websites to persons with disabilities and our handling and use of data, including personal data, that we collect. We could face liabilities for failure to comply with these requirements. Privacy laws and regulations, such as the California Consumer Privacy Act as amended by the California Privacy Rights Act ("CCPA"), related regulations and other U.S. state privacy laws, 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 1C. CYBERSECURITY

Cybersecurity Risk Management, Strategy and Governance

We have implemented and maintain a risk management framework designed to identify, assess, and mitigate risks from cybersecurity threats. We assess our cybersecurity program ("CSP"), as part of our enterprise risk management program, against the National Institute of Standards and Technology's Cybersecurity Framework ("NIST CSF") and also use as a model the Center for Internet Security ("CIS") control framework's Implementation Group 2 ("IG2"). We perform annual assessments against NIST CSF benchmarks and focus on continuous improvement over those criteria. We use a list of factors based on business risk tolerance and external compliance requirements to determine if a business asset, data, system, process, or service provider should be included within the scope of the CSP. Prior to contracting with an outside vendor that hosts our data, such as Company information, or PII of our associates or residents, or that integrates with our systems, our policy is to conduct a cybersecurity risk assessment, which includes, as appropriate, a due diligence questionnaire completed by the vendor, a System and Organization Controls 1 ("SOC1") report from major vendors and a review of the vendor's scope of access to our IT systems and data.

We also utilize third-party service providers to enhance our CSP, including engaging them annually to assess our CSP against the NIST CSF. We use one or more third-party managed security solution providers, who provide us with threat intelligence information and managed threat detection and response capabilities. We have also engaged a third party to assist with associate cybersecurity training. Additionally, we have engaged outside breach response legal counsel to assist the Company with cybersecurity counseling and incident response.

Although we have not experienced any material cybersecurity incidents, a future incident could materially affect us. We rely on information technology to process, transmit and store electronic information, and to manage or support a variety of business

processes, including financial transactions, PII, and resident and lease data. Our business requires us and some of our vendors, to use and store PII and other confidential and sensitive information of our residents and associates. Any failure in or breach of our operational or information security systems or those of our vendors as a result of cyber-attacks or other security incidents, could materially adversely impact our operations and financial position, including disruption of our operations caused by an inability to access network systems, 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.

You should carefully review Part I, Item 1A. “Risk Factors” of this Form 10-K for a discussion of the risks to the Company related to cybersecurity.

Our cybersecurity team is headed by our Senior Director of Cybersecurity, who has over 15 years of experience with IT and cybersecurity. The cybersecurity team reports to our Senior Vice President-Information Technology. The Senior Director of Cybersecurity and the Senior Vice President-Information Technology are part of, and work with, a management Cybersecurity Steering Committee (“CSC”), which meets regularly. The CSC works to ensure strategic alignment of the CSP with our business objectives and priorities. The CSC is chaired by the Senior Director of Cybersecurity and is composed of our Chief Financial Officer, Chief Operating Officer, General Counsel and senior members of our finance, legal, IT, risk management and internal audit teams. The Company has designated an incident response team and defined criteria to guide responses to cybersecurity incidents.

The Audit Committee of our Board of Directors provides Board-level oversight of risks from cybersecurity threats. In addition to providing periodic reports, at least annually the Senior Director of Cybersecurity and the Senior Vice President-Information Technology meet with the Audit Committee regarding cybersecurity risks and assessments and related Company policies and initiatives. The Audit Committee and management have adopted a policy that categorizes cybersecurity incidents and sets out incident escalation procedures to the full Board of Directors.

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* 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, 2023, Same Store communities are consolidated for financial reporting purposes, had stabilized occupancy as of January 1, 2022, did not conduct substantial redevelopment activities and are not held for sale as of December 31, 2023. 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, 2023, or which were acquired subsequent to January 1, 2022. Other Stabilized excludes communities that are conducting or conducted substantial redevelopment activities within the current year, as defined below.

- *Redevelopment* is composed of consolidated communities where substantial redevelopment occurred or is in progress. 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, 2023, communities that we owned or held a direct or indirect interest in were classified as follows:

	Number of communities	Number of apartment homes
Current Communities		
Same Store:		
New England	39	9,577
Metro NY/NJ	41	12,766
Mid-Atlantic	39	13,301
Southeast Florida	7	2,187
Denver, CO	4	1,086
Pacific Northwest	20	5,474
Northern California	40	12,133
Southern California	58	17,281
Other Expansion Regions	4	925
Total Same Store	252	74,730
Other Stabilized:		
New England	1	350
Metro NY/NJ	—	—
Mid-Atlantic	4	1,895
Southeast Florida	1	650
Denver, CO	2	453
Pacific Northwest	—	—
Northern California	—	—
Southern California	1	653
Other Expansion Regions	5	1,587
Total Other Stabilized	14	5,588
Redevelopment	—	—
Unconsolidated	8	2,247
Total Current	274	82,565
Development	24	7,629
Unconsolidated Development	1	475
Total Communities	299	90,669
Development Rights	30	10,801

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

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, 2023, 2022 and 2021 were as follows:

	Number of communities
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
Communities added	21
Communities removed (1)	
Redevelopment communities	—
Disposed communities	(4)
Same Store communities as of December 31, 2023	252

(1) Communities were removed from our Same Store portfolio if we believed that planned activity for the upcoming year would result in that community's expected operations not being comparable to the prior year, including (i) when we intended to undertake a significant capital renovation, such that the community was classified as a Redevelopment community; (ii) when we intended to dispose of a community; or (iii) when a significant casualty loss occurred.

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, 2024, our Current Communities consisted of the following:

	Number of communities	Number of apartment homes
Garden-style	131	41,026
Mid-rise	120	34,187
High-rise	28	8,442
Total Current Communities	279	83,655

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	
	1/31/2023	1/31/2024	1/31/2023	1/31/2024	1/31/2023	1/31/2024
New England	**41**	**42**	**10,221**	**10,328**	**12.4 %**	**12.4 %**
Metro NY/NJ	**47**	**49**	**14,296**	**14,756**	**17.4 %**	**17.6 %**
New York City, NY	14	14	5,089	5,089	6.2 %	6.1 %
New York Suburban	12	13	3,792	3,878	4.6 %	4.6 %
New Jersey	21	22	5,415	5,789	6.6 %	6.9 %
Mid-Atlantic	**45**	**44**	**15,770**	**15,501**	**19.2 %**	**18.5 %**
Washington Metro	39	36	13,808	12,784	16.8 %	15.3 %
Baltimore, MD	6	8	1,962	2,717	2.4 %	3.2 %
Southeast Florida	**8**	**8**	**2,837**	**2,837**	**3.4 %**	**3.4 %**
Denver, Colorado	**6**	**6**	**1,539**	**1,539**	**1.9 %**	**1.8 %**
Pacific Northwest	**21**	**21**	**5,802**	**5,802**	**7.0 %**	**6.9 %**
Northern California	**42**	**41**	**12,641**	**12,446**	**15.3 %**	**14.9 %**
San Jose, CA	12	12	4,723	4,723	5.7 %	5.7 %
Oakland-East Bay, CA	15	15	4,338	4,338	5.3 %	5.2 %
San Francisco, CA	15	14	3,580	3,385	4.3 %	4.0 %
Southern California	**59**	**59**	**17,924**	**17,934**	**21.7 %**	**21.4 %**
Los Angeles, CA	39	39	12,133	12,143	14.7 %	14.5 %
Orange County, CA	13	13	4,024	4,024	4.9 %	4.8 %
San Diego, CA	7	7	1,767	1,767	2.1 %	2.1 %
Other Expansion Regions	**6**	**9**	**1,381**	**2,512**	**1.7 %**	**3.1 %**
North Carolina	4	5	760	963	0.9 %	1.2 %
Texas	2	4	621	1,549	0.8 %	1.9 %
	275	279	82,411	83,655	100.0 %	100.0 %

We manage and operate substantially all of our Current Communities. During the year ended December 31, 2023, we completed construction of six communities containing 1,393 apartment homes, acquired three communities containing 1,131 apartment homes and sold four operating communities containing 987 apartment homes.

Of the Current Communities, as of January 31, 2024, we owned (directly or through wholly-owned subsidiaries):

- 270 operating communities, including 263 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 each hold a fee simple interest in an operating community, one of which is consolidated for financial reporting purposes.

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, 2023, 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 6,064 apartment homes and 59,000 square feet of commercial space to our portfolio for a total capitalized cost, including land acquisition costs, of approximately $2,491,000,000. 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 Amityville Amityville, NY	338	$ 134	Q2 2021	Q3 2023	Q2 2024	Q4 2024
2.	Avalon Bothell Commons I Bothell, WA	467	236	Q2 2021	Q3 2023	Q2 2024	Q1 2025
3.	Avalon Westminster Promenade Westminster, CO	312	112	Q3 2021	Q2 2024	Q3 2024	Q2 2025
4.	Avalon West Dublin Dublin, CA	499	267	Q3 2021	Q4 2023	Q4 2024	Q2 2025
5.	Avalon Montville Montville, NJ	349	127	Q4 2021	Q4 2023	Q3 2024	Q4 2024
6.	Avalon Redmond Campus (3) Redmond, WA	214	89	Q4 2021	Q1 2024	Q2 2024	Q4 2024
7.	Avalon Governor's Park Denver, CO	304	135	Q1 2022	Q3 2024	Q4 2024	Q2 2025
8.	Avalon West Windsor (4) West Windsor, NJ	535	201	Q2 2022	Q2 2025	Q3 2026	Q1 2027
9.	Avalon Durham (5) Durham, NC	336	125	Q2 2022	Q2 2024	Q3 2024	Q2 2025
10.	Avalon Annapolis Annapolis, MD	508	200	Q3 2022	Q3 2024	Q3 2025	Q2 2026
11.	Kanso Milford Milford, MA	162	65	Q4 2022	Q1 2024	Q3 2024	Q1 2025
12.	Avalon Lake Norman (5) Mooresville, NC	345	101	Q1 2023	Q1 2025	Q1 2026	Q3 2026
13.	Avalon Hunt Valley West Hunt Valley, MD	322	109	Q2 2023	Q1 2025	Q1 2026	Q3 2026
14.	Avalon South Miami (4) South Miami, FL	290	186	Q3 2023	Q3 2025	Q1 2026	Q3 2026
15.	Avalon Princeton Shopping Center Princeton, NJ	200	82	Q3 2023	Q1 2025	Q2 2025	Q4 2025
16.	Avalon Wayne Wayne, NJ	473	174	Q4 2023	Q2 2025	Q2 2026	Q4 2026
17.	Avalon Parsippany Parsippany, NJ	410	148	Q4 2023	Q3 2025	Q2 2026	Q3 2026
	Total	6,064	$ 2,491				

(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) Avalon Redmond Campus is a densification of the existing eaves Redmond Campus wholly-owned community, replacing 48 existing older apartment homes that were demolished.

(4) Development Communities containing at least 10,000 square feet of commercial space include Avalon West Windsor (19,000 square feet) and Avalon South Miami (32,000 square feet).

(5) Communities being developed through our Developer Funding Program ("DFP"). The DFP utilizes third-party multifamily developers to source and construct communities which we own and operate.

During the year ended December 31, 2023, 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 Harrison (2) Harrison, NY	143	$ 94	171,036	$ 550	Q2 2023
2.	Avalon Brighton Boston, MA	180	90	167,230	$ 538	Q2 2023
3.	Avalon Somerville Station Somerville, NJ	374	121	368,396	$ 328	Q3 2023
4.	Avalon North Andover North Andover, MA	221	77	216,545	$ 356	Q3 2023
5.	Avalon Merrick Park (3) Miami, FL	254	104	218,742	$ 475	Q3 2023
6.	Avalon Princeton Circle Princeton, NJ	221	89	253,462	$ 351	Q4 2023
	Total	1,393	$ 575			

(1) Total capitalized cost is as of December 31, 2023. We generally anticipate incurring additional costs associated with these communities that are customary for new developments.

(2) Avalon Harrison contains 27,000 square feet of commercial space.

(3) Community was developed through our DFP.

Unconsolidated Development Communities

As of December 31, 2023, 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 occupancy	Estimated completion	Estimated stabilized operations (4)
1. AVA Arts District (2)(3) Los Angeles, CA	25.0 %	475	$ 291	Q3 2020	Q3 2023	Q1 2024	Q4 2024

(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, 2023, we had contributed an equity investment in AVA Arts District of $32,738. The remaining development costs are primarily expected to be funded by the venture's variable rate construction loan. The venture had drawn $135,983 of the $167,147 maximum borrowing capacity of the construction loan as of December 31, 2023. While we guarantee the construction loan on behalf of the venture, any amounts payable under the guarantee are obligations of the venture partners in proportion to ownership interest.

(4) Stabilized operations is defined as the earlier of either (i) attainment of 90% or greater physical occupancy or (ii) the one-year anniversary of completion of development.

Unconsolidated Operating Communities

As of December 31, 2023, 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. For joint ventures holding operating apartment communities as of December 31, 2023, detail of the real estate and associated indebtedness underlying our unconsolidated investments is presented in the following table (dollars in thousands).

				Debt (1)			
Unconsolidated Real Estate Investments	**Company Ownership Percentage**	**# of Apartment Homes**	**Total Capitalized Cost**	**Principal Amount**	**Type**	**Interest Rate**	**Maturity Date**
NYTA MF Investors LLC							
1. Avalon Bowery Place I—New York, NY		206	$ 215,923	$ 93,800	Fixed	4.01 %	Jan 2029
2. Avalon Bowery Place II—New York, NY		90	91,368	39,639	Fixed	4.01 %	Jan 2029
3. Avalon Morningside—New York, NY (2)		295	212,444	111,295	Fixed	3.55 %	Jan 2029/May 2046
4. Avalon West Chelsea—New York, NY (3)		305	129,225	66,000	Fixed	4.01 %	Jan 2029
5. AVA High Line—New York, NY (3)		405	122,463	84,000	Fixed	4.01 %	Jan 2029
Total NYTA MF Investors LLC	20.0 %	1,301	771,423	394,734		3.88 %	
Other Operating Joint Ventures							
1. MVP I, LLC - Avalon at Mission Bay II - San Francisco, CA	25.0 %	313	129,681	103,000	Fixed	3.24 %	Jul 2025
2. Brandywine Apartments of Maryland, LLC - Brandywine - Washington, D.C.	28.7 %	305	20,093	19,062	Fixed	3.40 %	Jun 2028
3. Avalon Alderwood MF Member, LLC - Avalon Alderwood Place - Lynnwood, WA	50.0 %	328	111,159	—	N/A	N/A	N/A
Total Other Joint Ventures		946	260,933	122,062		3.26 %	
Total Unconsolidated Real Estate Investments (4)		2,247	$ 1,032,356	$ 516,796		3.73 %	

(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, 2023.

(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) In addition to leasehold assets, there were net other assets of $30,792 as of December 31, 2023 associated with our unconsolidated real estate investments which are primarily cash and cash equivalents.

We had an equity interest of 28.6% in the Archstone Multifamily Partners AC LP (the "U.S. Fund") and because we achieved a threshold return for the fund, during the years ended December 31, 2023 and 2022, we recognized income of $1,519,000 and $4,690,000, respectively, for our promoted interest, which is included in income from unconsolidated investments on the accompanying Consolidated Statements of Comprehensive Income. The U.S. Fund sold its final three communities in 2022 and has completed its dissolution in 2023.

Development Rights

At December 31, 2023, we had $199,062,000 in acquisition and related capitalized costs for direct interests in eight land parcels we own. In addition, we had $53,122,000 in capitalized costs (including legal fees, design fees and related overhead costs) related to (i) 19 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 three 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 30 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 10,801 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 2023, we incurred a charge of $33,479,000 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. The amount for 2023 includes write-offs of $27,455,000 related to seven Development Rights 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 2023, we acquired the following land parcels for an aggregate investment of $80,870,000.

		Estimated number of apartment homes	Projected total capitalized cost (1) ($ millions)	Date acquired
1.	Avalon Quincy Adams Quincy, MA	288	$ 117	April 2023
2.	Avalon Princeton Shopping Center (2) Princeton, NJ	200	82	June 2023
3.	Avalon Wayne (2) Wayne, NJ	473	174	September 2023
4.	Avalon Oakridge I Durham, NC	459	148	October 2023
5.	Avalon Parsippany (2) Parsippany, NJ	410	148	October 2023
6.	Avalon Carmel Charlotte, NC	360	126	December 2023
	Total	2,190	$ 795	

(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) Construction on this land parcel commenced during 2023.

Acquisition & Disposition Activity

We buy and sell assets based on our long-term investment criteria and target portfolio allocation. We also dispose of assets when capital and real estate markets allow us to realize a portion of the value created over our ownership periods, 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. At times, 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, 2023 to January 31, 2024, (i) we acquired three wholly-owned communities containing 1,131 apartment homes for an aggregate purchase price of $277,200,000 and (ii) we sold our interest in four wholly-owned communities, containing 987 apartment homes, with an aggregate gross sales price of $446,000,000.

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 an additional $5,000,000 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. A portion of coverage is included in the aforementioned self-insurance limits underwritten through the captive.

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

As disclosed in Note 7, “Commitments and Contingencies” of the Consolidated Financial Statements in Item 8 of this report, we are engaged in certain legal proceedings, and the disclosure set forth in Note 7, “Commitments and Contingencies” relating to legal and other contingencies is incorporated herein by reference.

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, 2024 there were 694 holders of record of an aggregate of 142,025,313 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 January 2024, we announced that our Board of Directors declared a dividend on our common stock for the first quarter of 2024 of $1.70 per share, a 3.0% increase over the Company's prior quarterly dividend of $1.65 per share. The dividend will be payable on April 15, 2024 to all common stockholders of record as of March 28, 2024.

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, 2023	28	$ 169.88	—	$ 314,237
November 1 - November 30, 2023	—	$ —	—	$ 314,237
December 1 - December 31, 2023	427	$ 177.94	—	$ 314,237
Total	455	$ 177.44	—	

(1) Consists of (i) 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 and the conversion of performance awards to shares of common stock and (ii) activity under the Stock Repurchase Program, if any, as indicated under Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs.

(2) The Board of Directors approved the Stock Repurchase Program in July 2020, 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 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 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

2023 Financial Highlights

Net income attributable to common stockholders for the year ended December 31, 2023 was $928,825,000, a decrease of $207,950,000, or 18.3%, from the prior year. The decrease was primarily attributable to decreases in real estate sales and related gains, partially offset by an increase in NOI from communities over the prior year.

Same Store NOI attributable to our apartment rental operations, including parking and other ancillary residential revenue ("Residential"), for the year ended December 31, 2023 was $1,732,422,000, an increase of $100,738,000, or 6.2%, over the prior year. The increase was due to an increase in Same Store Residential rental revenue of $149,495,000, or 6.3%, partially offset by an increase in Same Store Residential property operating expenses of $48,752,000, or 6.6%, over 2022.

During 2023, we raised approximately $1,363,299,000 of gross capital through the sale of wholly-owned real estate, the issuance of unsecured notes and the settlement of the outstanding forward contracts entered into in April 2022 (the "Equity Forward"). 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 2023, we:

- sold four wholly-owned communities containing an aggregate of 987 apartment homes and 27,000 square feet of commercial space for $446,000,000;
- completed the construction of six wholly-owned communities containing an aggregate of 1,393 apartment homes and 29,000 square feet of commercial space for an aggregate total capitalized cost of $575,000,000;
- started the construction of six wholly-owned communities which in the aggregate are expected to contain 2,040 apartment homes when completed, which are expected to be completed for an estimated total capitalized cost of $800,000,000; and
- acquired three wholly-owned communities containing an aggregate of 1,131 apartment homes for an aggregate purchase price of $277,200,000, which included the assumption of a $63,041,000 fixed rate mortgage loan.

During 2023, we i) issued $400,000,000 principal amount of fixed rate unsecured notes, ii) assumed a $63,041,000 fixed rate mortgage note in conjunction with the acquisition of Avalon West Plano, iii) repaid $600,000,000 principal amount of our fixed rate unsecured notes and iv) repaid the $150,000,000 variable rate unsecured term loan (the "Term Loan").

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 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, 2023 we owned or held a direct or indirect ownership interest in 299 apartment communities containing 90,669 apartment homes in 12 states and the District of Columbia, of which 18 communities were under development. We have an indirect interest in nine of the 299 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 30 communities that, if developed as expected, will contain an estimated 10,801 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 current year. Unconsolidated communities are communities in which we have an indirect ownership interest through our investment interest in an unconsolidated joint venture. 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 2022 and comparison to 2021 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 24, 2023. A comparison of our operating results for 2023 and 2022 follows (dollars in thousands).

	For the year ended December 31,		December 31, 2023 vs. 2022	
	2023	2022	$ Change	% Change
Revenue:				
Rental and other income	$ 2,760,187	$ 2,587,113	$ 173,074	6.7 %
Management, development and other fees	7,722	6,333	1,389	21.9 %
Total revenue	2,767,909	2,593,446	174,463	6.7 %
Expenses:				
Direct property operating expenses, excluding property taxes	551,905	509,529	42,376	8.3 %
Property taxes	306,794	288,960	17,834	6.2 %
Total community operating expenses	858,699	798,489	60,210	7.5 %
Property management and other indirect operating expenses	(129,433)	(120,625)	(8,808)	(7.3)%
Expensed transaction, development and other pursuit costs, net of recoveries	(33,479)	(16,565)	(16,914)	(102.1)%
Interest expense, net	(205,992)	(230,074)	24,082	10.5 %
Loss on extinguishment of debt, net	(150)	(1,646)	1,496	90.9 %
Depreciation expense	(816,965)	(814,978)	(1,987)	(0.2)%
General and administrative expense	(76,534)	(74,064)	(2,470)	(3.3)%
Casualty loss	(9,118)	—	(9,118)	(100.0)%
Income from unconsolidated investments	13,454	53,394	(39,940)	(74.8)%
Gain on sale of communities	287,424	555,558	(268,134)	(48.3)%
Other real estate activity	174	5,127	(4,953)	(96.6)%
Income before income taxes	938,591	1,151,084	(212,493)	(18.5)%
Income tax expense	(10,153)	(14,646)	4,493	30.7 %
Net income	928,438	1,136,438	(208,000)	(18.3)%
Net loss attributable to noncontrolling interests	387	337	50	14.8 %
Net income attributable to common stockholders	$ 928,825	$ 1,136,775	$ (207,950)	(18.3)%

Net income attributable to common stockholders decreased $207,950,000, or 18.3%, to $928,825,000 in 2023 from 2022, primarily due to decreases in real estate sales and related gains in the current year, partially offset by increases in NOI from communities in the current year.

NOI. 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 unconsolidated investments, depreciation expense, income tax expense, casualty loss, gain on sale of communities, other real estate activity and net operating income from real estate assets sold or held for sale. Management considers NOI 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 property management overhead 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.

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, 2023 and 2022 to net income for each year are as follows (dollars in thousands):

	For the year ended December 31,	
	2023	2022
Net income	$ 928,438	$ 1,136,438
Property management and other indirect operating expenses, net of corporate income	121,704	114,200
Expensed transaction, development and other pursuit costs, net of recoveries	33,479	16,565
Interest expense, net	205,992	230,074
Loss on extinguishment of debt, net	150	1,646
General and administrative expense	76,534	74,064
Income from unconsolidated investments	(13,454)	(53,394)
Depreciation expense	816,965	814,978
Income tax expense	10,153	14,646
Casualty loss	9,118	—
Gain on sale of communities	(287,424)	(555,558)
Other real estate activity	(174)	(5,127)
Net operating income from real estate assets sold or held for sale	(14,733)	(46,678)
NOI	1,886,748	1,741,854
Commercial NOI (1)	(33,911)	(35,652)
Residential NOI	$ 1,852,837	$ 1,706,202

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

The Residential NOI changes for 2023 as compared to 2022 consists of changes in the following categories (dollars in thousands):

	For the year ended December 31, 2023
Same Store	$ 100,738
Other Stabilized	25,235
Development / Redevelopment	20,662
Total	$ 146,635

The increase in our Same Store Residential NOI in 2023 is due to an increase in Residential rental revenue of $149,495,000, or 6.3%, partially offset by an increase in Residential property operating expenses of $48,752,000, or 6.6%, over 2022.

Increases in inflation can result in an increase in our operating costs 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 $173,074,000, or 6.7%, in 2023 compared to the prior year primarily due to the increased rental revenue from our Same Store communities, discussed below.

Consolidated Communities —The weighted average number of occupied apartment homes for consolidated communities increased to 77,667 apartment homes for 2023, compared to 77,319 homes for 2022. The weighted average monthly rental revenue per occupied apartment home increased to $2,955 for 2023 compared to $2,784 in 2022.

Same Store Communities — 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, 2023 (dollars in thousands).

	Residential rental revenue				Average monthly rental revenue per occupied home			Economic Occupancy (1)		
			$ Change	% Change			% Change			% Change
	For the year ended December 31,									
	2023	2022	2023 to 2022	2023 to 2022	2023	2022	2023 to 2022	2023	2022	2023 to 2022
New England	$ 366,070	$ 340,566	$ 25,504	7.5 %	$ 3,303	$ 3,053	8.2 %	96.4 %	97.1 %	(0.7)%
Metro NY/NJ	523,854	489,336	34,518	7.1 %	3,571	3,321	7.5 %	95.8 %	96.2 %	(0.4)%
Mid-Atlantic	366,888	345,618	21,270	6.2 %	2,412	2,276	6.0 %	95.3 %	95.1 %	0.2 %
Southeast Florida	73,733	67,269	6,464	9.6 %	2,903	2,666	8.9 %	96.8 %	96.1 %	0.7 %
Denver, CO	28,209	26,845	1,364	5.1 %	2,259	2,150	5.1 %	95.8 %	95.8 %	— %
Pacific Northwest	167,292	160,194	7,098	4.4 %	2,676	2,558	4.6 %	95.2 %	95.4 %	(0.2)%
Northern California	420,879	400,685	20,194	5.0 %	3,013	2,870	5.0 %	95.9 %	95.9 %	— %
Southern California	544,414	513,136	31,278	6.1 %	2,738	2,570	6.5 %	95.9 %	96.3 %	(0.4)%
Other Expansion Regions	22,933	21,127	1,806	8.5 %	2,169	2,003	8.3 %	95.2 %	95.0 %	0.2 %
Total Same Store	$ 2,514,272	$ 2,364,776	$ 149,496	6.3 %	$ 2,926	$ 2,745	6.6 %	95.8 %	96.1 %	(0.3)%

(1) 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 contract rates and vacant homes at market rents. Vacancy loss is determined by valuing vacant units at current market rents. Economic Occupancy considers that apartment homes of different sizes and locations within a community have different economic impacts on a community's gross revenue.

The following table details the increase in Same Store Residential rental revenue by component for the year ended December 31, 2023, compared to the prior year:

	For the year ended December 31, 2023
Residential rental revenue	
Lease rates	5.4 %
Concessions and other discounts	0.4 %
Economic Occupancy	(0.3)%
Other rental revenue	0.9 %
Uncollectible lease revenue (excluding rent relief)	1.2 %
Rent relief	(1.3)%
Total Residential rental revenue	6.3 %

The increase for Same Store Residential rental revenue for the year ended December 31, 2023, as compared to the prior year was not significantly impacted by uncollectible lease revenue, inclusive of amounts received from government rent relief programs. Same Store uncollectible lease revenue decreased for the year ended December 31, 2023 by $4,172,000, resulting in a 0.1% decrease in Same Store Residential rental revenue. However, uncollectible lease revenue was impacted by a decrease in government rent relief of $31,766,000 for the year ended December 31, 2023 from the prior year. Adjusting to remove the impact of rent relief, uncollectible lease revenue as a percentage of Same Store Residential rental revenue decreased to 2.4% in the year ended December 31, 2023 from 3.7% in the year ended December 31, 2022.

We use concessions periodically as a means to increase leasing velocity, providing our new and existing residents an upfront incentive to enter into a new lease, or extend an existing lease. During 2023, concessions granted for our Same Store communities increased over the prior year by $5,341,000 to $17,040,000. 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, 2023, amortized concessions decreased by $7,219,000 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, 2023 and 2022 was $8,480,000 and $6,229,000, respectively.

Management, development and other fees increased $1,389,000, or 21.9%, in 2023, compared to the prior year, primarily due to fees for third-party back-office, financial administrative support services in the current year, partially offset by reduced third-party development fees.

Direct property operating expenses, excluding property taxes, increased $42,376,000, or 8.3%, in 2023 compared to the prior year, primarily due to the addition of newly developed apartment communities as well as increased Residential operating expenses at our Same Store communities as discussed below.

Same Store Residential direct property operating expenses, excluding property taxes, increased $35,681,000, or 7.6%, in 2023 compared to the prior year, primarily due to increased utilities, maintenance costs, bad debt associated with resident expense reimbursements and legal and eviction costs as restrictions on managing delinquent accounts eased or expired, partially offset by a decrease in on-site payroll costs resulting from technology and centralization initiatives.

Property taxes increased $17,834,000, or 6.2%, in 2023 compared to the prior year, primarily due to the addition of newly developed and acquired apartment communities and increases for our Same Store Residential portfolio, partially offset by decreased property taxes from dispositions.

Same Store Residential property taxes increased $13,071,000, or 4.9%, in 2023 compared to the prior year, primarily due to increased assessments across the portfolio, successful appeals in the prior year and the expiration of property tax incentive programs primarily at certain of our properties in New York City. The expiration of property tax incentive programs represents $6,810,000 or 52% of the 4.9% increase in property taxes for the year ended December 31, 2023.

Property management and other indirect operating expenses increased $8,808,000, or 7.3%, for the year ended December 31, 2023 compared to the prior year, primarily due to increased costs related to initiatives to improve future efficiency in services for residents and prospects and investments in technology as well as increased compensation related costs.

Expensed transaction, development and other pursuit costs, net of recoveries primarily reflect costs incurred for write downs and abandonment of Development Rights, development pursuits not yet considered probable for development, as well as costs related to abandoned acquisition and disposition pursuits, offset by any recoveries of costs incurred. In periods of increased acquisition pursuit activity, periods of economic downturn or when there is limited access to capital, these costs can be volatile and 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 $16,914,000 in 2023 compared to the prior year. The amount for 2023 includes write-offs of $27,455,000 related to seven Development Rights that we determined are no longer probable. The amount for 2022 includes write-offs of $10,073,000 related to three development opportunities that we determined are no longer probable.

Interest expense, net decreased $24,082,000, or 10.5%, in 2023 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 and any mark-to-market impact from derivatives not in qualifying hedge relationships. The decrease in 2023 was primarily due to an increase in interest income due to higher cash amounts invested and higher interest rates coupled with increased capitalized interest, partially offset by the increase in rates on variable rate indebtedness.

Depreciation expense increased $1,987,000, or 0.2%, in 2023 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 increased $2,470,000, or 3.3%, in 2023 as compared to the prior year, primarily due to proceeds from legal settlements we received in the prior year, partially offset by a decrease in executive transition compensation in the current year.

Casualty loss for the year ended December 31, 2023 of $9,118,000 was primarily due to damages to certain of our communities in our Northeast and California regions related to severe weather and other casualty events.

Income from unconsolidated investments decreased $39,940,000 in 2023 compared to the prior year, primarily due to prior year gains from the sale of the final three communities in the U.S. Fund and related promoted interest, coupled with unrealized gains on property technology investments.

Gain on sale of communities decreased in 2023 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 $287,424,000 and $555,558,000 in 2023 and 2022, respectively, were primarily due to the sale of four and nine wholly-owned communities in 2023 and 2022, respectively.

Income tax expense of $10,153,000 and $14,646,000 for the years ended December 31, 2023 and 2022, respectively, was primarily related to dispositions at The Park Loggia.

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 a 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) gains or losses on sales of previously depreciated property or (ii) real estate depreciation may impact comparability 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 or other investments;
- 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 settlements and costs;
- 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;
- changes to 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.

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, 2023 and 2022 (dollars in thousands, except per share amounts).

	For the year ended December 31,	
	2023	2022
Net income attributable to common stockholders	$ 928,825	$ 1,136,775
Depreciation - real estate assets, including joint venture adjustments	811,717	810,611
Distributions to noncontrolling interests	25	48
Gain on sale of unconsolidated entities holding previously depreciated real estate	—	(38,144)
Gain on sale of previously depreciated real estate	(287,424)	(555,558)
Casualty loss on real estate	9,118	—
FFO attributable to common stockholders	$ 1,462,261	$ 1,353,732
Adjusting items:		
Unconsolidated entity gains, net (1)	(4,161)	(8,355)
Joint venture promote (2)	(1,519)	(4,690)
Structured Investment Program loan reserve (3)	1,186	1,632
Loss on extinguishment of consolidated debt	150	1,646
Hedge accounting activity	566	(229)
Advocacy contributions	1,625	634
Executive transition compensation costs	1,244	1,631
Severance related costs	2,625	1,097
Expensed transaction, development and other pursuit costs, net of recoveries (4)	30,583	13,288
Other real estate activity	(174)	(5,127)
For-sale condominium imputed carry cost (5)	602	2,306
Legal settlements and costs (6)	457	(2,212)
Income tax expense (7)	10,153	14,646
Core FFO attributable to common stockholders	$ 1,505,598	$ 1,369,999
Weighted average common shares outstanding - diluted	141,643,788	139,975,087
Earnings per common share - diluted	$ 6.56	$ 8.12
FFO per common share - diluted	$ 10.32	$ 9.67
Core FFO per common share - diluted	$ 10.63	$ 9.79

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

(2) Amounts are for our recognition of our promoted interest in the U.S. Fund.

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

(4) Amount for 2023 includes write-offs of $27,455 for seven Development Rights that we determined are no longer probable. Amount for 2022 includes write-offs of $10,073 related to three development opportunities that we determined are no longer probable. Amounts for 2023 and 2022 also include $3,128 and $3,215, respectively, for additional expensed pursuit costs.

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

(6) In 2022, we received $6,000 of legal settlement proceeds, of which $3,684 is adjusted for Core FFO.

(7) Amounts are primarily for the recognition of taxes associated with The Park Loggia dispositions.

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.

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;
- regularly scheduled principal and interest payments and principal payments either at maturity or opportunistically before maturity;
- 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 restricted cash of $530,960,000 at December 31, 2023, a decrease of $203,285,000 from $734,245,000 at December 31, 2022. The following discussion relates to changes in cash, cash equivalents and restricted cash due to operating, investing and financing activities.

A presentation of GAAP based cash flow metrics is as follows (unaudited, dollars in thousands):

	For the year ended December 31,	
	2023	2022
Net cash provided by operating activities	$ 1,560,029	$ 1,421,932
Net cash used in investing activities	$ (928,955)	$ (560,419)
Net cash used in financing activities	$ (834,359)	$ (671,056)

- Net cash provided by operating activities increased primarily due to increases in NOI.

- Net cash used in investing activities was primarily due to (i) investment of $901,847,000 in the development and redevelopment of communities, (ii) acquisition of three wholly-owned communities for $215,889,000 and (iii) capital expenditures of $197,274,000 for our wholly-owned communities and non-real estate assets. These amounts were partially offset by net proceeds from the disposition of four operating communities and the sale of for-sale residential condominiums of $467,096,000.

- Net cash used in financing activities was primarily due to (i) payment of cash dividends in the amount of $922,657,000, (ii) the repayment of the $600,000,000 fixed rate unsecured notes and (iii) the repayment of the $150,000,000 Term Loan. These amounts were partially offset by (i) the settlement of the Equity Forward for $491,912,000 and (ii) proceeds from the issuance of unsecured notes in the amount of $399,756,000.

Variable Rate Unsecured Credit Facility

The $2,250,000,000 Credit Facility matures in September 2026. The interest rate that would be applicable to borrowings under the Credit Facility is 6.13% at January 31, 2024 and is composed of (i) the Secured Overnight Financing Rate ("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 0.805% per annum, which consists of a 0.10% SOFR adjustment plus 0.705% per annum, assuming a daily SOFR borrowing rate. The borrowing spread to SOFR can vary from SOFR plus 0.63% to SOFR plus 1.38% based upon the rating of our unsecured senior notes. There is also an annual facility commitment fee of 0.12% of the borrowing capacity under the facility, which can vary from 0.095% to 0.295% based upon the rating of our unsecured senior notes. 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. The first determination under the sustainability-linked pricing component occurred in July 2023, resulting in reductions of approximately 0.02% to the interest rate margin and 0.005% to the commitment fee due to our achievement of sustainability targets.

The availability on the Credit Facility as of January 31, 2024 is as follows (dollars in thousands):

	January 31, 2024
Credit Facility commitment	$2,250,000
Credit Facility outstanding	—
Commercial paper outstanding	(20,000)
Letters of credit outstanding (1)	(1,914)
Total Credit Facility available	$ 2,228,086

(1) In addition, we had $58,616 outstanding in additional letters of credit unrelated to the Credit Facility as of January 31, 2024.

Commercial Paper Program

We have a Commercial Paper Program with the maximum aggregate face or principal amount outstanding at any one time not to exceed $500,000,000. 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. 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, 2024, we had $20,000,000 outstanding under the Commercial Paper Program at a weighted average contractual interest rate of 5.45%.

Financial Covenants

We are subject to financial covenants contained in the Credit Facility 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, 2023.

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

Under our continuous equity program (the "CEP"), 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 the CEP 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 2023 and through January 31, 2024, we did not have any sales under this program. As of January 31, 2024, we had $705,961,000 remaining authorized for issuance under this program.

Forward Equity Offering

In addition to the CEP, during the year ended December 31, 2023, we settled the Equity Forward issuing 2,000,000 shares of common stock, net of offering fees and discounts, for $491,912,000 or $245.96 per share.

Stock Repurchase Program

We have a stock repurchase program under which we may acquire shares of our common stock in open market or negotiated transactions up to an aggregate purchase price of $500,000,000 (the "Stock Repurchase Program"). Purchases of common stock under the 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 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, 2023, we repurchased 11,800 shares of common stock at an average price of $161.96 per share. From January 1, 2024 through January 31, 2024, we had no repurchases of shares under this program. As of January 31, 2024, we had $314,237,000 remaining authorized for purchase under this program.

Interest Rate Swap Agreements

The following derivative activity occurred during the year ended December 31, 2023:

- In connection with the issuance of our $400,000,000 unsecured notes in December 2023 maturing in 2033, we terminated $250,000,000 of forward interest rate swap agreements designated as cash flow hedges of the interest rate variability on the issuance of unsecured notes, receiving payments of $8,331,000 which will be recognized over the life of the unsecured notes as a reduction in the effective interest rate. All of the positions settled were forward interest rate swaps that we had entered into during 2023.

- In addition, we entered into $200,000,000 of forward interest rate swap agreements to reduce the impact of variability in interest rates on a portion of our anticipated future debt issuance activity in 2024. We expect to cash settle the swaps and either pay or receive cash for the then current fair value.

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 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, 2023 and 2022 (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 "Unconsolidated Investments" for further discussion of the construction loan).

Debt	Effective interest rate (1)	Principal maturity date		Balance Outstanding (2)		Scheduled Maturities					
				12/31/2022	12/31/2023	2024	2025	2026	2027	2028	Thereafter
Tax-exempt bonds											
Variable rate											
Avalon Acton	4.91 %	Jul-2040	(3)	$ 45,000	$ 45,000	$ —	$ —	$ —	$ —	$ —	$ 45,000
Avalon Clinton North	5.56 %	Nov-2038	(3)(5)	147,000	126,400	—	—	—	700	2,800	122,900
Avalon Clinton South	5.56 %	Nov-2038	(3)(5)	121,500	104,500	—	—	—	600	2,300	101,600
Avalon Midtown West	5.51 %	May-2029	(3)	82,700	76,600	6,800	7,300	8,100	8,800	9,600	36,000
Avalon San Bruno I	5.45 %	Dec-2037	(3)	60,950	57,650	2,200	2,400	2,600	2,800	3,000	44,650
				457,150	410,150	9,000	9,700	10,700	12,900	17,700	350,150
Conventional loans											
Fixed rate											
$250 million unsecured notes	— %	Mar-2023	(4)	250,000	—	—	—	—	—	—	—
$350 million unsecured notes	— %	Dec-2023	(4)	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	4.38 %	Feb-2033		350,000	350,000	—	—	—	—	—	350,000
$400 million unsecured notes	5.19 %	Dec-2033		—	400,000	—	—	—	—	—	400,000
Avalon Walnut Creek	4.00 %	Jul-2066		4,327	4,501	—	—	—	—	—	4,501
eaves Los Feliz	3.68 %	Jun-2027		41,400	41,400	—	—	—	41,400	—	—
eaves 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
Avalon West Plano	5.97 %	May-2029		—	63,041	593	1,065	1,111	1,159	1,202	57,911
				7,770,677	7,633,892	300,593	826,065	776,111	637,259	851,202	4,242,662
Variable rate											
Term Loan - $150 million	— %	Feb-2024	(5)	150,000	—	—	—	—	—	—	—
Total indebtedness - excluding Credit Facility and Commercial Paper				$ 8,377,827	$ 8,044,042	$ 309,593	$ 835,765	$ 786,811	$ 650,159	$ 868,902	$ 4,592,812

(1) Rates are as of December 31, 2023 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 $43,848 and $47,695 as of December 31, 2023 and 2022, respectively, deferred financing costs and debt discount associated

with secured notes of $18,372 and $14,087 as of December 31, 2023 and 2022, respectively, as reflected on our Consolidated Balance Sheets included elsewhere in this report.

(3) Financed by variable rate debt, but interest rate is capped through an interest rate protection agreement.

(4) During 2023, we repaid this borrowing at its scheduled maturity date.

(5) During 2023, we repaid some or all amounts outstanding of this borrowing in advance of 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 $15,333,000 for 2024, $15,633,000 for 2025 and $348,404,000 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 discussed further 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 2024, we expect to continue to meet our liquidity needs from one or more of a variety of internal and external sources, which may include (i) real estate dispositions, (ii) cash balances on hand as well as cash generated from our operating activities, (iii) borrowing capacity under the Credit Facility, (iv) borrowings under the Commercial Paper Program and (v) secured and unsecured debt financings. Additional sources of liquidity in 2024 may include the issuance of common and preferred equity, including the issuance of shares of our common stock under the CEP. 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, 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 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, 2023, we acquired the following communities (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 Frisco at Main	Frisco, TX	360	$ 83,100
Avalon Mooresville	Mooresville, NC	203	52,100
Avalon West Plano	Carrollton, TX	568	142,000
Total acquisitions		1,131	$ 277,200

During the year ended December 31, 2023, we sold four wholly-owned communities containing an aggregate of 987 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	Commercial square feet
eaves Daly City	Daly City, CA	Q2 2023	195	$ 67,000	$ 54,618	—
Avalon at Newton Highlands	Newton, MA	Q2 2023	294	170,000	132,723	—
Avalon Columbia Pike	Arlington, VA	Q3 2023	269	105,000	22,345	27,000
Avalon Mamaroneck	Mamaroneck, NY	Q4 2023	229	104,000	77,901	—
Total asset sales			987	$ 446,000	$ 287,587	27,000

Unconsolidated Investments

During the year ended December 31, 2023, 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.

- We had an equity interest of 28.6% in the U.S. Fund and because we achieved a threshold return for the fund, during the year ended December 31, 2023, we recognized income of $1,519,000 for the final amount of promoted interest, which is reported as a component of income from unconsolidated investments on the accompanying Consolidated Statements of Comprehensive Income. During 2023, we completed the dissolution of the U.S. Fund.

- 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, 2023, excluding costs incurred in excess of equity in the underlying net assets of the venture, we have an equity investment of $32,738,000 in the venture. The remaining development costs are primarily expected to be funded by the venture's variable rate construction loan. The venture has drawn $135,983,000 of $167,147,000 maximum borrowing capacity of the construction loan as of December 31, 2023. While we guarantee the construction loan on behalf of the venture, any amounts payable under the guarantee are obligations of the venture partners in proportion to ownership interest.

- We invested $10,748,000 in various property technology and environmentally focused companies directly and indirectly through investment management funds during the year ended December 31, 2023. As of December 31, 2023, we have $73,892,000 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, 2023, we recognized income and unrealized gains of $4,161,000 related to these investments, included as a component of income from unconsolidated investments on the Consolidated Statements of Comprehensive Income.

Structured Investment Program

During the year ended December 31, 2023, we entered into four additional commitments under the SIP, agreeing to provide an aggregate investment of up to $99,210,000 in multifamily development projects. As of January 31, 2024, we had seven commitments to fund up to $191,585,000 in the aggregate under the SIP. As of January 31, 2024, our investment commitments had a weighted average rate of return of 11.5% and have initial maturity dates between September 2025 and December 2027. As of January 31, 2024, we had funded $101,982,000 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” within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act. We intend such forward-looking statements to be covered by the safe harbor provisions for forward-looking statements contained in 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:

- 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 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 regions;
- our declaration or payment of dividends;
- our joint venture 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;
- trends affecting our financial condition or results of operations;
- regulatory changes 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.

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;
- 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;
- an outbreak of disease or other public health event may affect the multifamily industry and general economy, including from measures taken by businesses and the government and the preferences of consumers and businesses for living and working arrangements both during and after such an event;
- 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 $50,996,000 and $50,039,000 for 2023 and 2022, 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, 2023, capitalized pursuit costs associated with Development Rights totaled $53,122,000.

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 costs related to development pursuits not yet considered probable for development, as well as costs incurred in pursuing the acquisition or disposition of assets for which such acquisition and disposition activity did not occur, of which we expensed $33,479,000, $16,565,000 and $2,192,000 of these costs during the years ended December 31, 2023, 2022 and 2021, respectively. These costs are included in expensed transaction, development and other pursuit costs, net of recoveries on the accompanying Consolidated Statements of Comprehensive Income. 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, 2023, in connection with the issuance of our $400,000,000 unsecured notes in December 2023 maturing in 2033, we terminated $250,000,000 of forward interest rate swap agreements designated as cash flow hedges of the interest rate variability on the issuance of unsecured notes, receiving payments of $8,331,000 which will be recognized over the life of the unsecured notes as a reduction in the effective interest rate.
In addition, we have interest rate caps that serve to effectively limit the amount of interest rate expense we would incur on our outstanding floating rate borrowings. Further discussion of the financial instruments impacted and our exposure is presented below.

As of December 31, 2023 and 2022, we had $410,150,000 and $607,150,000, 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 2023 and 2022, our annual interest incurred would have increased by approximately $5,428,000 and $6,850,000, 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 or equivalent, 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. As of December 31, 2023, we had outstanding debt of $8,044,042,000 with an estimated aggregate fair value of $7,360,944,000 at December 31, 2023. Contractual fixed rate debt represented $7,011,605,000 of the fair value at December 31, 2023. If interest rates had been 100 basis points higher as of December 31, 2023, the fair value of this fixed rate debt would have decreased by approximately $449,065,000.

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 Exchange Act, 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 SEC'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, 2023 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, 2023.

Our internal control over financial reporting as of December 31, 2023 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included elsewhere herein.

(c) There were no changes to the internal control over financial reporting of the Company identified in connection with the Company’s evaluation referred to above that occurred during the fourth quarter of 2023 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

During the three months ended December 31, 2023, none of the Company's directors or officers (as defined in Rule 16a-1(f) of the Exchange Act) adopted, terminated or modified a Rule 10b5-1 trading arrangement or non-Rule 10b5-1 trading arrangement (as such terms are defined in Item 408 of Regulation S-K).

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 SEC 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 16, 2024.

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 SEC 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 16, 2024.

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 SEC 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 16, 2024, to the extent not set forth below.

The Company maintains the Second Amended and Restated 2009 Equity Incentive Plan (the "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 Plan and the ESPP as of December 31, 2023:

	(a)		(b)		(c)
Plan category	**Number of securities to be issued upon exercise of outstanding options, warrants and rights**		**Weighted-average exercise price of outstanding options, warrants and rights**		**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)	935,412	(2)	$ 181.99	(3)	5,424,356
Equity compensation plans not approved by security holders (4)	—		N/A		569,016
Total	935,412		$ 181.99	(3)	5,993,372

(1) Consists of the Plan.

(2) Includes 81,224 deferred restricted stock units granted under the 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, 2023, 2024 and 2025. Does not include 173,291 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 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 SEC 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 16, 2024.

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 SEC 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 16, 2024. Our independent public accounting firm is Ernst & Young LLP, Tysons, Virginia, PCAOB Auditor ID 42.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

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

Index to Financial Statements

Consolidated Financial Statements and Financial Statement Schedule:

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

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

Exhibit No.		Description
3(i).1	—	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.)
3(i).2	—	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.)
3(i).3	—	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.)
3(i).4	—	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.)
3(i).5		Composite restatement of Articles of Amendment and Restatement of Articles of Incorporation of the Company, dated as of June 4, 1998, as amended by the Articles of Amendment, dated as of October 2, 1998, the Articles of Amendment, dated as of May 22, 2013, and the Articles of Amendment, dated as of May 14, 2020. (Incorporated by reference to Exhibit 3(i).5 to Form 10-Q of the Company filed November 3, 2023.)
3(ii).1	—	Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on October 30, 2023. (Incorporated by reference to Exhibit 3.1 to Form 8-K of the Company filed October 30, 2023.)
4.1	—	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.)
4.2	—	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.)
4.3	—	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.)
4.4	—	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.)
4.5	—	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.)
4.6	—	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.)
4.7	—	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.)
4.8	—	Indenture for Debt Securities, dated as of February 23, 2024, between the Company and U.S. Bank Trust Company, National Association. (Filed herewith.)
4.9	—	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.)
4.10	—	Description of the Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934. (Filed herewith.)

4.11	—	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.)
4.12	—	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.)
4.13	—	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.)
4.14	—	Form of 5.300% Senior Notes due 2033 (Incorporated by reference to Exhibit 4.4 to Form 8-K of the Company filed December 7, 2023.)
10.1+	—	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. (Incorporated by reference to Exhibit 10.1 to Form 10-K of the Company filed February 24, 2023.)
10.2+	—	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.)
10.3+	—	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.)
10.4+	—	2024 Amended and Restated Directors Deferred Compensation Program. (Filed herewith.)
10.5+	—	Form of Director Restricted Stock Agreement. (Incorporated by reference to Exhibit 10.5 to Form 8-K of the Company filed February 22, 2018.)
10.6+	—	Form of Director Restricted Unit Agreement (deferred stock award) (2018). (Incorporated by reference to Exhibit 10.6 of Form 8-K of the Company filed February 22, 2018.)
10.7+	—	Form of Director Restricted Stock Unit Agreement (2024). (Filed herewith.)
10.8+	—	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). (Incorporated by reference to Exhibit 10.7 to Form 10-K of the Company filed February 24, 2023.)
10.9+	—	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.)
10.10+	—	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.)
10.11	—	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.)
10.12+	—	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.)
10.13+	—	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.)

10.14+	—	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.)
10.15	—	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.)
10.16	—	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.)
10.17	—	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.)
10.18	—	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.)
10.19+	—	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.)
10.20+	—	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.)
10.21+	—	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.)
10.22+	—	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.)
21.1	—	Schedule of Subsidiaries of the Company. (Filed herewith.)
23.1	—	Consent of Ernst & Young LLP. (Filed herewith.)
31.1	—	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer). (Filed herewith.)
31.2	—	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer). (Filed herewith.)
32	—	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer and Chief Financial Officer). (Furnished herewith.)
97	—	AvalonBay Communities, Inc. Compensation Recovery Policy. (Filed herewith.)
101	—	Financial materials from AvalonBay Communities, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2023 formatted in Inline XBRL (Extensible Business Reporting Language) including: (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.)

+ 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 23, 2024	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 23, 2024	By:	/s/ BENJAMIN W. SCHALL
		Benjamin W. Schall, Director, Chief Executive Officer and President (Principal Executive Officer)
Date: February 23, 2024	By:	/s/ KEVIN P. O'SHEA
		Kevin P. O'Shea, Chief Financial Officer (Principal Financial Officer)
Date: February 23, 2024	By:	/s/ KERI A. SHEA
		Keri A. Shea, Senior Vice President—Finance & Treasurer (Principal Accounting Officer)
Date: February 23, 2024	By:	/s/ GLYN F. AEPPEL
		Glyn F. Aeppel, Director
Date: February 23, 2024	By:	/s/ TERRY S. BROWN
		Terry S. Brown, Director
Date: February 23, 2024	By:	/s/ RONALD L. HAVNER, JR.
		Ronald L. Havner, Jr., Director
Date: February 23, 2024	By:	/s/ STEPHEN P. HILLS
		Stephen P. Hills, Director
Date: February 23, 2024	By:	/s/ CHRISTOPHER B. HOWARD
		Christopher B. Howard, Director
Date: February 23, 2024	By:	/s/ RICHARD J. LIEB
		Richard J. Lieb, Director
Date: February 23, 2024	By:	/s/ NNENNA LYNCH
		Nnenna Lynch, Director
Date: February 23, 2024	By:	/s/ CHARLES E. MUELLER, JR.
		Charles E. Mueller, Jr., Director
Date: February 23, 2024	By:	/s/ TIMOTHY J. NAUGHTON
		Timothy J. Naughton, Director (Chairman of the Board of Directors)
Date: February 23, 2024	By:	/s/ SUSAN SWANEZY
		Susan Swanezy, Director
Date: February 23, 2024	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, 2023 and 2022, the related consolidated statements of comprehensive income, equity and cash flows for each of the three years in the period ended December 31, 2023, 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, 2023 and 2022, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2023, 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, 2023, 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 23, 2024 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 accounts or disclosure to which it relates.

Valuation of Deferred Development Costs and Land Held for Development

Description of the Matter

As of December 31, 2023, the Company's deferred development costs and land held for development totaled $53.1 million and $199.1 million, respectively. The Company expensed costs related to development pursuits not yet considered probable for development and the abandonment of Development Rights in the amount of $33.5 million during the year ended December 31, 2023. 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 23, 2024

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, 2023, 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, 2023, 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, 2023 and 2022, the related consolidated statements of comprehensive income, equity and cash flows for each of the three years in the period ended December 31, 2023, and the related notes and financial statement schedule listed in the Index at Item 15(a)(2) and our report dated February 23, 2024 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 23, 2024

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

	December 31, 2023	December 31, 2022
ASSETS		
Real estate:		
Land and improvements	$ 4,720,331	$ 4,640,971
Buildings and improvements	19,438,195	18,804,510
Furniture, fixtures and equipment	1,303,959	1,174,135
	25,462,485	24,619,616
Less accumulated depreciation	(7,557,614)	(6,878,556)
Net operating real estate	17,904,871	17,741,060
Construction in progress, including land	1,268,915	1,072,543
Land held for development	199,062	179,204
Real estate assets held for sale, net	—	—
Total real estate, net	19,372,848	18,992,807
Cash and cash equivalents	397,890	613,189
Restricted cash	133,070	121,056
Unconsolidated investments	220,145	212,084
Deferred development costs	53,122	58,489
Prepaid expenses and other assets	366,465	316,808
Right of use lease assets	134,674	143,331
Total assets	$ 20,678,214	$ 20,457,764
LIABILITIES AND EQUITY		
Unsecured notes, net	$ 7,256,152	$ 7,602,305
Variable rate unsecured credit facility and commercial paper, net	—	—
Mortgage notes payable, net	725,670	713,740
Dividends payable	238,072	226,022
Payables for construction	87,703	72,802
Accrued expenses and other liabilities	310,868	306,186
Lease liabilities	153,232	162,671
Accrued interest payable	57,911	54,100
Resident security deposits	63,815	63,700
Total liabilities	8,893,423	9,201,526
Commitments and contingencies		
Redeemable noncontrolling interests	1,473	2,685
Equity:		
Preferred stock, $0.01 par value; $25 liquidation preference; 50,000,000 shares authorized at December 31, 2023 and December 31, 2022; zero shares issued and outstanding at December 31, 2023 and December 31, 2022	—	—
Common stock, $0.01 par value; 280,000,000 shares authorized at December 31, 2023 and December 31, 2022; 142,025,456 and 139,916,864 shares issued and outstanding at December 31, 2023 and December 31, 2022, respectively	1,420	1,400
Additional paid-in capital	11,287,549	10,765,431
Accumulated earnings less dividends	478,156	485,221
Accumulated other comprehensive income	16,116	1,424
Total stockholders' equity	11,783,241	11,253,476
Noncontrolling interests	77	77
Total equity	11,783,318	11,253,553
Total liabilities and equity	$ 20,678,214	$ 20,457,764

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,		
	2023	2022	2021
Revenue:			
Rental and other income	$ 2,760,187	$ 2,587,113	$ 2,291,766
Management, development and other fees	7,722	6,333	3,084
Total revenue	2,767,909	2,593,446	2,294,850
Expenses:			
Operating expenses, excluding property taxes	681,338	630,154	570,853
Property taxes	306,794	288,960	283,089
Expensed transaction, development and other pursuit costs, net of recoveries	33,479	16,565	3,231
Interest expense, net	205,992	230,074	220,415
Loss on extinguishment of debt, net	150	1,646	17,787
Depreciation expense	816,965	814,978	758,596
General and administrative expense	76,534	74,064	69,611
Casualty loss	9,118	—	3,119
Total expenses	2,130,370	2,056,441	1,926,701
Income from unconsolidated investments	13,454	53,394	38,585
Gain on sale of communities	287,424	555,558	602,235
Other real estate activity	174	5,127	1,120
Income before income taxes	938,591	1,151,084	1,010,089
Income tax expense	(10,153)	(14,646)	(5,733)
Net income	928,438	1,136,438	1,004,356
Net loss (income) attributable to noncontrolling interests	387	337	(57)
Net income attributable to common stockholders	$ 928,825	$ 1,136,775	$ 1,004,299
Other comprehensive income:			
Gain on cash flow hedges	13,332	23,647	993
Cash flow hedge losses reclassified to earnings	1,360	3,883	13,151
Comprehensive income	$ 943,517	$ 1,164,305	$ 1,018,443
Earnings per common share - basic:			
Net income attributable to common stockholders	$ 6.56	$ 8.13	$ 7.19
Earnings per common share - diluted:			
Net income attributable to common stockholders	$ 6.56	$ 8.12	$ 7.19

See accompanying notes to Consolidated Financial Statements.

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

	Shares issued									
	Preferred stock	Common stock	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
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
Noncontrolling interest activity	—	—	—	—	—	(1,022)	—	(1,022)	(25)	(1,047)
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
Stock-based compensation expense	—	—	—	—	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
Noncontrolling interest activity	—	—	—	—	—	(105)	—	(105)	(489)	(594)
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
Stock-based compensation expense	—	—	—	—	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
Net income attributable to common stockholders	—	—	—	—	—	928,825	—	928,825	—	928,825
Gain on cash flow hedges, net	—	—	—	—	—	—	13,332	13,332	—	13,332
Cash flow hedge losses reclassified to earnings	—	—	—	—	—	—	1,360	1,360	—	1,360
Noncontrolling interest activity	—	—	—	—	—	(1,217)	—	(1,217)	—	(1,217)
Dividends declared to common stockholders ($6.60 per share)	—	—	—	—	—	(935,305)	—	(935,305)	—	(935,305)
Issuance of common stock, net of withholdings	—	2,120,392	—	20	485,029	1,635	—	486,684	—	486,684
Repurchase of common stock, including repurchase costs	—	(11,800)	—	—	(908)	(1,003)	—	(1,911)	—	(1,911)
Stock-based compensation expense	—	—	—	—	37,997	—	—	37,997	—	37,997
Balance at December 31, 2023	—	142,025,456	$ —	$ 1,420	$ 11,287,549	$ 478,156	$ 16,116	$ 11,783,241	$ 77	$ 11,783,318

See accompanying notes to Consolidated Financial Statements.

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

	For the year ended December 31,		
	2023	**2022**	**2021**
Cash flows from operating activities:			
Net income	$ 928,438	$ 1,136,438	$ 1,004,356
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation expense	816,965	814,978	758,596
Amortization of deferred financing costs and debt discount	12,732	11,218	10,143
Loss on extinguishment of debt, net	150	1,646	17,787
Amortization of stock-based compensation	27,142	33,864	25,505
Equity in loss (income) of, and return on, unconsolidated investments and noncontrolling interests, net of eliminations	5,332	5,255	(108)
Casualty loss	4,622	—	1,723
Abandonment of development pursuits	33,479	5,599	685
Unrealized gain on terminated cash flow hedges	—	—	(2,654)
Cash flow hedge losses reclassified to earnings	1,360	3,883	7,887
Gain on sale of real estate assets	(287,987)	(600,958)	(630,747)
Increase (decrease) in prepaid expenses and other assets	5,777	(7,167)	5,505
Increase in accrued expenses, other liabilities and accrued interest payable	12,019	17,176	4,492
Net cash provided by operating activities	1,560,029	1,421,932	1,203,170
Cash flows from investing activities:			
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(901,847)	(921,203)	(654,861)
Acquisition of real estate assets	(215,889)	(536,838)	(771,692)
Capital expenditures - existing real estate assets	(178,312)	(160,313)	(142,688)
Capital expenditures - non-real estate assets	(18,962)	(14,392)	(10,547)
Increase (decrease) in payables for construction	14,901	9,080	(29,887)
Proceeds from sale of real estate and for-sale condominiums, net of selling costs	467,096	1,051,383	974,762
Note receivable lending	(82,802)	(29,352)	(1,210)
Note receivable payments	253	4,021	2,435
Distributions from unconsolidated entities	5,468	51,464	63,171
Unconsolidated investments	(18,861)	(14,269)	(53,536)
Net cash used in investing activities	(928,955)	(560,419)	(624,053)
Cash flows from financing activities:			
Issuance of common stock, net	496,706	20,020	31,874
Repurchase of common stock, net	(1,911)	—	—
Dividends paid	(922,657)	(889,607)	(888,344)
Repayments of mortgage notes payable, including prepayment penalties	(47,000)	(43,332)	(109,562)
Issuance of unsecured notes	399,756	348,565	1,098,643
Repayment of unsecured notes	(750,000)	(100,000)	(462,147)
Payment of deferred financing costs	(3,964)	(14,301)	(8,864)
Receipt for termination of forward interest rate swaps	8,331	26,869	4,751
Payments related to tax withholding for share-based compensation	(10,639)	(16,989)	(13,463)
Noncontrolling interests, joint venture and preferred equity transactions	(2,981)	(2,281)	(1,749)
Net cash used in financing activities	(834,359)	(671,056)	(348,861)
Net (decrease) increase in cash, cash equivalents and restricted cash	(203,285)	190,457	230,256
Cash, cash equivalents and restricted cash, beginning of year	734,245	543,788	313,532
Cash, cash equivalents and restricted cash, end of year	$ 530,960	$ 734,245	$ 543,788
Cash paid during the year for interest, net of amount capitalized	$ 187,523	$ 212,241	$ 203,773

See accompanying notes to Consolidated Financial Statements.

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

	December 31, 2023	December 31, 2022	December 31, 2021
Cash and cash equivalents	$ 397,890	$ 613,189	$ 420,251
Restricted cash	133,070	121,056	123,537
Cash, cash equivalents and restricted cash reported in the Consolidated Statements of Cash Flows	$ 530,960	$ 734,245	$ 543,788

Supplemental disclosures of non-cash investing and financing activities:

During the year ended December 31, 2023:

- As described in Note 4, “Equity,” the Company issued 153,162 shares of common stock as part of the Company's stock-based compensation plans, of which 60,016 shares related to the conversion of performance awards to shares of common stock, and the remaining 93,146 shares valued at $16,552,000 were issued in connection with new stock grants; 3,454 shares valued at $619,000 were issued through the Company’s dividend reinvestment plan; 62,937 shares valued at $10,639,000 were withheld to satisfy employees’ tax withholding and other liabilities; and 2,119 forfeited restricted shares with an aggregate value of $413,000.

- Common stock dividends declared but not paid totaled $236,133,000.

- The Company recorded (i) an increase to prepaid expenses and other assets of $5,001,000 and a corresponding adjustment to accumulated other comprehensive income; and (ii) reclassified $1,360,000 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 assumed a $63,041,000 fixed rate mortgage loan in conjunction with the acquisition of Avalon West Plano.

During the year ended December 31, 2022:

- 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 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 forfeited restricted shares with an aggregate value of $791,000.

- 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 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 forfeited restricted shares with an aggregate value of $804,000.

- 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 to interest expense, net, and loss on extinguishment of debt, net, respectively, to record the impact of the Company's derivative and hedging activity.

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 develops, redevelops, acquires, owns and operates 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 regions of Raleigh-Durham and Charlotte, North Carolina, Southeast Florida, Dallas and Austin, Texas, and Denver, Colorado.

At December 31, 2023, the Company owned or held a direct or indirect ownership interest in 299 operating apartment communities containing 90,669 apartment homes in 12 states and the District of Columbia, of which 18 communities were under development. 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 30 communities that, if developed as expected, will contain an estimated 10,801 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 determines first whether to follow the variable interest entity ("VIE") or the voting interest entity ("VOE") model for each joint venture entity. 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 ready for its intended use, or the Company's intended use changes such that capitalization is no longer appropriate.

For land parcels acquired for development improved with operating real estate, the Company generally manages the improvements until 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.

The Company accounts for real estate acquisitions as either an asset acquisition or a business combination. Under either model, the Company identifies and determines 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.

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. The Company utilizes various sources to determine fair value, 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.

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.

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, primarily due to dispositions at The Park Loggia, of $10,153,000, $14,646,000 and $5,733,000 in 2023, 2022 and 2021, respectively. As of December 31, 2023 and 2022, 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 2020 through 2022.

The following summarizes the tax components of the Company's common dividends declared for the years ended December 31, 2023, 2022 and 2021 (unaudited):

	2023	2022	2021
Ordinary income	83 %	82 %	55 %
20% capital gain	11 %	15 %	26 %
Unrecaptured §1250 gain	6 %	3 %	19 %
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 $34,494,000 and $29,815,000 as of December 31, 2023 and 2022, respectively, and related to mortgage notes payable was $2,262,000 and $2,040,000 as of December 31, 2023 and 2022, 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 $14,490,000 and $11,222,000 as of December 31, 2023 and 2022, 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 Restricted Cash

Cash and cash equivalents includes all cash and liquid investments with an original maturity of three months or less from the date acquired. Restricted cash includes principal reserve funds that are restricted for the repayment of specified secured financing, amounts the Company has designated for planned 1031 exchange activity and resident security deposits. The majority of the Company's cash, cash equivalents and restricted cash 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 common 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 common share. Both the unvested restricted shares and other potentially dilutive common shares, and the related impact to earnings, are considered when calculating earnings per common share on a diluted basis. Diluted earnings per common share was computed using the treasury stock method for performance awards, options and participating securities. The Company's earnings per common share are determined as follows (dollars in thousands, except per share data):

	For the year ended December 31,		
	2023	**2022**	**2021**
Basic and diluted shares outstanding			
Weighted average common shares—basic	141,307,186	139,634,294	139,389,433
Weighted average DownREIT units outstanding	3,503	7,500	7,500
Effect of dilutive securities	333,099	333,293	320,466
Weighted average common shares—diluted	141,643,788	139,975,087	139,717,399
Calculation of Earnings per Common Share—basic			
Net income attributable to common stockholders	$ 928,825	$ 1,136,775	$ 1,004,299
Net income allocated to unvested restricted shares	(1,663)	(2,091)	(2,100)
Net income attributable to common stockholders—basic	$ 927,162	$ 1,134,684	$ 1,002,199
Weighted average common shares—basic	141,307,186	139,634,294	139,389,433
Earnings per common share—basic	$ 6.56	$ 8.13	$ 7.19
Calculation of Earnings per Common Share—diluted			
Net income attributable to common stockholders	$ 928,825	$ 1,136,775	$ 1,004,299
Add: noncontrolling interests of DownREIT unitholders in consolidated partnerships, including discontinued operations	25	48	48
Net income attributable to common stockholders—diluted	$ 928,850	$ 1,136,823	$ 1,004,347
Weighted average common shares—diluted	141,643,788	139,975,087	139,717,399
Earnings per common share—diluted	$ 6.56	$ 8.12	$ 7.19

Certain options to purchase shares of common stock in the amounts of 303,784 and 291,881 were outstanding as of December 31, 2023 and 2022, respectively, but were not included in the computation of diluted earnings per common share because such options were anti-dilutive for the period. All options to purchase shares of common stock outstanding as of December 31, 2021 are included in the computation of diluted earnings per common share.

Expensed Transaction, Development and Other Pursuit Costs

The Company capitalizes costs associated with its development activities to the basis of land held when future development is probable ("Development Rights"), 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 $33,479,000, $16,565,000 and $2,192,000 during the years ended December 31, 2023, 2022 and 2021, 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 2023 includes write-offs of $27,455,000 related to seven Development Rights that the Company determined are no longer probable. The amount for 2022 includes write-offs of $10,073,000 related to three development opportunities that the Company determined are 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, 2023, 2022 and 2021, the Company did not recognize any material impairment losses. During the year ended December 31, 2023, the Company recognized a charge of $9,118,000 for the property and casualty damages across certain communities in its Northeast and California regions related to severe weather and other casualty events, reported as casualty loss on the accompanying Consolidated Statements of Comprehensive Income. 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 unconsolidated investments for other than temporary impairment, considering both whether 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. The Company did not recognize any other than temporary impairment losses during the years ended December 31, 2023, 2022 or 2021.

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) are 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 real estate assets that qualified as held for sale presentation at December 31, 2023.

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 ongoing basis. 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. 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. Amounts recorded in accumulated other comprehensive income 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 effective fair value hedges is reported as an adjustment to the carrying amount of the corresponding hedged item. Receipts or payments associated with the gains and losses on the Company's cash flow hedges are presented as a component of cash flows from financing activities in the period the hedges are terminated and the payments for the Company's derivatives that are not qualifying for hedging relationships are presented as a component of cash flows from operating activities. See Note 11, "Fair Value," for further discussion of derivative financial instruments.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States ("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' financial statements and notes to the financial statements to conform to current year presentations as a result of changes in held for sale classification, disposition activity, segment classification and classification of for-sale condominium inventory and activity.

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 that are based on an index or rate such as the consumer price index (CPI) or percentage rents based on total sales. Variable lease payments are generally not included in the lease liability, but 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 12 months or less, the Company elected the practical expedient to recognize the lease payments on a straight line basis.

Lessor Considerations

The Company's 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 also provides various third party back-office, financial administrative support services. 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, 2023, 2022 and 2021. The segments are classified based on the individual community's status at December 31, 2023 for the years ended December 31, 2023 and 2022, and at December 31, 2022 for the year ended December 31, 2021. Segment information for total revenue excludes real estate assets that were sold from January 1, 2021 through December 31, 2023, or otherwise qualify as held for sale as of December 31, 2023, 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, 2023					
Management, development and other fees and other ancillary items	$ —	$ —	$ —	$ 7,722	$ 7,722
Non-lease related revenue (2)	10,656	5,296	282	—	16,234
Total non-lease revenue (3)	10,656	5,296	282	7,722	23,956
Lease income (4)	2,531,978	129,508	61,270	—	2,722,756
Total revenue	$ 2,542,634	$ 134,804	$ 61,552	$ 7,722	$ 2,746,712
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)	11,048	2,990	165	—	14,203
Total non-lease revenue (3)	11,048	2,990	165	6,333	20,536
Lease income (4)	2,383,244	90,315	29,569	—	2,503,128
Total revenue	$ 2,394,292	$ 93,305	$ 29,734	$ 6,333	$ 2,523,664
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)	7,368	1,879	256	—	9,503
Total non-lease revenue (3)	7,368	1,879	256	3,084	12,587
Lease income (4)	1,988,348	119,780	42,629	—	2,150,757
Total revenue	$ 1,995,716	$ 121,659	$ 42,885	$ 3,084	$ 2,163,344

(1) 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, 2023.

Uncollectible Lease Revenue Reserves

The Company assesses the collectability of its lease revenue and receivables on an ongoing 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 $57,906,000, $49,147,000 and $52,075,000 for the years ended December 31, 2023, 2022 and 2021, respectively, under ASC 842 and ASC 450.

Recently Issued Accounting Standards

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2023-07, Segment Reporting - Improvements to Reportable Segment Disclosures, which requires reportable segments disclosures of significant segment expenses provided to the chief operating decision maker ("CODM"). The standard does not change the definition of a segment, the method for determining segments, or the criteria for aggregating operating segments into reportable segments. The new standard will be effective for fiscal years beginning after December 15, 2023. The Company is assessing the standard and does not expect the standard to have a material effect on the Company's financial position or results of operations.

In December 2023, the FASB issued ASU 2023-09, Improvements to Income Tax Disclosures, which requires (i) a tabular rate reconciliation of the reported income tax expense (benefit) from continuing operations into specific categories, (ii) separate disclosure for any reconciling items within certain categories above a quantitative threshold, (iii) disclosure of income taxes paid disaggregated by federal, state and material jurisdictions and (iv) disclosure of income tax expense from continuing operations disaggregated by federal and state. The new standard will be effective for fiscal years beginning after December 15, 2024. The Company is assessing the standard and does not expect the standard to 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 $47,133,000, $34,854,000 and $32,687,000 for the years ended December 31, 2023, 2022 and 2021, respectively.

3. Debt

The Company's debt, which consists of unsecured notes, the variable rate unsecured term loan (the "Term Loan"), mortgage notes payable, the Credit Facility and the Commercial Paper Program, each as defined below, as of December 31, 2023 and 2022 is 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, 2023 and 2022, as shown in the accompanying 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, 2023		December 31, 2022	
Fixed rate unsecured notes	$ 7,300,000	3.3 %	$ 7,500,000	3.3 %
Term Loan	—	— %	150,000	5.4 %
Fixed rate mortgage notes payable—conventional and tax-exempt	333,892	3.9 %	270,677	3.4 %
Variable rate mortgage notes payable—conventional and tax-exempt	410,150	5.5 %	457,150	5.3 %
Total mortgage notes payable and unsecured notes and Term Loan	8,044,042	3.5 %	8,377,827	3.4 %
Credit Facility	—	— %	—	— %
Commercial paper	—	— %	—	— %
Total principal outstanding	8,044,042	3.5 %	8,377,827	3.4 %
Less deferred financing costs and debt discount (1)	(62,220)		(61,782)	
Total	$ 7,981,822		$ 8,316,045	

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

The Company has a $2,250,000,000 revolving variable rate unsecured credit facility with a syndicate of banks (the "Credit Facility") which matures in September 2026. The interest rate that would be applicable to borrowings under the Credit Facility was 6.19% at December 31, 2023 and was composed of (i) the Secured Overnight Financing Rate ("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 0.805% per annum, which consisted of a 0.10% SOFR adjustment plus 0.705% per annum, assuming a daily SOFR borrowing rate. The borrowing spread to SOFR can vary from SOFR plus 0.63% to SOFR plus 1.38% based upon the rating of the Company's unsecured senior notes. There is also an annual facility commitment fee of 0.12% of the borrowing capacity under the facility, which can vary from 0.095% to 0.295% based upon the rating of the Company's unsecured senior notes. 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. The first determination under the sustainability-linked pricing component occurred in July 2023, resulting in reductions of approximately 0.02% to the interest rate margin and 0.005% to the commitment fee due to our achievement of sustainability targets.

The availability on the Company's Credit Facility as of December 31, 2023 and 2022, respectively, was as follows (dollars in thousands):

	December 31, 2023	December 31, 2022
Credit Facility commitment	$ 2,250,000	$ 2,250,000
Credit Facility outstanding	—	—
Commercial paper outstanding	—	—
Letters of credit outstanding (1)	(1,914)	(1,914)
Total Credit Facility available	$ 2,248,086	$ 2,248,086

(1) In addition, the Company had $58,116 and $48,740 outstanding in additional letters of credit unrelated to the Credit Facility as of December 31, 2023 and 2022, respectively.

The Company has an unsecured commercial paper note program (the "Commercial Paper Program") with the maximum aggregate face or principal amount outstanding at any one time not to exceed $500,000,000. 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. 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.

During the year ended December 31, 2023:

- In March 2023, the Company repaid $250,000,000 principal amount of its 2.85% unsecured notes at par at maturity.
- In September 2023, the Company repaid its $150,000,000 Term Loan at par in advance of its February 2024 scheduled maturity.
- In September 2023, the Company utilized $37,600,000 of restricted cash held in a principal reserve fund to repay a portion of the outstanding secured variable rate indebtedness of Avalon Clinton North and Avalon Clinton South.
- In October 2023, in conjunction with the acquisition of Avalon West Plano, the Company assumed a $63,041,000 fixed rate mortgage loan, with a contractual interest rate of 4.18% and an effective interest rate of 5.97%, maturing in May 2029.
- In December 2023, the Company issued $400,000,000 principal amount of unsecured notes in a public offering under its existing shelf registration statement for proceeds net of underwriting fees of approximately $397,156,000, before considering the impact of other offering costs. The notes mature in December 2033 and were issued at a 5.30% interest rate, resulting in a 5.19% effective rate including the impact of issuance costs and hedging activity.
- In December 2023, the Company repaid $350,000,000 principal amount of its 4.20% unsecured notes at par at maturity.

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 $1,284,650,000, excluding communities classified as held for sale, as of December 31, 2023).

Scheduled payments and maturities of secured notes payable and unsecured notes outstanding at December 31, 2023 were as follows (dollars in thousands):

Year	Secured notes principal payments and maturities	Unsecured notes maturities	Stated interest rate of unsecured notes
2024	$ 9,593	$ 300,000	3.50 %
2025	10,765	525,000	3.45 %
		300,000	3.50 %
2026	11,811	475,000	2.95 %
		300,000	2.90 %
2027	250,159	400,000	3.35 %
2028	18,902	450,000	3.20 %
		400,000	1.90 %
2029	132,661	450,000	3.30 %
2030	9,100	700,000	2.30 %
2031	9,700	600,000	2.45 %
2032	10,400	700,000	2.05 %
2033	12,000	350,000	5.00 %
		400,000	5.30 %
Thereafter	268,951	350,000	3.90 %
		300,000	4.15 %
		300,000	4.35 %
	$ 744,042	$ 7,300,000	

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 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 the Company's overall capital structure;
- limitations on the amount of the Company's 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 with these covenants at December 31, 2023.

4. Equity

As of December 31, 2023 and 2022, 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, 2023, the Company:

i. issued 5,773 shares of common stock in connection with stock options exercised;
ii. issued 3,454 shares of common stock through the Company's dividend reinvestment plan;
iii. issued 153,162 shares of common stock in connection with restricted stock grants and the conversion of performance awards to shares of common stock;
iv. issued 2,000,000 shares of common stock in the settlement of the forward contracts, as discussed below;
v. issued 23,059 shares of common stock through the Employee Stock Purchase Plan;
vi. withheld 62,937 shares of common stock to satisfy employees' tax withholding and other liabilities;
vii. canceled 2,119 shares of restricted common stock upon forfeiture; and
viii. repurchased 11,800 shares of common stock through the Stock Repurchase Program (as defined below).

Deferred compensation granted under the Company's Second Amended and Restated 2009 Equity Incentive Plan (the "Plan") for the year ended December 31, 2023 does not impact the Company's Consolidated Financial Statements until recognized as compensation cost.

The Company has a continuous equity program (the "CEP") 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 the CEP 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 years ended December 31, 2023 and 2022, the Company had no sales under this program. During the year ended December 31, 2021, the Company sold 122,343 shares of common stock at an average sales price of $226.15 per share, for net proceeds of $27,253,000 under this program. In addition, during the year ended December 31, 2022, the Company settled the outstanding forward contracts entered into in December 2021 under this program, selling 68,577 shares of common stock for $229.34 per share and net proceeds of $15,727,000. As of December 31, 2023, the Company had $705,961,000 remaining authorized for issuance under the CEP.

In addition to the CEP, during the year ended December 31, 2023, the Company settled the outstanding forward contracts entered into in April 2022 (the "Equity Forward"), issuing 2,000,000 shares of common stock, net of offering fees and discounts, for $491,912,000 or $245.96 per share.

The Company has 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 "Stock Repurchase Program"). Purchases of common stock under the 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 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, 2023, the Company repurchased 11,800 shares of common stock at an average price of $161.96 per share. During the years ended December 31, 2022 and 2021, the Company had no repurchases of shares under this program. As of December 31, 2023, the Company had $314,237,000 remaining authorized for purchase under this program.

5. Investments

Investments in Consolidated Real Estate Entities

Details regarding communities acquired in 2023, 2022 and 2021, are summarized in the following table (dollars in thousands):

Community name	Location	Number of communities	Apartment homes	Purchase price	Commercial square feet
Avalon Frisco at Main	Frisco, TX	1	360	$ 83,100	—
Avalon Mooresville	Mooresville, NC	1	203	52,100	—
Avalon West Plano (1)	Carrollton, TX	1	568	142,000	—
Total 2023 acquisitions		3	1,131	$ 277,200	—
Total 2022 acquisitions		4	1,313	$ 536,200	16,000
Total 2021 acquisitions		7	1,932	$ 724,500	90,000

(1) In conjunction with the acquisition of Avalon West Plano, the Company assumed a $63,041 fixed rate mortgage loan, with a contractual interest rate of 4.18%, maturing in May 2029.

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.

Structured Investment Program

The Company operates a Structured Investment Program (the "SIP"), an investment platform through which the Company provides mezzanine loans or preferred equity to third-party multifamily developers. During the year ended December 31, 2023, the Company entered into four additional commitments, agreeing to provide an aggregate investment of up to $99,210,000 in multifamily development projects. As of December 31, 2023, the Company had seven commitments to fund up to $191,585,000 in the aggregate. The Company's investment commitments have a weighted average rate of return of 11.5% and have initial maturity dates between September 2025 and December 2027. At December 31, 2023, the Company had funded $96,461,000 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, 2023, 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 commitment 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 commitment-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 seven existing commitments, 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 income from unconsolidated investments, on the accompanying Consolidated Statements of Comprehensive Income.

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. As of December 31, 2023, the Company had investments in five unconsolidated entities with real estate entities holdings, with ownership interest percentages ranging from 20.0% to 50.0%, coupled with other unconsolidated investments including property technology and environmentally focused companies and investment management funds. For one of the investments which owns an apartment community that is under development and in which the Company has an investment of 25.0%, the Company has guaranteed a construction loan on behalf of the venture, which had an outstanding balance of $135,983,000 as of December 31, 2023. Any amounts under the guarantee of this construction loan are obligations of the venture partners in proportion to their ownership interest. 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, 2023, 2022 and 2021:

Archstone Multifamily Partners AC LP (the "U.S. Fund")—The Company acquired its interest in the U.S. Fund as part of the Archstone Acquisition in 2013 (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). The Company was the general partner of the U.S. Fund and had a 28.6% combined general partner and limited partner equity interest. During 2022, the U.S. Fund sold its final three communities and the Company's proportionate share of the gains in accordance with GAAP was $38,144,000. In conjunction with achieving a threshold return under provisions of the U.S. Fund, the Company received incentive distributions for its promoted interest. During the years ended December 31, 2023 and 2022, the Company recognized income of $1,519,000 and $4,690,000, respectively, for its promoted interest, which is included in income from unconsolidated investments on the accompanying Consolidated Statements of Comprehensive Income. During 2023, the Company completed the dissolution of the U.S. Fund.

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 in 2013. 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, 2023, 2022 and 2021, the Legacy JV redeemed certain of the preferred interests and paid accrued dividends, for which the Company contributed $940,000, $860,000 and $1,340,000, respectively. At December 31, 2023, the remaining preferred interests had an aggregate liquidation value of $34,124,000, 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 $394,734,000 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, 2023, the Company has an equity investment of $55,695,000 (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, 2023.

Brandywine Apartments of Maryland, LLC ("Brandywine")— The Company acquired its interest in Brandywine as part of the Archstone Acquisition. 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 $19,062,000 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. At December 31, 2023, the Company had an equity investment of $14,602,000 (net of distributions) in Brandywine.

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, 2023, the Company has a total equity investment of $53,638,000. 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, 2023, 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 $32,738,000. The remaining development costs are primarily expected to be funded by the venture's variable rate construction loan. The venture has drawn $135,983,000 of $167,147,000 maximum borrowing capacity of the construction loan as of December 31, 2023. While the Company guarantees the construction loan on behalf of the venture, any amounts payable 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—The Company has invested $46,926,000 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, 2023, the Company has $73,892,000 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, 2023, 2022 and 2021, the Company recognized income and unrealized gains of $4,161,000, $8,315,000 and $15,908,000, respectively, related to these investments, which was reported as a component of income from unconsolidated investments 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 $287,424,000, 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	Gross sales price	Net cash proceeds	Commercial square feet
eaves Daly City	Daly City, CA	Q2 2023	195	$ 67,000	$ 66,646	—
Avalon at Newton Highlands	Newton, MA	Q2 2023	294	170,000	167,665	—
Avalon Columbia Pike	Arlington, VA	Q3 2023	269	105,000	103,032	27,000
Avalon Mamaroneck	Mamaroneck, NY	Q4 2023	229	104,000	102,230	—
Other real estate	multiple	2023	N/A	—	636	—
Total of 2023 asset sales			987	$ 446,000	$ 440,209	27,000
Total of 2022 asset sales			2,062	$ 953,135	$ 934,117	—
Total of 2021 asset sales			2,404	$ 875,058	$ 850,230	30,000

As of December 31, 2023, 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 six, 40 and 53 residential condominiums at The Park Loggia, for gross proceeds of $25,387,000, $126,848,000 and $135,458,000 resulting in a loss in accordance with GAAP of $73,000 and gain in accordance with GAAP of $2,217,000 and $3,110,000 during the years ended December 31, 2023, 2022 and 2021, respectively. The Company incurred $389,000, $2,129,000 and $4,087,000 during the years ended December 31, 2023, 2022 and 2021, respectively, in marketing, operating and administrative costs. All amounts are included in other real estate activity on the accompanying Consolidated Statements of Comprehensive Income. As of December 31, 2023, there were two residential condominiums remaining to be sold. As of December 31, 2023 and 2022, the unsold for-sale residential condominiums at The Park Loggia had an aggregate carrying value of $6,603,000 and $32,532,000, respectively, presented in prepaid expenses and other assets on the accompanying Consolidated Balance Sheets.

7. Commitments and Contingencies

Employment Agreements and Arrangements

At December 31, 2023, 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 employment agreement expires on January 25, 2024, although provisions relating to equity awards granted during the term of the employment agreement continue to apply with respect to those awards.

The standard restricted stock, option and performance award 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), (i) 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 and (ii) a pro rata share (based on the portion of the performance period that has been completed) of performance awards that have completed at least one year of their performance period shall vest, with settlement to occur at the end of the performance period in accordance with achievement thereunder. Under the agreements, Retirement generally means a termination of employment and other business relationships, other than for cause, after attainment of age 50, provided certain conditions are met, including 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 and (iii) the employee provides at least six months written notice of intent to retire.

If a sale event (as defined) of the Company occurs, all outstanding multiyear performance awards will vest at their target value and are settled. 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, options and performance awards 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.

In 2022 and early 2023, the Company was named as a defendant in cases brought by private litigants alleging antitrust violations by RealPage, Inc. and owners and/or operators of multifamily housing which utilize revenue management systems provided by RealPage, Inc. The Company engaged with the plaintiffs' counsel to explain why it believed that these cases were without merit as they pertained to the Company. Following these discussions, the plaintiffs filed a notice of voluntary dismissal in July 2023, which resulted in the Company being dismissed without prejudice from these cases. Subsequently, on November 1, 2023, the District of Columbia filed a lawsuit in the Superior Court of the District of Columbia against RealPage, Inc. and 14 owners and/or operators of multifamily housing in the District of Columbia, including the Company, alleging that the defendants violated the District of Columbia Antitrust Act by unlawfully agreeing to use RealPage, Inc. revenue management systems and sharing sensitive data. The Company intends to vigorously defend against this lawsuit. Given the early stage of the District of Columbia's lawsuit, the Company is unable to predict the outcome or estimate the amount of loss, if any, that may result from the lawsuit.

The Company is involved in various other 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 other 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, 2023 and 2021.

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 15 leases for its corporate and regional offices with varying terms through 2031, all of which are operating leases.

As of December 31, 2023 and 2022, the Company had total operating lease assets of $106,146,000 and $114,977,000, respectively, and lease obligations of $133,220,000 and $142,602,000, 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 $16,342,000, $15,667,000 and $15,458,000 for the years ended December 31, 2023, 2022 and 2021, 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, 2023 and 2022, the Company had total finance lease assets of $28,528,000 and $28,354,000, respectively, and total finance lease obligations of $20,012,000 and $20,069,000, 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	22 years
Weighted-average remaining lease term - operating leases (1)	40 years
Weighted-average discount rate - finance leases	4.63 %
Weighted-average discount rate - operating leases (1)	4.66 %

(1) Excludes two leases that have been executed but for which the Company has not yet taken control.

The following table details the future minimum payments of the Company's current leases as of December 31, 2023 (dollars in thousands):

	Operating Leases (1)	Financing Leases
2024	$ 14,246	$ 1,087
2025	14,544	1,089
2026	14,552	1,092
2027	13,884	1,094
2028	12,839	1,096
Thereafter	268,085	35,762
Total	338,150	41,220
Less discount for time value	(204,930)	(21,208)
Lease liability	$ 133,220	$ 20,012

(1) Includes two leases that have been executed but for which the Company has not yet taken control.

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, 2023, Same Store communities are consolidated for financial reporting purposes, had stabilized occupancy as of January 1, 2022, are not conducting or are not probable to conduct substantial redevelopment activities and are not held for sale as of December 31, 2023 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, 2023, or which were acquired during the years ended December 31, 2023 or 2022. Other Stabilized 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 did not have stabilized occupancy, as defined above, as of January 1, 2023.

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 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 unconsolidated investments, depreciation expense, income tax expense, casualty loss, gain on sale of communities, other real estate 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 1.8%, 2.0% and 1.7% of total NOI for the years ended December 31, 2023, 2022 and 2021, 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, 2023, 2022 and 2021 is as follows (dollars in thousands):

	For the year ended December 31,		
	2023	2022	2021
Net income	$ 928,438	$ 1,136,438	$ 1,004,356
Property management and other indirect operating expenses, net of corporate income	121,704	114,200	98,665
Expensed transaction, development and other pursuit costs, net of recoveries	33,479	16,565	3,231
Interest expense, net	205,992	230,074	220,415
Loss on extinguishment of debt, net	150	1,646	17,787
General and administrative expense	76,534	74,064	69,611
Income from unconsolidated investments	(13,454)	(53,394)	(38,585)
Depreciation expense	816,965	814,978	758,596
Income tax expense	10,153	14,646	5,733
Casualty loss	9,118	—	3,119
Gain on sale of communities	(287,424)	(555,558)	(602,235)
Other real estate activity	(174)	(5,127)	(1,120)
Net operating income from real estate assets sold or held for sale	(14,733)	(46,678)	(82,698)
Net operating income	$ 1,886,748	$ 1,741,854	$ 1,456,875

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,		
	2023	2022	2021
Rental income from real estate assets sold or held for sale	$ 21,197	$ 69,782	$ 131,506
Operating expenses from real estate assets sold or held for sale	(6,464)	(23,104)	(48,808)
Net operating income from real estate assets sold or held for sale	$ 14,733	$ 46,678	$ 82,698

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, 2023 for the years ended December 31, 2023 and 2022 and at December 31, 2022, for the year ended December 31, 2021. Segment information for the years ended December 31, 2023, 2022 and 2021 has been adjusted to exclude the real estate assets that were sold from January 1, 2021 through December 31, 2023, or otherwise qualify as held for sale as of December 31, 2023, as described in Note 6, “Real Estate Disposition Activities.”

	Total revenue	NOI	Gross real estate (1)
For the year ended December 31, 2023			
Same Store			
New England	$ 366,777	$ 244,700	$ 2,925,841
Metro NY/NJ	529,684	362,599	4,417,603
Mid-Atlantic	369,027	255,741	3,439,654
Southeast Florida	76,301	50,315	801,617
Denver, CO	28,209	20,020	322,419
Pacific Northwest	171,740	121,783	1,546,038
Northern California	425,165	303,526	3,789,965
Southern California	551,743	380,262	4,816,245
Other Expansion Regions	23,988	16,166	328,082
Total Same Store (2)	2,542,634	1,755,112	22,387,464
Other Stabilized	134,804	92,808	1,799,035
Development / Redevelopment	61,552	38,828	2,408,450
Land Held for Development	N/A	N/A	199,062
Non-allocated (3)	7,722	N/A	136,451
Total	$ 2,746,712	$ 1,886,748	$ 26,930,462
For the year ended December 31, 2022			
Same Store			
New England	$ 341,769	$ 226,987	$ 2,893,843
Metro NY/NJ	495,107	342,511	4,401,146
Mid-Atlantic	348,096	238,970	3,396,654
Southeast Florida	69,685	44,696	798,437
Denver, CO	26,848	19,652	321,685
Pacific Northwest	165,186	117,211	1,534,208
Northern California	405,184	288,772	3,765,490
Southern California	520,483	361,809	4,762,736
Other Expansion Regions	21,934	15,098	323,573
Total Same Store (2)	2,394,292	1,655,706	22,197,772
Other Stabilized	93,305	67,462	1,515,963
Development / Redevelopment	29,734	18,686	1,574,649
Land Held for Development	N/A	N/A	179,204
Non-allocated (3)	6,333	N/A	122,886
Total	$ 2,523,664	$ 1,741,854	$ 25,590,474
For the year ended December 31, 2021			
Same Store			
New England	$ 295,505	$ 189,571	$ 2,771,067
Metro NY/NJ	407,621	279,078	4,025,983
Mid-Atlantic	302,652	203,502	3,068,575
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	366,215	258,756	3,605,284
Southern California	441,765	303,336	4,264,695
Total Same Store (2)(4)	1,995,716	1,356,363	19,741,013
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	$ 2,163,344	$ 1,456,875	$ 24,140,139

(1) Does not include gross real estate either sold or classified as held for sale subsequent to December 31, 2022 and 2021 of $280,889 and $760,990, respectively.

(2) Gross real estate for the Company's Same Store includes capitalized additions of approximately $188,507, $209,607 and $158,991 in 2023, 2022 and 2021, 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.”

(4) Communities in Same Store Other Expansion Regions were included in Other Stabilized for the year ended December 31, 2021.

9. Stock-Based Compensation Plans

The Company's Plan includes an authorization to issue shares of the Company's common stock, par value $0.01 per share. At December 31, 2023, the Company had 5,424,356 shares remaining available to issue under the Plan, exclusive of shares that may be issued to satisfy currently outstanding awards such as stock options or performance awards. The Plan provides for equity awards to associates, officers, non-employee directors and other key personnel of the Company and its subsidiaries in the form of 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 share-based compensation framework includes annual restricted stock awards and multi-year performance awards (the “Performance Awards”). The annual restricted stock vests over a three-year period at one-third per year. For annual restricted stock awards, in lieu of restricted stock, an officer may elect to receive up to 100% of the award value, in increments of 25%, in the form of stock options, which vests consistent with the restricted stock awards. Annually, 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 over a performance period of three years. Performance units earned at the end of the measurement period are settled in fully vested shares of common stock and a payment of a cash amount representing accrued dividends on earned performance awards. The Company granted supplemental stock options in February 2021, that have a ten-year term and cliff vested 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.

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's target grant will be pro-rated based on the employee's service time during the performance period. The final payout is based on actual performance, at which time the units will be converted into shares and a payment of a cash amount for accrued dividends based on actual performance. For other terminating events, performance awards are generally forfeited.

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

	Options	Weighted average exercise price per option
Options Outstanding, December 31, 2020	12,506	$ 129.35
Granted (1)	294,115	180.32
Exercised	(2,759)	124.34
Forfeited	(4,713)	180.32
Options Outstanding, December 31, 2021	299,149	$ 178.71
Granted (2)	9,793	236.14
Exercised	(8,670)	135.78
Forfeited	(6,459)	180.32
Options Outstanding, December 31, 2022	293,813	$ 181.85
Granted (2)	15,744	177.83
Exercised	(5,773)	163.56
Forfeited	—	—
Options Outstanding, December 31, 2023	303,784	$ 181.99
Options Exercisable:		
December 31, 2021	9,747	$ 130.77
December 31, 2022	6,533	$ 165.51
December 31, 2023	279,894	$ 180.97

(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:

	2023
Dividend yield	4.0 %
Estimated volatility	29.2 %
Risk free rate	4.09 %
Expected life of options	5 years
Estimated fair value	$37.54

The following summarizes the exercise prices and contractual lives of options outstanding as of December 31, 2023:

The Plan Number of Options	Range—Exercise Price			Weighted Average Remaining Contractual Term (in years)
293,991	$177.00	-	$186.99	7.3
9,793	$236.00	-	$245.99	8.1
303,784				

Options outstanding at December 31, 2023 had an intrinsic value of $2,068,000. Options exercisable had an intrinsic value of $1,909,000 and had a weighted average contractual life of 7.2 years. The intrinsic value of options exercised under the Plan during 2023, 2022 and 2021 was $113,000, $602,000 and $186,000, 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, 2020	241,921	$ 195.13
Granted (1)	138,033	191.12
Change in awards based on performance (2)	(37,469)	156.00
Converted to restricted stock	(56,545)	156.00
Forfeited	(1,418)	207.65
Outstanding at December 31, 2021	284,522	$ 214.73
Granted (3)	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
Granted (4)	90,215	193.85
Change in awards based on performance (2)	(31,345)	241.49
Converted to shares of common stock	(60,016)	238.71
Forfeited	(2,719)	212.05
Outstanding at December 31, 2023	275,202	$ 210.52

(1) The shares of common stock earned was 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, net asset value and leverage metrics of the Company for 68,969 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 39,972 performance awards and financial metrics related to operating performance and leverage metrics of the Company for 32,811 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 49,611 performance awards and financial metrics related to operating performance and leverage metrics of the Company for 40,604 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:

	2023	2022	2021
Dividend yield	3.7%	2.7%	3.5%
Estimated volatility over the life of the plan (1)	22.9% - 26.1%	16.1% - 36.8%	22.0% - 49.0%
Risk free rate	4.35% - 4.61%	0.72% - 1.68%	0.06% - 0.38%
Estimated performance award value based on total shareholder return measure	$206.97	$271.98	$213.16

(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 $177.83, $233.94 and $178.38, for the years ended December 31, 2023, 2022 and 2021, 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	Weighted average grant date fair value per share	Restricted stock shares converted from performance awards
Outstanding at December 31, 2020	131,724	$ 203.28	146,319
Granted	99,291	178.84	—
Vested	(69,840)	192.32	(71,692)
Forfeited	(4,109)	195.77	—
Outstanding at December 31, 2021	157,066	$ 192.90	74,627
Granted	86,475	231.93	—
Vested	(78,212)	197.51	(48,171)
Forfeited	(3,615)	218.19	(86)
Outstanding at December 31, 2022	161,714	$ 210.97	26,370
Granted	93,146	177.70	—
Vested	(79,450)	207.93	(26,370)
Forfeited	(2,119)	194.78	—
Outstanding at December 31, 2023	173,291	$ 194.68	—

Total employee stock-based compensation cost recognized in income was $27,417,000, $34,131,000 and $25,100,000 for the years ended December 31, 2023, 2022 and 2021, respectively, and total capitalized stock-based compensation cost was $10,906,000, $10,431,000 and $9,472,000 for the years ended December 31, 2023, 2022 and 2021, respectively. At December 31, 2023, there was a total unrecognized compensation cost of $28,204,000 for unvested restricted stock, stock options and performance awards, which is expected to be recognized over a weighted average period of 1.8 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, 2023, there are 569,016 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 23,059, 20,837 and 21,362 shares and recognized compensation expense of $911,000, $564,000 and $1,609,000 under the ESPP for the years ended December 31, 2023, 2022 and 2021, 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 and may provide other real estate related services to third parties, for which it receives asset management, property management, construction, development and redevelopment fee revenue. From these entities, the Company earned fees of $7,722,000, $6,333,000 and $3,084,000 for the years ended December 31, 2023, 2022 and 2021, respectively. In addition, the Company had outstanding receivables associated with its property and construction management roles of $7,946,000 and $2,855,000 as of December 31, 2023 and 2022, 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 non-Executive Chairman receives an additional annual fee of $250,000 payable in equal quarterly installments of $62,500, 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 an additional annual fee 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 an additional annual fee of $25,000 per year payable in equal quarterly installments of $6,250 and the Nominating, Governance and Corporate Responsibility 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 $2,446,000, $2,228,000 and $1,981,000 for the years ended December 31, 2023, 2022 and 2021, 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 $799,000, $794,000 and $696,000 on December 31, 2023, 2022 and 2021, 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 or equivalent, 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, which the Company concluded are 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, 2023 (dollars in thousands):

	Non-designated Hedges	Cash Flow Hedges
	Interest Rate Caps	Interest Rate Swaps
Notional balance	$ 632,215	$ 200,000
Weighted average interest rate (1)	5.5 %	N/A
Weighted average capped/swapped interest rate	6.5 %	3.1 %
Earliest maturity date	January 2024	February 2024
Latest maturity date	January 2027	June 2024

(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.

The following derivative activity occurred during the year ended December 31, 2023:

- In connection with the issuance of the Company's $400,000,000 unsecured notes in December 2023 maturing in 2033, the Company terminated $250,000,000 of forward interest rate swap agreements designated as cash flow hedges of the interest rate variability on the issuance of unsecured notes, receiving payments of $8,331,000 which will be recognized over the life of the unsecured notes as a reduction in the effective interest rate. All of the positions settled by the Company were forward interest rate swaps that the Company had entered into during 2023. The Company has deferred these gains in accumulated other comprehensive income 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.

- In addition, the Company entered into $200,000,000 of forward interest rate swap agreements to reduce the impact of variability in interest rates on a portion of the Company's anticipated future debt issuance activity in 2024. The

Company expects to cash settle the swaps and either pay or receive cash for the then current fair value. Assuming that the Company issues the debt as expected, the hedging impact from these positions will then be recognized over the life of the issued debt as a yield adjustment.

The Company had certain derivatives not designated as hedges during the years ended December 31, 2023, 2022 and 2021, for which fair value changes during each of the respective years were not material.

Cash flow hedge losses reclassified from accumulated other comprehensive income into earnings were $1,360,000, $3,883,000 and $13,151,000 for the year ended December 31, 2023, 2022 and 2021, respectively.

The Company anticipates reclassifying approximately $582,000 of net hedging losses from accumulated other comprehensive income into earnings within the next 12 months as an offset to the hedged item during this period.

Redeemable Noncontrolling Interests

During the year ended December 31, 2023, 7,500 DownREIT units were redeemed for cash by the Company in conjunction with the sale of Avalon at Newton Highlands. Under the DownREIT agreement, for each limited partnership unit, the limited partner was 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. The limited partnership units in the DownREIT were 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.

Financial Instruments Not Carried at Fair Value

Cash, Cash Equivalents and Restricted Cash

Cash, cash equivalent and restricted cash 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, cash equivalent and restricted cash balances with any one financial institution and believes the likelihood of realizing material losses related to cash, cash equivalent and restricted cash balances is remote. Cash, cash equivalent and restricted cash 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 Loan, 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 Loan 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)
	December 31, 2023			
Assets				
Investments				
Notes Receivable, net	$ 118,127	$ —	$ 118,127	$ —
Non Designated Hedges				
Interest Rate Caps	85	—	85	—
Interest Rate Swaps - Assets	5,163	—	5,163	—
Total Assets	$ 123,375	$ —	$ 123,375	$ —
Liabilities				
Interest Rate Swaps - Liabilities	$ 162	$ —	$ 162	$ —
Indebtedness				
Fixed rate unsecured notes	6,716,631	6,716,631	—	—
Mortgage notes payable and Commercial Paper Program	644,313	—	644,313	—
Total Liabilities	$ 7,361,106	$ 6,716,631	$ 644,475	$ —
	December 31, 2022			
Assets				
Investments				
Notes Receivable, net	$ 28,860	$ —	$ 28,860	$ —
Non Designated Hedges				
Interest Rate Caps	455	—	455	—
Total Assets	$ 29,315	$ —	$ 29,315	$ —
Liabilities				
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 note	768,984	—	768,984	—
Total Liabilities	$ 7,423,876	$ 6,654,892	$ 768,984	$ —

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, 2023
(Dollars in thousands)

			2023								2022	2023	
			Initial Cost			Total Cost							
Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
SAME STORE													
NEW ENGLAND													
Avalon at Lexington	Lexington, MA	198	$ 2,124	$ 12,561	$ 16,103	$ 2,124	$ 28,664	$ 30,788	$ 21,263	$ 9,525	$ 8,586	$ —	1994
eaves Wilmington	Wilmington, MA	204	2,129	17,563	10,350	2,129	27,913	30,042	20,505	9,537	9,960	—	1999
eaves Quincy	Quincy, MA	245	1,743	14,662	16,934	1,743	31,596	33,339	22,326	11,013	11,327	—	1986/1995
eaves Wilmington West	Wilmington, MA	120	3,318	13,465	5,145	3,318	18,610	21,928	12,654	9,274	9,360	—	2002
Avalon at The Pinehills	Plymouth, MA	192	6,876	30,313	9,652	6,876	39,965	46,841	21,752	25,089	25,832	—	2004
eaves Peabody	Peabody, MA	286	4,645	18,919	17,202	4,645	36,121	40,766	22,253	18,513	19,726	—	1962/2004
Avalon at Bedford Center	Bedford, MA	139	4,258	20,551	6,060	4,258	26,611	30,869	17,272	13,597	14,919	—	2006
Avalon at Chestnut Hill	Chestnut Hill, MA	204	14,572	45,868	15,868	14,572	61,736	76,308	33,909	42,399	43,505	—	2007
Avalon at Lexington Hills	Lexington, MA	387	8,691	78,502	18,246	8,691	96,748	105,439	56,017	49,422	53,457	—	2008
Avalon Acton	Acton, MA	380	13,124	48,630	13,026	13,124	61,656	74,780	32,568	42,212	44,469	45,000	2008
Avalon at the Hingham Shipyard	Hingham, MA	235	12,218	41,516	14,550	12,218	56,066	68,284	31,342	36,942	39,025	—	2009
Avalon Acton II	Acton, MA	86	1,723	29,375	—	1,723	29,375	31,098	3,506	27,592	28,638	—	2021
Avalon Northborough	Northborough, MA	382	8,144	52,178	9,474	8,144	61,652	69,796	29,937	39,859	41,103	—	2009
Avalon Exeter (1)	Boston, MA	187	—	109,978	3,501	—	113,479	113,479	37,241	76,238	78,840	—	2014
Avalon Natick	Natick, MA	407	15,645	64,845	4,822	15,645	69,667	85,312	25,323	59,989	61,683	—	2013
Avalon at Assembly Row (2)	Somerville, MA	195	8,599	52,454	8,815	8,599	61,269	69,868	21,508	48,360	48,141	—	2015
AVA Somerville (2)	Somerville, MA	250	10,944	56,457	7,899	10,944	64,356	75,300	22,806	52,494	53,785	—	2015
AVA Back Bay	Boston, MA	271	9,034	36,536	53,129	9,034	89,665	98,699	53,387	45,312	48,193	—	1968/1998
Avalon Prudential Center II	Boston, MA	266	8,776	35,479	65,718	8,776	101,197	109,973	54,744	55,229	58,882	—	1968/1998
Avalon Prudential Center I	Boston, MA	243	8,002	32,349	57,378	8,002	89,727	97,729	47,794	49,935	53,395	—	1968/1998
eaves Burlington	Burlington, MA	203	7,714	32,499	10,087	7,714	42,586	50,300	16,673	33,627	35,005	—	1988/2012
AVA Theater District	Boston, MA	398	17,072	163,622	978	17,072	164,600	181,672	47,828	133,844	139,145	—	2015
Avalon Burlington	Burlington, MA	312	15,600	60,649	20,068	15,600	80,717	96,317	30,573	65,744	67,529	—	1989/2013
Avalon Marlborough	Marlborough, MA	350	15,367	60,338	3,153	15,367	63,491	78,858	19,027	59,831	60,938	—	2015
Avalon North Station	Boston, MA	503	22,796	247,270	966	22,796	248,236	271,032	58,323	212,709	221,269	—	2017
Avalon Framingham	Framingham, MA	180	9,315	34,604	620	9,315	35,224	44,539	10,319	34,220	35,348	—	2015
Avalon Quincy	Quincy, MA	395	14,694	79,655	1,287	14,694	80,942	95,636	20,519	75,117	77,107	—	2017
Avalon Easton	Easton, MA	290	3,170	60,785	1,674	3,170	62,459	65,629	14,815	50,814	51,690	—	2017
Avalon at the Hingham Shipyard II	Hingham, MA	190	8,998	55,366	971	8,998	56,337	65,335	11,244	54,091	55,416	—	2019
Avalon Sudbury	Sudbury, MA	250	20,278	66,509	1,033	20,278	67,542	87,820	14,066	73,754	75,492	—	2019

AVALONBAY COMMUNITIES, INC.
REAL ESTATE AND ACCUMULATED DEPRECIATION (Continued)
December 31, 2023
(Dollars in thousands)

			2023									2022	2023	
			Initial Cost			Total Cost								
Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon Saugus	Saugus, MA	280	$ 17,809	$ 72,196	$ 1,519	$ 17,809	$ 73,715	$ 91,524	$ 13,075	$ 78,449	$ 81,490	$ —	2019
Avalon Norwood	Norwood, MA	198	9,478	51,215	830	9,478	52,045	61,523	8,580	52,943	55,163	—	2020
Avalon Marlborough II	Marlborough, MA	123	5,523	36,367	63	5,523	36,430	41,953	4,610	37,343	38,727	—	2020
Avalon Easton II	Easton, MA	44	570	14,090	—	570	14,090	14,660	1,154	13,506	13,974	—	2021
AVA North Point	Cambridge, MA	265	31,263	81,196	2,918	31,263	84,114	115,377	16,019	99,358	102,594	—	2018/2019
Avalon Bear Hill	Waltham, MA	324	27,350	93,977	31,975	27,350	125,952	153,302	51,236	102,066	105,728	—	1999/2013
Avalon Wilton on River Rd	Wilton, CT	102	2,116	14,664	8,311	2,116	22,975	25,091	17,406	7,685	7,957	—	1997
Avalon New Canaan	New Canaan, CT	104	4,834	22,990	7,025	4,834	30,015	34,849	20,407	14,442	15,576	—	2002
Avalon Darien	Darien, CT	189	6,926	34,558	9,816	6,926	44,374	51,300	28,383	22,917	24,498	—	2004
TOTAL NEW ENGLAND		**9,577**	**$ 385,438**	**$ 2,094,751**	**$ 457,166**	**$ 385,438**	**$ 2,551,917**	**$ 2,937,355**	**$ 992,364**	**$ 1,944,991**	**$ 2,017,472**	**$ 45,000**	
METRO NY/NJ													
New York City, NY													
Avalon Riverview (3)	Long Island City, NY	372	$ —	$ 94,061	$ 16,257	$ —	$ 110,318	$ 110,318	$ 79,750	$ 30,568	$ 32,981	$ —	2002
Avalon Riverview North (3)	Long Island City, NY	602	—	165,932	19,104	—	185,036	185,036	98,183	86,853	91,224	—	2008
AVA Fort Greene	Brooklyn, NY	631	83,038	216,802	11,298	83,038	228,100	311,138	106,100	205,038	212,356	—	2010
AVA DoBro	Brooklyn, NY	500	76,127	206,762	1,177	76,127	207,939	284,066	56,879	227,187	233,948	—	2017
Avalon Willoughby Square	Brooklyn, NY	326	49,635	134,840	1,056	49,635	135,896	185,531	35,122	150,409	155,056	—	2017
Avalon Brooklyn Bay	Brooklyn, NY	180	9,690	84,361	651	9,690	85,012	94,702	19,809	74,893	77,480	—	2018
Avalon Midtown West	New York, NY	550	154,730	180,253	53,204	154,730	233,457	388,187	86,980	301,207	306,317	76,600	1998/2013
Avalon Clinton North	New York, NY	339	84,069	105,821	16,843	84,069	122,664	206,733	48,156	158,577	161,998	126,400	2008/2013
Avalon Clinton South	New York, NY	288	71,421	89,851	10,527	71,421	100,378	171,799	40,507	131,292	133,537	104,500	2007/2013
Total New York City, NY		**3,788**	**$ 528,710**	**$ 1,278,683**	**$ 130,117**	**$ 528,710**	**$ 1,408,800**	**$ 1,937,510**	**$ 571,486**	**$ 1,366,024**	**$ 1,404,897**	**$ 307,500**	
New York - Suburban													
Avalon Commons	Smithtown, NY	312	$ 4,679	$ 27,811	$ 14,400	$ 4,679	$ 42,211	$ 46,890	$ 32,309	$ 14,581	$ 16,263	$ —	1997
Avalon Melville	Melville, NY	494	9,228	50,059	25,486	9,228	75,545	84,773	54,955	29,818	31,352	—	1997
Avalon White Plains	White Plains, NY	407	15,391	137,312	3,294	15,391	140,606	155,997	70,419	85,578	90,111	—	2009
Avalon Rockville Centre I	Rockville Centre, NY	349	32,212	78,806	7,508	32,212	86,314	118,526	38,463	80,063	83,041	—	2012
Avalon Garden City	Garden City, NY	204	18,205	49,301	2,054	18,205	51,355	69,560	20,281	49,279	50,691	—	2013
Avalon Huntington Station	Huntington Station, NY	303	21,899	58,429	2,514	21,899	60,943	82,842	19,870	62,972	64,277	—	2014
Avalon Great Neck	Great Neck, NY	191	14,777	65,412	496	14,777	65,908	80,685	16,352	64,333	66,230	—	2017
Avalon Rockville Centre II	Rockville Centre, NY	165	7,534	50,981	635	7,534	51,616	59,150	12,392	46,758	47,759	—	2017
Avalon Somers	Somers, NY	152	5,608	40,591	24	5,608	40,615	46,223	9,644	36,579	37,893	—	2018
Avalon Yonkers	Yonkers, NY	590	28,267	172,681	57	28,267	172,738	201,005	22,948	178,057	198,438	—	2021
Avalon Westbury	Westbury, NY	396	69,620	43,736	19,688	69,620	63,424	133,044	31,659	101,385	100,559	—	2006/2013
Total New York - Suburban		**3,563**	**$ 227,420**	**$ 775,119**	**$ 76,156**	**$ 227,420**	**$ 851,275**	**$ 1,078,695**	**$ 329,292**	**$ 749,403**	**$ 786,614**	**$ —**	

AVALONBAY COMMUNITIES, INC.
REAL ESTATE AND ACCUMULATED DEPRECIATION (Continued)
December 31, 2023
(Dollars in thousands)

			2023									2022	2023	
			Initial Cost			Total Cost								
Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
New Jersey													
Avalon Cove	Jersey City, NJ	504	$ 8,760	$ 82,422	$ 33,937	$ 8,760	$ 116,359	$ 125,119	$ 91,946	$ 33,173	$ 37,018	$ —	1997
eaves West Windsor (2)	West Windsor, NJ	512	5,585	21,752	35,761	5,585	57,513	63,098	38,599	24,499	25,852	—	1988/1993
Avalon at Edgewater I	Edgewater, NJ	168	5,982	24,389	11,248	5,982	35,637	41,619	24,235	17,384	18,548	—	2002
Avalon at Florham Park	Florham Park, NJ	270	6,647	34,906	17,845	6,647	52,751	59,398	36,218	23,180	24,941	—	2001
Avalon North Bergen	North Bergen, NJ	164	8,984	30,994	1,493	8,984	32,487	41,471	13,173	28,298	29,364	—	2012
Avalon at Wesmont Station I	Wood-Ridge, NJ	266	14,682	41,610	4,354	14,682	45,964	60,646	18,513	42,133	43,071	—	2012
Avalon Hackensack at Riverside	Hackensack, NJ	226	9,939	44,619	2,329	9,939	46,948	56,887	17,376	39,511	41,169	—	2013
Avalon at Wesmont Station II	Wood-Ridge, NJ	140	6,502	16,851	856	6,502	17,707	24,209	6,685	17,524	18,010	—	2013
Avalon Bloomingdale	Bloomingdale, NJ	174	3,006	27,801	1,116	3,006	28,917	31,923	10,191	21,732	22,524	—	2014
Avalon Wharton	Wharton, NJ	247	2,273	48,609	1,700	2,273	50,309	52,582	15,948	36,634	38,379	—	2015
Avalon Bloomfield Station (1)	Bloomfield, NJ	224	10,701	36,430	2,195	10,701	38,625	49,326	11,365	37,961	38,182	—	2015
Avalon Roseland	Roseland, NJ	136	11,288	34,868	892	11,288	35,760	47,048	10,767	36,281	37,228	—	2015
Avalon Princeton	Princeton, NJ	280	26,461	68,003	1,639	26,461	69,642	96,103	18,272	77,831	79,743	—	2017
Avalon Union	Union, NJ	202	11,695	36,315	1,392	11,695	37,707	49,402	10,483	38,919	39,551	—	2016
Avalon Hoboken	Hoboken, NJ	217	37,237	90,278	7,624	37,237	97,902	135,139	32,649	102,490	105,557	—	2008/2016
Avalon Maplewood	Maplewood, NJ	235	15,179	49,425	2,630	15,179	52,055	67,234	13,085	54,149	55,666	—	2018
Avalon Boonton	Boonton, NJ	350	3,595	89,407	1,379	3,595	90,786	94,381	16,042	78,339	81,519	—	2019
Avalon Teaneck	Teaneck, NJ	248	12,588	60,257	89	12,588	60,346	72,934	10,161	62,773	65,193	—	2020
Avalon Piscataway	Piscataway, NJ	360	14,329	75,897	628	14,329	76,525	90,854	15,443	75,411	78,417	—	2019
Avalon Old Bridge	Old Bridge, NJ	252	6,895	64,907	647	6,895	65,554	72,449	7,955	64,494	67,152	—	2021
Avalon at Edgewater II	Edgewater, NJ	240	8,605	60,809	162	8,605	60,971	69,576	13,723	55,853	58,059	—	2018
Total New Jersey		**5,415**	**$ 230,933**	**$ 1,040,549**	**$ 129,916**	**$ 230,933**	**$ 1,170,465**	**$ 1,401,398**	**$ 432,829**	**$ 968,569**	**$ 1,005,143**	**$ —**	
TOTAL METRO NY/NJ		**12,766**	**$ 987,063**	**$ 3,094,351**	**$ 336,189**	**$ 987,063**	**$ 3,430,540**	**$ 4,417,603**	**$ 1,333,607**	**$ 3,083,996**	**$ 3,196,654**	**$ 307,500**	
MID-ATLANTIC													
Washington Metro/Baltimore, MD													
Avalon at Foxhall (2)	Washington, D.C.	308	$ 6,848	$ 27,614	$ 26,947	$ 6,848	$ 54,561	$ 61,409	$ 43,286	$ 18,123	$ 15,542	$ —	1982/1994
Avalon at Gallery Place	Washington, D.C.	203	8,800	39,658	6,850	8,800	46,508	55,308	31,375	23,933	24,523	—	2003
AVA H Street	Washington, D.C.	138	7,425	25,282	759	7,425	26,041	33,466	10,132	23,334	23,824	—	2013
Avalon The Albemarle	Washington, D.C.	234	25,140	52,459	11,231	25,140	63,690	88,830	27,955	60,875	62,715	—	1966/2013
eaves Tunlaw Gardens	Washington, D.C.	166	16,430	22,902	2,964	16,430	25,866	42,296	11,065	31,231	32,043	—	1944/2013
The Statesman	Washington, D.C.	281	38,140	35,352	7,359	38,140	42,711	80,851	18,980	61,871	62,825	—	1961/2013
eaves Glover Park	Washington, D.C.	120	9,580	26,532	2,912	9,580	29,444	39,024	12,826	26,198	27,160	—	1953/2013
AVA Van Ness (2)	Washington, D.C.	269	22,890	58,691	25,666	22,890	84,357	107,247	30,746	76,501	78,188	—	1978/2013
Avalon First and M	Washington, D.C.	469	43,700	153,950	6,092	43,700	160,042	203,742	61,290	142,452	147,209	—	2012/2013

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Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
AVA NoMa	Washington, D.C.	438	$ 25,246	$ 114,933	$ 1,743	$ 25,246	$ 116,676	$ 141,922	$ 30,359	$ 111,563	$ 114,529	$ —	2018
eaves Washingtonian Center	North Potomac, MD	288	4,047	18,553	8,215	4,047	26,768	30,815	21,923	8,892	9,067	—	1996
eaves Columbia Town Center	Columbia, MD	392	8,802	35,536	16,343	8,802	51,879	60,681	31,903	28,778	29,195	—	1986/1993
Avalon at Grosvenor Station	Bethesda, MD	497	29,159	52,993	9,860	29,159	62,853	92,012	41,697	50,315	51,889	—	2004
Avalon at Traville	Rockville, MD	520	14,365	55,398	10,537	14,365	65,935	80,300	44,203	36,097	37,487	—	2004
AVA Wheaton	Wheaton, MD	319	6,494	69,027	260	6,494	69,287	75,781	16,799	58,982	61,221	—	2018
Kanso Twinbrook	Rockville, MD	238	9,151	56,959	40	9,151	56,999	66,150	6,327	59,823	61,961	—	2021
Avalon Hunt Valley	Hunt Valley, MD	332	10,872	62,992	375	10,872	63,367	74,239	16,338	57,901	59,931	—	2017
Avalon Laurel	Laurel, MD	344	10,130	61,685	846	10,130	62,531	72,661	16,461	56,200	57,779	—	2017
Avalon Towson	Towson, MD	371	12,906	98,307	—	12,906	98,307	111,213	13,522	97,691	101,657	—	2020
Avalon Fairway Hills - Meadows	Columbia, MD	192	2,323	9,297	8,188	2,323	17,485	19,808	12,333	7,475	5,417	—	1987/1996
Avalon Fairway Hills - Woods	Columbia, MD	336	3,958	15,839	16,459	3,958	32,298	36,256	21,534	14,722	14,319	—	1987/1996
Avalon Arundel Crossing II	Linthicum Heights, MD	310	12,208	69,888	3,430	12,208	73,318	85,526	18,674	66,852	69,269	—	2018/2018
Kanso Silver Spring	Silver Spring, MD	151	3,471	41,393	2,297	3,471	43,690	47,161	8,238	38,923	39,652	—	2009/2019
Avalon Arundel Crossing	Linthicum Heights, MD	384	9,933	108,911	2,876	9,933	111,787	121,720	15,854	105,866	110,693	—	2020/2021
Avalon Russett	Laurel, MD	238	10,200	47,524	7,073	10,200	54,597	64,797	23,028	41,769	42,887	32,200	1999/2013
eaves Fair Lakes	Fairfax, VA	420	6,096	24,400	15,934	6,096	40,334	46,430	31,119	15,311	16,504	—	1989/1996
eaves Fairfax City	Fairfax, VA	141	2,152	8,907	5,885	2,152	14,792	16,944	11,084	5,860	6,278	—	1988/1997
Avalon Tysons Corner (2)	Tysons Corner, VA	558	13,851	43,397	18,581	13,851	61,978	75,829	46,096	29,733	30,382	—	1996
Avalon at Arlington Square	Arlington, VA	842	22,041	90,296	38,686	22,041	128,982	151,023	80,299	70,724	71,717	—	2001
eaves Fairfax Towers	Falls Church, VA	415	17,889	74,727	16,757	17,889	91,484	109,373	39,370	70,003	73,482	—	1978/2011
Avalon Mosaic	Fairfax, VA	531	33,490	75,801	2,652	33,490	78,453	111,943	26,670	85,273	85,707	—	2014
Avalon Potomac Yard	Alexandria, VA	323	24,225	81,982	4,294	24,225	86,276	110,501	28,224	82,277	84,838	—	2014/2016
Avalon Clarendon	Arlington, VA	300	22,573	95,355	10,816	22,573	106,171	128,744	34,207	94,537	98,098	—	2002/2016
Avalon Dunn Loring	Vienna, VA	440	29,377	115,465	7,358	29,377	122,823	152,200	35,634	116,566	120,242	—	2012/2017
eaves Tysons Corner	Vienna, VA	217	16,030	45,420	4,547	16,030	49,967	65,997	22,594	43,403	44,851	—	1980/2013
Avalon Courthouse Place	Arlington, VA	564	56,550	178,032	19,825	56,550	197,857	254,407	78,761	175,646	180,786	—	1999/2013
Avalon Arlington North (2)	Arlington, VA	228	21,600	59,076	10,018	21,600	69,094	90,694	23,957	66,737	65,465	—	2014
Avalon Reston Landing	Reston, VA	400	26,710	83,084	16,036	26,710	99,120	125,830	44,233	81,597	84,726	—	2000/2013
Avalon Falls Church	Falls Church, VA	384	39,544	66,160	820	39,544	66,980	106,524	20,315	86,209	87,780	—	2016
TOTAL MID-ATLANTIC		**13,301**	**$ 684,346**	**$ 2,403,777**	**$ 351,531**	**$ 684,346**	**$ 2,755,308**	**$ 3,439,654**	**$ 1,109,411**	**$ 2,330,243**	**$ 2,391,838**	**$ 32,200**	
DENVER, CO													
Avalon Denver West	Lakewood, CO	252	$ 8,047	$ 67,861	$ 3,367	$ 8,047	$ 71,228	$ 79,275	$ 19,434	$ 59,841	$ 61,852	$ —	2016/2017
Avalon Meadows at Castle Rock	Castle Rock, CO	240	8,527	64,565	1,548	8,527	66,113	74,640	16,269	58,371	61,241	—	2018/2018
Avalon Red Rocks	Littleton, CO	256	4,461	70,103	1,745	4,461	71,848	76,309	17,954	58,355	61,311	—	2018/2018

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Avalon Southlands	Aurora, CO	338	$ 5,101	$ 85,184	$ 1,910	$ 5,101	$ 87,094	$ 92,195	$ 20,839	$ 71,356	$ 75,302	$ —	2018/2019
TOTAL DENVER, CO		**1,086**	**$ 26,136**	**$ 287,713**	**$ 8,570**	**$ 26,136**	**$ 296,283**	**$ 322,419**	**$ 74,496**	**$ 247,923**	**$ 259,706**	**$ —**	
SOUTHEAST FLORIDA													
Avalon 850 Boca	Boca Raton, FL	370	$ 21,430	$ 114,626	$ 5,499	$ 21,430	$ 120,125	$ 141,555	$ 31,301	$ 110,254	$ 113,769	$ —	2017/2017
Avalon Doral	Doral, FL	350	23,392	92,949	—	23,392	92,949	116,341	10,744	105,597	108,861	—	2020
Avalon West Palm Beach	West Palm Beach, FL	290	9,597	91,411	5,703	9,597	97,114	106,711	22,694	84,017	87,164	—	2018/2018
Avalon Bonterra	Hialeah, FL	314	16,655	71,180	3,608	16,655	74,788	91,443	17,723	73,720	76,764	—	2018/2019
Avalon Toscana	Margate, FL	240	9,213	49,936	2,457	9,213	52,393	61,606	10,587	51,019	52,600	—	2016/2019
Avalon Fort Lauderdale	Fort Lauderdale, FL	243	20,029	122,394	6,895	20,029	129,289	149,318	13,760	135,558	140,432	—	2020/2021
Avalon Miramar	Miramar, FL	380	17,959	110,895	5,789	17,959	116,684	134,643	15,283	119,360	123,611	—	2018/2021
TOTAL SOUTHEAST FLORIDA		**2,187**	**$ 118,275**	**$ 653,391**	**$ 29,951**	**$ 118,275**	**$ 683,342**	**$ 801,617**	**$ 122,092**	**$ 679,525**	**$ 703,201**	**$ —**	
PACIFIC NORTHWEST													
Seattle, WA													
Avalon at Bear Creek	Redmond, WA	264	$ 6,786	$ 27,641	$ 9,169	$ 6,786	$ 36,810	$ 43,596	$ 29,552	$ 14,044	$ 14,558	$ —	1998/1998
Avalon Bellevue	Bellevue, WA	201	6,664	24,119	7,705	6,664	31,824	38,488	22,409	16,079	16,052	—	2001
eaves RockMeadow	Bothell, WA	206	4,777	19,765	6,227	4,777	25,992	30,769	19,364	11,405	10,508	—	2000/2000
Avalon ParcSquare	Redmond, WA	124	3,789	15,139	4,654	3,789	19,793	23,582	15,326	8,256	8,973	—	2000/2000
AVA Belltown	Seattle, WA	100	5,644	12,733	2,570	5,644	15,303	20,947	11,216	9,731	10,189	—	2001
Avalon Meydenbauer	Bellevue, WA	368	12,697	77,450	7,778	12,697	85,228	97,925	45,089	52,836	54,763	—	2008
Avalon Towers Bellevue (3)	Bellevue, WA	397	—	123,029	7,100	—	130,129	130,129	58,466	71,663	74,217	—	2011
AVA Queen Anne	Seattle, WA	203	12,081	41,618	1,922	12,081	43,540	55,621	18,196	37,425	38,701	—	2012
AVA Ballard	Seattle, WA	265	16,460	46,926	2,527	16,460	49,453	65,913	18,907	47,006	48,245	—	2013
Avalon Alderwood I	Lynnwood, WA	367	12,294	55,627	977	12,294	56,604	68,898	18,398	50,500	51,868	—	2015
AVA Capitol Hill	Seattle, WA	249	20,613	59,986	1,417	20,613	61,403	82,016	18,187	63,829	65,807	—	2016
Avalon Esterra Park	Redmond, WA	482	23,178	112,986	1,603	23,178	114,589	137,767	30,391	107,376	111,314	—	2017
Avalon Alderwood II	Redmond, WA	124	5,072	21,418	132	5,072	21,550	26,622	5,631	20,991	21,612	—	2016
Avalon Newcastle Commons I	Newcastle, WA	378	9,649	111,600	1,377	9,649	112,977	122,626	26,105	96,521	100,143	—	2017
Avalon Belltown Towers	Seattle, WA	274	24,638	121,064	1,359	24,638	122,423	147,061	21,564	125,497	130,407	—	2019
AVA Esterra Park	Redmond, WA	323	16,405	74,568	13	16,405	74,581	90,986	14,291	76,695	79,748	—	2019
Avalon Newcastle Commons II	Newcastle, WA	293	6,982	99,824	151	6,982	99,975	106,957	10,540	96,417	100,273	—	2021
Avalon North Creek	Bothell, WA	316	13,498	69,015	—	13,498	69,015	82,513	11,989	70,524	73,315	—	2020
eaves Redmond Campus	Redmond, WA	374	15,665	80,985	33,073	15,665	114,058	129,723	46,910	82,813	86,856	—	1991/2013
Archstone Redmond Lakeview	Redmond, WA	166	10,250	26,842	6,807	10,250	33,649	43,899	15,980	27,919	28,921	—	1987/2013
TOTAL PACIFIC NORTHWEST		**5,474**	**$ 227,142**	**$ 1,222,335**	**$ 96,561**	**$ 227,142**	**$ 1,318,896**	**$ 1,546,038**	**$ 458,511**	**$ 1,087,527**	**$ 1,126,470**	**$ —**	

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NORTHERN CALIFORNIA													
San Jose, CA													
Avalon Campbell	Campbell, CA	348	$ 11,830	$ 47,828	$ 15,636	$ 11,830	$ 63,464	$ 75,294	$ 48,448	$ 26,846	$ 28,834	$ —	1995
eaves San Jose	San Jose, CA	442	12,920	53,047	20,565	12,920	73,612	86,532	50,866	35,666	38,016	—	1985/1996
Avalon on the Alameda	San Jose, CA	307	6,119	50,217	14,862	6,119	65,079	71,198	48,958	22,240	24,383	—	1999
Avalon Silicon Valley	Sunnyvale, CA	712	20,713	99,573	39,340	20,713	138,913	159,626	100,513	59,113	62,187	—	1998
Avalon Mountain View	Mountain View, CA	248	9,755	39,387	13,323	9,755	52,710	62,465	41,707	20,758	22,553	—	1986
eaves Creekside	Mountain View, CA	300	6,546	26,263	23,236	6,546	49,499	56,045	35,902	20,143	21,595	—	1962/1997
Avalon at Cahill Park	San Jose, CA	218	4,765	47,600	5,035	4,765	52,635	57,400	37,552	19,848	21,594	—	2002
Avalon Towers on the Peninsula	Mountain View, CA	211	9,560	56,136	15,744	9,560	71,880	81,440	46,823	34,617	36,518	—	2002
Avalon Morrison Park	San Jose, CA	250	13,837	64,521	1,763	13,837	66,284	80,121	22,822	57,299	59,228	—	2014
Avalon Willow Glen	San Jose, CA	412	46,060	81,957	8,667	46,060	90,624	136,684	41,133	95,551	98,445	—	2002/2013
eaves West Valley	San Jose, CA	873	90,890	132,040	17,080	90,890	149,120	240,010	65,540	174,470	179,233	—	1970/2013
eaves Mountain View at Middlefield	Mountain View, CA	402	64,070	69,018	18,536	64,070	87,554	151,624	41,619	110,005	113,785	—	1969/2013
Total San Jose, CA		**4,723**	**$ 297,065**	**$ 767,587**	**$ 193,787**	**$ 297,065**	**$ 961,374**	**$ 1,258,439**	**$ 581,883**	**$ 676,556**	**$ 706,371**	**$ —**	
Oakland - East Bay, CA													
Avalon Fremont (2)	Fremont, CA	308	$ 10,746	$ 43,399	$ 31,654	$ 10,746	$ 75,053	$ 85,799	$ 46,363	$ 39,436	$ 40,798	$ —	1992/1994
eaves Dublin (2)	Dublin, CA	204	5,276	19,642	13,991	5,276	33,633	38,909	24,315	14,594	14,722	—	1989/1997
eaves Pleasanton (2)	Pleasanton, CA	456	11,610	46,552	48,872	11,610	95,424	107,034	54,990	52,044	52,344	—	1988/1994
eaves Union City	Union City, CA	208	4,249	16,820	5,299	4,249	22,119	26,368	18,465	7,903	8,337	—	1973/1996
eaves Fremont	Fremont, CA	237	6,581	26,583	13,046	6,581	39,629	46,210	30,582	15,628	16,761	—	1985/1994
Avalon Union City	Union City, CA	439	14,732	104,024	6,787	14,732	110,811	125,543	53,676	71,867	75,293	—	2009
Avalon Walnut Creek (3)	Walnut Creek, CA	422	—	148,846	7,250	—	156,096	156,096	71,711	84,385	89,055	4,501	2010
Avalon Dublin Station	Dublin, CA	253	7,772	72,142	1,543	7,772	73,685	81,457	25,232	56,225	58,455	—	2014
Avalon Dublin Station II	Dublin, CA	252	7,762	76,587	631	7,762	77,218	84,980	21,099	63,881	66,244	—	2016
Avalon Public Market (1)	Emeryville, CA	289	27,394	145,592	260	27,394	145,852	173,246	22,366	150,880	155,467	—	2020
Avalon Walnut Creek II (3)	Walnut Creek, CA	200	—	112,759	315	—	113,074	113,074	14,289	98,785	103,064	—	2020
eaves Walnut Creek	Walnut Creek, CA	510	30,320	82,375	18,289	30,320	100,664	130,984	41,605	89,379	92,829	—	1987/2013
Avalon Walnut Ridge I	Walnut Creek, CA	106	9,860	19,850	5,999	9,860	25,849	35,709	10,517	25,192	26,048	—	2000/2013
Avalon Walnut Ridge II	Walnut Creek, CA	360	27,190	57,041	14,257	27,190	71,298	98,488	30,247	68,241	70,626	—	1989/2013
Avalon Berkeley	Berkeley, CA	94	4,500	28,689	145	4,500	28,834	33,334	9,409	23,925	24,850	—	2014
Total Oakland - East Bay, CA		**4,338**	**$ 167,992**	**$ 1,000,901**	**$ 168,338**	**$ 167,992**	**$ 1,169,239**	**$ 1,337,231**	**$ 474,866**	**$ 862,365**	**$ 894,893**	**$ 4,501**	
San Francisco, CA													
AVA Nob Hill	San Francisco, CA	185	$ 5,403	$ 21,567	$ 11,273	$ 5,403	$ 32,840	$ 38,243	$ 24,511	$ 13,732	$ 14,850	$ —	1990/1995
eaves Foster City	Foster City, CA	288	7,852	31,445	15,824	7,852	47,269	55,121	35,545	19,576	19,642	—	1973/1994

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			2023									2022	2023	
			Initial Cost			Total Cost								
Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
eaves Pacifica	Pacifica, CA	220	$ 6,125	$ 24,792	$ 5,573	$ 6,125	$ 30,365	$ 36,490	$ 25,442	$ 11,048	$ 11,745	$ —	1971/1995
Avalon Sunset Towers	San Francisco, CA	243	3,561	21,313	17,599	3,561	38,912	42,473	28,331	14,142	15,240	—	1961/1996
Avalon at Mission Bay I	San Francisco, CA	250	14,029	78,452	10,330	14,029	88,782	102,811	63,094	39,717	42,935	—	2003
Avalon at Mission Bay III	San Francisco, CA	260	28,687	119,156	1,675	28,687	120,831	149,518	59,154	90,364	94,137	—	2009
Avalon Ocean Avenue	San Francisco, CA	173	5,544	50,906	3,259	5,544	54,165	59,709	21,932	37,777	39,333	—	2012
AVA 55 Ninth	San Francisco, CA	273	20,267	97,321	1,710	20,267	99,031	119,298	33,915	85,383	88,357	—	2014
Avalon Hayes Valley	San Francisco, CA	182	12,595	81,228	1,259	12,595	82,487	95,082	25,213	69,869	72,131	—	2015
Avalon Dogpatch	San Francisco, CA	326	23,523	180,698	421	23,523	181,119	204,642	40,228	164,414	170,374	—	2018
Avalon San Bruno I	San Bruno, CA	300	40,780	68,684	8,945	40,780	77,629	118,409	34,287	84,122	86,649	57,650	2004/2013
Avalon San Bruno II	San Bruno, CA	185	23,787	44,934	3,840	23,787	48,774	72,561	19,334	53,227	54,746	—	2007/2013
Avalon San Bruno III	San Bruno, CA	187	33,303	62,910	3,725	33,303	66,635	99,938	26,514	73,424	75,442	51,000	2010/2013
Total San Francisco, CA		**3,072**	**$ 225,456**	**$ 883,406**	**$ 85,433**	**$ 225,456**	**$ 968,839**	**$ 1,194,295**	**$ 437,500**	**$ 756,795**	**$ 785,581**	**$ 108,650**	
TOTAL NORTHERN CALIFORNIA		**12,133**	**$ 690,513**	**$ 2,651,894**	**$ 447,558**	**$ 690,513**	**$ 3,099,452**	**$ 3,789,965**	**$ 1,494,249**	**$ 2,295,716**	**$ 2,386,845**	**$ 113,151**	
SOUTHERN CALIFORNIA													
Los Angeles, CA													
AVA Burbank	Burbank, CA	750	$ 22,483	$ 28,093	$ 54,756	$ 22,483	$ 82,849	$ 105,332	$ 58,108	$ 47,224	$ 49,720	$ —	1961/1997
Avalon Woodland Hills (2)	Woodland Hills, CA	663	23,828	40,342	86,225	23,828	126,567	150,395	67,704	82,691	81,679	—	1989/1997
eaves Warner Center	Woodland Hills, CA	228	7,045	12,980	14,216	7,045	27,196	34,241	22,014	12,227	12,597	—	1979/1998
Avalon Glendale (3)	Glendale, CA	223	—	42,564	3,993	—	46,557	46,557	31,921	14,636	15,619	—	2003
Avalon Burbank	Burbank, CA	401	14,053	56,820	28,892	14,053	85,712	99,765	55,436	44,329	46,283	—	1988/2002
Avalon Camarillo	Camarillo, CA	249	8,446	40,269	4,428	8,446	44,697	53,143	26,671	26,472	27,509	—	2006
Avalon Wilshire	Los Angeles, CA	123	5,459	41,182	7,326	5,459	48,508	53,967	27,843	26,124	27,803	—	2007
Avalon Encino	Encino, CA	132	12,789	49,073	3,804	12,789	52,877	65,666	26,824	38,842	39,700	—	2008
Avalon Warner Place	Canoga Park, CA	210	7,920	44,837	3,794	7,920	48,631	56,551	25,319	31,232	32,291	—	2008
AVA Little Tokyo	Los Angeles, CA	280	14,734	93,977	2,394	14,734	96,371	111,105	31,206	79,899	82,725	—	2015
eaves Phillips Ranch	Pomona, CA	503	9,796	41,740	13,163	9,796	54,903	64,699	23,162	41,537	39,164	—	1989/2011
eaves San Dimas	San Dimas, CA	102	1,916	7,819	2,631	1,916	10,450	12,366	4,906	7,460	7,586	—	1978/2011
eaves San Dimas Canyon	San Dimas, CA	156	2,953	12,397	2,286	2,953	14,683	17,636	6,719	10,917	11,072	—	1981/2011
AVA Pasadena	Pasadena, CA	84	8,400	11,547	6,358	8,400	17,905	26,305	7,067	19,238	19,805	—	1973/2012
eaves Cerritos	Artesia, CA	151	8,305	21,195	3,023	8,305	24,218	32,523	9,423	23,100	23,387	—	1973/2012
Avalon Playa Vista	Los Angeles, CA	309	30,900	71,959	9,549	30,900	81,508	112,408	34,723	77,685	80,665	—	2006/2012
Avalon San Dimas	San Dimas, CA	156	9,141	30,726	552	9,141	31,278	40,419	10,414	30,005	30,885	—	2014
Avalon Glendora	Glendora, CA	281	18,311	64,303	1,052	18,311	65,355	83,666	19,211	64,455	66,283	—	2016
Avalon West Hollywood	West Hollywood, CA	294	35,214	119,105	1,859	35,214	120,964	156,178	29,788	126,390	130,476	—	2017
AVA Hollywood at La Pietra Place	Hollywood, CA	695	99,309	272,596	2,010	99,309	274,606	373,915	37,712	336,203	346,636	—	2021

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Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon Monrovia	Monrovia, CA	154	$ 12,125	$ 56,233	$ 195	$ 12,125	$ 56,428	$ 68,553	$ 5,649	$ 62,904	$ 65,150	$ —	2021
Avalon Mission Oaks	Camarillo, CA	160	9,600	37,566	2,502	9,600	40,068	49,668	14,377	35,291	36,101	—	2014
Avalon Chino Hills	Chino Hills, CA	331	16,617	79,829	1,099	16,617	80,928	97,545	19,785	77,760	80,473	—	2017
AVA North Hollywood	North Hollywood, CA	156	18,408	52,280	2,320	18,408	54,600	73,008	16,375	56,633	58,572	—	2015/2016
Avalon Cerritos	Cerritos, CA	132	8,869	51,452	1,030	8,869	52,482	61,351	10,562	50,789	52,867	30,250	2017/2019
Avalon Simi Valley	Simi Valley, CA	500	42,020	73,345	13,151	42,020	86,496	128,516	36,353	92,163	94,588	—	2007/2013
AVA Studio City II	Studio City, CA	101	4,626	22,941	8,188	4,626	31,129	35,755	12,385	23,370	24,296	—	1991/2013
Avalon Studio City	Studio City, CA	276	15,756	78,166	19,782	15,756	97,948	113,704	40,965	72,739	76,417	—	2002/2013
Avalon Calabasas	Calabasas, CA	600	42,720	107,368	28,616	42,720	135,984	178,704	67,697	111,007	115,715	—	1988/2013
Avalon Oak Creek	Agoura Hills, CA	336	43,540	79,827	12,286	43,540	92,113	135,653	45,131	90,522	92,637	—	2004/2013
Avalon Santa Monica on Main	Santa Monica, CA	133	32,000	60,705	16,377	32,000	77,082	109,082	30,005	79,077	81,034	—	2007/2013
eaves Old Town Pasadena	Pasadena, CA	96	9,110	15,371	7,555	9,110	22,926	32,036	9,317	22,719	23,292	—	1972/2013
eaves Thousand Oaks	Thousand Oaks, CA	158	13,950	20,052	7,148	13,950	27,200	41,150	14,258	26,892	27,613	—	1992/2013
eaves Los Feliz	Los Angeles, CA	263	18,940	43,661	14,420	18,940	58,081	77,021	24,175	52,846	54,878	41,400	1989/2013
AVA Toluca Hills	Los Angeles, CA	1,151	86,450	161,078	95,036	86,450	256,114	342,564	94,367	248,197	253,476	—	1973/2013
eaves Woodland Hills	Woodland Hills, CA	888	68,940	90,507	26,038	68,940	116,545	185,485	54,334	131,151	134,282	111,500	1971/2013
Avalon Thousand Oaks Plaza	Thousand Oaks, CA	148	12,810	22,515	4,401	12,810	26,916	39,726	12,276	27,450	27,659	—	2002/2013
Avalon Pasadena	Pasadena, CA	120	10,240	31,558	7,000	10,240	38,558	48,798	15,345	33,453	34,559	—	2004/2013
AVA Studio City I	Studio City, CA	450	17,658	90,562	37,807	17,658	128,369	146,027	49,319	96,708	101,202	—	1987/2013
Total Los Angeles, CA		**12,143**	**$ 825,381**	**$ 2,278,540**	**$ 557,262**	**$ 825,381**	**$ 2,835,802**	**$ 3,661,183**	**$ 1,128,846**	**$ 2,532,337**	**$ 2,606,696**	**$ 183,150**	
Orange County, CA													
AVA Newport	Costa Mesa, CA	145	$ 1,975	$ 3,814	$ 10,806	$ 1,975	$ 14,620	$ 16,595	$ 9,899	$ 6,696	$ 6,734	$ —	1956/1996
eaves Mission Viejo	Mission Viejo, CA	166	2,517	9,245	6,229	2,517	15,474	17,991	12,243	5,748	5,573	—	1984/1996
eaves South Coast	Costa Mesa, CA	258	4,709	16,063	15,495	4,709	31,558	36,267	23,224	13,043	13,049	—	1973/1996
eaves Santa Margarita	Rancho Santa Margarita, CA	302	4,607	16,902	14,958	4,607	31,860	36,467	22,841	13,626	13,657	—	1990/1997
eaves Huntington Beach	Huntington Beach, CA	304	4,871	19,731	13,091	4,871	32,822	37,693	27,339	10,354	11,122	—	1971/1997
Avalon Irvine I	Irvine, CA	279	9,911	67,520	7,686	9,911	75,206	85,117	35,582	49,535	50,566	—	2010
Avalon Irvine II	Irvine, CA	179	4,358	40,905	1,654	4,358	42,559	46,917	16,074	30,843	32,044	—	2013
eaves Lake Forest	Lake Forest, CA	225	5,199	21,117	7,790	5,199	28,907	34,106	12,905	21,201	21,661	—	1975/2011
Avalon Baker Ranch	Lake Forest, CA	430	31,689	98,004	987	31,689	98,991	130,680	30,569	100,111	103,234	—	2015
Avalon Irvine III	Irvine, CA	156	11,607	43,973	386	11,607	44,359	55,966	12,412	43,554	44,965	—	2016
eaves Seal Beach	Seal Beach, CA	549	46,790	99,999	38,750	46,790	138,749	185,539	52,068	133,471	137,902	—	1971/2013
Avalon Huntington Beach	Huntington Beach, CA	378	13,055	105,981	1,248	13,055	107,229	120,284	28,127	92,157	95,733	—	2017
Total Orange County, CA		**3,371**	**$ 141,288**	**$ 543,254**	**$ 119,080**	**$ 141,288**	**$ 662,334**	**$ 803,622**	**$ 283,283**	**$ 520,339**	**$ 536,240**	**$ —**	

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Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
San Diego, CA													
AVA Pacific Beach	San Diego, CA	564	$ 9,922	$ 40,580	$ 44,172	$ 9,922	$ 84,752	$ 94,674	$ 58,896	$ 35,778	$ 38,380	$ —	1969/1997
eaves Mission Ridge	San Diego, CA	200	2,710	10,924	15,906	2,710	26,830	29,540	20,756	8,784	8,229	—	1960/1997
eaves San Marcos	San Marcos, CA	184	3,277	13,385	7,260	3,277	20,645	23,922	8,165	15,757	16,014	—	1988/2011
eaves Rancho Penasquitos	San Diego, CA	250	6,692	27,143	12,493	6,692	39,636	46,328	17,133	29,195	29,449	—	1986/2011
Avalon Vista	Vista, CA	221	12,689	43,328	977	12,689	44,305	56,994	13,955	43,039	44,449	—	2015
eaves La Mesa	La Mesa, CA	168	9,490	28,482	4,849	9,490	33,331	42,821	16,369	26,452	27,526	—	1989/2013
Avalon La Jolla Colony	San Diego, CA	180	16,760	27,694	12,707	16,760	40,401	57,161	17,641	39,520	40,944	—	1987/2013
Total San Diego, CA		**1,767**	**$ 61,540**	**$ 191,536**	**$ 98,364**	**$ 61,540**	**$ 289,900**	**$ 351,440**	**$ 152,915**	**$ 198,525**	**$ 204,991**	**$ —**	
TOTAL SOUTHERN CALIFORNIA		**17,281**	**$ 1,028,209**	**$ 3,013,330**	**$ 774,706**	**$ 1,028,209**	**$ 3,788,036**	**$ 4,816,245**	**$ 1,565,044**	**$ 3,251,201**	**$ 3,347,927**	**$ 183,150**	
OTHER EXPANSION REGIONS													
North Carolina													
Avalon South End	Charlotte, NC	265	$ 13,723	$ 87,978	$ 5,176	$ 13,723	$ 93,154	$ 106,877	$ 10,916	$ 95,961	$ 97,335	$ —	2020/2021
AVA South End	Charlotte, NC	164	9,367	44,623	2,133	9,367	46,756	56,123	4,756	51,367	51,675	—	2013/2021
Avalon Hawk (1)	Charlotte, NC	71	2,564	44,056	227	2,564	44,283	46,847	3,729	43,118	44,649	—	2021/2021
Total North Carolina		**500**	**$ 25,654**	**$ 176,657**	**$ 7,536**	**$ 25,654**	**$ 184,193**	**$ 209,847**	**$ 19,401**	**$ 190,446**	**$ 193,659**	**$ —**	
Texas													
Avalon Lakeside	Flower Mound, TX	425	$ 15,073	$ 98,057	$ 5,105	$ 15,073	$ 103,162	$ 118,235	$ 14,595	$ 103,640	$ 107,962	$ —	2015/2021
Total Texas		**425**	**$ 15,073**	**$ 98,057**	**$ 5,105**	**$ 15,073**	**$ 103,162**	**$ 118,235**	**$ 14,595**	**$ 103,640**	**$ 107,962**	**$ —**	
TOTAL EXPANSION REGIONS		**925**	**$ 40,727**	**$ 274,714**	**$ 12,641**	**$ 40,727**	**$ 287,355**	**$ 328,082**	**$ 33,996**	**$ 294,086**	**$ 301,621**	**$ —**	
TOTAL SAME STORE		**74,730**	**$ 4,187,849**	**$ 15,696,256**	**$ 2,514,873**	**$ 4,187,849**	**$ 18,211,129**	**$ 22,398,978**	**$ 7,183,770**	**$ 15,215,208**	**$ 15,731,734**	**$ 681,001**	

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Community	City and state	# of homes	Land and Improvements	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land and Improvements	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Cor Ac
OTHER STABILIZED													
Avalon Brea Place	Brea, CA	653	$ 72,925	$ 220,062	$ 36	$ 72,925	$ 220,098	$ 293,023	$ 17,267	$ 275,756	$ 282,419	$ —	
AVA RiNo	Denver, CO	246	15,152	71,666	—	15,152	71,666	86,818	5,460	81,358	84,033	—	
Avalon Flatirons	Lafayette, CO	207	7,390	87,130	1,399	7,390	88,529	95,919	8,030	87,889	91,038	—	20
Avalon Miramar Park Place	Miramar, FL	650	50,919	230,931	15,110	50,919	246,041	296,960	29,089	267,871	277,761	—	20
Avalon Woburn	Woburn, MA	350	21,576	97,844	787	21,576	98,631	120,207	8,238	111,969	115,430	—	
Avalon 555 President	Baltimore, MD	400	13,168	121,333	45	13,168	121,378	134,546	15,749	118,797	125,018	—	
Avalon Foundry Row	Owings Mill, MD	437	11,132	86,261	—	11,132	86,261	97,393	8,529	88,864	91,611	—	
Avalon Highland Creek	Charlotte, NC	260	4,586	71,200	1,822	4,586	73,022	77,608	5,715	71,893	75,672	—	20
Avalon Mooresville	Mooresville, NC	203	3,770	47,565	958	3,770	48,523	52,293	856	51,437	—	—	20
Avalon Addison	Addison, TX	196	11,174	57,809	1,237	11,174	59,046	70,220	4,958	65,262	67,180	—	19
Avalon Frisco at Main	Frisco, TX	360	11,919	68,210	3,301	11,919	71,511	83,430	3,066	80,364	—	—	20
Avalon West Plano	Carrollton, TX	568	14,100	115,399	7,880	14,100	123,279	137,379	4,503	132,876	—	63,041	20
AVA Ballston	Arlington, VA	344	7,291	29,177	28,545	7,291	57,722	65,013	39,188	25,825	27,056	—	
AVA Ballston Square	Arlington, VA	714	71,640	215,937	60,475	71,640	276,412	348,052	104,173	243,879	243,726	—	19
The Park Loggia Commercial	New York, NY	N/A	77,393	76,410	10,233	77,393	86,643	164,036	12,836	151,200	152,293	—	
TOTAL OTHER STABILIZED		**5,588**	**$ 394,135**	**$ 1,596,934**	**$ 131,828**	**$ 394,135**	**$ 1,728,762**	**$ 2,122,897**	**$ 267,657**	**$ 1,855,240**	**$ 1,633,237**	**$ 63,041**	
TOTAL CURRENT COMMUNITIES (4)		**80,318**	**$ 4,581,984**	**$ 17,293,190**	**$ 2,646,701**	**$ 4,581,984**	**$ 19,939,891**	**$ 24,521,875**	**$ 7,451,427**	**$ 17,070,448**	**$ 17,364,971**	**$ 744,042**	
DEVELOPMENT (4)													
Avalon West Dublin	Dublin, CA	499	$ 9,003	$ 53,197	$ 177,920	$ 9,003	$ 231,117	$ 240,120	$ 280	$ 239,840	$ 157,784	$ —	
Avalon Westminster Promenade	Westminster, CO	312	—	—	91,833	—	91,833	91,833	—	91,833	48,830	—	
Avalon Governor's Park	Denver, CO	304	—	—	106,898	—	106,898	106,898	—	106,898	44,987	—	
Avalon Merrick Park	Miami, FL	254	18,029	77,160	—	18,029	77,160	95,189	1,738	93,451	85,052	—	
Avalon South Miami	South Miami, FL	290	—	—	43,909	—	43,909	43,909	—	43,909	—	—	
Avalon North Andover	North Andover, MA	221	13,612	61,895	—	13,612	61,895	75,507	2,190	73,317	59,448	—	
Avalon Brighton	Boston, MA	180	11,157	76,931	315	11,157	77,246	88,403	2,048	86,355	76,197	—	
Kanso Milford	Milford, MA	162	—	—	38,557	—	38,557	38,557	—	38,557	15,540	—	
Avalon Annapolis	Annapolis, MD	508	—	—	115,599	—	115,599	115,599	—	115,599	66,119	—	
Avalon Hunt Valley West	Hunt Valley, MD	322	—	—	29,616	—	29,616	29,616	—	29,616	—	—	
Avalon Durham	Durham, NC	336	—	—	80,784	—	80,784	80,784	—	80,784	33,214	—	
Avalon Lake Norman	Mooresville, NC	345	—	—	20,233	—	20,233	20,233	—	20,233	—	—	
Avalon Montville	Montville, NJ	349	1,915	26,884	82,146	1,915	109,030	110,945	87	110,858	49,944	—	
Avalon Somerville Station (1)	Somerville, NJ	374	16,663	97,348	321	16,663	97,669	114,332	4,455	109,877	98,470	—	

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Avalon West Windsor	West Windsor, NJ	535	$ —	$ —	$ 50,414	$ —	$ 50,414	$ 50,414	$ —	$ 50,414	$ 30,097	$ —	
Avalon Princeton Shopping Center	Princeton, NJ	200	—	—	25,615	—	25,615	25,615	—	25,615	—	—	
Avalon Wayne	Wayne, NJ	473	—	—	23,811	—	23,811	23,811	—	23,811	—	—	
Avalon Parsippany	Parsippany, NJ	410	—	—	17,012	—	17,012	17,012	—	17,012	—	—	
Avalon Princeton Circle	Princeton, NJ	221	11,705	73,366	55	11,705	73,421	85,126	644	84,482	42,622	—	
Avalon Harrison	Harrison, NY	143	14,374	75,589	198	14,374	75,787	90,161	4,529	85,632	80,864	—	
Avalon Harbor Isle	Island Park, NY	172	16,486	75,196	—	16,486	75,196	91,682	3,868	87,814	89,662	—	
Avalon Amityville	Amityville, NY	338	10,035	50,071	62,910	10,035	112,981	123,016	441	122,575	81,899	—	
Avalon Bothell Commons	Bothell, WA	467	5,996	46,907	164,309	5,996	211,216	217,212	430	216,782	126,331	—	
Avalon Redmond Campus	Redmond, WA	214	—	—	81,535	—	81,535	81,535	4	81,531	43,599	—	
TOTAL DEVELOPMENT		**7,629**	**$ 128,975**	**$ 714,544**	**$ 1,213,990**	**$ 128,975**	**$ 1,928,534**	**$ 2,057,509**	**$ 20,714**	**$ 2,036,795**	**$ 1,230,659**	**$ —**	
Land Held for Development		N/A	$ 199,062	$ —	$ —	$ 199,062	$ —	$ 199,062	$ —	$ 199,062	$ 179,204	$ —	
Corporate Overhead		N/A	9,372	11,414	131,230	9,372	142,644	152,016	85,473	66,543	60,902	7,300,000	
2023 Disposed Communities		N/A	—	—	—	—	—	—	—	—	157,071	—	
TOTAL		**87,947**	**$ 4,919,393**	**$ 18,019,148**	**$ 3,991,921**	**$ 4,919,393**	**$ 22,011,069**	**$ 26,930,462**	**$ 7,557,614**	**$ 19,372,848**	**$ 18,992,807**	**$ 8,044,042**	(5)

(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 2023, 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.

(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) Balance outstanding represents total amount due at maturity, and excludes deferred financing costs and debt discount associated with the unsecured and secured notes of $43,848 and $18,372, respectively.

AVALONBAY COMMUNITIES, INC.
REAL ESTATE AND ACCUMULATED DEPRECIATION (Continued)
December 31, 2023
(Dollars in thousands)

Amounts include real estate assets held for sale.

The aggregate cost of total real estate for federal income tax purposes was approximately $25,437,272 at December 31, 2023.

The changes in total real estate assets for the years ended December 31, 2023, 2022 and 2021 are as follows:

	December 31, 2023	December 31, 2022	December 31, 2021
Balance, beginning of period	$ 25,871,363	$ 24,927,305	$ 23,962,222
Acquisitions, construction costs and improvements	1,338,187	1,599,311	1,588,314
Dispositions, including casualty losses, and other activity	(279,088)	(655,253)	(623,231)
Balance, end of period	$ 26,930,462	$ 25,871,363	$ 24,927,305

The changes in accumulated depreciation for the years ended December 31, 2023, 2022 and 2021, are as follows:

	December 31, 2023	December 31, 2022	December 31, 2021
Balance, beginning of period	$ 6,878,556	$ 6,217,721	$ 5,728,440
Depreciation	816,965	814,978	758,596
Dispositions, including casualty losses	(137,907)	(154,143)	(269,315)
Balance, end of period	$ 7,557,614	$ 6,878,556	$ 6,217,721

Exhibit 4.8

AVALONBAY COMMUNITIES, INC.,

as Issuer

— and —

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of February 23, 2024

Debt Securities

Certain Sections of this Indenture
relating to the Trust Indenture Act of 1939

Trust Indenture Act Section	Indenture Section
§310(a)(1)	607
(a)(2)	607
(b)	608
§312(a)	701, 702(1)
(b)	702
(c)	702
§313(a)	703
(b)(2)	703
(c)	703
(d)	703
§314(a)	704
(c)(1)	102
(c)(2)	102
(e)	102
§315(a)	601
(b)	601, 602
(c)	601
(d)	601
(e)	515
§316(a) (last sentence)	101
(a)(1)(A)	502, 512
(a)(1)(B)	513
(b)	508
§317(a)(1)	503
(a)(2)	504
(b)	1003
§318(a)	108

Note: This reconciliation and tie shall not, for any purpose, be deemed to be part of the Indenture.

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INDENTURE, dated as of February 23, 2024 (this "**Indenture**"), between AvalonBay Communities, Inc., a Maryland corporation (the "**Issuer**"), having its principal executive office located at 4040 Wilson Blvd., Suite 1000, Arlington, VA 22203, as issuer, and U.S. Bank Trust Company, National Association, a national banking association organized and existing under the laws of the United States, as trustee, registrar, paying agent and transfer agent (the "**Trustee**," "**Registrar**," "**Paying Agent**," and "**Transfer Agent**," respectively).

RECITALS

The Issuer has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness (hereinafter called the "**Securities**"), unlimited as to principal amount, to bear such fixed or floating rates of interest, to mature at such time or times, to be issued in one or more series and to have such other provisions as shall be fixed as hereinafter provided.

The Issuer has done all things necessary on its part to make this Indenture a valid and legally binding agreement of the Issuer in accordance with its terms.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders (as herein defined) thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of any series thereof as follows:

ARTICLE ONE.

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101. Definitions.

.

Except as otherwise expressly provided in or pursuant to this Indenture or unless the context otherwise requires, for all purposes of this Indenture:

(1) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

(4) the words "herein," "hereof," "hereto" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(5) the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both");

(6) provisions apply to successive events and transactions;

(7) the term "merger" includes a statutory share exchange and the terms "merge" and "merged" have correlative meanings;

(8) the masculine gender includes the feminine and the neuter; and

(9) references to agreements and other instruments include subsequent amendments and supplements thereto.

Certain terms used principally in certain Articles hereof are defined in those Articles.

"**Acquisition Property**" means a Property acquired by the Issuer or any Subsidiary of the Issuer that has been owned for less than four (4) consecutive full fiscal quarters.

"**Act**," when used with respect to any Holders, has the meaning specified in Section 104.

"**Additional Amounts**" means any additional amounts which are required by this Indenture, by the terms of any Security established pursuant to Section 301 or by the terms of any Guarantee, under circumstances specified herein or therein, to be paid by the Issuer or any Guarantor, as applicable, in respect of certain taxes, duties, levies, imposts, assessments or other governmental charges imposed on Holders specified herein or therein.

"**Additional Amounts Notice**" has the meaning specified in Section 1004.

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

"**Agency**" with respect to any Securities, means an agent of the Issuer or the office of an agent of the Issuer, as the context requires, in each case maintained or designated in a Place of Payment for such Securities pursuant to Section 1002 or any other agent of the Issuer or office of an agent of the Issuer, as the context requires, in each case maintained or designated for such Securities pursuant to Section 1002 or, to the extent designated or required by Section 1002 in lieu of such agent or agent's office, the Corporate Trust Office of the Trustee.

"**Authenticating Agent**" means any Person authorized by the Trustee pursuant to Section 611 to act on behalf of the Trustee to authenticate Securities of one or more series.

"**Bankruptcy Law**" means Title 11, U.S. Code or any similar federal, state, or foreign law for the relief of debtors.

"**Board of Directors**" means the board of directors of the Issuer, or any committee of such board duly authorized to act generally or in any particular respect hereunder.

"**Board Resolution**" means a copy of one or more resolutions or unanimous written consents, certified by the Secretary or an Assistant Secretary of the Issuer to have been duly adopted by the Board of Directors, on behalf of the Issuer, and to be in full force and effect on the date of such certification, delivered to the Trustee.

"**Business Day**" means, unless otherwise specified with respect to the Securities of any series pursuant to Section 301, any day other than a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or obligated by law, regulation or executive order to close; *provided* that such term shall mean, when used with respect to any payment of principal of, or premium or interest, if any, on, or Additional Amounts with respect to, the Securities of any series to be made at any Place of Payment for such Securities, unless otherwise specified pursuant to Section 301 with respect to such Securities, any day other than a Saturday, Sunday or other day on which banking institutions in such Place of Payment are authorized or obligated by law, regulation or executive order to close.

"**Capitalized Property Value**" means, as of any date, with respect to the Issuer and its Subsidiaries, (i) Property EBITDA for the four (4) consecutive fiscal quarters ended on the most recent Reporting Date, excluding from the calculation of Property EBITDA the financial contributions that would otherwise apply thereto from Acquisition Properties, Development Properties and Gross Book Value Properties, which net amount is then (ii) capitalized at the Capitalization Rate (i.e., divided by the Capitalization Rate expressed as a decimal number).

"**Capitalization Rate**" means 6.75%.

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Common Equity**" means the common stock, par value $.01 per share, of the Issuer, and includes without limitation any other equity security of any class of the Issuer, which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Issuer, and which is not subject to redemption by the Issuer.

"**Conversion Event**" means the cessation of use of (i) a Foreign Currency both by the government of the country or the confederation which issued such Foreign Currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community or (ii) any currency unit or composite currency for the purposes for which it was established.

"**Corporate Trust Office**" means either the corporate trust office of the Trustee at which this Indenture shall be administered, which office at the date of this Indenture is located at 1051 East Cary Street, Suite 600, Richmond, Virginia 23219 or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer.

"**Corporation**" includes corporations, partnerships, associations, limited liability companies and other companies, and business trusts (which term shall expressly include real estate investment trusts). The term "corporation" means a corporation and does not include partnerships, associations, limited liability companies or other companies or business trusts. Except to the extent expressly provided to the contrary, Corporation does not include joint ventures.

"**Covenant Defeasance**" has the meaning specified in Section 402(3).

"**Currency**," with respect to any payment, deposit or other transfer in respect of the principal of or any premium or interest on or any Additional Amounts with respect to any Security, means Dollars or the Foreign Currency, as the case may be, in which such payment, deposit or other transfer is required to be made by or pursuant to the terms hereof or such Security and, with respect to any other payment, deposit or transfer pursuant to or contemplated by the terms hereof or such Security, means Dollars.

"**CUSIP number**" means the alphanumeric designation assigned to a Security by Standard & Poor's, CUSIP Service Bureau.

"**Debt**" means, without duplication, the Issuer's aggregate principal amount of indebtedness in respect of (i) borrowed money evidenced by bonds, notes, debentures or similar instruments, as determined in accordance with GAAP, (ii) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on Property or other assets owned by the Issuer, as determined in accordance with GAAP, (iii) reimbursement obligations in connection with any letters of credit actually issued and called, (iv) any lease of property by the Issuer or any Subsidiary as lessee which is reflected in the Issuer's balance sheet as a capitalized lease, in accordance with GAAP; *provided*, that Debt also includes, to the extent not otherwise set forth above, any obligation by the Issuer or any Subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise, items of indebtedness of another Person (other than the Issuer or any Subsidiary) described in clauses (i) through (iv) above (or, in the case of any such obligation made jointly with another Person, the Issuer's or Subsidiary's allocable portion of such obligation based on its ownership interest in the related real estate assets or such other applicable assets); and *provided, further*, that Debt excludes Intercompany Debt.

"**Defaulted Interest**" has the meaning specified in Section 307.

"**Depository**" means, with respect to any Security issuable or issued in the form of one or more global Securities, The Depository Trust Company (including its successors), or such other Person as the Issuer may designate as depository in or pursuant to this Indenture, and, unless otherwise provided with respect to any Security,

shall include any successor to such Person. If at any time there is more than one such Person, "Depository" shall mean, with respect to any Securities, the depository which has been appointed with respect to such Securities.

"**Development Property**" means a Property currently under development. A Property will remain a Development Property until four (4) consecutive full fiscal quarters after the earlier of (a) 18 calendar months after substantial completion of construction of the Property and (b) the quarter in which the physical occupancy level of residential units of the Property is at least 93%.

"**Dollars**" or "**$**" means a dollar or other equivalent unit of legal tender for payment of public or private debts in the United States of America.

"**EBITDA**" means, with respect to any Person, for any period and without duplication, net earnings (loss) of such Person for such period excluding the impact of the following amounts with respect to any Person (but only to the extent included in determining net earnings (loss) for such period): (i) depreciation and amortization expense and other non-cash charges of such Person for such period, as such Person shall determine in good faith; (ii) interest expense, including prepayment penalties, of such Person for such period; (iii) income tax expense of such Person in respect of such period; (iv) extraordinary and nonrecurring gains and losses, as such Person shall determine in good faith, of such Person for such period, including without limitation, gains and losses from the sale of assets, write-offs and forgiveness of debt, foreign currency translation gains or losses; and (v) non-controlling interests. In each case for such period, such Person will reasonably determine the amounts in accordance with GAAP, except to the extent GAAP is not applicable with respect to the determination of non-cash and non-recurring items.

"**Encumbered Asset Value**" means, with respect to the Issuer and its Subsidiaries, as of any date, the portion of Total Assets serving as collateral for Secured Debt.

"**Equivalent Terms**" has the meaning specified in Section 1102.

"**Event of Default**" has the meaning specified in Section 501.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, or any successor thereto, in each case as amended from time to time.

"**Foreign Currency**" means any currency, currency unit or composite currency issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such government.

"**GAAP**" and "**generally accepted accounting principles**" means accounting principles generally accepted in the United States of America, consistently applied, as in effect from time to time; *provided* that if, as of a particular date as of which compliance with the covenants contained in this Indenture is being determined, there have been changes in accounting principles generally accepted in the United States of America from those that applied to the Issuer's consolidated financial statements included in the Annual Report on Form 10-K for the year ended December 31, 2023, the Issuer may, in its sole discretion, determine compliance with the covenants contained in this Indenture using accounting principles generally accepted in the United States of America, consistently applied, as in effect as of the end of any calendar quarter selected by us, in the Issuer's sole discretion, that is on or after December 31, 2023 and prior to the date as of which compliance with the covenants in this Indenture is being determined ("**Fixed GAAP**"), and, solely for purposes of calculating the covenants as of such date, "GAAP" shall mean Fixed GAAP.

"**Government Obligations**" means securities which are (i) direct obligations of the United States of America or the other government or governments in the confederation which issued the Foreign Currency in which the principal of or any premium or interest on the relevant Security or any Additional Amounts in respect thereof shall be payable, in each case where the payment or payments thereunder are supported by the full faith and credit of such government or governments or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such other government or governments, in each case where the timely payment or payments thereunder are unconditionally guaranteed as a full faith and credit obligation by the

United States of America or such other government or governments, and which, in the case of (i) or (ii) above, are not callable or redeemable at the option of the issuer or issuers thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of or other amount with respect to any such Government Obligation held by such custodian for the account of the holder of a depository receipt, *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of or other amount with respect to the Government Obligation evidenced by such depository receipt.

"**Gross Book Value Property**" means, as of any date, a Property, other than Development Properties or Acquisition Properties, for which: (a) the value of such Property, when calculated by taking the contribution of such Property to Property EBITDA (or, put another way and with the same intended result, taking the result of calculating Property EBITDA as if such Property were the only Property owned by the Issuer) for the four (4) consecutive fiscal quarters ended on the most recent Reporting Date and capitalizing such amount by the Capitalization Rate (i.e., dividing such contributed amount by the Capitalization Rate expressed as a decimal number), is less than (b) the current undepreciated book value of such Property determined in accordance with GAAP.

"**Guarantee**" has the meaning set forth in Article Sixteen hereof.

"**Guarantors**" means any Person that is liable under a Guarantee under Article Sixteen hereof.

"**Holder**," in the case of any Registered Security, means the Person in whose name such Security is registered in the Security Register.

"**Indebtedness**," when used with respect to any Person, and without duplication, unless otherwise specified with respect to the Securities of any series pursuant to Section 301, means any indebtedness (whether being principal, premium or interest) for or in respect of (i) any notes, bonds, debenture stock, loan stock or other securities or (ii) any borrowed money.

"**Indenture**" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and, with respect to any Security, by the terms and provisions of such Security established pursuant to Section 301 (as such terms and provisions may be amended pursuant to the applicable provisions hereof), *provided*, *however*, that, if at any time more than one Person is acting as Trustee under this instrument, "Indenture" shall mean, with respect to any one or more series of Securities for which such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of those particular series of Securities for which such Person is Trustee established pursuant to Section 301, exclusive, *however*, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted.

"**Indexed Security**" means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

"**Intercompany Debt**" means, as of any date, Debt to which the only parties are the Issuer and any of its Subsidiaries, but only so long as that Debt is held solely by any of the Issuer and any of its Subsidiaries as of that date and, *provided* that, in the case of Debt owed by the Issuer to any Subsidiary, the Debt is subordinated in right of payment to the holders of the Securities.

"**Interest**," with respect to any Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

"**Interest Expense**" means, for any period, the Issuer's interest expense for such period, with other adjustments as are necessary to exclude: (i) the effect of items classified as extraordinary items in accordance with

GAAP; (ii) amortization of debt issuance costs; (iii) prepayment penalties; and (iv) non-cash swap ineffectiveness charges.

"**Interest Payment Date**," with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"**Issuer**" means the Person named as the "Issuer" in the first paragraph of this Indenture until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Issuer" shall mean such successor Person.

"**Issuer Request**" and "**Issuer Order**" mean, respectively, a written request or order, as the case may be, signed in the name of the Issuer, by an Officer of the Issuer and delivered to the Trustee.

"**Judgment Currency**" has the meaning specified in Section 116.

"**Maturity**," with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as provided in or pursuant to this Indenture or such Security, whether at the Stated Maturity, upon acceleration, upon redemption at the option of the Issuer, upon repurchase or repayment at the option of the Holder or otherwise, and includes a Redemption Date for such Security and a date fixed for the repurchase or repayment of such Security at the option of the Holder.

"**New York Banking Day**" has the meaning specified in Section 116.

"**Office**," with respect to any Securities, means an office of the Issuer maintained or designated in a Place of Payment for such Securities pursuant to Section 1002 or any other office of the Issuer maintained or designated for such Securities pursuant to Section 1002 or, to the extent designated or required by Section 1002 in lieu of such office, the Corporate Trust Office of the Trustee.

"**Officer**" means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary or a Vice President of the Issuer.

"**Officer's Certificate**" means a certificate signed by an Officer of the Issuer that, if applicable, complies with the requirements of Section 314(e) of the Trust Indenture Act and is delivered to the Trustee.

"**Opinion of Counsel**" means a written opinion of counsel, who may be an employee of or counsel for the Issuer or other counsel who shall be reasonably acceptable to the Trustee. Opinions of Counsel required to be delivered under this Indenture may have qualifications customary for opinions of the type required.

"**Original Issue Discount Security**" means a Security, other than an Indexed Security, issued pursuant to this Indenture which provides for an amount less than the principal amount thereof to be due and payable upon acceleration pursuant to Section 502.

"**Outstanding**," when used with respect to any Securities, means, as of the date of determination, all such Securities theretofore authenticated and delivered under this Indenture, except:

(a) any such Security theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) any such Security for whose payment at the Maturity thereof money in the necessary amount (or, to the extent that such Security is payable at such Maturity in shares of Common Equity or other securities or property, Common Equity or such other securities or property in the necessary amount, together with, if applicable, cash in lieu of fractional shares or securities) has been theretofore deposited pursuant hereto (other than pursuant to Section 402) with the Trustee or any Paying Agent (other than the Issuer or any Affiliate of the Issuer) in trust or set aside and segregated in trust by the Issuer or any Affiliate of the Issuer (if it shall act as Paying Agent) for the Holders of such Securities, *provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(c) any such Security with respect to which the Issuer has effected defeasance or Covenant Defeasance pursuant to Section 402, except to the extent provided in Section 402;

(d) any such Security which has been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, unless there shall have been presented to the Trustee proof satisfactory to it that such Security is held by a bona fide purchaser in whose hands such Security is a valid obligation of the Issuer; and

(e) any such Security converted or exchanged as contemplated by this Indenture into Common Equity or other securities or property, if the terms of such Security provide for such conversion or exchange pursuant to Section 301; *provided*, *however*, that in determining whether the Holders of the requisite aggregate principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders of Securities for quorum purposes, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination and that shall be deemed to be Outstanding for such purposes shall be equal to the amount of the principal thereof that pursuant to the terms of such Original Issue Discount Security would be due and payable upon acceleration thereof pursuant to Section 502 at the time of such determination, and (ii) the principal amount of any Indexed Security that may be counted in making such determination and that shall be deemed Outstanding for such purpose shall be equal to the principal amount of such Indexed Security at original issuance, unless otherwise provided in or pursuant to this Indenture, and (iii) the principal amount of a Security denominated in a Foreign Currency that may be counted in making such determination and that shall be deemed Outstanding for such purposes shall be the Dollar equivalent, determined on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent on the date of original issuance of such Security of the amount determined as provided in (i) above) of such Security, and (iv) Securities owned by the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making any such determination or relying upon any such request, demand, authorization, direction, notice, consent or waiver, the Trustee shall be entitled to conclusively rely on any such request, demand, authorization, direction, notice, consent or waiver, but only to the extent the Responsible Officer of the Trustee making such determination has not been provided with written notice that such Securities are not so owned. Securities so owned which shall have been pledged in good faith may be regarded as Outstanding if the pledgee establishes in writing to the satisfaction of the Trustee (A) the pledgee's right so to act with respect to such Securities and (B) that the pledgee is not the Issuer or any other obligor upon the Securities or an Affiliate of the Issuer or such other obligor.

"**Paying Agent**" means any Person authorized by the Issuer to pay the principal of, or any premium or interest on, or any Additional Amounts with respect to, any Security on behalf of the Issuer.

"**Person**" and "**person**" mean any individual, Corporation, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"**Place of Payment**," with respect to any Security, means the place or places where the principal of, or any premium or interest on, or any Additional Amounts with respect to such Security are payable as provided in or pursuant to this Indenture or such Security.

"**Predecessor Security**" of any particular Security means every previous Security evidencing all or a portion of the same indebtedness as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a lost, destroyed, mutilated or stolen Security.

"**Property**" means a parcel (or group of related parcels) of real property.

"**Property EBITDA**" means, for any period, the Issuer's EBITDA for such period adjusted to add back the impact of corporate level general and administrative expenses.

"**Redemption Date**," with respect to any Security or portion thereof to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture or such Security.

"**Redemption Price**," with respect to any Security or portion thereof to be redeemed, means the price at which it is to be redeemed as determined by or pursuant to this Indenture or such Security.

"**Registered Security**" means any Security established pursuant to Section 201 which is registered in the Security Register.

"**Regular Record Date**" for the interest payable on any Registered Security on any Interest Payment Date therefor means the date, if any, specified in or pursuant to this Indenture or such Security as the regular record date for the payment of such interest.

"**Reporting Date**" means the date ending the most recently ended fiscal quarter of the Issuer for which the Issuer's consolidated financial statements are publicly available, it being understood that at any time when the Issuer is not subject to the informational requirements of the Exchange Act, the term "Reporting Date" shall be deemed to refer to the date ending the fiscal quarter covered by the Issuer's most recent quarterly financial statements delivered to the Trustee or, in the case of the last fiscal quarter of the year, the Issuer's annual financial statements delivered to the Trustee.

"**Required Currency**" has the meaning specified in Section 116.

"**Responsible Officer**" means any officer of the Trustee in its corporate trust department who is responsible for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer or employee of the Trustee to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

"**Secured Debt**" means Debt secured by any mortgage, lien, pledge, encumbrance or security interest of any kind upon any of the Issuer's Property or other assets or the Property or other assets of any Subsidiary.

"**Securities Act**" means the Securities Act of 1933, as amended, or any successor thereto, in each case as amended from time to time.

"**Security**" or "**Securities**" means any note or notes, bond or bonds, debenture or debentures, or any other evidences of indebtedness, as the case may be, authenticated and delivered under this Indenture; *provided, however,* that, if at any time there is more than one Person acting as Trustee under this Indenture, "Securities," with respect to any such Person, shall mean Securities authenticated and delivered under this Indenture, exclusive, *however,* of Securities of any series as to which such Person is not Trustee.

"**Security Interest**" means any mortgage, pledge, lien, hypothecation, security interest or other charge.

"**Security Register**" and "**Security Registrar**" have the respective meanings specified in Section 305.

"**Significant Subsidiary**" means any Subsidiary or group of Subsidiaries that meets either of the following conditions: (1) the Issuer and its other Subsidiaries' investments in and advances to the Subsidiary exceed 10% of the Issuer's and its Subsidiaries' total assets consolidated (determined in accordance with GAAP) as of the end of the most recent fiscal quarter for which an annual or quarterly report has been furnished to Holders or filed with the Commission; or (2) the Issuer's and its other Subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the Subsidiary exceeds 10% of the Issuer's and its Subsidiaries' total assets consolidated (determined in accordance with GAAP) as of the end of the most recent fiscal quarter for which an annual or quarterly report has been furnished to Holders or filed with the Commission.

"**Special Record Date**" for the payment of any Defaulted Interest on any Registered Security means a date fixed therefor by the Trustee pursuant to Section 307.

"**Stated Maturity**," with respect to any Security or any installment of principal thereof or interest thereon or any Additional Amounts with respect thereto, means the date established by or pursuant to this Indenture or such Security as the fixed date on which the principal of such Security or such installment of principal or interest is, or such Additional Amounts are, due and payable.

"**Subsidiary**" means, with respect to the Issuer or any other Person, any Person (excluding an individual), a majority of the outstanding voting stock, partnership interests, membership interests or other equity interests, as the case may be, of which is owned or controlled, directly or indirectly, by the Issuer or by one or more other Subsidiaries of the Issuer. For the purposes of this definition, "voting stock" means stock having voting power for the election of directors, trustees or managers, as the case may be, whether at all times or only so long as no senior class of stock or equity interest has such voting power by reason of any contingency. Unless the context otherwise requires, "Subsidiary" refers to a Subsidiary of the Issuer.

"**Total Assets**" means, as of any date, the sum (without duplication) of: (a) the Capitalized Property Value of the Issuer and its Subsidiaries; (b) all cash and cash equivalents (excluding tenant deposits and other cash and cash equivalents the disposition of which is restricted) of the Issuer and its Subsidiaries at such time; (c) the current undepreciated book value of Development Properties; (d) the current undepreciated book value of Acquisition Properties; (e) the current undepreciated book value of Gross Book Value Properties; and (f) all other assets of the Issuer and its Subsidiaries excluding accounts receivable and any assets classified as intangible under GAAP. The value of any assets under clauses (b), (c), (d) (e) and (f) above shall be determined in accordance with GAAP.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939 as in force at the date as of which this Indenture was executed; *provided*, *however*, that in the event that the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means the Trust Indenture Act of 1939 as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of Securities pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean each Person who is then a Trustee hereunder; *provided*, *however*, that if at any time there is more than one such Person, "Trustee" shall mean each such Person and as used with respect to the Securities of any series shall mean the Trustee with respect to the Securities of such series.

"**Unencumbered Assets**" means, as of any date, Total Assets as of such date less Encumbered Asset Value as of such date; provided, however, that all investments by the Issuer and its Subsidiaries in unconsolidated joint ventures, unconsolidated limited partnerships, unconsolidated limited liability companies and other unconsolidated entities shall be excluded from Unencumbered Assets to the extent such investments would otherwise have been included.

"**Unsecured Debt**" means Debt that is not secured by any mortgage, lien, pledge, encumbrance or security interest of any kind upon any of the Issuer's Property or other assets or the Property or other assets of any Subsidiary.

"**United States**" means the United States of America (including the states thereof and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction; and the term "**United States of America**" means the United States of America.

"**Vice President**" means any vice president, whether or not designated by a number or a word or words added before or after the title "**Vice President**."

"**Voting Stock**" means, with respect to any Person, any class or series of capital stock of, or other equity interests in, such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of, or to appoint or to approve the appointment of, the directors, trustees or managing members of, or other persons holding similar positions with, such Person.

Section 102. Compliance Certificates and Opinions.

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Except as otherwise expressly provided in or pursuant to this Indenture, upon any application or request by the Issuer or any Guarantor, as applicable, to the Trustee to take any action under any provision of this Indenture, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent, if any, have been complied with. Each certificate or opinion with respect to compliance with a condition precedent or covenant provided for in this Indenture (other than certificates delivered pursuant to Section 1007) must include:

(1) a statement that each person signing the certificate or opinion has read the covenant or condition precedent and the related definitions;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in the certificate or opinion is based;

(3) a statement that, in the opinion of each such person, that person has made such examination or investigation as is necessary to enable the person to express an informed opinion as to whether or not such covenant or condition precedent has been complied with; and

(4) a statement as to whether or not, in the opinion of each such person, such condition precedent or covenant has been complied with.

Section 103. Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Issuer or any Guarantor may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, unless such officer knows, or in the exercise of reasonable care should know, that the Opinion of Counsel with respect to the matters upon which such officer's certificate or opinion is based is erroneous. Any such Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Issuer or any Guarantor, a governmental official or officers or any other Person or Persons, stating that the information with respect to such factual matters is in the possession of the Issuer or any Guarantor, as applicable, unless counsel rendering the Opinion of Counsel knows, or in the exercise of reasonable care should know, that the certificate, opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture or any Security, they may, but need not, be consolidated and form one instrument.

Section 104. Acts of Holders; Record Dates.

(1) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by or pursuant to this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing or the record of any action taken by Holders at a meeting pursuant to Article Fifteen. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuer or any Guarantor, as applicable. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and (subject to

Section 315 of the Trust Indenture Act) conclusive in favor of the Trustee, the Issuer or any Guarantor, as applicable, and any agent of the Trustee, the Issuer or any Guarantor, as applicable, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1506.

Without limiting the generality of this Section 104, unless otherwise provided in or pursuant to this Indenture, a Holder, including a Depository that is a Holder of a global Security, may make, give or take, by a proxy or proxies, duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other Act provided in or pursuant to this Indenture or the Securities to be made, given or taken by Holders, and a Depository that is a Holder of a global Security may provide its proxy or proxies to the beneficial owners of interests in any such global Security through such Depository's standing instructions and customary practices.

(2) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine; and the Trustee may in any instance require further proof with respect to any of the matters referred to in this Section.

(3) The ownership, principal amount and serial numbers of Registered Securities held by any Person, and the date of the commencement and the date of the termination of holding the same, shall be proved by the Security Register.

(4) If the Issuer or any Guarantor shall solicit from the Holders of any Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may at its option (but is not obligated to), by Board Resolution, fix in advance a record date for the determination of Holders of Registered Securities entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of Registered Securities of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Securities have authorized, agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders of Registered Securities shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six (6) months after the record date.

(5) Any request, demand, authorization, direction, notice, consent, waiver or other Act by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee, any Security Registrar, any Paying Agent, the Issuer or any Guarantor in reliance thereon, whether or not notation of such Act is made upon such Security.

Section 105. Notices, etc. to Trustee and Issuer.

Any request, demand, authorization, direction, notice, consent, waiver or act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(1) the Trustee by any Holder or by the Issuer or any Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office at the location specified in Section 101; or

(2) the Issuer by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Issuer addressed to the attention of the Secretary of the Issuer at the address of the Issuer's principal office specified in writing to the Trustee by the Issuer and, until further notice, at:

AvalonBay Communities, Inc.
4040 Wilson Blvd., Suite 1000
Arlington, VA 22203

In addition to the foregoing, the Trustee agrees to accept and act upon notices, instructions or directions pursuant to this Indenture sent by unsecured e-mail or other similar unsecured electronic methods. If the party elects to give the Trustee e-mail notices, instructions or directions (or notices, instructions or directions by a similar electronic method) and the Trustee acts upon such notices, instructions or directions, the Trustee's understanding of such notices, instructions or directions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such notices, instructions or directions. The party providing electronic notices, instructions or directions agrees to assume all risks arising out of the use of such electronic methods to submit notices, instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized notices, instructions or directions, and the risk of interception and misuse by third parties.

Section 106. Notice to Holders of Securities; Waiver.

Except as otherwise expressly provided in or pursuant to this Indenture, where this Indenture provides for notice to Holders of Securities of any event, such notice shall be sufficiently given if in writing and mailed, first-class postage prepaid, or if delivered electronically pursuant to the applicable procedures of the Depository, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders given as provided herein. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given or provided. In the case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee in its sole discretion shall constitute a sufficient notification for every purpose hereunder.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders of Securities shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 107. Language of Notices.

Any request, demand, authorization, direction, notice, consent, waiver or other action required or permitted under this Indenture shall be in the English language.

Section 108. Conflict with Trust Indenture Act.

If any provision of this Indenture limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 109. Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 110. Successors and Assigns.

All covenants and agreements in this Indenture by the Issuer or any Guarantor shall bind its successors and assigns, whether so expressed or not.

Section 111. Separability Clause.

In case any provision in this Indenture or any Security shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not, to the fullest extent permitted by law, in any way be affected or impaired thereby.

Section 112. Benefits of Indenture.

Nothing in this Indenture or any Security, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent, any Authenticating Agent and their successors hereunder and the Holders of Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 113. Governing Law; Waiver of Jury Trial.

This Indenture, the Securities and any Guarantees shall be governed by, and construed in accordance with, the laws of the State of New York without regard to conflicts of law principles of such State other than New York General Obligations Law Section 5-1401. EACH OF THE ISSUER, ANY GUARANTOR AND THE TRUSTEE AND EACH HOLDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE, THE SECURITIES, ANY GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 114. Legal Holidays.

Unless otherwise specified in or pursuant to this Indenture or any Securities, in any case where any Interest Payment Date, Stated Maturity or Maturity of, or any other day on which a payment is due with respect to, any Security shall be a day which is not a Business Day, then payment need not be made on such day, but such payment may be made on the next succeeding day that is a relevant Business Day with the same force and effect as if made on the Interest Payment Date, at the Stated Maturity or Maturity or on any such other payment date, as the case may be, and no interest shall accrue or be payable on the payment so deferred on such succeeding Business Day for the period from and after such Interest Payment Date, Stated Maturity, Maturity or other payment date, as the case may be, to such succeeding Business Day.

Section 115. Counterparts.

This Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by PDF shall be deemed to be their original signatures for all purposes.

Section 116. Judgment Currency.

Each of the Issuer and any Guarantor agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of, or premium or interest, if any, or Additional Amounts on the Securities of any series (the "**Required Currency**") into a currency in which a judgment will be rendered (the "**Judgment Currency**"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the date on which a final unappealable judgment is given and (b) its obligations under this Indenture

to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment (whether or not entered in accordance with clause (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "**New York Banking Day**" means any day except a Saturday, Sunday or a legal holiday in The City of New York or a day on which banking institutions in The City of New York are authorized or obligated by law, regulation or executive order to be closed. The provisions of this Section 116 shall not be applicable with respect to any payment due on a Security which is payable in Dollars.

Section 117. Extension of Payment Dates.

In the event that (i) the terms of any Security established in or pursuant to this Indenture permit the Issuer or any Holder thereof to extend the date on which any payment of principal of, or premium, if any, or interest, if any, on, or Additional Amounts, if any, with respect to such Security is due and payable and (ii) the due date for any such payment shall have been so extended, then all references herein to the Stated Maturity of such payment (and all references of like import) shall be deemed to refer to the date as so extended.

Section 118. Immunity of General Partners, Limited Partners, Shareholders, Directors, Officers, Employees, Incorporators and Agents of the Issuer and Guarantors.

No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any past, present or future general partner, limited partner, member, employee, incorporator, controlling person, shareholder, officer, trustee, director, agent or legal counsel, as such, of the Issuer, any Guarantor or of any of the Issuer's or any Guarantor's predecessors or successors, either directly or through the Issuer or any Guarantor or any predecessor or successor of the Issuer or any Guarantor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders and as part of the consideration for the issuance of the Securities.

Section 119. USA Patriot Act.

The parties hereto acknowledge that, in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. Each of the Issuer and any Guarantor agrees that it will provide the Trustee with such information as it may reasonably request in order for the Trustee to seek to satisfy the requirements of the U.S.A. Patriot Act, including documentation to verify its formation and existence as a legal entity, financial statements, licenses, and identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Section 120. Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, pandemics or epidemics, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services.

Section 121. FATCA.

In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time (as used solely in this Section 121,

"**Applicable Law**") that a foreign financial institution, or issuer, trustee, paying agent, holder or other institution is or has agreed to be subject to related to this Indenture, the Issuer agrees (i) to use commercially reasonable efforts to provide to the Trustee sufficient information about Holders in the Issuer's possession or available to it or other applicable counterparties to the Issuer and/or transactions between the Issuer and such counter parties (including any modification to the terms of such transactions) that is reasonably requested by the Trustee so the Trustee can determine whether it has tax related obligations under Applicable Law, (ii) upon written notice to the Issuer, that the Trustee shall be entitled to make any withholding or deduction from payments under this Indenture to the extent necessary to comply with Applicable Law for which the Trustee shall not have any liability if properly withheld in accordance with Applicable Law, and (iii) to hold harmless the Trustee for any losses it may suffer due to the actions it takes to comply with such Applicable Law, in case of each of clauses (ii) and (iii), other than any liability or losses as may be attributable to the Trustee's willful misconduct or negligence. The terms of this paragraph shall survive the satisfaction and discharge of this Indenture.

ARTICLE TWO.

SECURITIES FORMS

Section 201. Forms Generally.

Each Registered Security and temporary or permanent global Security issued pursuant to this Indenture shall be in the form established by or pursuant to a Board Resolution and set forth in an Officer's Certificate, or established in one or more indentures supplemental hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by or pursuant to this Indenture or any indenture supplemental hereto and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may, consistently herewith, be determined by the officer of the Issuer executing such Security as evidenced by the execution of such Security.

Definitive Securities shall be printed, lithographed or engraved or produced by any combination of these methods or in any other manner, all as determined by the Officer of the Issuer executing such Securities, as evidenced by the execution of such Securities.

Section 202. Form of Trustee's Certificate of Authentication.

Subject to Section 611, the Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

U.S. Bank Trust Company, National Association, as Trustee

By: Authorized Signatory

Dated:

Section 203. Securities in Global Form.

Unless otherwise provided in or pursuant to this Indenture or any Securities, the Securities shall be issuable in global form. If Securities of a series shall be issuable in temporary or permanent global form, any such Security may provide that it or any principal amount of such Securities shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser principal amount as is permitted by the terms thereof) from time to time endorsed thereon or reflected on the books and records of the Trustee and may also provide that the aggregate principal amount of Outstanding Securities represented thereby may from time to time be increased or reduced to reflect exchanges. Any endorsement of any Security in global form to reflect the principal amount, or any

increase or decrease in the principal amount, or changes in the rights of Holders, of Outstanding Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified therein or pursuant to Section 301 with respect to such Security or in the Issuer Order to be delivered pursuant to Section 303 or 304 with respect thereto. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in global form in the manner and upon written instructions given by the Person or Persons specified therein or pursuant to Section 301 with respect to such Security or in the applicable Issuer Order. If an Issuer Order pursuant to Section 303 (with respect to any reopening of Outstanding Securities) or 304 has been, or simultaneously is, delivered, any instructions by the Issuer with respect to a Security in global form shall be in writing but need not be accompanied by or contained in an Officer's Certificate and need not be accompanied by an Opinion of Counsel. Notwithstanding the foregoing provisions of this paragraph, in the event a global Security is exchangeable for definitive Securities as provided in Section 305, then, unless otherwise provided in or pursuant to this Indenture with respect to the Securities of such series, the Trustee shall deliver and redeliver such global Security to the extent necessary to effect such exchanges, shall endorse such global Security to reflect any decrease in the principal amount thereto resulting from such exchanges and shall take such other actions, all as contemplated by Section 305.

Notwithstanding the provisions of Section 307, payment of principal of, any premium and interest on, and any Additional Amounts in respect of any Security in temporary or permanent global form shall be made to the Person in whose name such Security is registered.

Notwithstanding anything to the contrary, the Issuer, any Guarantor, the Trustee and any agent of the Issuer, any Guarantor or the Trustee shall treat as the Holder of the principal amount of Outstanding Securities represented by a global Security, in the case of a global Security in registered form, the Holder of such global Security in registered form.

ARTICLE THREE.

THE SECURITIES

Section 301. Amount Unlimited; Issuable in Series.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more series.

With respect to any Securities to be authenticated and delivered hereunder, there shall be established in or pursuant to one or more Board Resolutions and set forth in an Officer's Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of any Securities of a series,

(1) the title of the Securities of such series (which shall distinguish the Securities of the series from Securities of any other series) and whether the Securities of such series are to be senior or subordinated;

(2) any limit upon the aggregate principal amount of the Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of such series pursuant to Section 304, 305, 306, 905 or 1107, upon repayment in part of any Security of such series pursuant to Article Thirteen or upon surrender in part of any Security for conversion or exchange into Common Equity or other securities or property pursuant to its terms); *provided*, *however*, that the authorized aggregate principal amount of such series may from time to time be increased above such amount by a Board Resolution to such effect;

(3) if such Securities are to be issuable as Registered Securities, as bearer securities or alternatively as bearer securities and Registered Securities, and whether the bearer securities are to be issuable with coupons, without coupons or both, and any restrictions applicable to the offer, sale or delivery of the bearer securities and the terms, if any, upon which bearer securities may be exchanged for Registered Securities and vice versa and, with respect to bearer securities, any other provisions related to bearer securities not otherwise provided for herein;

(4) if any of such Securities are to be issuable in global form, when any of such Securities are to be issuable in global form and (i) whether such Securities are to be issued in temporary or permanent global form or both, (ii) whether beneficial owners of interests in any such global Security may exchange such interests for Securities of the same series and of like tenor and of any authorized form and denomination, and the circumstances under which any such exchanges may occur, if other than in the manner specified in Section 305, (iii) the name of the Depository with respect to any such global Security, and (iv) if applicable and in addition to the Persons specified in Section 305, the Person or Persons who shall be entitled to make any endorsements on any such global Security and to give the instructions and take the other actions with respect to such global Security contemplated by the first paragraph of Section 203;

(5) the date or dates, or the method or methods, if any, by which such date or dates shall be determined, on which the principal and premium, if any, of any Securities of the series is payable or the method used to determine or extend those dates;

(6) the rate or rates at which such Securities shall bear interest, if any, or the method or methods, if any, by which such rate or rates are to be determined, the date or dates, if any, from which such interest shall accrue or the method or methods, if any, by which such date or dates are to be determined, the Interest Payment Dates, if any, on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on Registered Securities on any Interest Payment Date, the notice, if any, to Holders regarding the determination of interest on a floating rate Security and the manner of giving such notice, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(7) if in addition to or other than the Corporate Trust Office, the place or places where the principal of, any premium and interest on or any Additional Amounts with respect to such Securities shall be payable, any of such Securities that are Registered Securities may be surrendered for registration of transfer or exchange, any of such Securities may be surrendered for conversion or exchange or at maturity or otherwise, and notices or demands to or upon the Issuer in respect of such Securities and this Indenture may be made and the manner in which any payment may be made;

(8) whether any of such Securities are to be redeemable at the option of the Issuer and, if so, the date or dates on which, the period or periods within which, the price or prices at which, the currency or currency units in which, and the other terms and conditions upon which such Securities may be redeemed, in whole or in part, at the option of the Issuer, and, if other than by a Board Resolution, the manner in which any election by the Issuer to redeem the Securities shall be evidenced;

(9) if the Issuer is obligated to redeem or purchase any of such Securities pursuant to any sinking fund or analogous provisions or at the option of any Holder thereof and, if so, the date or dates on which, the period or periods within which, the price or prices at which, the currency or currency units in which, and the other terms and conditions upon which such Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and any provisions for the remarketing of such Securities so redeemed or purchased;

(10) the denominations in which any of such Securities that are Registered Securities shall be issuable if other than minimum denominations of $2,000 and any integral multiple of $1,000 in excess thereof;

(11) whether such Securities will be convertible into and/or exchangeable for Common Equity or other securities or property of the Issuer or of any other Person, and if so, the terms and conditions upon which such Securities will be so convertible or exchangeable, and any deletions from or modifications or additions or changes to this Indenture to permit or to facilitate the issuance of such convertible or exchangeable Securities or the administration thereof;

(12) if other than the entire principal amount thereof, the portion of the principal amount of any of such Securities that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 502 or the method by which such portion is to be determined;

(13) if other than Dollars, the Foreign Currency in which purchases of such Securities must be made and the Foreign Currency in which payment of the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities shall be payable and the manner of determining the equivalent thereof in Dollars for any purpose, including for purposes of the definition of "Outstanding" in Section 101;

(14) if the principal of, any premium or interest on or any Additional Amounts with respect to any of such Securities are to be payable, at the election of the Issuer or a Holder thereof or otherwise, in a Currency other than that in which such Securities are stated to be payable, the date or dates on which, the period or periods within which, and the other terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the Currency in which such Securities are stated to be payable and the Currency in which such Securities or any of them are to be paid pursuant to such election, and any deletions from or modifications of or additions to the terms of this Indenture to provide for or to facilitate the issuance of Securities denominated or payable, at the election of the Issuer or a Holder thereof or otherwise, in a Foreign Currency;

(15) if the amount of payments of principal of, any premium or interest on or any Additional Amounts with respect to such Securities may be determined with reference to an index, formula or other method or methods (which index, formula or method or methods may be based, without limitation, on one or more Currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

(16) any deletions from, modifications of or additions to the Events of Default or covenants of the Issuer or any Guarantor with respect to any of such Securities or any Guarantee (whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein), any additional covenants subject to waiver by the Act of Holders pursuant to Section 1006, and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 502;

(17) if any one or more of the provisions of Section 401 relating to satisfaction and discharge, Section 402(2) relating to defeasance or Section 402(3) relating to Covenant Defeasance shall not be applicable to such Securities, and any covenants in addition to or other than those specified in Section 402(3) relating to such Securities which shall be subject to Covenant Defeasance, and, if such Securities are subject to repurchase or repayment at the option of the Holders thereof pursuant to Article Thirteen, if the Issuer's obligation to repurchase or repay such Securities will be subject to satisfaction and discharge pursuant to Section 401 or to defeasance or Covenant Defeasance pursuant to Section 402, and, if the Holders of such Securities have the right to convert or exchange such Securities into Common Equity or other securities or property, if the right to effect such conversion or exchange will be subject to satisfaction and discharge pursuant to Section 401 or to defeasance or Covenant Defeasance pursuant to Section 402, and any deletions from, or modifications or additions to, the provisions of Article Four (including any modification which would permit satisfaction and discharge, defeasance or Covenant Defeasance to be effected with respect to less than all of the outstanding Securities of such series) in respect of such Securities;

(18) if any of such Securities are to be issuable upon the exercise of warrants, and the time, manner and place for such Securities to be authenticated and delivered;

(19) if any of such Securities are issuable in global form and are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security) only upon receipt of certain certificates or other documents or satisfaction of other conditions, then the form and terms of such certificates, documents or conditions;

(20) the circumstances under which the Issuer or any Guarantor will pay Additional Amounts on such Securities in respect of any tax, assessment or other government charge and whether the Issuer will have the option to redeem such Securities rather than pay such Additional Amounts;

(21) if there is more than one Trustee, the identity of the Trustee that has any obligations, duties and remedies with respect to such Securities and, if not the Trustee, the identity of each Security Registrar, Paying Agent or Authenticating Agent with respect to such Securities;

(22) the Person to whom any interest on any Registered Security of such series shall be payable, if other than the Person in whose name such Registered Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, and the extent to which, or the manner in which, any interest payable on a temporary global Security will be paid if other than in the manner provided in this Indenture;

(23) whether the Securities of the series will be guaranteed by a Guarantor and, if so, the identity of such Guarantor, the extent to which, and the terms and conditions upon which such Securities shall be guaranteed and, if applicable, the terms and conditions upon which such Guarantees may be subordinated to other indebtedness of the respective Guarantors;

(24) whether the Securities of the series will be secured and, if so, specification of the collateral and the extent to which, and the terms and conditions upon which, such Securities shall be secured;

(25) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(26) whether the Securities will not be issued in a transaction registered under the Securities Act and any restriction or condition on the transferability of the Securities of such series;

(27) the exchanges, if any, on which such Securities may be listed;

(28) the price or prices at which the Securities will be sold; and

(29) any other terms of such Securities and any deletions from or modifications or additions to this Indenture in respect of such Securities (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 901).

All Securities of any one series shall be substantially identical, except as may be provided by the Issuer in or pursuant to the Board Resolution and set forth in the Officer's Certificate or in any indenture or indentures supplemental hereto pertaining to such series of Securities. The terms of the Securities of any series may provide, without limitation, that the Securities shall be authenticated and delivered by the Trustee on original issue from time to time upon written order of persons designated in the Board Resolutions of the Issuer or any Guarantor (with respect to its Guarantee), Officer's Certificate or supplemental indenture, as the case may be, pertaining to such series of Securities and that such persons are authorized to determine, consistent with such Board Resolutions, Officer's Certificate or supplemental indenture, such terms and conditions of the Securities of such series as are specified in such Board Resolutions, Officer's Certificate or supplemental indenture.

All Securities of any one series need not be issued at the same time and, unless otherwise provided by the Issuer as contemplated by this Section 301, a series may be reopened from time to time without notice to or the consent of any Holders for issuances of additional Securities of such series or to establish additional terms of such series of Securities.

If any of the terms of the Securities of any series shall be established by action taken by or pursuant to Board Resolutions of the Issuer, such Board Resolution(s) shall be delivered to the Trustee at or prior to the delivery of the Officer's Certificate setting forth the terms of such series.

Section 302. Currency; Denominations.

Unless otherwise provided in or pursuant to this Indenture, the principal of, any premium and interest on and any Additional Amounts with respect to the Securities shall be payable in Dollars. Unless otherwise provided in

or pursuant to this Indenture, Registered Securities denominated in Dollars shall be issuable in registered form without coupons in minimum denominations of $2,000 and any integral multiple of $1,000 in excess thereof. Securities not denominated in Dollars shall be issuable in such denominations as are established with respect to such Securities in or pursuant to this Indenture.

Section 303. Execution, Authentication, Delivery and Dating.

Securities and any Guarantee to be endorsed thereon shall be executed on behalf of the Issuer or the related Guarantor, as applicable, by the Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, or one of the Vice Presidents of the Issuer, or such Guarantor, and may (but need not) have the Issuer's or the Guarantor's, as applicable, corporate seal thereon. The signature of any of these officers on the Securities may be manual or electronic.

Securities and any related Guarantees bearing the manual or electronic signatures of individuals who were at any time the proper officers of the Issuer or any Guarantor, as applicable, shall, to the fullest extent permitted by law, bind the Issuer or such Guarantor, as applicable, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or the Securities upon which any such Guarantee is endorsed or did not hold such offices at the date of such Securities or any such related Guarantee.

At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Securities executed by the Issuer to the Trustee for authentication and, *provided* that the Board Resolutions and Officer's Certificate or supplemental indenture or indentures with respect to such Securities referred to in Section 301 and an Issuer Order for the authentication and delivery of such Securities have been delivered to the Trustee, the Trustee in accordance with the Issuer Order and subject to the provisions hereof and of such Securities shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in conclusively relying upon,

(1) an Opinion of Counsel to the following effect:

(a) the form or forms and terms of such Securities have been established in conformity with Sections 201 and 301 of this Indenture;

(b) all conditions precedent set forth in this Indenture to the authentication and delivery of such Securities have been complied with; and

(c) and that such Securities, when completed by appropriate insertions (if applicable), executed by a duly authorized officer of the Issuer, delivered by a duly authorized officer of the Issuer to the Trustee for authentication pursuant to this Indenture, and authenticated and delivered by the Trustee and issued by the Issuer in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their terms, and that any Guarantee, when executed by a duly authorized signatory of the Guarantor and issued by such Guarantor in the manner and subject to any conditions specified in such Opinion of Counsel and when the Securities upon which such Guarantees have been endorsed have been completed, executed and delivered by a duly authorized officer of the Issuer and authenticated and delivered by the Trustee, will constitute valid and binding obligations of the Guarantor, except, in each case, as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws relating to or affecting creditors' rights generally or by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law) and subject to such other exceptions as shall be reasonably acceptable to the Trustee; *provided,* that such Opinion of Counsel need express no opinion as to whether a court in the United States would render a money judgment in a currency other than that of the United States; and

(2) an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the issuance of the Securities have been complied with and that, to the best of the knowledge of the signers of such certificate, that no Event of Default with respect to any of the Securities shall have occurred and be continuing.

The Trustee shall not be required to authenticate or to cause an Authenticating Agent to authenticate any Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or will otherwise be in a manner which is not reasonably acceptable to the Trustee or if the Trustee, being advised by counsel, determines that such action may not lawfully be taken.

Each Registered Security shall be dated the date of its authentication. Except to the extent specified in a supplemental indenture, or in established in or pursuant to one or more Board Resolutions and set forth in an Officer's Certificate, the Securities of each series shall be substantially in the form of Exhibit A attached hereto.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for in Section 202 or 611 executed by or on behalf of the Trustee or by the Authenticating Agent by the manual or electronic signature of one of its authorized signatories. Such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

Section 304. Temporary Securities.

Pending the preparation of definitive Securities, the Issuer may execute and deliver to the Trustee and, upon Issuer Order, the Trustee or Authenticating Agent shall authenticate and deliver, in the manner provided in Section 303, temporary Securities in lieu thereof which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form and with such appropriate insertions, omissions, substitutions and other variations as the officers of the Issuer executing such Securities may determine, as conclusively evidenced by their execution of such Securities. Such temporary Securities may be in global form.

Except in the case of temporary Securities in global form, which shall be exchanged in accordance with the provisions set forth in this Indenture or the provisions established pursuant to Section 301, if temporary Securities are issued, the Issuer shall cause definitive Securities or global Securities to be prepared without unreasonable delay. Except as otherwise provided in or pursuant to this Indenture, after the preparation of definitive Securities or global Securities of the same series and containing terms and provisions that are identical to those of any temporary Securities, such temporary Securities shall be exchangeable for such definitive Securities or global Securities upon surrender of such temporary Securities at an Office or Agency for such Securities, without charge to any Holder thereof. Except as otherwise provided in or pursuant to this Indenture, upon surrender for cancellation of any one or more temporary Securities, the Issuer shall execute and, upon Issuer Order, the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities or global Securities of authorized denominations of the same series and containing identical terms and provisions. Unless otherwise provided in or pursuant to this Indenture with respect to a temporary global Security, until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 305. Registration, Transfer and Exchange.

With respect to the Registered Securities of each series, if any, the Issuer shall cause to be kept a register (each such register being herein sometimes referred to as the "**Security Register**") at an Office or Agency for such series in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of the Registered Securities of such series and of transfers and exchanges of the Registered Securities of such series. Such Office or Agency shall be the "**Security Registrar**" for that series of Securities. Unless otherwise specified in or pursuant to this Indenture or the Securities, the initial Security Registrar for each series of Securities shall be as specified in the second to last paragraph of Section 1002. The Issuer shall have the right to remove and replace from time to time the Security Registrar for any series of Securities; *provided* that no such removal or replacement shall be effective until a successor Security Registrar with respect to such series of Securities shall have

been appointed by the Issuer and shall have accepted such appointment. In the event that the Trustee shall not be or shall cease to be Security Registrar with respect to a series of Securities, it shall have the right to examine the Security Register for such series at all reasonable times. There shall be only one Security Register for each series of Securities.

Except as otherwise provided in or pursuant to this Indenture, upon surrender for registration of transfer of any Registered Security of any series at any Office or Agency for such series, the Issuer shall execute, and, upon Issuer Order, the Trustee shall authenticate and deliver, one or more new Registered Securities of the same series denominated as authorized in or pursuant to this Indenture, of a like aggregate principal amount bearing a number not contemporaneously outstanding and containing identical terms and provisions.

Except as otherwise provided in or pursuant to this Indenture, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series containing identical terms and provisions, in any authorized denominations, and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at any Office or Agency for such series. Whenever any Registered Securities are so surrendered for exchange, the Issuer shall execute, and, upon Issuer Order, the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise provided in or pursuant to this Indenture, the global Securities of any series shall be exchangeable for definitive certificated Securities of such series only if (i) the Depository for such global Securities notifies the Issuer that it is unwilling or unable or no longer qualified to continue as a Depository for such global Securities or at any time the Depository for such global Securities ceases to be a clearing agency registered as such under the Exchange Act, if so required by applicable law or regulation, and no successor Depository for such Securities shall have been appointed by the Issuer within 90 days of such notification or of the Issuer becoming aware of the Depository's ceasing to be so registered, as the case may be, (ii) the Issuer, in its sole discretion and subject to the Depository's procedures, determines that the Securities of such series shall no longer be represented by one or more global Securities and executes and delivers to the Trustee an Issuer Order to the effect that such global Securities shall be so exchangeable or (iii) an Event of Default has occurred and is continuing with respect to such Securities and the Depository or the Issuer specifically requests such exchange.

If the beneficial owners of interests in a global Security are entitled to exchange such interests for definitive Securities as the result of an event described in clause (i), (ii) or (iii) of the preceding paragraph, then without unnecessary delay, but in any event not later than the earliest date on which such interests may be so exchanged, the Issuer shall deliver to the Trustee definitive Securities in such form and denominations as are required by or pursuant to this Indenture, and of the same series, containing identical terms and in aggregate principal amount equal to the principal amount of such global Security, executed by the Issuer. On or after the earliest date on which such interests may be so exchanged, such global Security shall be cancelled by the Trustee in accordance with its customary procedures as shall be specified in the Issuer Order with respect thereto (which the Issuer agrees to deliver), and in accordance with instructions given to the Trustee and the Depository as shall be specified in the Issuer Order with respect thereto to the Trustee, as the Issuer's agent for such purpose, to be exchanged, in whole or in part, for definitive Securities as described above without charge. The Trustee shall authenticate and make available for delivery, in exchange for each portion of such surrendered global Security, a like aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such global Security to be exchanged, which shall be in such denominations and, in the case of Registered Securities, registered in such names, as shall be specified by the Depository, but subject to the satisfaction of any certification or other requirements to the issuance of securities; *provided*, *however*, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities of the same series to be redeemed and ending on the relevant Redemption Date. Promptly following any such exchange in part, such global Security shall be returned by the Trustee to such Depository (or its custodian) or such other Depository (or its custodian) referred to above if requested by the Issuer in accordance with the instructions of the Issuer referred to above, and the Trustee shall endorse such global Security to reflect the decrease in the principal amount thereof resulting from such exchange. If a Registered Security is issued in exchange for any portion of a global Security after the close of business at the Office or Agency for such Security where such exchange occurs on or after (i) any Regular Record Date for such Security and before the opening of business at

such Office or Agency on the next Interest Payment Date, or (ii) any Special Record Date for such Security and before the opening of business at such Office or Agency on the related proposed date for payment of interest or Defaulted Interest, as the case may be, interest shall not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but shall be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such global Security shall be payable in accordance with the provisions of this Indenture.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Issuer evidencing the same debt and entitling the Holders thereof to the same benefits under this Indenture as the Securities surrendered upon such registration of transfer or exchange.

Every Registered Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Issuer or the Security Registrar for such Security) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Security Registrar for such Security duly executed by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, or any redemption or repayment of Securities, or any conversion or exchange of Securities for other types of securities or property, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 905 or 1107, upon repayment or repurchase in part of any Registered Security pursuant to Article Thirteen, or upon surrender in part of any Registered Security for conversion or exchange into Common Equity or other securities or property pursuant to its terms, in each case not involving any transfer.

Except as otherwise provided in or pursuant to this Indenture, the Issuer shall not be required (i) to issue, register the transfer of or exchange any Securities during a period beginning at the opening of business 15 days before the day of the selection for redemption of Securities of like tenor and terms and of the same series under Section 1103 and ending at the close of business on the day of such selection, or (ii) to register the transfer of or exchange any Registered Security, or portion thereof, so selected for redemption, except in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to issue, register the transfer of or exchange any Security which, in accordance with its terms, has been surrendered for repayment at the option of the Holder pursuant to Article Thirteen and not withdrawn, except the portion, if any, of such Security not to be so repaid.

Section 306. Mutilated, Destroyed, Lost and Stolen Securities.

If any mutilated Security is surrendered to the Trustee, subject to the provisions of this Section 306, the Issuer shall execute and, upon Issuer Order, the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding.

If there be delivered to the Issuer and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security, and (ii) such security and/or indemnity as may be reasonably required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Issuer or the Trustee that such Security has been acquired by a bona fide purchaser, the Issuer shall execute and, upon the Issuer's written request the Trustee shall authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Security, a new Security of the same series containing identical terms and of like principal amount and bearing a number not contemporaneously outstanding.

Notwithstanding the foregoing provisions of this Section 306, in case any mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee and its legal counsel) connected therewith.

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute a separate obligation of the Issuer, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of such series duly issued hereunder.

The provisions of this Section 306, as amended or supplemented pursuant to this Indenture with respect to particular Securities or generally, shall (to the extent lawful) be exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 307. Payment of Interest and Certain Additional Amounts; Rights to Interest and Certain Additional Amounts Preserved.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, and are punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more Predecessor Securities) is registered as of the close of business on the Regular Record Date for such interest.

Unless otherwise provided in or pursuant to this Indenture, any interest on and any Additional Amounts with respect to any Registered Security which shall be payable, but shall not be punctually paid or duly provided for, on any Interest Payment Date for such Registered Security (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Holder thereof on the relevant Regular Record Date by virtue of having been such Holder; and such Defaulted Interest may be paid by the Issuer, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Registered Security and the date of the proposed payment, and at the same time the Issuer shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when so deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this clause provided.

Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to the Holder of such Registered Security (or a Predecessor Security thereof) in the manner set forth in Section 106 not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been sent as aforesaid, such Defaulted Interest shall be paid to the Person in whose name such Registered Security (or a Predecessor Security thereof) shall be registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2); or

(2) The Issuer may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Security may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Issuer to the Trustee of the proposed payment pursuant to this clause (2), such payment shall be deemed practicable by the Trustee.

Unless otherwise provided in or pursuant to this Indenture or the Securities of any particular series, at the option of the Issuer, interest on Registered Securities on any Interest Payment Date may be paid by mailing a check to the address of the Person entitled thereto as such address shall appear in the Security Register or by transfer to an account maintained by the payee with a bank located in the United States of America (other than with respect to global Securities, which shall be payable in accordance with the Depository's customary policies and procedures).

Subject to the foregoing provisions of this Section 307 and Section 305, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 308. Persons Deemed Owners.

Prior to due presentment of a Registered Security for registration of transfer or exchange or at maturity or otherwise, the Issuer, any Guarantor, the Trustee and any agent of the Issuer, any Guarantor or the Trustee may treat the Person in whose name such Registered Security is registered in the Security Register as the owner of such Registered Security for the purpose of receiving payment of principal of, any premium and (subject to Sections 305 and 307) interest on and any Additional Amounts with respect to such Registered Security and for all other purposes whatsoever, whether or not any payment with respect to such Registered Security shall be overdue, and none of the Issuer, any Guarantor, the Trustee or any agent of the Issuer, any Guarantor or the Trustee shall be affected by notice to the contrary.

No owner of any beneficial interest in any global Security held on its behalf by a Depository shall have any rights under this Indenture or with respect to such global Security, and such Depository or its nominee may be treated by the Issuer, any Guarantor, the Trustee and any agent of the Issuer, any Guarantor or the Trustee as the absolute owner and Holder of such global Security for all purposes whatsoever. None of the Issuer, any Guarantor, the Trustee or any agent of the Issuer, any Guarantor or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, nothing herein shall prevent the Issuer, any Guarantor, the Trustee or any agent of the Issuer, any Guarantor or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the applicable Depository, as a Holder, with respect to a global Security or impair, as between such Depository and the owners of beneficial interests in such global Security, the operation of customary practices governing the exercise of the rights of such Depository (or its nominee) as the Holder of such global Security.

Section 309. Cancellation.

All Securities surrendered for payment, redemption, registration of transfer, exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be promptly delivered to the Trustee, and any such Securities, as well as Securities surrendered directly to the Trustee for any such purpose, shall be cancelled promptly by the Trustee. The Issuer may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and all Securities so delivered shall be cancelled promptly by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by or pursuant to this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with its customary procedures.

Section 310. Computation of Interest.

Except as otherwise provided in or pursuant to this Indenture or in the Securities of any series, interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 311. CUSIP Numbers.

The Issuer in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or

omission of such numbers. The Issuer will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 312. Trustee, Paying Agent and Security Registrar Not Responsible for Depository.

None of the Trustee, any Paying Agent or any Security Registrar shall have any responsibility or liability for any acts or omissions of any Depository with respect to any global Security, for the records of any Depository, including records in respect of beneficial ownership interests in respect of any global Security, for any transactions between such Depository and any participant in such Depository or between or among any such Depository, any such participant or any holder or owner of a beneficial interest in any global Security or for any transfers of beneficial interests in any global Security.

ARTICLE FOUR.

SATISFACTION AND DISCHARGE OF INDENTURE

Section 401. Satisfaction and Discharge.

Unless, pursuant to Section 301, the provisions of this Section 401 shall not be applicable with respect to the Securities of any series, upon the direction of the Issuer by an Issuer Order, this Indenture shall cease to be of further effect with respect to any series of Securities specified in such Issuer Order and any Guarantee of such Securities (except for provisions that survive pursuant to the terms of the Indenture or the applicable series of Securities), and the Trustee, on receipt of an Issuer Order, at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series, when,

(1) either

(a) all Securities of such series theretofore authenticated and delivered (other than (i) Securities of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, and (ii) Securities of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer or any Affiliate of the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(b) all such Securities of such series not theretofore delivered to the Trustee for cancellation:

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) if redeemable at the option of the Issuer, are to be called for redemption within one year under arrangements reasonably satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with and held uninvested by the Trustee as trust funds in trust for such purpose, money in the Currency in which such Securities are payable in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, including the principal of, any premium and interest on, and, to the extent that the Securities of such series provide for the payment of Additional Amounts thereon and the amount of any such Additional Amounts which are or will be payable with respect to the Securities of such series is at the time of deposit determinable by the Issuer (in the exercise by the Issuer of its reasonable discretion), any Additional Amounts with respect to, such Securities, to the date of such deposit (in the case of Securities which have become due and payable) or to the Maturity thereof, as the case may be;

(2) the Issuer has paid or caused to be paid all other sums payable hereunder by the Issuer with respect to the Outstanding Securities of such series (including amounts payable to the Trustee pursuant to Section 606); and

(3) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to the Securities of such series have been complied with.

In the event there are Securities of two or more series Outstanding hereunder, the Trustee shall be required to execute an instrument acknowledging satisfaction and discharge of this Indenture only if requested to do so with respect to Securities of such series as to which it is Trustee, if in form and content reasonably acceptable to the Trustee and if the other conditions thereto are met.

Notwithstanding the satisfaction and discharge of this Indenture with respect to any series of Securities, the obligations of the Issuer to the Trustee under Section 606 and, if money shall have been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section 401, the obligations of the Issuer and the Trustee with respect to the Securities of such series under Sections 305, 306, 403, 404, 1002, 1003 and, if applicable to the Securities of such series, Section 1004 (including, without limitation, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 1004, but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to Section 401(1)(b)), the obligations of any Guarantor under any Guarantee in respect of Additional Amounts, any rights of Holders of the Securities of such series (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to require the Issuer to repurchase or repay, and the obligations of the Issuer to repurchase or repay, such Securities at the option of the Holders pursuant to Article Thirteen hereof, and any rights of Holders of the Securities of such series (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to convert or exchange, and the obligations of the Issuer to convert or exchange, such Securities into Common Equity or other securities or property, shall survive such satisfaction and discharge.

Section 402. Defeasance and Covenant Defeasance.

(1) Unless, pursuant to Section 301, either or both of (i) defeasance of the Securities of or within a series under clause (2) of this Section 402 or (ii) Covenant Defeasance of the Securities of or within a series under clause (3) of this Section 402 shall not be applicable with respect to the Securities of such series, then such provisions, together with the other provisions of this Section 402 (with such modifications thereto as may be specified pursuant to Section 301 with respect to any Securities), shall be applicable to such Securities, and the Issuer may at its option by Board Resolution, at any time, with respect to the Securities of or within such series, elect to have Section 402(2) or Section 402(3) be applied to such Outstanding Securities and any Guarantees of such Outstanding Securities upon compliance with the conditions set forth below in this Section 402. Unless otherwise specified pursuant to Section 301 with respect to the Securities of any series, defeasance under clause (2) of this Section 402 and Covenant Defeasance under clause (3) of this Section 402 may be effected only with respect to all, and not less than all, of the Outstanding Securities of any series. To the extent that the terms of any Security established in or pursuant to this Indenture permit the Issuer or any Holder thereof to extend the date on which any payment of principal of, or premium, if any, or interest, if any, on, or Additional Amounts, if any, with respect to such Security is due and payable, then unless otherwise provided pursuant to Section 301, the right to extend such date shall terminate upon defeasance or Covenant Defeasance, as the case may be.

(2) Upon the Issuer's exercise of the above option applicable to this Section 402(2) with respect to any Securities of or within a series, the Issuer and any Guarantor, as applicable, shall be deemed to have been discharged from their respective obligations with respect to such Outstanding Securities on the date the conditions set forth in clause (4) of this Section 402 are satisfied (hereinafter, "**defeasance**"). For this purpose, such defeasance means that the Issuer shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities, which shall thereafter be deemed to be "**Outstanding**" only for the purposes of clause (5) of this Section 402 and the other Sections of this Indenture referred to in subclauses (i) through (iv) of this clause (2), and that each of the Issuer and any Guarantor shall be deemed to have satisfied all of their respective other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following

which shall survive until otherwise terminated or discharged hereunder: (i) the rights of Holders of such Outstanding Securities to receive, solely (except as provided in subclause (ii) below) from the trust fund described in clause (4)(a) of this Section 402 and as more fully set forth in this Section 402 and in Section 403, payments in respect of the principal of (and premium, if any) and interest, if any, on, and Additional Amounts, if any, with respect to, such Securities when such payments are due; (ii) the obligations of the Issuer and the Trustee with respect to such Securities under Sections 305, 306, 1002, 1003 and, if applicable to the Securities of such series, Section 1004 (including, without limitation, with respect to the payment of Additional Amounts, if any, with respect to such Securities as contemplated by Section 1004, but only to the extent that the Additional Amounts payable with respect to such Securities exceed the amount deposited in respect of such Additional Amounts pursuant to clause (4)(a) of this Section 402), the obligations of any Guarantor under a Guarantee in respect of Additional Amounts, as applicable, any rights of Holders of such Securities (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to require the Issuer to repurchase or repay, and the obligations of the Issuer to repurchase or repay, such Securities at the option of the Holders pursuant to Article Thirteen hereof, and any rights of Holders of such Securities (unless otherwise provided pursuant to Section 301 with respect to the Securities of such series) to convert or exchange, and the obligations of the Issuer to convert or exchange, such Securities into Common Equity or other securities or property; (iii) the rights, powers, trusts, duties and immunities of the Trustee hereunder; and (iv) this Section 402 and Sections 403 and 404. The Issuer may exercise its option under this Section 402(2) notwithstanding the prior exercise of its option under Section 402(3) with respect to such Securities.

(3) Upon the Issuer's exercise of the above option applicable to this Section 402(3) with respect to any Securities of or within a series, the Issuer and any Guarantor, as applicable, shall be released from their respective obligations under clause (ii) of Section 1005, Section 704 and, to the extent specified pursuant to Section 301, any other covenant applicable to such Securities with respect to such Securities shall cease to be applicable to such Securities on and after the date the conditions set forth in clause (4) of this Section 402 are satisfied (hereinafter, "**Covenant Defeasance**"), and such Securities shall thereafter be deemed to be not "**Outstanding**" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with any such covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such Covenant Defeasance means, with respect to such Outstanding Securities, the Issuer and any Guarantor, as applicable, may omit to comply with, and shall have no liability in respect of, any term, condition or limitation set forth in any such Section or any such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 501(3) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby.

(4) The following shall be the conditions to application of clause (2) or (3) of this Section 402 to any Outstanding Securities of or within a series:

(a) The Issuer shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 607 who shall agree to comply with the provisions of this Section 402 applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, (1) an amount in Dollars or in such Foreign Currency in which such Securities are then specified as payable at Stated Maturity or, if such defeasance or Covenant Defeasance is to be effected in compliance with subsection (f) below, on the relevant Redemption Date, as the case may be, or (2) Government Obligations applicable to such Securities (determined on the basis of the Currency in which such Securities are then specified as payable at Stated Maturity or, if such defeasance or Covenant Defeasance is to be effected in compliance with subsection (f) immediately below, on the relevant Redemption Date, as the case may be) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee, to pay and discharge, and which shall be applied

by the Trustee (or other qualifying trustee) to pay and discharge, (y) the principal of (and premium, if any) and interest, if any, on, and, to the extent that such Securities provide for the payment of Additional Amounts thereon and the amount of any such Additional Amounts which are or will be payable with respect to the Securities of such series is at the time of deposit reasonably determinable by the Issuer (in the exercise by the Issuer of its reasonable discretion), any Additional Amounts with respect to, such Outstanding Securities on the Maturity or Stated Maturity of such principal or interest, and (z) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities.

(b) Such defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Issuer or any Guarantor is a party or by which the Issuer or any Guarantor is bound.

(c) No Event of Default or event which, with notice or lapse of time or both, would become an Event of Default with respect to such Securities shall have occurred and be continuing on the date of such deposit, and, solely in the case of defeasance under Section 402(2), no Event of Default with respect to such Securities under clauses (5), (6) or (7) of Section 501 or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities under clauses (5), (6) or (7) of Section 501 shall have occurred and be continuing at any time during the period ending on and including the 91st day after the date of such deposit (it being understood that this condition to defeasance under Section 402(2) shall not be deemed satisfied until the expiration of such period).

(d) In the case of defeasance pursuant to Section 402(2), the Issuer shall have delivered to the Trustee an Opinion of Counsel acceptable to the Trustee stating that (x) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date of this Indenture there has been a change in applicable federal income tax law, in either case to the effect that, and based thereon such opinion of independent counsel shall confirm that, the Holders and beneficial owners of such Outstanding Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred; or, in the case of Covenant Defeasance pursuant to Section 402(3), the Issuer shall have delivered to the Trustee an Opinion of Counsel acceptable to the Trustee to the effect that the Holders and beneficial owners of such Outstanding Securities and will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred.

(e) The Issuer shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance or Covenant Defeasance, as the case may be, under this Indenture have been complied with.

(f) If the monies or Government Obligations or combination thereof, as the case may be, deposited under subclause (a) immediately above are sufficient to pay the principal of, and premium, if any, and interest, if any, on and, to the extent provided in such subclause (a), Additional Amounts with respect to, such Securities on a particular Redemption Date, the Issuer shall have given the Trustee irrevocable instructions to redeem such Securities on such date and to provide notice of such redemption to Holders as provided in or pursuant to this Indenture.

(g) Notwithstanding any other provisions of this Section 402(4), such defeasance or Covenant Defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Issuer in connection therewith pursuant to Section 301.

(5) Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations (or other property as may be provided pursuant to Section 301) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee (collectively for purposes of this Section 402(5) and

Section 403, the "Trustee")) pursuant to clause (4)(a) of Section 402 in respect of any Outstanding Securities of any series shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (other than the Issuer or any Subsidiary or Affiliate of the Issuer acting as Paying Agent), to the Holders of such Securities of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

Unless otherwise specified in or pursuant to this Indenture or any Securities, if, after a deposit referred to in Section 402(4)(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 301 or the terms of such Security to receive payment in a Currency other than that in which the deposit pursuant to Section 402(4)(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the Foreign Currency in which the deposit pursuant to Section 402(4)(a) has been made, the indebtedness represented by such Security shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on, and Additional Amounts, if any, with respect to, such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the Currency in which such Security becomes payable as a result of such election or Conversion Event based on (x) in the case of payments made pursuant to subclause (a) immediately above, the applicable market exchange rate for such Currency in effect on the second (2nd) Business Day prior to each payment date, or (y) with respect to a Conversion Event, the applicable market exchange rate for such Foreign Currency in effect (as nearly as feasible) at the time of the Conversion Event.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge, imposed on or assessed against the Government Obligations deposited pursuant to this Section 402 or the principal or interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities.

Anything in this Section 402 to the contrary notwithstanding, the Trustee shall deliver or pay to the Issuer from time to time upon Issuer Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in clause (4)(a) of this Section 402 which, in the written opinion of a nationally recognized firm of independent public accountants delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or Covenant Defeasance, as applicable, in accordance with this Section 402.

Section 403. Application of Trust Money.

Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations deposited with the Trustee pursuant to Section 401 or 402 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent), to the Holders, of the principal, premium, interest and Additional Amounts for whose payment such money has or Government Obligations have been deposited with or received by the Trustee; but such money and Government Obligations need not be segregated from other funds except to the extent required by law.

Section 404. Reinstatement.

If the Trustee (or other qualifying trustee appointed pursuant to Section 402(4)(a)) or any Paying Agent is unable to apply any moneys or Government Obligations deposited pursuant to Section 401(1) or 402(4)(a) to pay any principal of or premium, if any, or interest, if any, on or Additional Amounts, if any, with respect to the Securities of any series by reason of any legal proceeding or any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's obligations under this Indenture and the Securities of such series and the Guarantee shall be revived and reinstated as though no such deposit had occurred, until such time as the Trustee (or other qualifying trustee) or Paying Agent is permitted to apply all such moneys and Government Obligations to pay the principal of and premium, if any, and interest, if any, on and Additional Amounts, if any, in respect of the Securities of such series as contemplated by Section 401 or 402 as the case may be, and Section 403; *provided*, *however*, that if the Issuer makes any payment of the principal of or

premium, if any, or interest, if any, on or Additional Amounts, if any, in respect of the Securities of such series following the reinstatement of its obligations as aforesaid, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the funds held by the Trustee (or other qualifying trustee) or Paying Agent.

Section 405. Qualifying Trustee.

Any trustee appointed pursuant to Section 402(4)(a) for the purpose of holding trust funds deposited pursuant to that Section shall be appointed under an agreement in form acceptable to the Trustee and shall provide to the Trustee a certificate of such trustee, upon which certificate the Trustee shall be entitled to conclusively rely, that all conditions precedent provided for herein to the related defeasance or Covenant Defeasance have been complied with. In no event shall the Trustee be liable for any acts or omissions of said trustee.

ARTICLE FIVE.
REMEDIES

Section 501. Events of Default.

An "**Event of Default**" wherever used herein with respect to Securities of any series (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) means any of the following events, or any other event as specified in accordance with Section 301 for a particular series of Securities:

(1) default for thirty (30) days in the payment of any installment of interest or Additional Amounts payable with respect to such interest under the Securities of that series;

(2) default in the payment of the principal of, or premium, if any, on, or any Additional Amounts payable in respect of any principal of or premium, if any, on, the Securities of that series, when the same becomes due and payable or default is made in the deposit of any sinking fund payment with respect to the Securities of that series when due;

(3) the Issuer fails to comply with any of the Issuer's other agreements contained in the Securities of that series or this Indenture (other than an agreement a default in whose performance or whose breach is elsewhere in this Section 501 specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series) upon receipt by the Issuer of notice of such default by the Trustee or receipt by the Issuer and the Trustee of written notice of such default by Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Securities of that series then outstanding and the Issuer fails to cure (or obtain a waiver of) such default within ninety (90) days after the Issuer receives such notice;

(4) failure to pay any recourse indebtedness for monies borrowed by the Issuer in an outstanding principal amount in excess of $150,000,000 at final maturity or upon acceleration after the expiration of any applicable notice and grace period, which recourse indebtedness is not discharged, or such default in payment or acceleration is not cured or rescinded, within thirty (30) days after written notice to the Issuer from the Trustee (or to the Issuer and the Trustee from Holders of at least twenty-five percent (25%) in aggregate principal amount of the outstanding Securities of that series);

(5) the Issuer, any Guarantor or any Significant Subsidiary pursuant to, under or within the meaning of any Bankruptcy Law: (a) commences a voluntary case or proceeding seeking liquidation, reorganization or other relief with respect to the Issuer, any Guarantor or any Significant Subsidiary or its debts or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer, any Guarantor or any Significant Subsidiary or any substantial part of the property of the Issuer, any Guarantor or any Significant Subsidiary; (b) consents to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against the Issuer, any Guarantor or any Significant Subsidiary;

(c) consents to the appointment of a custodian of it or for all or substantially all of its property; or (d) makes a general assignment for the benefit of creditors;

(6) an involuntary case or other proceeding shall be commenced against the Issuer, any Guarantor or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Issuer, any Guarantor or any Significant Subsidiary or its debts under any Bankruptcy Law or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer, any Guarantor or any Significant Subsidiary or any substantial part of the property of the Issuer, any Guarantor or any Significant Subsidiary, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of thirty (30) calendar days; or

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that: (a) is for relief against the Issuer, any Guarantor or any Significant Subsidiary in an involuntary case or proceeding; (b) appoints a trustee, receiver, liquidator, custodian or other similar official of the Issuer, any Guarantor or any Significant Subsidiary or any substantial part of the property of the Issuer, any Guarantor or any Significant Subsidiary; or (c) orders the liquidation of the Issuer, any Guarantor or any Significant Subsidiary; and, in each case in this clause (7), the order or decree remains unstayed and in effect for thirty (30) calendar days.

Section 502. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default (other than an Event of Default specified in clause (5), (6) or (7) of Section 501) with respect to Securities of any series occurs and is continuing, then either the Trustee or the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Securities of such series may declare the principal of, and premium, if any, on all of the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, and accrued and unpaid interest, if any, thereon to be due and payable immediately, by a notice in writing to the Issuer (and to the Trustee if given by the Holders), and upon any such declaration such principal or such lesser amount, as the case may be, and such accrued and unpaid interest shall become immediately due and payable. If an Event of Default specified in clause (5), (6) or (7) of Section 501 with respect to the Securities of any series occurs, then the principal of, and premium, if any, on all of the Securities of such series, or such lesser amount as may be provided for in the Securities of such series, and accrued and unpaid interest, if any, thereon shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of the Securities of such series.

At any time after Securities of any series have been accelerated by declaration of the Trustee or the Holders and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series, by written notice to the Issuer, any Guarantor and the Trustee, may rescind and annul such declaration and its consequences if:

(1) the Issuer has paid or deposited, or cause to be paid or deposited, with the Trustee a sum of money sufficient to pay (or, to the extent that the terms of the Securities of such series established pursuant to Section 301 expressly provide for payment to be made in shares of Common Equity or other securities or property, together with cash in lieu of fractional shares or securities):

(a) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due the Trustee under Section 606;

(b) all overdue installments of any interest on any Securities of such series which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto;

(c) the principal of and any premium on any Securities of such series which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto and, to the extent permitted by applicable law, interest thereon at the rate or respective rates, as the

case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities; and

(d) to the extent permitted by applicable law, interest upon installments of any interest, if any, which have become due otherwise than by such declaration of acceleration and any Additional Amounts with respect thereto at the rate or respective rates, as the case may be, provided for in or with respect to such Securities, or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities; and (ii) all Events of Default with respect to Securities of such series other than the non-payment of the principal of, any premium and interest on, and any Additional Amounts with respect to Securities of such series which shall have become due solely by such declaration of acceleration, shall have been waived as provided in Section 513 or cured.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503. Collection of Indebtedness and Suits for Enforcement by Trustee.

The Issuer covenants that if:

(1) default is made in the payment of any interest on, or any Additional Amounts payable in respect of any interest on, any Security when such interest or Additional Amounts, as the case may be, shall have become due and payable and such default continues for a period of 30 days; or

(2) default is made in the payment of any principal of or premium, if any, on, or any Additional Amounts payable in respect of any principal of or premium, if any, on, any Security at its Maturity, when the same becomes due and payable; or

(3) default is made in the deposit of any sinking fund payment, if applicable, when due, and such default continues for three (3) Business Days, the Issuer or any Guarantor shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount of money then due and payable with respect to such Securities, with interest upon the overdue principal, any premium and, to the extent permitted by applicable law, upon any overdue installments of interest and Additional Amounts at the rate or respective rates, as the case may be, provided for or with respect to such Securities or, if no such rate or rates are so provided, at the rate or respective rates, as the case may be, of interest borne by such Securities, and, in addition thereto, such further amount of money as shall be sufficient to cover the reasonable costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts due to the Trustee under Section 606.

If the Issuer (and any applicable Guarantor) fails to pay the money it is required to pay the Trustee pursuant to the preceding paragraph forthwith upon the demand of the Trustee, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the money so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Issuer, any Guarantor or any other obligor upon such Securities and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer, any Guarantor or any other obligor upon such Securities, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem necessary to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or such Securities or in aid of the exercise of any power granted herein or therein, or to enforce any other proper remedy.

Section 504. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Issuer, any Guarantor or any other

obligor upon the Securities or the property of the Issuer, such Guarantor or such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer for the payment of any overdue principal, premium, interest or Additional Amounts) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(1) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of the principal and any premium, interest and Additional Amounts owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents or counsel) and of the Holders of Securities allowed in such judicial proceeding; and

(2) 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 Holder of Securities to make such payments to the Trustee and, in the event that the Trustee shall consent in writing in its sole discretion to the making of such payments directly to the Holders of Securities, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee (acting in any capacity hereunder), its agents and counsel and any other amounts due the Trustee hereunder.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security in any such proceeding.

Section 505. Trustee May Enforce Claims without Possession of Securities.

All rights of action and claims under this Indenture or any of the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery or judgment, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, shall be for the ratable benefit of each and every Holder of a Security in respect of which such judgment has been recovered.

Section 506. Application of Money Collected.

Any money collected by the Trustee pursuant to this Article Five with respect to the Securities of any series shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal, or any premium, interest or Additional Amounts, upon presentation of such Securities, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee (acting in any capacity hereunder) and any predecessor Trustee under the Indenture;

SECOND: To the payment of the amounts then due and unpaid upon the Securities for principal and any premium, interest and Additional Amounts in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities for principal and any premium, interest and Additional Amounts; and

THIRD: The balance, if any, to the Issuer.

Section 507. Limitations on Suits.

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or such Security, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of such series;

(2) the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Securities of such series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee security and/or indemnity reasonably satisfactory to it against the losses, damages, costs, expenses and liabilities, including reasonable attorneys' fees, out of pocket costs and expenses and court costs, to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture or any Security to affect, disturb or prejudice the rights of any other such Holders or Holders of Securities of any other series, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 508. Unconditional Right of Holders to Receive Principal and any Premium, Interest and Additional Amounts.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of, and premium, if any, and (subject to Sections 305 and 307) interest, if any, on and any Additional Amounts with respect to such Security, on the respective Stated Maturity or Maturities therefor specified in such Security (or, in the case of redemption, on the Redemption Date or, in the case of repayment pursuant to Article Thirteen hereof at the option of such Holder if provided in or pursuant to this Indenture, on the date such repayment is due) and, in the case of any Security which is convertible into or exchangeable for other securities or property, to convert or exchange, as the case may be, such Security in accordance with its terms, and to institute suit for the enforcement of any such payment and any such right to convert or exchange, and such right shall not be impaired without the consent of such Holder.

Section 509. Restoration of Rights and Remedies

If the Trustee or any Holder of a Security has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case the Issuer, any Guarantor (if applicable), the Trustee and each such Holder shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and each such Holder shall continue as though no such proceeding had been instituted.

Section 510. Rights and Remedies Cumulative

To the extent permitted by applicable law and except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to each and every Holder of a Security is intended to be

exclusive of any other right or remedy, and every right and remedy, to the extent permitted by law, shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 511. Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall, to the extent permitted by applicable law, impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to any Holder of a Security may, to the extent permitted by applicable law, be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by such Holder, as the case may be.

Section 512. Control by Holders of Securities.

The Holders of a majority in aggregate principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, provided that:

(1) such direction shall not be in conflict with any rule of law or with this Indenture or with the Securities of any series and could not involve the Trustee in personal liability;

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and (iii) such direction is not unduly prejudicial to the rights of the other Holders of Securities of such series (or any other series) not joining in such action (it being understood that the Trustee shall not have an affirmative duty to ascertain whether or not any such direction is unduly prejudicial to any other Holder).

Section 513. Waiver of Past Defaults.

The Holders of a majority in aggregate principal amount of the Outstanding Securities of any series on behalf of the Holders of all the Securities of such series may waive any past default hereunder with respect to such series and its consequences, except:

(1) a continuing default in the payment of the principal of, any premium or interest on, or any Additional Amounts with respect to, any Security of such series; or

(2) in the case of any Securities which are convertible into or exchangeable for Common Equity or other securities or property, a continuing default in any such conversion or exchange; or

(3) a continuing default in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 514. Waiver of Usury, Stay or Extension Laws.

The Issuer covenants that (to the extent that it may lawfully do so) it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury law or any other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Issuer or any applicable Guarantor from paying all or any portion of the principal of or premium, if any, or interest,

if any, on or Additional Amounts, if any, as contemplated in this Indenture, any Guarantee and the Securities or which may affect the covenants or the performance of this Indenture or the Securities; and each of the Issuer and any Guarantor expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee or the Holders, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 515. Undertaking for Costs.

All parties to this Indenture agree, and each Holder of any Security by such Holder's acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and disbursements, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 515 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest, if any, on or Additional Amounts, if any, with respect to any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date, and, in the case of repayment at the option of the Holder pursuant to Article Thirteen hereof, on or after the date for repayment) or for the enforcement of the right, if any, to convert or exchange any Security into Common Equity or other securities or property in accordance with its terms.

ARTICLE SIX.

THE TRUSTEE

Section 601. Certain Rights of Trustee.

The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act; *provided*, that (i) notwithstanding Section 315(a)(2) of the Trust Indenture Act, the Trustee need not confirm or investigate the accuracy of any mathematical calculations or other facts, statements, opinions or conclusions stated in the certificates or opinions referred to therein, and (ii) except during the continuance of an Event of Default, no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default has occurred and is continuing, written notice of which shall have been given to a Responsible Officer of the Trustee by the Issuer or any Guarantor, any other obligor of the Securities or by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Securities, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of such Person's own affairs.

Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

In connection with this Indenture and any Securities issued hereunder, subject to Sections 315(a) through 315(d) of the Trust Indenture Act:

(1) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Issuer or any Guarantor shall be sufficiently evidenced by an Issuer Request or an Issuer Order (in each case, other than delivery of any Security, to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence shall be herein specifically prescribed) may, in the absence of willful misconduct on its part, conclusively rely upon an Officer's Certificate;

(4) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by or pursuant to this Indenture at the request or direction of any of the Holders of Securities of any series pursuant to this Indenture, unless such Holders shall have offered to the Trustee security and/or indemnity reasonably satisfactory to the Trustee against the losses, damages, costs, expenses and liabilities, including reasonable attorneys' fees, costs and expenses and court costs, which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, coupon or other paper or document, but the Trustee, in its sole discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, upon reasonable prior written notice and during normal business hours, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the expense of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee need perform only those duties that are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers. The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture. The permissive right of the Trustee to take the actions permitted by this Indenture shall not be construed as an obligation or duty to do so;

(9) the Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail (PDF only) or other similar unsecured electronic methods, provided, however, that the Issuer and any Guarantor, as applicable, shall provide to the Trustee an incumbency certificate listing designated persons with the authority to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Issuer or any Guarantor elects to give the Trustee e-mail instructions (or instructions by a similar electronic method) and the Trustee in its sole and absolute discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, damages, costs, fees or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or inconsistency with a subsequent written instruction except for the Trustee's negligence or willful misconduct. The Issuer and any Guarantor, as applicable, agree to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including, without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception by third parties;

(10) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(11) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(12) in no event shall the Trustee be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(13) the Trustee may request that the Issuer and any Guarantor deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any person authorized to sign an Officer's Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(14) the Trustee shall not be liable for actions taken, or errors of judgment made, in good faith, unless negligent in ascertaining the pertinent facts; and

(15) under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Securities.

Section 602. Notice of Defaults.

Within 90 days after a Responsible Officer of the Trustee has received written notice of the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit by mail or electronically to all Holders of Securities of such series, notice of such default hereunder actually known to the Trustee, unless such default shall have been cured or waived; *provided*, *however*, that in the case of any default of the character specified in Section 501(3) with respect to Securities of such series, no such notice to Holders shall be given until at least 90 days after the occurrence thereof. Except in the case of a default or Event of Default in payment of principal of, premium, if any, or interest on any Security, or in the payment of any sinking fund installment, the Trustee may withhold such notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interest of the Holders of the Securities. For the purpose of this Section 602, the term "**default**" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series; *provided* that any default that results solely from the taking of an action that would have been permitted but for the continuation of a previous default will be deemed to be cured if such previous default is cured prior to becoming an Event of Default. The Trustee shall not be charged with knowledge of any default or Event of Default under this Indenture or related documents unless a Responsible Officer of the Trustee shall have received written notice of such default or Event of Default by the Issuer or by the Holders of at least twenty-five percent (25%) in aggregate principal amount of the Securities then Outstanding of the affected series, and such notice is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such written notice references the Securities and this Indenture.

Section 603. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, shall be taken as the statements of the Issuer, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder and that the statements made by it in a Statement of Eligibility on Form T-1 supplied to the Issuer are true and accurate, subject to the qualifications set forth therein. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Issuer of the Securities or the proceeds thereof, for any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture, or for the use or application of any money received by any Paying Agent other than

the Trustee. The Trustee shall not be bound to ascertain or inquire as to the performance, observance, or breach of any covenants, conditions, representations, warranties or agreements on the part of the Issuer or any Guarantor but the Trustee may require full information and advice as to the performance of the aforementioned covenants in accordance with the provisions hereof. Under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Securities or any Guarantees. The Trustee shall not be responsible for and makes no representation as to any statement in any prospectus, prospectus supplement or other offering document in connection with the sale of any Securities.

Section 604. May Hold Securities; Transactions with the Issuer or any Guarantor.

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other Person that may be an agent of the Trustee or the Issuer, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 310(b) and 311 of the Trust Indenture Act, may otherwise deal with the Issuer or any Guarantor with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other Person; *provided*, *however*, that if the Trustee acquires any conflicting interest under the Trust Indenture Act relating to any of its duties with respect to the Securities, it must either eliminate such conflict or resign as Trustee upon prior written notice to the Issuer and the Holders, subject to its right under the Trust Indenture Act to seek a stay of its duty to resign.

Section 605. Money Held in Trust.

Except as provided in Section 403 and Section 1003, money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law and shall be held uninvested. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Issuer.

Section 606. Compensation and Reimbursement.

The Issuer and, in the event that the Issuer fails to perform the following obligations and indemnities, any Guarantor, agrees:

(1) to pay to the Trustee from time to time such compensation as agreed in writing for all services rendered by the Trustee (in any capacity) hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) to reimburse the Trustee (acting in any capacity hereunder) upon its request for all out of pocket expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation, expenses and disbursements of its agents and counsel, such as attorneys' fees, costs and expenses), except any such expense, disbursement or advance as shall be determined to have been caused by the Trustee's own negligence or willful misconduct as adjudicated by a final non-appealable decision of a court of competent jurisdiction; and

(3) to indemnify the Trustee (acting in any capacity hereunder), its directors, officers, employees and its agents for, and to hold them harmless against, any loss, claim, cause of action, damage, liability or reasonable cost or expense (including, without limitation, the reasonable fees and disbursements of the Trustee's agents, legal counsel, accountants and experts, and court costs) arising out of or in connection with this Indenture or the acceptance or administration of the trust or trusts hereunder, including the reasonable costs and expenses of defending themselves against any claim (whether asserted by the Issuer, any Guarantor, a Holder or any other Person), or reasonable attorneys' fees, expenses and court costs incurred in connection with any action, claim or suit brought to enforce the Trustee's right to compensation, reimbursement or indemnification, or liability in connection with the exercise or performance of any of their powers or duties hereunder, except to the extent that any such loss, claim, cause of action, damage, liability, cost or expense shall be determined to have been caused by the Trustee's own negligence or willful misconduct as adjudicated by a final non-appealable decision of a court of competent jurisdiction.

The foregoing payment obligations and indemnities shall survive the termination of this Indenture and the resignation or removal of the Trustee.

As security for the performance of the obligations of the Issuer and any Guarantor under this Section 606, the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of, or any premium or interest on or any Additional Amounts with respect to particular Securities.

Without prejudice to any other rights available to the Trustee under applicable law, any compensation or expense incurred by the Trustee after a default specified by Section 501(5), (6) or (7) is intended to constitute an expense of administration under any then applicable bankruptcy or insolvency law. "**Trustee**" for purposes of this Section 606 shall include any predecessor Trustee, but the negligence or willful misconduct of any Trustee shall not affect the rights of any other Trustee under this Section 606. The provisions of this Section 606 shall, to the extent permitted by Applicable Law, survive any termination or expiration of this Indenture (including, without limitation, termination pursuant to any bankruptcy or insolvency laws) and the resignation or removal of the Trustee.

Section 607. Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder that is a Corporation, organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, eligible under Section 310(a)(1) of the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act and that has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least $100,000,000 subject to supervision or examination by federal or state authority. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 607, it shall resign immediately in the manner and with the effect hereinafter specified in this Article Six.

Section 608. Resignation and Removal; Appointment of Successor.

(1) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee pursuant to Section 609.

(2) The Trustee may resign at any time with respect to the Securities of one or more series by giving prior written notice thereof to the Issuer and the Holders. If the instrument of acceptance by a successor Trustee required by Section 609 shall not have been delivered to the Trustee within 30 days after the giving of such written notice of resignation, the resigning Trustee may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(3) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series, delivered to the Trustee and the Issuer. If the instrument of acceptance by a successor Trustee required by Section 609 shall not have been delivered to the Trustee within 30 days after the giving of such written notice of removal, the Trustee being removed may petition, at the expense of the Issuer, any court of competent jurisdiction for the appointment of a successor Trustee with respect to such series.

(4) If at any time:

(a) the Trustee shall fail to comply with the obligations imposed upon it under Section 310(b) of the Trust Indenture Act with respect to Securities of any series after written request therefor by the Issuer or any Holder of a Security of such series who has been a bona fide Holder of a Security of such series for at least six months; or

(b) the Trustee shall cease to be eligible under Section 607 and shall fail to resign after written request therefor by the Issuer or any such Holder; or

(c) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, (i) the Issuer, by or pursuant to a Board Resolution, may remove the Trustee with respect to all Securities or the Securities of such series, or (ii) subject to Section 315(e) of the Trust Indenture Act, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of such bona fide Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities of such series and the appointment of a successor Trustee or Trustees.

(5) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Issuer, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 609. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series delivered to the Issuer and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 609, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Issuer. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Issuer or the Holders of Securities and accepted appointment in the manner required by Section 609, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(6) The Issuer shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series in the manner provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 609. Acceptance of Appointment by Successor.

(1) Upon the appointment hereunder of any successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Issuer and the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties hereunder of the retiring Trustee; but, on the written request of the Issuer or such successor Trustee, such retiring Trustee, upon payment of its charges, shall promptly execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and, subject to Section 1003, shall promptly duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 606.

(2) Upon the appointment hereunder of any successor Trustee with respect to the Securities of one or more (but not all) series, the Issuer, any Guarantor, the retiring Trustee and such successor Trustee shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, such successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust, that each such Trustee shall be trustee of a trust or trusts separate and apart from trust or trusts hereunder administered by any other such Trustee and that no Trustee shall be responsible for any notice given to, or received by, or any act or failure to act on the part of any other Trustee hereunder, and, upon the execution and delivery of such supplemental indenture, the resignation or removal of the retiring Trustee shall become effective to the extent provided therein, such retiring Trustee shall have no further responsibility for the exercise of rights and powers or for the performance of the duties and obligations vested in the Trustee under this Indenture with respect to the Securities of that or those series to which the appointment of such successor Trustee relates other than as

hereinafter expressly set forth, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on written request of the Issuer or such successor Trustee, such retiring Trustee, upon payment of its charges with respect to the Securities of that or those series to which the appointment of such successor relates and subject to Section 1003 shall duly assign, transfer and deliver to such successor Trustee, to the extent contemplated by such supplemental indenture, the property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, subject to its lien, if any, provided for in Section 606.

(3) Upon request of any Person appointed hereunder as a successor Trustee, the Issuer and any Guarantor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (1) or (2) of this Section 609, as the case may be.

(4) No Person shall accept its appointment hereunder as a successor Trustee unless at the time of such acceptance such successor Person shall be qualified under the Trust Indenture Act and eligible under this Article.

Section 610. Merger, Conversion, Consolidation or Succession to Business.

Any Corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder (provided that such Corporation shall otherwise be qualified under the Trust Indenture Act and eligible under this Article Six), without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated but not delivered by the Trustee then in office, any such successor to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities. In case any Securities shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Securities in either its own name or that of its predecessor Trustee.

Section 611. Appointment of Authenticating Agent.

The Trustee may appoint one or more Authenticating Agents acceptable to the Issuer with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of that or those series issued upon original issue, exchange, registration of transfer, partial redemption, partial repayment, partial conversion or exchange for Common Equity or other securities or property, or pursuant to Section 306, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent.

Each Authenticating Agent shall be acceptable to the Issuer and, except as provided in or pursuant to this Indenture, shall at all times be a Corporation that would be permitted by the Trust Indenture Act to act as trustee under an indenture qualified under the Trust Indenture Act, is authorized under applicable law and by its charter to act as an Authenticating Agent and has a combined capital and surplus (computed in accordance with Section 310(a)(2) of the Trust Indenture Act) of at least $100,000,000. If at any time an Authenticating Agent shall cease to

be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in this Section.

Any Corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Corporation succeeding to all or substantially all of the corporate agency or corporate trust business of an Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, *provided* such Corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving 30 days' written notice thereof to the Trustee and the Issuer. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and the Issuer. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and shall give notice of such appointment in the manner provided in Section 106 to all Holders of Registered Securities, if any, of the series with respect to which such Authenticating Agent shall serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 611.

The Issuer agrees to pay each Authenticating Agent from time to time reasonable compensation for its services under this Section 611.

The provisions of Sections 308, 603 and 604 shall be applicable to each Authenticating Agent.

If an Authenticating Agent is appointed with respect to one or more series of Securities pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

[NAME OF AUTHENTICATING AGENT],
as Authenticating Agent

By: Authorized Signatory

Dated:

If all of the Securities of any series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Securities upon original issuance located in a Place of Payment where the Issuer wishes to have Securities of such series authenticated upon original issuance, the Trustee, if so requested in writing (which writing need not be accompanied by or contained in an Officer's Certificate), shall appoint in accordance with this Section an Authenticating Agent having an office in a Place of Payment designated by the Issuer with respect to such series of Securities.

ARTICLE SEVEN.
HOLDERS LISTS AND REPORTS BY TRUSTEE, TRUST AND GUARANTORS

Section 701. Issuer to Furnish Trustee Names and Addresses of Holders.

In accordance with Section 312(a) of the Trust Indenture Act, the Issuer shall furnish or cause to be furnished to the Trustee:

(1) semi-annually with respect to Securities of each series, a list, in each case in such form as the Trustee may reasonably require, of the names and addresses of Holders as of the applicable date; and

(2) at such other times as the Trustee may reasonably request in writing, within 30 days after the receipt by the Issuer of any such request, a list of the names and addresses of Holders as of a date not more than 15 days prior to the time such list is furnished, provided, however, that so long as the Trustee is the Security Registrar no such list shall be required to be furnished pursuant to either clause (1) or clause (2) of this Section 701.

Section 702. Preservation of Information; Communications to Holders.

(1) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 701 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee shall comply with the obligations imposed upon it pursuant to Section 312 of the Trust Indenture Act.

(2) Every Holder of Securities, by receiving and holding the same, agrees with the Issuer, any Guarantor and the Trustee that none of the Issuer, any Guarantor or the Trustee or any agent of any of them shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders of Securities in accordance with the Trust Indenture Act, regardless of the source from which such information was derived.

Section 703. Reports by Trustee.

(1) Within 60 days after May 15 of each year commencing with the first May 15 following the first issuance of Securities pursuant to Section 301, if required by Section 313(a) of the Trust Indenture Act, the Trustee shall transmit, pursuant to Section 313(c) of the Trust Indenture Act, a brief report dated as of such May 15 with respect to any of the events specified in said Section 313(a) which may have occurred since the later of the immediately preceding May 15 and the date of this Indenture.

(2) The Trustee shall transmit the reports required by the Trust Indenture Act, including Sections 313(a), 313(b), 313(c) and 313(d), at the times, in the manner and to the Persons specified therein.

(3) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and the Issuer. The Issuer will promptly notify the Trustee when any Securities are listed on any stock exchange.

Section 704. Reports by the Issuer.

For so long as any Securities are outstanding, if the Issuer is subject to Section 13(a) or 15(d) of the Exchange Act or any successor provision, the Issuer will deliver to the Trustee the annual reports, quarterly reports and other documents which it is required to file with the Commission pursuant to Section 13(a) or 15(d) or any successor provision, within 15 days after the date that the Issuer files the same with the Commission. If the Issuer is not subject to Section 13(a) or 15(d) of the Exchange Act or any successor provision, and for so long as any Securities are outstanding, the Issuer will deliver to the Trustee the quarterly and annual financial statements and accompanying Item 303 of Regulation S-K disclosure ("management's discussion and analysis of financial condition and results of operations") that would be required to be contained in annual reports on Form 10-K and quarterly reports on Form 10-Q, respectively, required to be filed with the Commission if the Issuer was subject to Section 13(a) or 15(d) of the Exchange Act or any successor provision, within 15 days of the filing date that would be applicable to a non-accelerated filer at that time pursuant to applicable Commission rules and regulations.

Reports and other documents filed by the Issuer with the Commission and publicly available via the EDGAR system or on the Issuer's website will be deemed to be delivered to the Trustee as of the time such filing is

publicly available via EDGAR or on the Issuer's website for purposes of this covenant; *provided, however*, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed or publicly available via EDGAR or on the Issuer's website. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including its compliance with any of its covenants relating to the Securities (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

ARTICLE EIGHT.

CONSOLIDATION, MERGER, SALES AND SUBSTITUTION

Section 801. Issuer May Consolidate, Etc., Only on Certain Terms.

Nothing contained in this Indenture or in the Securities shall prevent any consolidation or merger of the Issuer with or into any other Person or Persons (whether or not affiliated with the Issuer), or successive consolidations or mergers in which either the Issuer will be the continuing entity or the Issuer or its successor or successors shall be a party or parties, or shall prevent any sale, assignment, conveyance, transfer or lease of all or substantially all of the property and assets of the Issuer, to any other Person (whether or not affiliated with the Issuer); *provided*, *however*, that the following conditions are met:

(1) the Issuer shall be the continuing entity, or the successor entity (if other than the Issuer) formed by or resulting from such consolidation or merger or which shall have received such sale, assignment, conveyance, transfer or lease of property and assets shall be domiciled in the United States, any state thereof or the District of Columbia and shall expressly assume by supplemental indenture payment of the principal of and interest on all of the Securities and the due and punctual performance and observance of all of the covenants and conditions in this Indenture;

(2) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and

(3) either the Issuer or the successor Person, in either case, shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, assignment, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article Eight and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 802. Guarantor May Consolidate, Etc., Only on Certain Terms.

Nothing contained in this Indenture or in the Securities shall prevent any consolidation or merger of any Guarantor with or into any other Person or Persons (whether or not affiliated with such Guarantor), or successive consolidations or mergers in which such Guarantor will be the continuing entity or such Guarantor or its successor or successors shall be a party or parties, or shall prevent any sale, assignment, conveyance, transfer or lease of all or substantially all of the property and assets of such Guarantor, to any other Person (whether or not affiliated with such Guarantor); *provided*, *however*, that the following conditions are met:

(1) such Guarantor shall be the continuing entity, or the successor entity (if other than such Guarantor) formed by or resulting from any consolidation or merger or which shall have received the sale, assignment, conveyance, transfer or lease of property and assets shall be domiciled in the United States, any state thereof or the District of Columbia and shall expressly assume the obligations of such Guarantor under the applicable Guarantee and the due and punctual performance and observance of all of the covenants and conditions in this Indenture;

(2) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing; and

(3) either such Guarantor or the successor Person, in either case, shall have delivered to the Trustee an Officer's Certificate of such Guarantor and an Opinion of Counsel, each stating that such consolidation, sale, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article Eight and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 803. Successor Person Substituted for Issuer or Guarantor.

If the Issuer or any Guarantor shall, in any transaction or series of related transactions, consolidate with or merge into any Person or sell, assign, transfer, lease or otherwise convey all or substantially all its property and assets to any Person, in each case in accordance with Section 801 or Section 802, as applicable, the successor Person formed by or resulting from such consolidation or merger or to which such sale, assignment, transfer, lease or other conveyance of all or substantially all of the properties and assets of the Issuer or such Guarantor, as applicable, is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer or such Guarantor, as applicable, under this Indenture, with respect to the Outstanding Securities of the applicable series, with the same effect as if such successor Person had been named as the Issuer or Guarantor, as applicable, herein; and thereafter, except in the case of a lease, the predecessor Person shall be released from all obligations and covenants under this Indenture and the applicable Securities.

ARTICLE NINE.

SUPPLEMENTAL INDENTURES

Section 901. Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders of Securities, the Issuer (when authorized by or pursuant to a Board Resolution), any Guarantor, if affected thereby, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto for any of the following purposes:

(1) to evidence the succession of another Person to the Issuer or any Guarantor, if applicable, or successive successions, and the assumption by any such successor of the covenants of the Issuer or any Guarantor, if applicable, contained herein and in the Securities; or

(2) to add to the covenants of the Issuer or any Guarantor for the benefit of the Holders of all or any series of Securities (as shall be specified in such supplemental indenture or indentures) or to surrender any right or power herein conferred upon the Issuer or any Guarantor with respect to all or any series of Securities issued under this Indenture (as shall be specified in such supplemental indenture or indentures); or

(3) to change or eliminate any restrictions on the payment of principal of or any premium or interest on or any Additional Amounts with respect to any Securities or any Guarantee, provided any such action shall not adversely affect the interests of the Holders of Securities of any series; or

(4) to establish the form or terms of Securities of any series as permitted by Sections 201 and 301, including, without limitation, any conversion or exchange provisions applicable to Securities which are convertible into or exchangeable for other securities or property, and any deletions from or additions or changes to this Indenture in connection therewith (provided that any such deletions, additions and changes shall not be applicable to any other series of Securities then Outstanding); or

(5) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 609; or

(6) to cure any ambiguity, defect or inconsistency in the Indenture; or

(7) to make any change necessary to comply with any requirement of the Commission in connection with the Indenture under the Trust Indenture Act; or

(8) to add any additional Events of Default for the benefit of the Holders with respect to all or any series of Securities (as shall be specified in such supplemental indenture) (and if such additional Events of Default are to be for the benefit of less than all of the Securities, stating that such additional Events of Default are expressly being included solely for the benefit of such series); or

(9) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance, Covenant Defeasance and/or satisfaction and discharge of any series of Securities pursuant to Article Four, provided that any such action shall not adversely affect the interests of any Holder of a Security of such series or any other Security in any material respect; or

(10) to add one or more Guarantees for the benefit of Holders of all or any series of Securities, to secure the Securities or to confirm and evidence the release, termination or discharge of any Guarantee or lien securing the Securities which such release, termination or discharge is permitted by this Indenture; or

(11) to amend or supplement any provision contained herein or in any supplemental indenture or in any Securities (which amendment or supplement may apply to one or more series of Securities or to one or more Securities within any series as specified in such supplemental indenture or indentures), provided that such amendment or supplement (A) does not (i) apply to any Outstanding Security issued prior to the date of such supplemental indenture and entitled to the benefits of such provision or (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no Security described in clause (A)(i) Outstanding; or

(12) in the case of any series of Securities which are convertible into or exchangeable for Common Equity or other securities or property, to safeguard or provide for the conversion or exchange rights, as the case may be, of such Securities in the event of any reclassification or change of outstanding shares of Common Equity or any merger, consolidation, statutory share exchange or combination of the Issuer with or into another Person or any sale, lease, assignment, transfer, disposition or other conveyance of all or substantially all of the assets of the Issuer to any other Person or other similar transactions, if expressly required by the terms of such series of Securities established pursuant to Section 301; or

(13) to conform the terms of the Indenture or the Securities of a series, as applicable, to the description thereof contained in any prospectus, prospectus supplement or other offering document relating to the offer and sale of such Securities; or

(14) subject to any limitations established pursuant to Section 301, to provide for the issuance of additional Securities of any series; or

(15) to comply with the rules of any applicable Depository; or

(16) to make any change that would provide any additional rights or benefits to the Holders or that does not adversely affect the legal rights under this Indenture of any Holder in any material respect;

(17) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in uncertificated form; or

(18) to add a co-issuer or co-obligor of the Securities; or

(19) to comply with the rules or regulations of any securities exchange or automated quotation system on which any of the Securities may be listed or traded.

Section 902. Supplemental Indentures with Consent of Holders.

With the consent of the Holders of a majority in aggregate principal amount of the Outstanding Securities of each series affected by such supplemental indenture (voting as separate classes) by Act of said Holders delivered to the Issuer and the Trustee, the Issuer (when authorized by or pursuant to a Board Resolution), any Guarantor, if affected thereby, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of the Securities of such series or of any Guarantee or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; *provided,* that no such supplemental indenture, without the consent of the Holder of each Outstanding Security affected thereby, shall:

(1) change the Stated Maturity of the principal of, or premium, if any, or any installment of interest, if any, on, or any Additional Amounts, if any, with respect to, any Security, or reduce the principal amount thereof or the premium, if any, thereon or the rate (or modify the calculation of such rate) of interest thereon, or reduce the amount payable upon redemption thereof at the option of the Issuer or repayment or repurchase thereof at the option of the Holder, or reduce any Additional Amounts payable with respect to any Security or any Guarantee, or change the obligation of the Issuer to pay Additional Amounts pursuant to Section 1004 (except as contemplated by Section 801(1) and permitted by Section 901(1)) or the obligation of any Guarantor to pay Additional Amounts under any Guarantee, or reduce the amount of the principal of any Original Issue Discount Security that would be due and payable upon acceleration of the Maturity thereof pursuant to Section 502 or the amount thereof provable in bankruptcy pursuant to Section 504, or adversely affect the right of repayment or repurchase at the option of any Holder as contemplated by Article Thirteen, or change the Place of Payment where or the Currency in which the principal of, any premium or interest on, or any Additional Amounts with respect to any Security or any Guarantee is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date or, in the case of repayment or repurchase pursuant to Article Thirteen at the option of the Holder, on or after the date for repayment or repurchase) in each case as such Stated Maturity, Redemption Date or date for repayment or repurchase may, if applicable, be extended in accordance with the terms of such Security, or in the case of any Security which is convertible into or exchangeable for shares of Common Equity or other securities or property, impair the right to institute suit to enforce the right to convert or exchange such Security in accordance with its terms, or release a Guarantor from any of its obligations under a Guarantee except as permitted under this Indenture; or

(2) reduce the percentage in aggregate principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in Section 513 or 1006 of this Indenture, or reduce the requirements of Section 1504 for quorum or voting, or

(3) modify any of the provisions of this Section 902, Section 513 or Section 1006 except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby;

(4) make any change that adversely affects the right, if any, to convert or exchange any Security for shares of Common Equity or other securities or property in accordance with its terms; or

(5) change the ranking of any Security.

Other than as set forth above, a supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which shall have been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

Anything in this Indenture to the contrary notwithstanding, if more than one series of Securities is Outstanding, the Issuer and any Guarantor shall be entitled to enter into a supplemental indenture under this Section

902 with respect to any one or more series of Outstanding Securities without entering into a supplemental indenture with respect to any other series of Outstanding Securities.

It shall not be necessary for any Act of Holders of Securities under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 903. Execution of Supplemental Indentures.

As a condition to executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article Nine or the modifications thereby of the trust created by this Indenture, the Trustee shall receive, and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel of each of the Issuer and any Guarantor to the effect that the execution of such supplemental indenture is authorized or permitted by this Indenture and that such supplemental indenture has been duly authorized, executed and delivered by, and is a legal, valid and binding obligation of, each of the Issuer and any Guarantor, respectively, enforceable against it in accordance with its terms, subject to customary exceptions. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Upon an Issuer Request, accompanied by the Officer's Certificates and Opinions of Counsel provided for in Section 102 and this Section 903, and, if applicable, upon the filing with the Trustee of evidence of the consent of Holders as aforesaid or as required in this Indenture, the Trustee shall join with the other parties thereto in the execution of a supplemental indenture, subject to the protection afforded to the Trustee by the last sentence of the first paragraph of this Section 903.

Section 904. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of a Security theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 905. Reference in Securities to Supplemental Indentures.

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article Nine may bear a notation as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Securities of any series so modified as to conform, in the opinion of the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee, upon Issuer Order, in exchange for Outstanding Securities of such series. Failure to make the appropriate notation or to issue new Securities shall not affect the validity of such supplemental indenture.

Section 906. Conformity with Trust Indenture Act.

Unless the Issuer shall determine, based on an Opinion of Counsel delivered to the Trustee, that the same shall not be required, every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

ARTICLE TEN.

COVENANTS

Section 1001. Payment of Principal, Premium, Interest and Additional Amounts.

The Issuer covenants and agrees that it will duly and punctually pay or cause to be paid when due the principal of (including the Redemption Price upon redemption pursuant to Article Eleven hereof), and premium, if

any, and interest on each of the Securities at the places, at the respective times and in the manner provided herein and in the Securities; *provided*, that the Issuer or Paying Agent may withhold from payments of interest and upon redemption pursuant to Article Three hereof, Maturity or otherwise, any amounts the Issuer or Paying Agent is required to withhold by law.

Section 1002. Maintenance of Office or Agency.

The Issuer will maintain an office or agency, where the Securities may be surrendered for registration of transfer or exchange or for presentation for payment or redemption and where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be served. As of the date of this Indenture, such office shall be the Corporate Trust Office and, at any other time, at such other address as the Trustee may designate from time to time by notice to the Issuer. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Issuer may also from time to time designate co-registrars and one or more offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby initially designates the Trustee as Paying Agent, Security Registrar and Transfer Agent, and the Corporate Trust Office shall be considered as one such office or agency of the Issuer for each of the aforesaid purposes.

So long as the Trustee is the Security Registrar, the Trustee agrees to send, or cause to be sent, the notices set forth in Section 608(6) hereof. If co-registrars have been appointed in accordance with this Section 1002, the Trustee shall send such notices only to the Issuer and the Holders of Securities it can identify from its records.

Section 1003. Provisions as to Paying Agent.

(1) If the Issuer shall appoint a Paying Agent other than the Trustee, or if the Trustee shall appoint such a Paying Agent, the Issuer will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 1003: (a) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest on the Securities (whether such sums have been paid to it by the Issuer or by any other obligor on the Securities) in trust for the benefit of the Holders of the Securities; (b) that it will give the Trustee written notice of any failure by the Issuer (or by any other obligor on the Securities) to make any payment of the principal of and premium, if any, or interest on the Securities when the same shall be due and payable; and (c) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Issuer shall, on or before each due date of the principal of, premium, if any, or interest on the Securities, deposit with the Paying Agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal, premium, if any, or interest and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of any failure to take such action; provided, that if such deposit is made on the due date, such deposit shall be received by the Paying Agent by 11:00 a.m. New York City time, on such date.

(2) If the Issuer shall act as its own Paying Agent, it will, on or before each due date of the principal of, premium, if any, or interest on the Securities, set aside, segregate and hold in trust for the benefit of the Holders of the Securities a sum sufficient to pay such principal, premium, if any, and interest so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Issuer (or any other obligor under the Securities) to make any payment of the principal of, premium, if any, or interest on the Securities when the same shall become due and payable.

(3) Anything in this Section 1003 to the contrary notwithstanding, the Issuer may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Issuer or any Paying Agent hereunder as required by this Section 1003, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Issuer or any Paying Agent to the Trustee, the Issuer or such Paying Agent shall be released from all further liability with respect to such sums.

The Trustee shall not be responsible for the actions of any other Paying Agents (including the Issuer if acting as its own Paying Agent) and shall have no control of any funds held by such other Paying Agents.

Subject to applicable escheatment laws, any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Issuer on Issuer Request, or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease.

Section 1004. Additional Amounts.

In the event that the Issuer is required to make the payment of Additional Amounts to Holders of Securities pursuant to this Indenture, the Issuer will provide written notice ("**Additional Amounts Notice**") to the Trustee of its obligation to pay Additional Amounts no later than fifteen (15) calendar days prior to the proposed payment date for Additional Amounts, and the Additional Amount Notice shall set forth the amount of Additional Amounts to be paid by the Issuer on such payment date. The Trustee shall not at any time be under any duty or responsibility to any Holder of Securities to determine the Additional Amounts, or with respect to the nature, extent or calculation of the amount of Additional Amounts when made, or with respect to the method employed in such calculation of the Additional Amounts.

Section 1005. Corporate Existence.

Subject to Article Eight, each of the Issuer and any Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its (i) existence, and (ii) rights (by charter and statutory) and franchises; *provided*, that neither the Issuer nor any Guarantor shall be required to preserve any such right or franchise if the Board of Directors (or any duly authorized committee of that Board of Directors), as applicable, shall determine that the preservation of the right or franchise is no longer desirable in the conduct of the business of the Issuer or any Guarantor, as applicable.

Section 1006. Waiver of Certain Covenants.

The Issuer and any Guarantor may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1005(ii) and 704 with respect to the Securities of any series and, if expressly provided pursuant to Section 301(16), any additional covenants applicable to the Securities of such series if, before the time for such compliance, the Holders of a majority in aggregate principal amount of the Outstanding Securities of such series, by Act of such Holders, either shall waive such compliance in such instance or generally shall have waived compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Issuer and any Guarantor, as applicable and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 1007. Issuer and Guarantor Statement as to Compliance.

Within one hundred twenty (120) calendar days after the end of each fiscal year of the Issuer, the Issuer and, if applicable, any Guarantor, shall deliver to the Trustee an Officer's Certificate (that need not comply with Section 102) signed by any of the principal executive officer, principal financial officer or principal accounting

officer of the Issuer and such Guarantor, stating whether or not the signer has knowledge of any default or Event of Default under this Indenture, and, if so, specifying each default or Event of Default and the nature and the status thereof, and further stating what action the Issuer has taken, is taking or proposes to take with respect thereto.

The Issuer will deliver to the Trustee, within thirty (30) calendar days of becoming aware of (i) any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, or (ii) any Event of Default, an Officer's Certificate specifying with particularity such default or Event of Default and further stating what action the Issuer has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 1007 shall be delivered to a Responsible Officer of the Trustee at its Corporate Trust Office.

Section 1008. Calculation of Original Issue Discount.

So long as there is any Outstanding Original Issue Discount Security, the Issuer shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Securities as of the end of such year and (ii) such other specific information relating to such original issue discount as may then be relevant under the Internal Revenue Code of 1986, as amended from time to time.

Section 1009. Maintenance of Properties.

The Issuer will cause all of its material Properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order, normal wear and tear, casualty and condemnation excepted, and supplied with all necessary equipment, all as in the judgment of the Issuer may be necessary so that the business carried on in connection with these Properties may be properly conducted in all material respects at all times; *provided*, *however*, that nothing in this Section 1009 shall prevent the Issuer or any of its Subsidiaries from (1) removing permanently any Property that has been condemned or suffered a casualty loss, if it is in the best interests of the Issuer, (2) discontinuing maintenance or operation of any Property if, in the judgment of the Issuer, doing so is in the best interests of the Issuer and is not disadvantageous in any material respect to the holders of the Securities, or (3) selling or otherwise disposing of any Properties for value in the ordinary course of business.

Section 1010. Insurance.

The Issuer will, and will cause each of its Subsidiaries to, keep in force insurance policies on each of its insurable Properties, issued by responsible companies in such amounts and covering all such risks as is reasonable as determined by the Issuer in accordance with prevailing market conditions and availability.

Section 1011. Payment of Taxes and Other Claims.

The Issuer will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all material taxes, assessments and governmental charges levied or imposed upon it or any Subsidiary or upon the income, profits or property of the Issuer or any Subsidiary, and (2) all material lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material lien upon the property of the Issuer or any Subsidiary; *provided*, *however*, that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith.

Section 1012. Limitations on Incurrence of Debt.

(1) Aggregate Debt Test. The Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt if, immediately after giving effect to the incurrence of such Debt and any other Debt incurred or repaid since the end of the most recent Reporting Date prior to the incurrence of such Debt and the application of the proceeds from such Debt and such other Debt on a pro forma basis, the aggregate principal amount of the Issuer's

Debt would exceed 65% of the sum of the following (without duplication): (1) the Issuer's Total Assets as of such Reporting Date; (2) the aggregate purchase price of any assets acquired, and the aggregate amount of proceeds received from any incurrence of other Debt and any securities offering proceeds received (to the extent such proceeds were not used to acquire assets or used to reduce Debt), by the Issuer or any of its Subsidiaries since the end of the most recent Reporting Date prior to the incurrence of such Debt; and (3) the proceeds or assets obtained from the incurrence of such Debt and other securities issued as part of the same transaction on a pro forma basis (including assets to be acquired in exchange for debt assumption and security issuance as in the case of a merger).

(2) Secured Debt Test. The Issuer will not, and will not permit any of its Subsidiaries to, incur any Secured Debt if, immediately after giving effect to the incurrence of such Secured Debt and any other Secured Debt incurred or repaid since the end of the most recent Reporting Date prior to the incurrence of such Secured Debt and the application of the proceeds from such Secured Debt and such other Secured Debt on a pro forma basis, the aggregate principal amount of the Issuer's Secured Debt would exceed forty percent (40%) of the sum of the following (without duplication): (1) the Issuer's Total Assets as of such Reporting Date; (2) the aggregate purchase price of any assets acquired, and the aggregate amount of proceeds received from any incurrence of other Debt and any securities offering proceeds received (to the extent such proceeds were not used to acquire assets or used to reduce Debt), by the Issuer or any of its Subsidiaries since the end of the most recent Reporting Date prior to the incurrence of such Debt; and (3) the proceeds or assets obtained from the incurrence of such Secured Debt and other securities issued as part of the same transaction on a pro forma basis (including assets to be acquired in exchange for debt assumption and security issuance as in the case of a merger).

(3) Debt Service Test. The Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt if, immediately after giving effect to the incurrence of such Debt and the application of the proceeds from such Debt on a pro forma basis, the ratio of EBITDA to Interest Expense for the four (4) consecutive fiscal quarters ended on the most recent Reporting Date prior to the incurrence of such Debt would be less than 1.50 to 1.00, and calculated on the following assumptions (without duplication): (1) such Debt and any other Debt incurred since such Reporting Date and outstanding on the date of determination had been incurred, and the application of the proceeds from such Debt (including to repay or retire other Debt) had occurred, on the first day of such four-quarter period; (2) the repayment or retirement of any other Debt since such Reporting Date had occurred on the first day of such four-quarter period; and (3) in the case of any acquisition or disposition by the Issuer or any of its Subsidiaries of any asset or group of assets since such Reporting Date, whether by merger, stock purchase or sale or asset purchase or sale or otherwise, such acquisition or disposition had occurred as of the first day of such four-quarter period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation. If any Debt incurred during the period from such Reporting Date to the date of determination bears interest at a floating rate, then, for purposes of calculating the Interest Expense, the interest rate on such Debt will be computed on a pro forma basis as if the average daily rate during such interim period had been the applicable rate for entire relevant four-quarter period. For purposes of the foregoing, Debt will be deemed to be incurred by a Person whenever such Person creates, assumes, guarantees or otherwise becomes liable in respect thereof.

(4) Maintenance of Total Unencumbered Assets. As of each Reporting Date, the Issuer's Unencumbered Assets will not be less than 125% of the Issuer's Unsecured Debt.

ARTICLE ELEVEN.

REDEMPTION OF SECURITIES

Section 1101. Applicability of Article.

Redemption of Securities of any series at the option of the Issuer as permitted or required by the terms of such Securities shall be made in accordance with the terms of such Securities and (except as otherwise provided herein or pursuant hereto) this Article.

Section 1102. Election to Redeem; Notice to Trustee.

The election of the Issuer to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Issuer of all of the Outstanding Securities of any series, the Issuer

shall, not less than 10 and not more than 60 days prior to the Redemption Date fixed by the Issuer (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed and, in the event that the Issuer shall determine that the Securities of any series to be redeemed shall be selected from Securities of such series having the same issue date, interest rate or interest rate formula, Stated Maturity and other terms (the "**Equivalent Terms**"), the Issuer shall notify the Trustee of such Equivalent Terms.

If less than all of the Securities of any series are to be redeemed or if less than all of the Securities of any series with Equivalent Terms are to be redeemed, the Issuer shall, at least five (5) Business Days prior to giving notice of redemption to the Holders (unless a shorter notice shall be satisfactory to the Trustee and agreed upon in writing by the Trustee), notify the Trustee of such Redemption Date, the principal amount of Securities of such series to be redeemed and, if applicable, the Equivalent Terms.

In the case of any redemption of Securities (A) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture or (B) pursuant to an election of the Issuer which is subject to a condition specified in the terms of such Securities or elsewhere in this Indenture, the Issuer shall furnish to the Trustee an Officer's Certificate and Opinion of Counsel evidencing compliance with such restriction or condition.

Section 1103. Selection by Trustee of Securities to be Redeemed.

If less than all of the Securities of any series are to be redeemed or if less than all of the Securities of any series with Equivalent Terms are to be redeemed, the particular Securities to be redeemed shall be selected in accordance with the applicable procedures of the Depository, and which may provide for the selection for redemption of portions of the principal amount of Registered Securities of such series; *provided*, *however*, that no such partial redemption shall reduce the portion of the principal amount of a Security of such series not redeemed to less than the minimum denomination for a Security of such series established herein or pursuant hereto; *provided* that if the Securities of such series are represented by one or more global Securities, interests in such global Securities shall be selected for redemption by the Depository in accordance with its standard procedures therefor.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal of such Securities which has been or is to be redeemed.

Unless otherwise specified in or pursuant to this Indenture or the Securities of any series, if any Security selected for partial redemption is converted or exchanged for Common Equity or other securities or property in part before termination of the conversion or exchange right with respect to the portion of the Security so selected, the converted or exchanged portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted or exchanged during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

Section 1104. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 106, not less than 10 nor more than 60 days prior to the Redemption Date, unless a shorter period is specified in the Securities to be redeemed, to the Holders of Securities to be redeemed. Failure to give notice in the manner herein provided to the Holder of any Registered Securities designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other Securities or portions thereof.

Any notice that is sent to the Holder of any Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not such Holder receives the notice.

All notices of redemption shall state:

(1) the Redemption Date;

(2) the Redemption Price, or if not then ascertainable, the manner of calculation thereof;

(3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed;

(4) that, in case any Security is to be redeemed in part only, on and after the Redemption Date, upon surrender of such Security, the Holder of such Security will receive, without charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed;

(5) that, on the Redemption Date, the Redemption Price shall become due and payable upon each such Security or portion thereof to be redeemed, together (if applicable) with accrued and unpaid interest, if any, thereon (subject, if applicable, to the proviso to the first paragraph of Section 1106), and, if applicable, that interest thereon shall cease to accrue on and after said date;

(6) the place or places where such Securities, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and any accrued interest and Additional Amounts pertaining thereto;

(7) that the redemption is for a sinking fund, if such is the case;

(8) in the case of Securities of any series that are convertible or exchangeable into shares of Common Equity or other securities or property, the then current conversion or exchange price or rate, the date or dates on which the right to convert or exchange the principal of the Securities of such series to be redeemed will commence or terminate, as applicable, and the place or places where and the Persons to whom such Securities may be surrendered for conversion or exchange;

(9) the CUSIP number, Common Code or ISIN number of such Securities, if any (or any other numbers used by a Depository to identify such Securities); and

(10) if the Redemption Price or any portion thereof shall be payable, at the option of the Issuer or any Holders, in shares of Common Equity, cash or in other securities or property (or a combination thereof), a statement as to whether the Issuer has elected to pay the Redemption Price in shares of Common Equity, cash or in other securities or property (or a combination thereof) and, if applicable, the portion of the Redemption Price that is to be paid in shares of Common Equity, cash or in other securities or property.

Notice of redemption of Securities to be redeemed at the election of the Issuer shall be given by the Issuer or, at the Issuer's request with five (5) Business Days prior written notice (or such shorter notice as shall be acceptable to the Trustee), by the Trustee in the name and at the expense of the Issuer, which request shall set forth the information to be contained in such notice of redemption.

Section 1105. Deposit of Redemption Price.

At or prior to 11:00 am (local time in New York City) on any Redemption Date, the Issuer shall deposit, with respect to the Securities of any series called for redemption pursuant to Section 1104, with the Trustee or with a Paying Agent (or, if the Issuer, any Guarantor or any Affiliate of the Issuer or any Guarantor is acting as Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money in the applicable Currency sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date, unless otherwise specified pursuant to Section 301 for or in the Securities of such series) any accrued interest on and Additional Amounts with respect to, all such Securities or portions thereof which are to be redeemed on that date.

Section 1106. Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, together with (unless otherwise provided with respect to the Securities of such series pursuant to Section 301) accrued and unpaid interest,

if any, thereon and from and after such date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest, if any) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Issuer at the Redemption Price, together with, unless otherwise provided in or pursuant to this Indenture, any accrued and unpaid interest thereon and Additional Amounts with respect thereto to but excluding the Redemption Date; *provided*, *however*, except as otherwise specified in or pursuant to this Indenture or the Registered Securities of such series, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the Regular Record Dates therefor according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid, or funds set aside for payment, on the Redemption Date, the principal and any premium, until paid, shall bear interest from the Redemption Date at the rate prescribed therefor in the Security or, if no rate is prescribed therefor in the Security, at the rate of interest, if any, borne by such Security.

Section 1107. Securities Redeemed in Part.

Any Registered Security which is to be redeemed only in part shall be surrendered at any Office or Agency for such Security (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver, upon Issuer Order, to the Holder of such Security without service charge, a new Registered Security or Securities of the same series, containing identical terms and provisions, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a temporary or permanent Security in global form is redeemed in part but not so surrendered, the outstanding principal amount thereof shall be decreased in accordance with the procedures of the Depositary. If a temporary or permanent Security in global form is so surrendered, such new Security so issued shall be a new temporary global Security or permanent global Security, respectively. However, if less than all of the Securities of any single series with different issue dates, interest rates and stated maturities are to be redeemed, the Issuer in its sole discretion shall select the particular Securities to be redeemed and shall notify the Trustee in writing thereof at least 10 days prior to the relevant redemption date.

ARTICLE TWELVE.

SINKING FUNDS

Section 1201. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series, except as otherwise permitted or required in or pursuant to this Indenture or any Security of such series issued pursuant to this Indenture.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Securities of such series is herein referred to as an "**optional sinking fund payment**." If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series and this Indenture.

Section 1202. Satisfaction of Sinking Fund Payments with Securities.

The Issuer may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any series to be made pursuant to the terms of such Securities (1) deliver Outstanding Securities of such series (other than any of such Securities previously called for redemption or any of such Securities in respect of which cash shall have been released to the Issuer), and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Issuer pursuant to the terms of such series of Securities or through the application of

permitted optional sinking fund payments pursuant to the terms of such Securities, *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities of any series in lieu of cash payments pursuant to this Section 1202, the principal amount of Securities of such series to be redeemed in order to exhaust the aforesaid cash payment shall be less than $100,000, the Trustee need not call Securities of such series for redemption, except upon Issuer Request, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, *provided*, *however*, that the Trustee or such Paying Agent shall at the written request of the Issuer from time to time pay over and deliver to the Issuer any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Issuer to the Trustee of Securities of that series purchased by the Issuer having an unpaid principal amount equal to the cash payment requested to be released to the Issuer.

Section 1203. Redemption of Securities for Sinking Fund.

Not less than 75 days prior to each sinking fund payment date for any series of Securities, the Issuer shall deliver to the Trustee an Officer's Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that series pursuant to Section 1202, the basis for such credit and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so credited and not theretofore delivered. If such Officer's Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Issuer shall thereupon be obligated to pay the amount therein specified. Not less than 60 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Issuer in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN.

REPAYMENT AT THE OPTION OF HOLDERS

Section 1301. Applicability of Article.

Securities of any series which are repayable at the option of the Holders thereof before their Stated Maturity shall be repaid in accordance with the terms of the Securities of such series. The repayment of any principal amount of Securities pursuant to such option of the Holder to require repayment of Securities before their Stated Maturity, for purposes of Section 309, shall not operate as a payment, redemption or satisfaction of the indebtedness represented by such Securities unless and until the Issuer, at its option, shall deliver or surrender the same to the Trustee with a direction that such Securities be cancelled. If specified with respect to the Securities of a series as contemplated by Section 301, in connection with any repayment of Securities, the Issuer may arrange for the purchase of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Holders of such Securities on or before the applicable repayment date an amount not less than the repayment price payable by the Issuer on repayment of such Securities, and the obligation of the Issuer to pay the repayment price of such Securities shall be satisfied and discharged to the extent such payment is so paid by such purchasers.

Unless otherwise expressly stated in this Indenture or pursuant to Section 301 with respect to the Securities of any series or unless the context otherwise requires, all references in this Indenture to the repayment of Securities at the option of the Holders thereof (and all references of like import) shall be deemed to include a reference to the repurchase of Securities at the option of the Holders thereof.

ARTICLE FOURTEEN.
SECURITIES IN FOREIGN CURRENCIES

Section 1401. Applicability of Article.

Whenever this Indenture provides for (i) any action by, or the determination of any of the rights of, Holders of Securities of any series in which not all of such Securities are denominated in the same Currency or (ii) any distribution to Holders of Securities of any series in which not all of such Securities are denominated in the same Currency, in the absence of any provision to the contrary in or pursuant to this Indenture or the Securities of such series and in accordance with the Depository's procedures, any amount in respect of any Security denominated in a Currency other than Dollars shall be treated for any such action, determination or distribution as that amount of Dollars that could be obtained for such amount on such reasonable basis of exchange and as of the record date with respect to Registered Securities of such series (if any) for such action, determination or distribution (or, if there shall be no applicable record date, such other date reasonably proximate to the date of such distribution) as the Issuer may specify in a written notice to the Trustee or, in the absence of such written notice, as the Trustee may determine.

Section 1402. Monies of Different Currencies to be Segregated.

The Trustee shall segregate monies, funds and accounts held by the Trustee hereunder in one currency from any monies, funds or accounts in any other currencies, notwithstanding any provision herein which would otherwise permit the Trustee to commingle such accounts.

ARTICLE FIFTEEN.

MEETINGS OF HOLDERS OF SECURITIES

Section 1501. Purposes for Which Meetings May Be Called.

A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

Section 1502. Call, Notice and Place of Meetings.

(1) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1501, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 20 nor more than 180 days prior to the date fixed for the meeting.

(2) In case at any time the Issuer (by or pursuant to a Board Resolution), or the Holders of at least 25% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1501, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 20 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (1) of this Section.

Section 1503. Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Issuer and its counsel.

Section 1504. Quorum; Action.

The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting or duly reconvened meeting of Holders of Securities of such series; *provided*, *however*, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than a specified percentage in principal amount of the Outstanding Securities of a series, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at the reconvening of any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days; at the reconvening of any meeting adjourned or further adjourned for lack of a quorum, the persons entitled to vote 25% in aggregate principal amount of the then Outstanding Securities shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1502(1), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities represented at such meeting; *provided*, *however*, that, except as limited by the proviso to Section 902, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the related coupons, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 1504, if any action is to be taken at a meeting of Holders of Securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all Outstanding Securities affected thereby, or of the Holders of such series and one or more additional series:

(i) there shall be no minimum quorum requirement for such meeting; and

(ii) the principal amount of the Outstanding Securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under this Indenture.

Section 1505. Determination of Voting Rights; Conduct and Adjournment of Meetings.

(1) Notwithstanding any provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of a series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the Person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written

instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(2) The Trustee shall, by an instrument in writing appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Securities as provided in Section 1502(2), in which case the Issuer or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(3) At any meeting each Holder of a Security of such series or proxy shall be entitled to one vote for each $1,000 principal amount of the Outstanding Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(4) Any meeting of Holders of Securities of any series duly called pursuant to Section 1502 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting, and the meeting may be held as so adjourned without further notice.

Section 1506. Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any Series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the fact, setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1502 and, if applicable, Section 1504. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE SIXTEEN.

GUARANTEE OF SECURITIES

Section 1601. Guarantee.

(1) Each Person who may become a “Guarantor” with respect to any series of Securities to which this Article Sixteen is made applicable, irrevocably and unconditionally guarantees (the “Guarantee”) to each Holder of a Security of such series authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Securities of such series, the obligations of the Issuer under this Indenture or the Securities of such series or irrespective of restrictions of any kind on the Issuer’s performance of its obligations under the Securities, and waiving all rights of objection and defense arising from the Securities, that: (i) the principal of and premium, if any, and interest on the Securities of such series will be paid in full when due, whether at the Stated Maturity or Interest Payment Date, by acceleration, call for redemption, or otherwise; (ii) all other obligations of the Issuer to the Holders of such series or the Trustee under this Indenture or the Securities of such series will be promptly paid in full, all in accordance with the terms of this Indenture and the Securities of such series; and (iii) in case of any extension of time of payment or renewal of

any Securities of such series or any of such other obligations thereunder, they will be paid in full when due in accordance with the terms of the extension or renewal, whether at the Stated Maturity or Interest Payment Date, by acceleration, call for redemption, or otherwise. Failing payment when due of any amount so guaranteed for whatever reason, each Guarantor shall be obligated to pay the same before failure so to pay becomes an Event of Default with respect to Securities of any series. If the Issuer defaults in the payment of the principal of or premium, if any, or interest on the Securities of a series so guaranteed when and as the same shall become due, whether at the Stated Maturity or Interest Payment Date, by acceleration, call for redemption, or otherwise, without the necessity of action by the Trustee or any Holder, each Guarantor with respect to such series shall be required to promptly make such payment in full. The obligations of all Guarantors under this Article Sixteen shall be joint and several.

(2) Each Guarantor agrees with respect to Securities of any series that its obligations with regard to this Guarantee shall be as principal and not merely as surety and shall be full, irrevocable and unconditional, irrespective of the validity, regularity or enforceability of the Securities of such series or this Indenture, the absence of any action to enforce the same, any delays in obtaining or realizing upon or failures to obtain or realize upon collateral, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor. Each Guarantor with respect to Securities of any series hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer or right to require the prior disposition of the assets of the Issuer to meet its obligations, protest, notice and all demands whatsoever and covenants that this Guarantee will not be discharged except by complete performance of all obligations contained in the Securities of such series and this Indenture as it relates to such series of Securities. Each Guarantee is a guaranty of payment and not of collection. The obligations of any Guarantor under this Guarantee will constitute direct, unsecured and unsubordinated obligations of such Guarantor and any Guarantor undertakes that its obligations hereunder will rank pari passu with all other present or future direct, unsecured and unsubordinated obligations of the Guarantor, save for such obligations as may be mandatorily preferred by law.

(3) Any such Guarantee will be a guarantee of payment and not merely of collection and it shall continue in full force and effect by way of continuing security until all principal, premium, if any, and interest, if any, (including any Additional Amounts required to be paid in accordance with the terms and conditions of the series of Securities so guaranteed) have been paid in full and all other actual or contingent obligations of the Issuer in relation to the series of Securities so guaranteed or under the Indenture have been satisfied in full. Notwithstanding the foregoing, if any payment received by any Holder is, on the subsequent bankruptcy or insolvency of the Issuer, avoided under any applicable laws, including, among others, laws relating to bankruptcy or insolvency, such payment will not be considered as having discharged or diminished the liability of any Guarantor and any such Guarantee will continue to apply as if such payment had at all times remained owing by the Issuer.

(4) If any Holder of Securities of a series or the Trustee is required by any court or otherwise to return to any of the Issuer or a Guarantor with respect to Securities of that series, or any custodian, trustee, or similar official acting in relation to any of the Issuer or a Guarantor, any amount paid by any of the Issuer or a Guarantor to the Trustee or such Holder with respect to Securities of that series, the Guarantee with respect to Securities of that series, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders of Securities of a series in respect of any obligations guaranteed hereby until payment in full of all obligations of Securities of such series. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (i) the maturity of the obligations guaranteed hereby may be accelerated as provided in Section 502 for the purposes of a Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration as to the Issuer of the obligations so guaranteed, and (ii) in the event of any declaration of acceleration of those obligations as provided in Section 502, those obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors with respect to Securities of a series for purposes of the Guarantee.

(5) Each Guarantor and by its acceptance of a Security issued hereunder each Holder hereby confirms that it is the intention of all such parties that the Guarantee by each Guarantor set forth in Section 1601(1) not constitute a fraudulent transfer or conveyance for purpose of any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar Federal or state law. To effectuate the

foregoing intention, the Holders and all Guarantors hereby irrevocably agree that the obligations of each of the Guarantors under the Guarantee set forth in Section 1601(1) shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor, and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to the next succeeding sentence, result in the obligations of such Guarantor under such Guarantee not constituting such a fraudulent transfer or conveyance. Each Guarantor that makes any payment or distribution under Section 1601(1) shall be entitled to a contribution from each other Guarantor equal to its Pro Rata Portion of such payment or distribution. For purposes of the foregoing, the "Pro Rata Portion" of any Guarantor means the percentage of net assets of all Guarantors held by such Guarantor, determined in accordance with GAAP.

(6) It is the intention of the parties that the obligations of the Guarantors shall be in, but not in excess of, the maximum amount permitted by applicable law. Accordingly, if the obligations in respect of the Guarantee would be annulled, avoided or subordinated to the creditors of any Guarantor by a court of competent jurisdiction in a proceeding actually pending before such court as a result of a determination both that such Guarantee was made without fair consideration and, immediately after giving effect thereto, such Guarantor was insolvent or unable to pay its debts as they mature or left with an unreasonably small capital, then the obligations of such Guarantor under such Guarantee shall be reduced by such court if and to the extent such reduction would result in the avoidance of such annulment, avoidance or subordination; provided, however, that any reduction pursuant to this paragraph shall be made in the smallest amount as is strictly necessary to reach such result. For purposes of this paragraph, "fair consideration," "insolvency," "unable to pay its debts as they mature," "unreasonably small capital" and the effective times of reductions, if any, required by this paragraph shall be determined in accordance with applicable law.

(7) If the obligations of any Guarantor are reduced pursuant to Section 1601(5) or 1601(6) above, such reduction shall be applied proportionately with respect to all Securities (of whatever series) guaranteed under Section 1601, in accordance with the respective outstanding principal amount of such Securities so guaranteed (or, if any Securities are Original Issue Discount Securities, the accreted value of such Securities) and being then due upon the acceleration of the payment of such Securities.

Section 1602. Future Guarantors.

Each Person providing a guarantee of any Security of a series pursuant to this Indenture shall execute and deliver a supplemental indenture making such Person a party to this Indenture for the purpose of becoming a Guarantor.

Section 1603. Delivery of Guarantee.

The delivery of any Security of a series by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Guarantee set forth in Section 1601 on behalf of each Guarantor for that series.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

AVALONBAY COMMUNITIES, INC.,
as Issuer

By: /s/ Joanne M. Lockridge_____
Name: Joanne M. Lockridge
Title: Executive Vice President

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed all as of the day and year first above written.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee, Registrar, Paying Agent and Transfer Agent

By: /s/ Monique L. Green
Name: Monique L. Green
Title: Vice President

Exhibit A — Form of Note

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITARY") (55 WATER STREET, NEW YORK, NEW YORK) TO THE ISSUER HEREOF OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY AND ANY PAYMENT IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN CERTIFICATED FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

CERTIFICATE No.	CUSIP No.: ISIN No.:	PRINCIPAL AMOUNT:$
	AVALONBAY COMMUNITIES, INC.	
	% Senior Notes due	
ORIGINAL ISSUE DATE:	INTEREST RATE: % DEFAULT RATE:	STATED MATURITY DATE:
INTEREST PAYMENT DATE(S)*: □ □ Other	□ CHECK IF DISCOUNT NOTE Issue Price: %	FIRST INTEREST PAYMENT DATE:

* See additional provisions herein

INITIAL REDEMPTION DATE:	INITIAL REDEMPTION PERCENTAGE:	ANNUAL REDEMPTION PERCENTAGE REDUCTION:
OPTIONAL REPAYMENT DATE(S): N/A		
SPECIFIED CURRENCY: □ United States dollars □Other:	AUTHORIZED DENOMINATION: □ $2,000 and integral multiples of $1,000 in excess thereof □ Other:	EXCHANGE RATE AGENT:
ADDENDUM ATTACHED □ Yes □ N	OTHER/ADDITIONAL PROVISIONS: See Annex A attached to this Note	

AVALONBAY COMMUNITIES, INC., a Maryland corporation (the "Issuer", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & CO., or registered assigns, the Principal Amount of [ ] MILLION DOLLARS ($), on the Stated Maturity Date specified above (or any Redemption Date or Repayment Date, each as defined on the reverse hereof or in an addendum hereto, or any earlier date of acceleration of maturity) (each such date being hereinafter referred to as the "Maturity Date" with respect to the principal repayable on such date) and to pay interest thereon (and on any overdue principal, premium and/or interest to the extent legally enforceable) at the Interest Rate per annum specified above, until the principal hereof is paid or duly made available for payment. The Issuer will pay interest in arrears on each Interest Payment Date, if any, specified above (each, an "Interest Payment Date"), commencing on [ ]. Interest on this Note will be computed on the basis of a 360-day year of twelve 30-day months.

Interest on this Note will accrue from, and including, the immediately preceding Interest Payment Date to which interest has been paid or duly provided for (or from, and including, the Original Issue Date if no interest has been paid or duly provided for) to, but excluding, the applicable Interest Payment Date or the Maturity Date, as the case may be (each, an "Interest Period"). The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, subject to certain exceptions described herein, be paid to the person in whose name this Note (or one or more predecessor Notes, as defined on the reverse hereof) is registered at the close of business on the fifteenth calendar day (whether or not a Business Day, as defined below) immediately preceding such Interest Payment Date (the "Record Date"); *provided, however*, that interest payable on the Maturity Date will be payable to the person to whom the principal hereof and premium, if any, hereon shall be payable. Any such interest not so punctually paid or duly provided for on any Interest Payment Date other than the Maturity Date ("Defaulted Interest") shall forthwith cease to be payable to the person in whose name this Note is registered (the "Holder") on the close of business on any Record Date and, instead, shall be paid to the Holder at the close of business on a special record date (the "Special Record Date") for the payment of such Defaulted Interest to be fixed by the Trustee hereinafter referred to, notice whereof shall be given to the Holder of this Note by the Trustee not less than 10 calendar days prior to such Special Record Date or may be paid at any time in any other lawful manner, all as more fully provided for in the Indenture.

Payment of principal, premium, if any, and interest in respect of this Note due on the Maturity Date will be made in immediately available funds upon presentation and surrender of this Note (and, with respect to any applicable repayment of this Note, upon delivery of instructions as contemplated on the reverse hereof) at the office or agency maintained by the Issuer for that purpose in the Borough of Manhattan, The City of New York, currently the office of the Trustee located at 1051 East Cary Street, Suite 600, Richmond, Virginia 23219, or at such other paying agency in the Borough of Manhattan, The City of New York, as the Issuer may determine; *provided, however*, that if the Specified Currency (as defined below) is other than United States dollars and such payment is to be made in the Specified Currency in accordance with the provisions set forth below, such payment will be made, in the case of global Securities, in accordance with the Depository's customary policies and procedures and, in the case of certificated Securities, by wire transfer of immediately available funds to an account with a bank designated by the Holder hereof at least 15 calendar days prior to the Maturity Date, provided that such bank has appropriate facilities therefor and that this Note is presented and surrendered and, if applicable, instructions are delivered at the aforementioned Office or Agency maintained by the Issuer in time for the Trustee to make such payment in such funds in accordance with its normal procedures. Payment of interest due on any Interest Payment Date other than the Maturity Date will be made at the aforementioned Office or Agency maintained by the Issuer or, at the option of the Issuer, in the case of certificated Securities, by check mailed to the address of the person entitled thereto as such address shall appear in the Security Register maintained by the Trustee and, in the case of global Securities, in accordance with the Depository's customary policies and procedures; *provided, however*, that a Holder of U.S. $10,000,000 (or, if the Specified Currency is other than United States dollars, the equivalent thereof in the Specified Currency) or more in aggregate principal amount of certificated Notes (whether having identical or different terms and provisions) will be entitled to receive interest payments on such Interest Payment Date by wire transfer of immediately available funds if such Holder has delivered appropriate wire transfer instructions in writing to the Trustee not less than 15 calendar days prior to such Interest Payment Date. Any such wire transfer instructions received by the Trustee shall remain in effect until revoked by such Holder.

If any Interest Payment Date or the Maturity Date falls on a day that is not a Business Day, the required payment of principal, premium, if any, and/or interest shall be made on the next succeeding Business Day with the same force and effect as if made on the date such payment was due, and no interest shall accrue with respect to such payment

for the period from and after such Interest Payment Date or the Maturity Date, as the case may be, to the date of such payment on the next succeeding Business Day.

As used herein, "Business Day" means any day other than a Saturday, Sunday or other day on which banking institutions in The City of New York are authorized or obligated by law, regulation or executive order to close; provided that such term shall mean, when used with respect to any payment of principal of, or premium or interest, if any, on, or Additional Amounts with respect to, the Notes to be made at any Place of Payment for such Notes, any day other than a Saturday, Sunday or other day on which banking institutions in such Place of Payment are authorized or obligated by law, regulation or executive order to close.

The Issuer is obligated to make payment of principal, premium, if any, and interest in respect of this Note in the Specified Currency specified above (or, if such Specified Currency is not at the time of such payment legal tender for the payment of public and private debts in the country issuing such Specified Currency or, if such Specified Currency is Euro, in the member states of the European Union that have adopted the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union, then in the currency which is at the time of such payment legal tender in the related country or in the adopting member states of the European Union) (the "Specified Currency"). If the Specified Currency is other than United States dollars, except as otherwise provided below, any such amounts so payable by the Issuer will be converted by the Exchange Rate Agent specified above into United States dollars for payment to the Holder of this Note. In no event shall the Trustee be required to be the Exchange Rate Agent.

If the Specified Currency is other than United States dollars, the Holder of this Note may elect to receive any amounts payable hereunder in such Specified Currency. If the Holder of this Note shall not have duly made an election to receive all or a specified portion of any payment of principal, premium, if any, and/or interest in respect of this Note in the Specified Currency, any United States dollar amount to be received by the Holder of this Note will be based on the highest bid quotation in The City of New York received by the Exchange Rate Agent at approximately 11:00 A.M., New York City time, on the second Business Day preceding the applicable payment date from three recognized foreign exchange dealers (one of whom may be the Exchange Rate Agent) selected by the Exchange Rate Agent and approved by the Issuer for the purchase by the quoting dealer of the Specified Currency for United States dollars for settlement on such payment date in the aggregate amount of the Specified Currency payable to all Holders of Notes scheduled to receive United States dollar payments and at which the applicable dealer commits to execute a contract. All currency exchange costs will be borne by the Holder of this Note by deductions from such payments. If three such bid quotations are not available, payments on this Note will be made in the Specified Currency.

If the Specified Currency is other than United States dollars, the Holder of this Note may elect to receive all or a specified portion of any payment of principal, premium, if any, and/or interest in respect of this Note in the Specified Currency by submitting a written request for such payment to the Trustee at its corporate trust office in The City of New York on or prior to the applicable Record Date or at least 15 calendar days prior to the Maturity Date, as the case may be. Such written request may be mailed or hand delivered or sent by electronic transmission. The Holder of this Note may elect to receive all or a specified portion of all future payments in the Specified Currency in respect of such principal, premium, if any, and/or interest and need not file a separate election for each payment. Such election will remain in effect until revoked by written notice to the Trustee, but written notice of any such revocation must be received by the Trustee on or prior to the applicable Record Date or at least 15 calendar days prior to the Maturity Date, as the case may be.

If the Specified Currency is other than United States dollars and the Holder of this Note shall have duly made an election to receive all or a specified portion of any payment of principal, premium, if any, and/or interest in respect of this Note in the Specified Currency, but the Specified Currency is not available due to the imposition of exchange controls or other circumstances beyond the control of the Issuer, the Issuer will be entitled to satisfy its obligations to the Holder of this Note by making such payment in United States dollars on the basis of the Market Exchange Rate (as defined below) determined by the Exchange Rate Agent on the second Business Day prior to such payment date or, if such Market Exchange Rate is not then available, on the basis of the most recently available Market Exchange Rate. The "Market Exchange Rate" for the Specified Currency means the noon dollar buying rate in The City of New York for cable transfers for the Specified Currency as certified for customs purposes (or, if not so

certified, as otherwise determined) by the Federal Reserve Bank of New York. Any payment made in United States dollars under such circumstances shall not constitute an Event of Default (as defined in the Indenture).

All determinations referred to above made by the Exchange Rate Agent shall be at its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and binding on the Holder of this Note.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof and, if so specified on the face hereof, in an Addendum hereto, which further provisions shall have the same force and effect as if set forth on the face hereof.

Notwithstanding any provisions to the contrary contained herein, if the face of this Note specifies that an Addendum is attached hereto and/or that "Other/Additional Provisions" apply to this Note, this Note shall be subject to the terms set forth in such Addendum and/or such "Other/Additional Provisions," and the terms set forth in such Addendum and/or such "Other/Additional Provisions" shall supersede any provisions in this Note to the extent that there may be any conflict or ambiguity between (a) the terms in such Addendum and/or such "Other/Additional Provisions" and (b) the terms in this Note.

Unless the Certificate of Authentication hereon has been executed by the Trustee by manual or electronic signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Issuer has caused this Note to be duly executed by one of its duly authorized officers.

Dated: _____ **AVALONBAY COMMUNITIES, INC.**

By:
Name:
Title:

[Corporate Seal]

Attest:

By:
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

Dated: _____ By:
Name:

Title:

[REVERSE OF NOTE]

AVALONBAY COMMUNITIES, INC.

This Note is one of a duly authorized issue of Securities (the "Debt Securities") of the Issuer of the series hereinafter specified, all issued and to be issued under an Indenture, dated as of February 23, 2024, between the Issuer and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuer, the Trustee and the Holders of the Debt Securities, and of the terms upon which the Debt Securities are, and are to be, authenticated and delivered. All terms used but not defined in this Note or in an Addendum hereto shall have the meanings assigned to such terms in the Indenture or on the face hereof, as the case may be. This Note is one of a series of Debt Securities designated as the % Senior Notes due 20 of the Issuer.

This Note is issuable only in registered form without coupons in minimum denominations of U.S. $2,000 and integral multiples $1,000 in excess thereof, or other Authorized Denomination specified on the face hereof.

This Note will not be subject to any sinking fund and, unless otherwise specified on the face hereof in accordance with the provisions of the following two paragraphs or in an Addendum referred to on the face hereof, will not be redeemable or repayable prior to the Stated Maturity Date.

This Note will be subject to redemption at the option of the Issuer on any date on or after the Initial Redemption Date, if any, specified on the face hereof, in whole or from time to time in part in increments of U.S. $2,000 or other integral multiple of an Authorized Denomination (provided that any remaining principal amount hereof shall be at least U.S. $2,000 or such other minimum Authorized Denomination), at the Redemption Price (as defined below), together with unpaid interest accrued thereon to the date fixed for redemption (the "Redemption Date"), on written notice given to the Holder hereof (in accordance with the provisions of the Indenture) not more than 60 nor less than 10 calendar days prior to the Redemption Date. Except to the extent the provisions in Annex A apply to this Note, the "Redemption Price" shall be the Initial Redemption Percentage specified on the face hereof (as adjusted by the Annual Redemption Percentage Reduction, if any, specified on the face hereof as set forth below) multiplied by the unpaid principal amount of this Note to be redeemed. The Initial Redemption Percentage shall decline at each anniversary of the Initial Redemption Date by the Annual Redemption Percentage Reduction, if any, until the Redemption Price is 100% of unpaid principal amount to be redeemed. In the event of redemption of this Note in part only, a new Note of like tenor for the unredeemed portion hereof and otherwise having the same terms and provisions as this Note shall be issued by the Issuer in the name of the Holder hereof upon the presentation and surrender hereof. The Trustee shall have no responsibility for determining the Redemption Price or any component thereof.

This Note will be subject to repayment by the Issuer at the option of the Holder hereof on the Optional Repayment Date(s), if any, specified on the face hereof, in whole or in part in increments of U.S. $2,000 or other integral multiple of an Authorized Denomination (provided that any remaining principal amount hereof shall be at least U.S. $2,000 or such other minimum Authorized Denomination), at a repayment price equal to 100% of the unpaid principal amount to be repaid, together with unpaid interest accrued thereon to the date fixed for repayment (the "Repayment Date"). For this Note to be repaid, the Trustee must receive at its Corporate Trust Office not more than 60 nor less than 5 calendar days prior to the Repayment Date, such Note and instructions to such effect forwarded by the Holder hereof. Exercise of such repayment option by the Holder hereof shall be irrevocable. In the event of repayment of this Note in part only, a new Note of like tenor for the unrepaid portion hereof and otherwise having the same terms and provisions as this Note shall be issued by the Issuer in the name of the Holder hereof upon the presentation and surrender hereof.

If this Note is specified on the face hereof to be a Discount Note, the amount payable to the Holder of this Note in the event of redemption, repayment or acceleration of maturity will be equal to the sum of (1) the Issue Price specified on the face hereof (increased by any accruals of the Discount, as defined below) and, in the event of any redemption of this Note (if applicable), multiplied by the Initial Redemption Percentage (as adjusted by the Annual Redemption Percentage Reduction, if applicable) and (2) any unpaid interest accrued thereon to the Redemption

Date, Repayment Date or date of acceleration of maturity, as the case may be. The difference between the Issue Price and 100% of the principal amount of this Note is referred to herein as the "Discount".

For purposes of determining the amount of Discount that has accrued as of any Redemption Date, Repayment Date or date of acceleration of maturity of this Note, such Discount will be accrued so as to cause the yield on the Note to be constant. The constant yield will be calculated using a 30-day month, 360-day year convention, a compounding period that, except for the Initial Period (as defined below), corresponds to the shortest period between Interest Payment Dates (with ratable accruals within a compounding period) and an assumption that the maturity of this Note will not be accelerated. If the period from the Original Issue Date to the initial Interest Payment Date (the "Initial Period") is shorter than the compounding period for this Note, a proportionate amount of the yield for an entire compounding period will be accrued. If the Initial Period is longer than the compounding period, then such period will be divided into a regular compounding period and a short period, with the short period being treated as provided in the preceding sentence. The Trustee shall have no responsibility for determining the Discount or any component thereof.

If an Event of Default, as defined in the Indenture, shall occur and be continuing, the principal of the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture contains provisions for defeasance of (i) the entire indebtedness of the Notes or (ii) certain covenants and Events of Default with respect to the Notes, in each case upon compliance with certain conditions set forth therein, which provisions apply to the Notes.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Holders of the Debt Securities at any time by the Issuer and the Trustee with the consent of the Holders of a majority of the aggregate principal amount of all Debt Securities at the time outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of a majority of the aggregate principal amount of the outstanding Debt Securities of any series, on behalf of the Holders of all such Debt Securities, to waive compliance by the Issuer with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of a majority of the aggregate principal amount of the outstanding Debt Securities of any series, in certain instances, to waive, on behalf of all of the Holders of Debt Securities of such series, certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and other Notes issued upon the registration of transfer hereof or in exchange heretofore or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay principal, premium, if any, and interest in respect of this Note at the times, places and rate or formula, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein and herein set forth, the transfer of this Note is registrable in the Security Register of the Issuer upon surrender of this Note for registration of transfer at the office or agency of the Issuer in any place where the principal hereof and any premium or interest hereon are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Issuer and the Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Notes having the same terms and provisions, of Authorized Denominations and for the same aggregate principal amount, will be issued by the Issuer to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein and herein set forth, this Note is exchangeable for a like aggregate principal amount of Notes of different Authorized Denominations but otherwise having the same terms and provisions, as requested by the Holder hereof surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Issuer, the Trustee and any agent of the Issuer or the Trustee may treat the Holder as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Issuer, the Trustee nor any such agent shall be affected by notice to the contrary, except as required by law.

This Note and all documents, agreements, understandings and arrangements relating to any transaction contemplated hereby or thereby have been executed or entered into by the undersigned in his/her capacity as an officer of the Issuer which has been formed as a Maryland corporation, and not individually. No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Note, or because of any indebtedness evidenced hereby or thereby, shall be had against any promoter, as such, or against any past, present or future shareholder, officer or director, as such, of the Issuer or of any successor, either directly or through the Issuer or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Note by the holder thereof and as part of the consideration for the issue of this Note.

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

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused “CUSIP” numbers to be printed on the Securities of this series as a convenience to the holders of such Securities. No representation is made as to the correctness or accuracy of such CUSIP numbers as printed on the Securities, and reliance may be placed only on the other identification numbers printed hereon.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UNIF GIFT MIN ACT	- Custodian
TEN ENT	- as tenants by the entireties		(Cust) (Minor)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common	Under Uniform Gifts to Minors Act	(State)

Additional abbreviations may also be used though not in the above list.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto
PLEASE INSERT SOCIAL SECURITY OR
OTHER
IDENTIFYING NUMBER OF ASSIGNEE

(Please print or typewrite name and address including postal zip code of assignee) this Note and all rights thereunder hereby irrevocably constituting and appointing Attorney to transfer this Note on the books of the Trustee, with full power of substitution in the premises.

Dated:

_____

Notice: The signature(s) on this Assignment must correspond with the name(s) as written upon the face of this Note in every particular, without alteration or enlargement or any change whatsoever.

ANNEX A TO
AVALONBAY COMMUNITIES, INC.
Certificate No. 1- — $ Principal Amount

Other/Additional Provisions:

Optional Redemption. Prior to __ months prior to the maturity date of the Notes (the "Par Call Date"), the Issuer may redeem the Notes at its option, in whole or in part, at any time and from time to time, at a redemption price (expressed as a percentage of principal amount and rounded to three decimal places) equal to the greater of:

(1) (a) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date (assuming the Notes matured on the Par Call Date) on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate (as defined below) plus __ basis points less (b) interest accrued to the date of redemption, and

(2) 100% of the principal amount of the Notes to be redeemed,

plus, in either case, accrued and unpaid interest thereon to, but excluding, the redemption date.

On or after the Par Call Date, the Issuer may redeem the Notes, in whole or in part, at any time and from time to time, at a redemption price equal to 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest thereon to, but excluding, the redemption date.

For purposes of determining the optional redemption price, the following definitions are applicable:

"*Treasury Rate*" means, with respect to any redemption date, the yield determined by the Issuer in accordance with the following two paragraphs.

The Treasury Rate shall be determined by the Issuer after 4:15 p.m., New York City time (or after such time as yields on U.S. government securities are posted daily by the Board of Governors of the Federal Reserve System), on the third business day preceding the date notice of such redemption is given based upon the yield or yields for the most recent day that appear after such time on such day in the most recent statistical release published by the Board of Governors of the Federal Reserve System designated as "Selected Interest Rates (Daily) — H.15"(or any successor designation or publication) ("H.15") under the caption "U.S. government securities — Treasury constant maturities — Nominal" (or any successor caption or heading) ("H.15 TCM"). In determining the Treasury Rate, the Issuer shall select, as applicable: (1) the yield for the Treasury constant maturity on H.15 exactly equal to the period from the redemption date to the Par Call Date (the "Remaining Life"); or (2) if there is no such Treasury constant maturity on H.15 exactly equal to the Remaining Life, the two yields — one yield corresponding to the Treasury constant maturity on H.15 immediately shorter than and one yield corresponding to the Treasury constant maturity on H.15 immediately longer than the Remaining Life — and shall interpolate to the Par Call Date on a straight-line basis (using the actual number of days) using such yields and rounding the result to three decimal places; or (3) if there is no such Treasury constant maturity on H.15 shorter than or longer than the Remaining Life, the yield for the single Treasury constant maturity on H.15 closest to the Remaining Life. For purposes of this paragraph, the applicable Treasury constant maturity or maturities on H.15 shall be deemed to have a maturity date equal to the relevant number of months or years, as applicable, of such Treasury constant maturity from the redemption date.

If on the third business day preceding the date notice of such redemption is given H.15 TCM is no longer published, the Issuer shall calculate the Treasury Rate based on the rate per annum equal to the semi-annual equivalent yield to maturity at 11:00 a.m., New York City time, on the second business day preceding the date notice of such redemption is given of the United States Treasury security maturing on, or with a maturity that is closest to, the Par Call Date, as applicable. If there is no United States Treasury security maturing on the Par Call Date but there are two or more United States Treasury securities with a maturity date equally distant from the Par Call Date, one with a maturity date preceding the Par Call Date and one with a maturity date following the Par Call Date, the Issuer shall select the United States Treasury security with a maturity date preceding the Par Call Date. If

there are two or more United States Treasury securities maturing on the Par Call Date or two or more United States Treasury securities meeting the criteria of the preceding sentence, the Issuer shall select from among these two or more United States Treasury securities the United States Treasury security that is trading closest to par based upon the average of the bid and asked prices for such United States Treasury securities at 11:00 a.m., New York City time. In determining the Treasury Rate in accordance with the terms of this paragraph, the semi-annual yield to maturity of the applicable United States Treasury security shall be based upon the average of the bid and asked prices (expressed as a percentage of principal amount) at 11:00 a.m., New York City time, of such United States Treasury security, and rounded to three decimal places.

The Issuer's actions and determinations in fixing the redemption price shall be conclusive and binding for all purposes, absent manifest error. For the avoidance of doubt, the Trustee shall not be responsible for determining the redemption price.
Notice of any redemption will be mailed or electronically delivered (or otherwise transmitted in accordance with the depositary's procedures) at least 10 days but not more than 60 days before the redemption date to each holder of Notes to be redeemed.

In the case of a partial redemption, selection of the Notes for redemption will be made by lot. No Notes of a principal amount of $2,000 or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption that relates to the Note will state the portion of the principal amount of the Note to be redeemed. A new Note in a principal amount equal to the unredeemed portion of the Note will be issued in the name of the holder of the Note upon surrender for cancellation of the original Note. For so long as the Notes are held by the Depositary (or another depositary), the redemption of the Notes shall be done in accordance with the policies and procedures of the depositary.

Unless the Issuer defaults in payment of the redemption price, on and after the redemption date interest will cease to accrue on the Notes or portions thereof called for redemption.

Acceleration of Maturity. If an Event of Default with respect to the Notes that are then outstanding occurs and is continuing, and pursuant to Section 502 of the Indenture, the Trustee or the Holders of not less than 25% in aggregate principal amount of the then outstanding Notes shall have declared the principal of, and premium, if any, on all the Notes, or such lesser amount as may be provided for in the Notes, and accrued and unpaid interest, if any, thereon to be due and payable immediately, by a notice in writing to the Issuer (and to the Trustee if given by the Holders), then upon any such declaration such principal, or specified portion thereof, plus accrued interest to the date the Notes are paid, plus any redemption premium on the Notes, shall become immediately due and payable.

If an Event of Default set forth in Section 501(5), (6) or (7) of the Indenture occurs with respect to the Notes, such that pursuant to Section 502 of the Indenture, the principal of, and premium, if any, on all of the Notes, or such lesser amount as may be provided for in the Notes, and accrued and unpaid interest, if any, thereon, shall be immediately due and payable, without declaration or other act on the part of the Trustee or any Holder of the Notes, then the redemption premium on the Notes, if any, shall also be immediately due and payable.

Exhibit 4.10

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

AvalonBay Communities, Inc. (the "Company" or "we") has one class of securities, our common stock, registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Description of Common Stock

The following is a description of the material terms and provisions of our common stock. You should read our charter and bylaws in their entirety before you purchase any shares of our common stock.

General

Under our charter, we have authority to issue 280,000,000 shares of common stock, par value $.01 per share. Under Maryland law, stockholders whose shares have been duly authorized, validly issued and paid for are generally not responsible for our debts or obligations. Our common stock is listed on the New York Stock Exchange under the symbol "AVB."

Dividends

Subject to the preferential rights of any other class or series of stock, none of which are currently outstanding, and to the provisions of our charter regarding excess stock, which are described below, holders of shares of our common stock will be entitled to receive dividends on shares of common stock out of assets that we may legally use to pay dividends, if and when they are authorized by our board of directors and declared by us in compliance with applicable provisions of Maryland law and our charter.

Voting Rights

Except as provided by the terms of any other class or series of stock, holders of common stock have the exclusive power to vote on all matters presented to our stockholders, including the election of directors. Holders of common stock are entitled to one vote per share. There is no cumulative voting in the election of our directors, and, subject to any rights to elect directors that are granted to the holders of any class or series of preferred stock, a nominee for director shall be elected as a director only if such nominee receives the affirmative vote of a majority of the total votes cast for and against such nominee at a meeting of stockholders duly called and at which a quorum is present. However, directors shall be elected by a plurality of votes cast at a meeting of stockholders duly called and at which a quorum is present if, as a result of stockholder nominations of one or more nominees done in accordance with our bylaws, the number of nominees is greater than the number of directors to be elected at the meeting. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. Directors are elected annually because our board is non-classified and serve until the next annual meeting of stockholders and until their successors are duly elected and qualify.

Liquidation/Dissolution Rights

Subject to the preferential rights of any other class or series of stock and to the provisions of our charter regarding excess stock, holders of shares of our common stock share in the same proportion as our other stockholders in the assets that we may legally use to pay distributions in the event we are liquidated, dissolved or our affairs are wound up after we pay or make adequate provision for all of our known debts and liabilities.

Other Rights

Subject to the preferential rights of any other class or series of stock and to provisions of our charter regarding excess stock, all shares of our common stock have equal dividend, distribution, liquidation and other rights, and have no preference, appraisal or exchange rights. Furthermore, holders of shares of our common stock have no conversion, sinking fund or redemption rights, or preemptive rights to subscribe for any of our securities.

Restrictions on Ownership

For us to qualify as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code"), no more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by or for five or fewer individuals at any time during the last half of a taxable year. To assist us in meeting this requirement, we may take actions such as the automatic conversion of shares in excess of this ownership restriction into shares of excess stock to limit the beneficial ownership of our outstanding equity securities, directly or indirectly, by one individual. See "Limits on Ownership of Stock."

Transfer Agent

The transfer agent and registrar for the common stock is Computershare Trust Company, N.A., New York, New York.

Material Provisions of Maryland Law and Our Charter and Bylaws

The following summary of certain provisions of Maryland law and of our charter and bylaws does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law and our charter and bylaws.

Number of Directors; Vacancies

Our charter provides that the number of directors on the board will be set from time to time by a resolution duly adopted by the board of directors, subject to a minimum board size of five directors and a maximum board size of fifteen directors, in each case as set forth in our bylaws. Our bylaws provide that the minimum or maximum number of directors may be changed only by amendment to our charter or bylaws, provided that any such amendment shall be both duly adopted by the affirmative vote of a majority of the outstanding shares entitled to vote and deemed advisable or approved by the board of directors. However, the number of directors may never be less than the minimum number required by the Maryland General Corporation Law (the "MGCL"), which is one.

Any vacancy on the board of directors that results from the removal of a director for cause will be filled by the affirmative vote of a majority of votes cast by the stockholders normally entitled to vote in the election of directors at a meeting of stockholders. Any vacancy occurring on the board of directors for any other reason, except as a result of an increase in the number of directors, may be filled by a majority vote of the remaining directors, notwithstanding that such majority is less than a quorum; provided, however, that any director appointed to fill the vacancy for an independent director will also require the affirmative vote of a majority of the remaining independent directors. Any vacancy occurring on the board of directors as a result of an increase in the number of directors may be filled by a majority vote of the entire board of directors. A director elected by the board of directors or the stockholders to fill a vacancy will hold office until the next annual meeting of stockholders and until his or her successor is elected and qualified.

Annual Elections; Majority Voting

Each of our directors will be elected by our stockholders to serve until our next annual meeting of stockholders and until his or her successor is duly elected and qualifies. Our bylaws provide for majority voting in uncontested director elections. Pursuant to our bylaws, in a contested election, directors are elected by a plurality of all of the votes cast in the election of directors.

Removal of Directors

Our charter provides that, subject to the rights, if any, of holders of any class or series of stock to elect or remove one or more directors, a director may be removed only for cause (as defined in our charter) and only by the affirmative vote of the holders of at least 75% of the shares then entitled to vote at a meeting of the stockholders called for that purpose.

Calling of Special Meetings of Stockholders

Our bylaws provide that special meetings of stockholders may be called by the chairman of the board of directors, the chief executive officer, the president or the board of directors. Additionally, our bylaws provide that, subject to the satisfaction of certain procedural and informational requirements by the stockholders requesting the meeting, a special meeting of stockholders to act on any matter that may properly be considered at a meeting of stockholders shall be called by the secretary of the corporation upon the written request of stockholders entitled to cast a majority of all the votes entitled to be cast on such matter at such meeting.

Business Combinations

Under the MGCL, certain "business combinations" (including a merger, consolidation, share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested stockholder, or an affiliate of such an interested stockholder, are prohibited for five years following the most recent date on which the interested stockholder became an interested stockholder. Maryland law defines an interested stockholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock after the date on which the corporation had 100 or more beneficial owners of its stock; or

- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question and after the date on which the corporation had 100 or more beneficial owners of its stock, was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding stock of the corporation.

After such five-year period, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These supermajority approval requirements do not apply if, among other conditions, the corporation's common stockholders receive a minimum price (as set forth in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares. In addition, a person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. The board of directors may provide that its approval is subject to compliance with any terms and conditions determined by it.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a corporation's board of directors prior to the time that the interested stockholder becomes an interested stockholder.

Control Share Acquisitions

The MGCL provides that holders of "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights with respect to any control shares except to the extent approved at a special meeting of stockholders by the affirmative vote of at least two-thirds of the votes entitled to be cast on the matter, excluding shares of stock of a corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors: (a) a person who makes or proposes to make a control share acquisition; (b) an officer of the corporation; or (c) an employee of the corporation who is also a director of the corporation. "Control shares" are voting shares of stock which, if aggregated with all other such shares of stock previously acquired by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more but less than one-third;

- one-third or more but less than a majority; or

- a majority or more of all voting power.

Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A "control share acquisition" means the acquisition, directly or indirectly, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an "acquiring person statement" as described in the MGCL), may compel our board of directors to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares acquired or to be acquired in the control share acquisition. If no request for a special meeting is made, the corporation may itself present the question at any stockholders meeting.

The control share acquisition statute does not apply to: (a) shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction, or (b) acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of the company's stock. The company cannot provide you any assurance that its board of directors will not amend or eliminate this provision at any time in the future.

Subtitle 8

Under Subtitle 8 of Title 3 of the MGCL, a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three directors who are not officers or employees of the corporation, and who are not affiliated with a person who is seeking to acquire control of the corporation, may elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to certain provisions of Subtitle 8 that may have the effect of delaying or preventing a change in control of the corporation. These provisions relate to a classified board of directors, removal of directors, establishing the number of directors, filling vacancies on the board of directors and calling special meetings of the corporation's stockholders.

Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (a) require the affirmative vote of the holders of at least 75% of the shares then entitled to vote at a meeting of the stockholders called for that purpose for the removal of any director from the board, which removal also requires cause, and (b) require the secretary of the company to call a special meeting of the stockholders to act on any matter that may properly be considered at a meeting of the stockholders upon the written request of stockholders entitled to cast a majority of all the votes entitled to be cast on such matter at such meeting. We have not elected to create a classified board, to vest in the board of directors the exclusive power to fix the number of directors or to vest in the board of directors the exclusive power to fill board vacancies for the remainder of the full term of the directorship in which the vacancy occurred. See, however "—Number of Directors; Vacancies." In the future, our board of directors may elect, without stockholder approval, to create a classified board or elect to be subject to one or more of the other provisions of Subtitle 8.

Amendments to Our Charter and Bylaws

Generally, our charter may be amended only if the amendment is declared advisable by our board of directors and approved by the affirmative vote of stockholders entitled to cast a majority of the votes entitled to be cast on the matter. However, our board of directors may amend the charter without any action by our stockholders to change our name, to change the name or other designation or the par value of any class or series of stock and the aggregate par value of our stock or to effect certain reverse stock splits, as permitted by the MGCL.

Our board of directors has the power to alter or repeal any bylaws and to make new bylaws, except that our board of directors does not have the power to alter or repeal the bylaws relating to (i) changing the minimum or maximum number of directors without the affirmative vote of a majority of the outstanding shares entitled to vote, (ii) the indemnification of directors and officers without a vote of the stockholders and the consent of any indemnified persons whose rights would be adversely affected by such proposed alteration or repeal, (iii) the power of the board of directors to unilaterally alter or repeal bylaws, or (iv) the power of stockholders to alter or repeal the bylaws with the approval of the board of directors.

Stockholders, with the approval of our board of directors, have the power to alter or repeal any bylaws and to make new bylaws by affirmative vote of a majority of the outstanding shares of common stock of the company, except that (i) the stockholders cannot alter or repeal the bylaws relating to the indemnification of directors and officers without the consent of any indemnified persons adversely affected by such proposed alteration or repeal and (ii) a vote of two-thirds of the outstanding shares of common stock of the company is required to amend the bylaws relating to (a) matters to be considered at an annual meeting, (b) the nomination of directors, and (c) vacancies on the board of directors.

Stockholders have the power, by the affirmative vote of the holders of a majority of the outstanding shares of common stock, to unilaterally alter or repeal any bylaws and to make new bylaws, except that the stockholders may not alter or repeal bylaws relating to (i) the indemnification of directors and officers without the consent of any indemnified persons adversely affected by such proposed alteration or repeal or (ii) the amendment of the bylaws without the approval of the board of directors.

Transactions Outside the Ordinary Course of Business

Under Maryland law, a corporation generally cannot dissolve, amend its charter, merge, convert, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a different percentage is set forth in the corporation's charter, which percentage shall not in any event be less than a majority of all of the votes entitled to be cast on such matter. Our charter provides that, except as specifically provided in the provision relating to removal of directors, notwithstanding any provision of law requiring any action to be taken or approved by the affirmative vote of stockholders entitled to cast a greater number of votes, any such action shall be effective and valid if declared advisable by the board of directors and taken or approved by the affirmative vote of stockholders entitled to cast a majority of all the votes entitled to be cast on the matter.

Advance Notice of Director Nominations and New Business; Universal Proxy Rules

Our bylaws provide that:

- with respect to an annual meeting of stockholders, nominations of individuals for election to our board of directors and the proposal of business to be considered by stockholders may be made only:
    - pursuant to the company's notice of the meeting;
    - by or at the direction of the company's board of directors; or
    - by a stockholder who is a stockholder of record entitled to vote in the election of each individual nominated or on the matter being proposed at the time of giving the advance notice required by our bylaws, as of the record date for the annual meeting and at the time of the meeting (and any postponement or adjournment thereof), and who has complied with the advance notice procedures set forth in our bylaws; and
- with respect to special meetings of stockholders, only the business specified in the company's notice of meeting may be brought before the meeting of stockholders and nominations of individuals for election to the company's board of directors may be made only:
    - by or at the direction of the company's board of directors
    - by a stockholder that has requested that a special meeting be called for the purpose of electing directors in compliance with our bylaws and that has supplied the information required by our bylaws about each individual whom the stockholder proposes to nominate for election as a director; or
    - provided that the special meeting has been called in accordance with our bylaws for the purpose of electing directors, by a stockholder who is a stockholder of record entitled to vote in the election of directors at the time of giving notice, as of the record date for the special meeting and at the time of such special meeting (and any postponement of adjournment thereof), and who has complied with the advance notice provisions set forth in our bylaws.

The advance notice procedures of our bylaws provide that, to be timely, a stockholder's notice with respect to director nominations or proposals for an annual meeting must be delivered to the company's corporate secretary at the company's principal executive office not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement for the company's preceding year's annual meeting (the "Notice Anniversary Date"). If the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, to be timely, a stockholder's notice must be delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern time, on the later of the 120th day prior to the date of such annual meeting, as originally convened, or the tenth day following the day on which public announcement of the date of such meeting is first made.

Our bylaws also contain certain additional procedural requirements for stockholders soliciting proxies for their own director nominees in a contested election pursuant to Rule 14a-19 of the Exchange Act, including that (i) such stockholders comply with the timing requirements described above in our advance notice bylaws, (ii) any stockholder submitting a director nomination notice make a representation as to whether such stockholder intends to comply with Rule 14a-19 under the Exchange Act, and (iii) a stockholder submitting such a director nomination notice deliver reasonable evidence that it has complied with the requirements of Rule 14a-19 of the Exchange Act.

Proxy Access

Our bylaws contain proxy access provisions which permit any stockholder or group of up to 20 stockholders owning at least 3% of the company's outstanding shares of common stock continuously for at least three years to nominate and include up to a specified number of director nominees in the company's proxy materials for an annual meeting of stockholders. The maximum number of stockholder nominees permitted under these proxy access provisions is the greater of: (i) 20% of the number of seats on the board of directors before the nomination, rounding down to nearest whole number or (ii) two nominees.

Under such proxy access provisions, a stockholder's written notice of nominations of individuals for election to the company's board of directors to be included in the company's proxy statement for an annual meeting must be delivered to the secretary of the company at the company's principal executive offices not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the Notice Anniversary Date. The public announcement of a postponement or adjournment of an annual meeting does not commence a new time period (or extend any time period) for the giving of a stockholder's written notice.

Action by Stockholders

Our bylaws provide that stockholder action can be taken at an annual or special meeting of stockholders or, if such consent is approved unanimously, by written consent in lieu of a meeting. These provisions, combined with the requirements of our bylaws regarding advance notice of nominations and other business to be considered at a meeting of stockholders and the

calling of a stockholder-requested special meeting of stockholders, may have the effect of delaying consideration of a stockholder proposal.

Anti-Takeover Effect of Certain Provisions of Maryland Law and of Our Charter and Bylaws

The provisions of the MGCL, our charter and our bylaws described above including, among others, the restrictions on ownership and transfer of our stock, the power of our board of directors to fill certain vacancies on the board, the business combination provisions of the MGCL and the advance notice provisions of our bylaws could delay, defer or prevent a transaction or a change of control of our company that might involve a premium price for holders of our common stock or otherwise be in their best interests. Likewise, if our board of directors were to opt in to the classified board or other provisions of Subtitle 8 of Title 3 of the MGCL or if our board of directors were to amend our bylaws to opt in to the control share acquisition provisions of the MGCL, these provisions of the MGCL could provide us with similar anti-takeover effects.

Ownership Limit

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 Exchange Act) by any single stockholder of more than 9.8% of the issued and outstanding shares of any class or series of our stock and the ownership, directly or indirectly, of more than 50% in value of our outstanding capital stock by or for five or fewer individuals at any time during the last half of a taxable year. For a fuller description of this restriction, see "Limits on Ownership of Stock."

Exclusive Forum

Our bylaws provide that, unless the company consents in writing to the selection of an alternative forum, the Circuit Court for Baltimore City, Maryland or, if that Court does not have jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, shall be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the company, (b) any action asserting a claim of breach of any duty owed by any director or officer or other employee of the company to the company or to the stockholders, (c) any action asserting a claim against the company or any director or officer or other employee of the company arising pursuant to any provision of the MGCL, our charter or our bylaws or (d) any action asserting a claim against the company or any director or officer or other employee of the company that is governed by the internal affairs doctrine. We will not interpret this forum provision to apply to actions arising under federal securities laws.

Preferred Stock

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 class or series of preferred stock issued. The Board of Directors may issue preferred stock without stockholder approval, which 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.

Limits on Ownership of Stock

Ownership Limits

For us to qualify as a REIT under the Code, among other things, no more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by or for five or fewer individuals at any time during the last half of a taxable year. Additionally, the shares of our capital stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of twelve months or during a proportionate part of a shorter taxable year. To protect us against the risk of losing our status as a REIT due to a concentration of ownership among our stockholders, and to otherwise address concerns related to concentrated ownership of capital stock, our charter provides that no person may own (directly, indirectly by virtue of the attribution provisions of the Code, or beneficially under Rule 13d-3 of the Exchange Act) more than 9.8% of any class or series of our stock (15% for some entities as described below). Notwithstanding the preceding sentence, the board of directors at its option and in its sole discretion may approve ownership greater than the applicable ownership limitation by selected persons or entities. Our board of directors does not expect that it would waive the applicable ownership limit unless the board of directors receives evidence to its satisfaction that the waiver of the limit will not jeopardize our status as a REIT and an agreement in writing from the person seeking the waiver that any violation or attempted violation of any other limitation as the board may establish or any other restrictions and conditions as the board may impose will result, as of the time of such violation, in the conversion of any shares in excess of the original limit into excess stock, and the board of directors also decides that the waiver is in our best interests. Any transfer of shares of stock, including any security convertible into shares of stock, shall be void and have no effect if it: (1) would create a direct or indirect ownership of shares of stock in excess of the applicable ownership limit, absent a valid waiver of this ownership limit or (2) would result in our disqualification as a REIT, including any transfer that would (a) result in the shares of stock being beneficially owned by fewer than 100 persons, (b) result in us being "closely held" within the meaning of Section 856(h) of the Code or (c) result in us constructively owning 10% or more of the ownership

interests in a tenant within the meaning of Section 856(d)(2)(B) of the Code. In addition, if any purported transfer of stock or any other event would otherwise result in any person violating the applicable ownership limit, then the purported transfer will be void and of no force or effect with respect to the intended transferee as to that number of shares in excess of the ownership limit. The intended transferee will acquire no right or interest in the excess shares; or, in the case of any event other than a purported transfer, the person holding record title to any shares in excess of the ownership limit shall cease to own any right or interest in the excess shares. In both cases, neither the intended transferee nor the person holding record title to any shares in excess of the ownership limit shall have any right to: (1) transfer or otherwise dispose of the excess stock, (2) vote the excess stock or (3) receive any dividend or distribution paid with respect to the excess stock, as further explained below.

Under the Code, some types of entities, which includes pension plans described in Section 401(a) of the Code and mutual funds registered under the Investment Company Act of 1940, will be looked through for purposes of the five or fewer test described above. Our charter limits these pension plans and mutual funds to owning no more than 15% of any class or series of our stock.

Shares Owned in Excess of the Ownership Limit

Stock owned, or deemed to be owned, or proposed to be transferred to a stockholder in excess of the ownership limit will be converted automatically into shares of excess stock and will be transferred, by operation of law, to a trust, the beneficiary of which shall be a qualified charitable organization selected by us. As soon as practicable after the transfer of shares to the trust, the trustee of the trust will be required to sell the shares of excess stock to a person who could own the shares without violating the ownership limit and distribute to the proposed transferee an amount equal to the lesser of (1) the price paid by the proposed transferee for the shares of excess stock or (2) the sales proceeds received by the trust for the shares of excess stock. In the case of any excess stock resulting from any event other than a transfer, or from a transfer for no consideration (such as a gift), the trustee will be required to sell the excess stock to a qualified person or entity and distribute to the person holding record title to the shares in excess of the ownership limit an amount equal to the lesser of (A) the fair market value of the excess stock as of the date of the event or (B) the sales proceeds received by the trust for the excess stock. In either case, any proceeds in excess of the amount distributable to the proposed transferee or person holding record title to the shares in excess of the ownership limit, as applicable, will be distributed to the beneficiary of the trust.

Upon the transfer of shares of excess stock by the trustee, the shares shall be converted automatically into an equal number of shares of the same class and series that were converted into the excess stock, and the shares of excess stock will be automatically retired and canceled and will thereupon be restored to the status of authorized but unissued shares of excess stock. Prior to a sale of any excess stock by the trustee, the trustee will be entitled to receive in trust for the beneficiary, all dividends and other distributions paid with respect to the excess stock. In addition, while the shares of excess stock are held in trust, the holder of shares will not be entitled to vote such shares.

Neither the proposed transferee nor any person holding record title to any excess stock shall have any right to receive any dividend or distribution paid with respect to the excess stock. Any dividend or distribution paid on excess stock prior to discovery by us of the violation of the applicable ownership limit shall be repaid to us. In addition, neither the proposed transferee nor any person holding record title to any excess stock shall have any voting rights with respect to the excess stock. Any vote of any excess stock prior to discovery by us of the violation of the applicable ownership limit shall, subject to applicable law, be rescinded and deemed void and shall be recast by the trustee acting for the benefit of the beneficiary; provided, however, that such vote shall not be rescinded and recast if we have already taken irreversible corporate action. Shares of excess stock are not treasury stock, but rather constitute a separate class of issued and outstanding stock.

Right to Purchase Excess Stock

In addition to the foregoing transfer restrictions, we have the right for a period of 90 days to purchase all or any portion of the excess stock from the proposed transferee or any person holding record title to any excess stock for a price per share equal to the lesser of:

(1) the price per share initially paid for the stock by the proposed transferee or, in the case of excess stock resulting from any event other than a transfer or from a transfer for no consideration (such as a gift), the average of the closing price per share for the class of shares from which the shares of excess stock were converted for the five consecutive trading days ending on the date of such event or transfer, as applicable; or

(2) the average closing price per share for the class or series of shares from which the shares of excess stock were converted for the five consecutive trading days ending on the date we elect to purchase the shares.

The 90-day period begins on the date of the purported transfer or non-transfer event that violated the applicable ownership limit if the proposed transferee or person holding record title to any excess stock gives notice to us of the transfer or non-transfer event, as applicable, or if no notice is given, the date our board of directors determines that such a transfer has been made or such a non-transfer event has occurred.

General

The foregoing restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interest to continue to qualify as a REIT. The board may, in its sole discretion, waive the ownership limits if evidence is presented that such ownership of shares in excess of the ownership limit will not jeopardize our qualification as a REIT, the person seeking the waiver agrees in writing that any violation or attempted violation of any other limitation as the board may establish or any other restrictions and conditions as the board may impose will result, as of the time of such violation, in the conversion of any shares in excess of the original limit into excess stock and the board otherwise decides in its sole discretion that such action is in our best interest.

Our stockholders are required to disclose to us in writing any information with respect to their ownership of our stock that we may request in order to determine our status as a REIT and to ensure compliance with the ownership limits.

The ownership limits may have the effect of delaying, deferring or preventing a change of control of our company.

Exhibit 10.4

SECOND AMENDED AND RESTATED RULES AND PROCEDURES
FOR
DIRECTORS' DEFERRED COMPENSATION PROGRAM

These second amended and restated rules and procedures have been adopted on February 12, 2024 by the Nominating, Governance and Corporate Responsibility committee (the "Committee") of the Board of Directors of AvalonBay Communities, Inc. (the "Company") to govern the deferral by a Non-Employee Director pursuant to Section 7(b) of the AvalonBay Communities, Inc. 1994 Stock Option Plan and Section 8(b) of the AvalonBay Communities, Inc. Second Amended and Restated Equity Incentive Plan (the "2009 Plan"), each as may heretofore have been, or hereafter may be, amended (collectively, the "Plan"). All capitalized terms used herein shall have the same meaning as used in the 2009 Plan unless otherwise specifically provided herein.

1. Election to Defer. A Non-Employee Director may elect in advance to receive all or a portion of the cash compensation or Restricted Stock Award otherwise due to such Non-Employee Director in the form of a Deferred Stock Award/Restricted Stock Unit (referred to herein as a "Deferred Stock Award"). To make such an election, the Non-Employee Director must execute and deliver to the Company an election form specifying the percentage of cash compensation the Non-Employee Director wishes to defer and whether or not the Non-Employee Director wishes to receive his or her Restricted Stock Award in the form of a Deferred Stock Award. Except with respect to a newly elected or appointed Non-Employee Director, any election under this paragraph shall apply only to cash fees that are earned with respect to services to be performed beginning on or after the start of the next calendar year after such receipt and to stock awards to be granted after the start of the next calendar year. A newly elected or appointed Non-Employee Director, may, no later than his or her start date as a Non-Employee Director, file a deferral election which shall apply only to cash fees that are earned with respect to services to be performed subsequent to the election and to stock awards to be granted subsequent to the election. An election shall remain in effect from year to year, until a new election becomes effective with respect to cash fees payable, and a stock award to be granted, in the next calendar year. A Non-Employee Director may revoke or modify his or her deferral election with respect to cash fees that are payable, and stock awards to be granted, in the calendar year beginning after receipt by the Company of his written revocation (for clarification, this means that in the absence of a revocation or modification, an election will remain in effect for subsequent calendar years).

2. Deferred Account. On the day following the day cash fees would otherwise have been paid to a Non-Employee Director but for his or her deferral election, the Non-Employee Director's deferred account ("Account") shall be credited with a number of whole and fractional stock units determined by dividing his aggregate deferred cash fees by the Fair Market Value of a share of Stock as of the day such cash payment would otherwise have been made. If a Non-Employee Director has elected to receive his or her Restricted Stock Award in the form of a Deferred Stock Award, at such time as a Restricted Stock Award would otherwise be granted to the Non-Employe Director, the Non-Employee Director's Account shall also be credited with a number of stock units equal to the number of shares that otherwise would have been issued pursuant to a Restricted Stock Award. Except as otherwise provided in the award agreement or by vote of the Board, the stock units credited in lieu of a Restricted Stock Award shall:

(1) vest on the same dates as such Restricted Stock Award would have vested, namely (as of February 12, 2024) in four installments on the following dates: September 1, December 1, March 1, and the day prior to the anniversary of the prior year's Annual Meeting (or, if earlier, the day prior to the Annual Meeting), subject to acceleration as set forth in the applicable award agreement, and

(2) the director will have been deemed to have accepted the Deferred Stock Award pursuant to the terms of the most recently adopted form of Restricted Unit Agreement approved by the Committee.

3. Dividend Equivalent Amounts. Whenever dividends (other than dividends payable only in shares of Stock) are paid with respect to Stock, each Account shall be credited with a number of whole and fractional stock units determined by multiplying the dividend value per share by the stock unit balance of the Account on the record date and dividing the result by the Fair Market Value of a share of Stock on the dividend payment date.

4. Period of Deferral. The period of deferral shall cease when a Non-Employee Director ceases to serve as a member of the Board.

5. Designation of Beneficiary. A Non-Employee Director may designate one or more beneficiaries to receive payments from his Account in the event of the Non-Employee Director's death. A designation of beneficiary shall apply to a specified percentage of a Non-Employee Director's entire interest in his or her Account. Such designation, or any change therein, must be in writing and shall be effective upon receipt by the Company. If there is no effective designation of beneficiary, or if no beneficiary survives the Non-Employee Director, the estate of the Non-Employee Director shall be deemed to be the beneficiary. All payments to a beneficiary or estate shall be made in a lump sum in shares of Stock, with any fractional share paid in cash.

6. Payment. All vested stock units credited to a Non-Employee Director's Account shall be paid in shares of Stock to the Non-Employee Director, or the Non-Employee Director's designated beneficiary (or beneficiaries) or estate, (i) with respect to stock units granted prior to January 1, 2024, in a lump sum on a date determined by the Company that is within 30 days after the Non-Employee Director incurs a "separation from service" (within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h)) with the Company and (ii) with respect to stock units granted on or after January 1, 2024, on a date determined by the Company that is no earlier than 60 days, and no later than 90 days, after the Non-Employee Director incurs a "separation from service" (within the meaning of Section 409A of the Code and in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h)) with the Company; provided, however, that fractional shares shall be paid in cash, and provided, further, that in the event the Non-Employee Director is a "specified employee" within the meaning of Section 409A of the Code and the regulations promulgated thereunder, such distribution shall be made upon the earlier of the Non-Employee Director's death, or six months and a day after the Non-Employee Director's separation from service. In no event will a Non-Employee Director have a right to designate the taxable year of any payment made pursuant to the preceding sentence. Notwithstanding the foregoing, in the event of a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A of the Code and the regulations promulgated thereunder, all Accounts under this Directors' Deferred Compensation Program shall become immediately payable in a lump sum. In addition to the foregoing, this Directors' Deferred Compensation Program shall be administered in accordance with Section 409A of the Code. To the extent that any provision of this Directors' Deferred Compensation Program is ambiguous as to its compliance with Section 409A of the Code, such provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code.

7. Adjustments. In the event of a stock dividend, stock split or similar change in capitalization affecting the Stock, or other event contemplated by Section 3(d) of the 2009 Plan, the Committee shall make appropriate adjustments in the number of stock units credited to Non-Employee Directors' Accounts.

8. Nontransferability of Rights. During a Non-Employee Director's lifetime, any payment under this deferred compensation arrangement shall be made only to the Non-Employee Director. No sum or other interest under this Directors' Deferred Compensation Program shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt by a Non-Employee Director or any beneficiary under this Directors' Deferred Compensation Program to do so shall be void. No interest under this Directors' Deferred Compensation Program shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of a Non-Employee Director or beneficiary entitled thereto. Notwithstanding the foregoing, the Company may make payments to an individual other than a Non-Employee Director to the extent required by a domestic relations order.

9. Company's Obligations to Be Unfunded and Unsecured. The Accounts maintained under this Directors' Deferred Compensation Program shall at all times be entirely unfunded, and no provision shall at any time be made with respect to segregating assets of the Company (including Stock) for payment of any amounts hereunder. No Non-Employee Director or other person shall have any interest in any particular assets of the Company (including Stock) by reason of the right to receive payment under this Directors' Deferred Compensation Program, and any Non-Employee Director or other person shall have only the rights of a general unsecured creditor of the Company with respect to any rights under this deferred compensation arrangement.

10. Administration. This Directors' Deferred Compensation Program shall be administered by the Compensation. The Committee shall also have the discretion and authority to (i) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this program and (ii) decide or resolve any and all questions including interpretations of this program, as may arise in connection with this program.

AVALONBAY COMMUNITIES, INC.
RESTRICTED STOCK UNIT AGREEMENT

Pursuant to the terms of the AvalonBay Communities, Inc. 2009 Second Amended and Restated Equity Incentive Plan, as the same may hereafter be further amended (the "Plan"), in consideration for services rendered and to be rendered to AvalonBay Communities, Inc. (the "Company"), in order to advance the interests of the Company and its stockholders and effect the intended purposes of the Plan, and for other good and valuable consideration, which the Company has determined to be equal to the fair market value of the Restricted Stock Units set forth below (the "Units"), the Company is awarding to the Director (identified or as determined immediately below) herewith the Units, upon the terms and conditions set forth herein and in the Restricted Stock Unit Agreement Terms (the "Terms") which are provided herewith and incorporated herein in their entirety. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Terms or in the Plan.

Award Date*: _____ (the "Award Date")

Number of Units*: _____ Units

Director*: _____

***The Award Date, Number of Units, and identity of the Director may be memorialized in a separate addendum executed by the Director through electronic means.**

Vesting Schedule: Subject to the provisions of the Terms, the Units shall vest, and the status of the Units as Unvested Units shall terminate, in accordance with the following schedule of events:

Vesting Event	**Incremental Total Shares Vested**	**Shares Vested After Vesting Event**
September 1 after the Award Date	25%	25%
December 1 after the Award Date	25%	50%
March 1 after the Award Date (following year)	25%	75%
The day prior to the first anniversary of the Annual Meeting that was held in the year of the Award Date (or, if earlier, the day prior to the Annual Meeting held in the year after the Award Date)	25%	100%
Termination of the Director's service as a director by vote of the Company's stockholders for any reason other than Cause	100%*	
Failure by the Board or any authorized committee thereof to nominate the Director for re-election for any reason other than for Cause	100%*	
Failure of the Company's stockholders to re-elect the Director	100%*	
Death or Disability of the Director	100%*	
If earlier than any of the above events, a Sale Event	100%*	

*or, if fewer, all Unvested Units

Additional Terms/Acknowledgements: The Director acknowledges receipt of, and understands and agrees to, this Restricted Unit Agreement, including, without limitation, the Terms. The Director further acknowledges that as of the Award Date, this Restricted Unit

Agreement, including, without limitation, the Terms, sets forth the entire understanding between the Director and the Company regarding the grant of Units described herein and supersedes all prior oral and written agreements on that subject.

Provided herewith and Incorporated by Reference: Restricted Stock Unit Agreement Terms

AVALONBAY COMMUNITIES, INC.
RESTRICTED STOCK UNIT AGREEMENT TERMS

ARTICLE I
DEFINITIONS

The following terms used below in this Agreement shall have the meaning specified below unless the context clearly indicates to the contrary. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Plan.

Section 1.1 - Cause

"Cause" means and shall be limited to (a) an affirmative vote of the holders of at least 75 percent of the shares entitled to vote at a meeting of stockholders called for the purpose, resolving that the Director should be removed from office or (b) a vote of the Board, the Nominating, Governance and Corporate Responsibility Committee of the Board, if any, or any other authorized committee of the Board resolving that the Director should not be nominated for re-election as a director, in either case, as a result of (i) conviction of a felony, (ii) declaration of unsound mind by order of a court, (iii) gross dereliction of duty, (iv) commission of any act involving moral turpitude or (v) commission of an act that constitutes intentional misconduct or a knowing violation of law if such action in either event results in both an improper substantial personal benefit to such Director and a material injury to the Company.

Section 1.2 - Common Stock

"Common Stock" shall mean the common stock of the Company, $.01 par value.

Section 1.3 – Deferred Stock

"Deferred Stock" shall mean phantom stock of the Company. Each share of Deferred Stock shall have the same value as each share of Common Stock and shall be ultimately distributed to the Director in the form of Common Stock.

Section 1.4 – Disability

"Disability" shall mean the Director's inability to perform the Director's normal required services for the Company and its Subsidiaries for a period of six consecutive months by reason of the individual's mental or physical disability, as determined by the Administrator in good faith in its sole discretion.

Section 1.5 - Restrictions

"Restrictions" shall mean the restrictions set forth in Article III of this Agreement.

Section 1.6 - Secretary

"Secretary" shall mean the secretary of the Company.

Section 1.7 - Unvested Units

"Unvested Units" shall mean the Units (as defined in the Restricted Unit Agreement) issued under this Agreement for as long as such Units are subject to the Restrictions (as hereinafter defined) imposed by this Agreement.

ARTICLE II
RESTRICTED UNITS

Section 2.1 - Unvested Units

Any Units granted on the Award Date pursuant to this Agreement shall be considered Unvested Units for purposes of this Agreement and shall be subject to the Restrictions until such time or times and except to the extent that the Units vest in accordance with the Vesting Schedule set forth on the first page of this Agreement.

Section 2.2 - Rights as Stockholder

From and after the Award Date, the Director shall not have any of the rights of a stockholder with respect to the Units until the Units are distributed to the Director in the form of Common Stock, except with respect to Dividend Equivalent Rights as set forth on Section 2.3.

Section 2.3 – Dividend Equivalent Rights

All Units granted hereunder shall carry Dividend Equivalent Rights which shall entitle the Director to receive additional Units, based on the amount of actual dividends payable by the Company with respect to the Common Stock. The amount of dividend equivalents credited to the Director's Units shall be credited on the day following the dividend payment date for such dividend based on the Fair Market Value of a share of Stock on the payment date. Such additional Units shall also carry Dividend Equivalent Rights. All additional Units credited to a Director's account pursuant to this Section 2.3 shall be fully vested at all times.

ARTICLE III
RESTRICTIONS

Section 3.1 - Reversion of Unvested Units

Except as provided in clauses (a) through (e) of this sentence or in the following paragraph, any interest of the Director in Units that are Unvested Units shall immediately terminate if the Director's service as a director of the Company terminates for any reason, unless such termination of service results from (a) death of the Director, (b) Disability of the Director, (c) removal of the Director from office by vote of the Company's stockholders for any reason other than for Cause, (d) failure by the Board or any authorized committee thereof to nominate the Director for re-election for any reason other than for Cause or (e) failure of the Company's stockholders to re-elect the Director.

Notwithstanding the provisions of the preceding paragraph, in the event that any Unvested Units are forfeited, the Director shall be entitled to payment with respect to any Units credited to his account pursuant to the Dividend Equivalent Rights accrued on the Unvested Units in accordance with Section 2.3 before the date of such event.

Section 3.2 – Units Not Transferable

No Units, whether vested or unvested, or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Director or the Director's successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law or judgment, levy,

attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect; provided, however, that this Section 3.2 shall not prevent transfers by will or by applicable laws of descent and distribution until the Units are distributed to the Director in shares of Common Stock. Until such time when the shares of Common Stock are distributed to the Director, the Director's rights under this Agreement shall be similar to that of an unsecured creditor of the Company.

Section 3.3 – Timing and Form of Distribution

To the extent not forfeited pursuant to Section 3.1, Units shall be exchanged into shares of Common Stock on a one-for-one basis and shall be distributed to the Director on a date determined by the Company that is no earlier than 60 days, and no later than 90 days, after the Director incurs a "separation from service" (within the meaning of Section 409A of the Code and in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h)) with the Company; provided, however, is Director is a "specified employee" within the meaning of Section 409A of the Code and the regulations promulgated thereunder, such distribution shall be made upon the earlier of the Director's death, or six months and a day after the Director's separation from service. In no event will a Director have a right to designate the taxable year of any payment made pursuant to this Agreement. Any fractional Unit shall be distributed in cash at the same time.

ARTICLE IV
MISCELLANEOUS

Section 4.1 - Conditions to Issuance of Stock

The Company shall not be required to issue or deliver any certificate or certificates or enter the Director's name as the stockholder of record on the books of the Company for shares of Stock pursuant to this Agreement prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such class of stock is then listed; and

(b) The completion of any registration or other qualification of such shares under any state or Federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Company shall deem necessary or advisable; and

(c) The obtaining of any approval or other clearance from any state or Federal governmental agency which the Company shall, in its absolute discretion, determine to be necessary or advisable.

Section 4.2 - Administration

The Committee shall have the power to interpret the Plan, this Agreement and all other documents relating to the Units and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made by the Committee in good faith shall be final and binding upon the Director, the Company and all other interested person. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or the Units and all members of the Committee shall be fully protected by the Company in respect to any

such action, determination or interpretation. The Board shall have no right to exercise any of the rights or duties of the Committee under the Plan and this Agreement.

Section 4.3 - Notices

Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of its Secretary, and any notice to be given to the Director shall be addressed to him at the address maintained in the Company's records. By a notice given pursuant to this Section 4.3, either party may hereafter designate a different address for notices to be given to him, her, them or it. Any notice which is required to be given to the Director shall, if the Director is then deceased, be given to the Director's personal representative if such representative has previously informed the Company of the Director's death and address by written notice under this Section 4.3. Any notice shall have been deemed duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

Section 4.4 - Titles

Titles and captions are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 4.5 - Amendment

This Agreement may be amended only by a writing executed by the parties hereto which specifically states that it is amending this Agreement.

Section 4.6 - Governing Law

The laws of the State of Maryland shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

Section 4.7 - Counterparts

This 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.

Section 4.8 - No Special Rights

This Agreement does not, and shall not be interpreted to, create any right on the part of the Director to nomination, election or continued service as a director of the Company or any subsidiary or affiliate thereof, nor to any continued compensation, prerequisites or other current or future benefits or other incidents of such service nor shall it interfere with or restrict in any way any right or power, which is hereby expressly reserved, to remove or not to renominate the Director at any time for any reason whatsoever, with or without cause.

[End of Text]

Exhibit 21.1

SUBSIDIARY LIST (BY JURISDICTION)

California

San Francisco Bay Partners II, Ltd.

Connecticut

Smithtown Galleria Associates Limited Partnership
Town Close Associates Limited Partnership

Delaware

1865 Broadway For-Sale, LLC
1865 Broadway Retail, LLC
4100 Massachusetts Avenue Solar, LLC
650 North Sherman, 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 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 HoldCO CM LLC
Archstone Huntington Beach College Park LLC
Archstone Huntington Beach Member LLC
Archstone Lincoln Towers LLC
Archstone Master Property Holdings LLC
Archstone Multifamily Partners AC JV Asset Manager LLC
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 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 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 Carmel, L.P.
Avalon Carmel GP, 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 Frisco at Main, L.P.
Avalon Frisco at Main GP, LLC
Avalon Ft. Lauderdale, LLC
Avalon Glendora, L.P.
Avalon Gold, LLC
Avalon Great Neck, 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 JV, LLC
Avalon Hoboken TRS, 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 Middletown Urban Renewal, 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 Mooresville, L.P.
Avalon Mooresville GP, 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 North Creek, LLC
Avalon Oak Road, L.P.
Avalon Oak Road GP, LLC
Avalon Oakridge, L.P.
Avalon Oakridge GP, LLC

Avalon Ocean Avenue, L.P.
Avalon Old Bridge, LLC
Avalon Old Bridge Solar, LLC
Avalon Overlake, LLC
Avalon Overlake Phase II, LLC
Avalon Parsippany 2 Campus Urban Renewal, LLC
Avalon Parsippany 3 Campus Urban Renewal, 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 Becker Farm Urban Renewal, LLC
Avalon Roseland Livingston Urban Renewal, 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 SR Lender, L.P.
Avalon SR Lender Parent, 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 Plano, L.P.
Avalon West Plano GP, 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 Birkdale Investor, L.P.
AVB Birkdale Investor GP, LLC

AVB Bloomfield Station Urban Renewal, LLC
AVB Boonton Bondholder, LLC
AVB Bowery II, LLC
AVB Brandywine Member, LLC
AVB Buffaloe Investor, L.P.
AVB Buffaloe Investor GP, 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 Hicksville Investor, LLC
AVB Investor, LLC
AVB Kendall 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 Wayne Valley, LLC
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
Brighton Solar 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 Fremont Solar, LLC
Eaves Mission Ridge Solar, LLC
Eaves OT Pasadena Solar, LLC
Eaves Pacifica Solar, LLC
Eaves Pleasanton Solar, LLC
Eaves Rancho Solar, LLC
Eaves San Jose Solar, LLC
Eaves Union City 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.
Kanso Parsippany Urban Renewal, LLC
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 Adams Avalon, 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
Valet Waste Holdings, Inc.
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 SR Lender GP, 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 Traville, LLC
AVB Development Transactions, Inc.
AVB NC Mezz QRS, 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)

Exhibit 23.1

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 23, 2024, 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, 2023.

/s/ Ernst & Young LLP

Tysons, Virginia
February 23, 2024

Exhibit 31.1

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 23, 2024

/s/ BENJAMIN W. SCHALL

Benjamin W. Schall
Chief Executive Officer and President
(Principal Executive Officer)

Exhibit 31.2

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 23, 2024

/s/ KEVIN P. O'SHEA

Kevin P. O'Shea
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32

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 23, 2024

/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.

Exhibit 97

AVALONBAY COMMUNITIES, INC.

COMPENSATION RECOVERY POLICY

Adopted by the Board of Directors on September 29, 2023

1. Overview

This Compensation Recovery Policy sets forth the circumstances and procedures under which AvalonBay Communities, Inc. shall recover Erroneously Awarded Compensation from Covered Persons in accordance with rules issued by the SEC and the NYSE and may recover Erroneously Awarded Compensation from Non-Covered Officers. This Policy is effective as of the Effective Date and replaces, effective as of that date, the Prior Policy; the Prior Policy remains in effect with respect to compensation received prior to the Effective Date.

Capitalized terms used and not otherwise defined herein shall have the meanings given to them in Section 3 below.

2. Compensation Recovery Requirement

In the event the Company is required to prepare a Financial Restatement, the Company shall recover reasonably promptly all Erroneously Awarded Compensation with respect to such Financial Restatement.

3. Definitions

a. "Applicable Recovery Period" means the three completed fiscal years immediately preceding the Restatement Date for a Financial Restatement. In addition, in the event the Company has changed its fiscal year: (i) any transition period of less than nine months occurring within or immediately following such three completed fiscal years shall also be part of such Applicable Recovery Period and (ii) any transition period of nine to 12 months will be deemed to be a completed fiscal year.

b. "Applicable Rules" means any rules or regulations adopted by the NYSE pursuant to Rule 10D-1 under the Exchange Act and any applicable rules or regulations adopted by the SEC pursuant to Section 10D of the Exchange Act.

c. "Board" means the Board of Directors of the Company.

d. "Company" means AvalonBay Communities, Inc.

e. "Committee" means the Compensation Committee of the Board or, as determined by the Board for any particular application of this Policy, either (i) a majority of independent directors serving on the Board or (ii) a committee of the Board consisting only of independent directors.

f. "Covered Person" means any Executive Officer. A person's status as a Covered Person with respect to Erroneously Awarded Compensation shall be determined as of the time of receipt of such Erroneously Awarded Compensation regardless of the person's current role or status with the Company (e.g., if a person began service as an Executive Officer after the beginning of an Applicable Recovery Period, that person would not be considered a Covered Person with respect to Erroneously Awarded Compensation received before the person began service as an Executive Officer, but would be considered a Covered Person with respect to Erroneously Awarded Compensation received after the person began service as an Executive Officer where such person served as an Executive Officer at any time during the performance period for such Erroneously Awarded Compensation).

g. "Effective Date" means October 2, 2023.

h. "Erroneously Awarded Compensation" means the amount of any Incentive-Based Compensation received by a Covered Person on or after the Effective Date and during the Applicable Recovery Period that exceeds the amount that otherwise would have been received by the Covered Person had such compensation been determined based on the restated amounts in a Financial Restatement, computed without regard to any taxes paid. Calculation of Erroneously Awarded Compensation with respect to Incentive-Based Compensation based on stock price or total shareholder return, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in a Financial Restatement, shall be based on a reasonable estimate of the effect of the Financial Restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was based, and the Company shall maintain documentation of the determination of such reasonable estimate and provide such documentation to the NYSE in accordance with the Applicable Rules. Incentive-Based Compensation is deemed received when the Financial Reporting Measure is attained, not when the actual payment, grant, or vesting occurs.

i. "Exchange Act" means the Securities Exchange Act of 1934, as amended.

j. "Executive Officer" means any person who served the Company in any of the following roles at any time during the performance period applicable to Incentive-Based Compensation and received Incentive-Based Compensation after beginning service in any such role (regardless of whether such Incentive-Based Compensation was received during or after such person's service in such role): the president, principal financial officer, principal accounting officer (or if there is no such accounting officer the controller), any vice president in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy making function, or any other person who performs similar policy making functions for the Company. Executive officers of parents or subsidiaries of the Company may be deemed Executive Officers if they perform such policy making functions for the Company.

k. "Financial Reporting Measures" mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, any measures that are derived wholly or in part from such measures (including, for example, a non-GAAP financial measure), and stock price and total shareholder return.

l. "Financial Restatement" means a restatement of previously issued financial statements of the Company due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required restatement to correct an error in previously-issued financial statements that is material to the previously-issued financial statements or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

m. "Incentive-Based Compensation" means any compensation provided, directly or indirectly, by the Company or any of its subsidiaries that is granted, earned, or vested based, in whole or in part, upon the attainment of a Financial Reporting Measure.

n. "Non-Covered Officer" means any current or former employee of the Company who, during all or part of an Applicable Recovery Period, was not a Covered Person and who, during such time when they were not a Covered Person, had the title of Senior Vice President or a more senior title. For clarification, it is noted that a person may be both a Covered Person and a Non-Covered Officer at different times during the same Applicable Recovery Period, and recovery of Incentive-Based Compensation from a person serving as a Non-Covered Officer under Section 5 below shall be made without duplication of any amounts recovered from the same person as Erroneously Awarded Compensation pursuant to Section 2 above.

o. "NYSE" means the New York Stock Exchange.

p. "Policy" means this Compensation Recovery Policy.

q. "Prior Policy" means the Company's Policy for Recoupment of Incentive Compensation adopted by the Board on September 19, 2012.

r. "Restatement Date" means, with respect to a Financial Restatement, the earlier to occur of: (i) the date on which the Board, the Audit Committee of the Board, or the officer or officers of the Company authorized to take such action if Board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare the Financial Restatement or (ii) the date a court, regulator or other legally authorized body directs the Company to prepare the Financial Restatement.

s. "SEC" means the United States Securities and Exchange Commission.

4. Exception to Compensation Recovery Requirement

The Company may elect not to recover Erroneously Awarded Compensation pursuant to this Policy if the Committee determines that recovery would be impracticable, and one or more of the following conditions, together with any further requirements set forth in the Applicable Rules, are met: (i) the direct expense paid to a third party, including outside legal counsel, to assist in enforcing this Policy would exceed the amount to be recovered, and the Company has made a reasonable attempt to recover such Erroneously Awarded Compensation, documented such reasonable attempt to recover, and provided that documentation to the NYSE, or (ii) recovery would likely cause an otherwise tax-qualified retirement plan to fail to be so qualified under applicable regulations.

5. Discretionary Recovery from Non-Covered Officers

In addition to (and without limiting) the provisions of Section 2 above, in the event the Company is required to prepare a Financial Restatement after the Effective Date, the Company may recover from any Non-Covered Officer who received Incentive-Based Compensation from the Company during the three completed fiscal years immediately preceding the date on which it is determined that the Company is required to prepare a Financial Restatement, the amount that exceeds what would have been paid to the Non-Covered Officer under the Financial Restatement; provided that this Section 5 will apply only to the extent the Board or the Committee, in its sole discretion, determines to recover such amount. In making such a determination with respect to a Non-Covered Officer, the Board or the Committee may take into account any factors it deems reasonable in determining whether to seek recoupment of previously paid compensation and how much compensation to recoup from individual Non-Covered Officers (which need not be the same amount or proportion for every Non-Covered Officer), including any conclusion by the Board or the Committee that a Non-Covered Officer engaged in misconduct, wrongdoing, or a violation of any of the Company's rules or of any applicable legal or regulatory requirements in the course of the Non-Covered Officer's employment by the Company. The amount and form of the compensation to be recouped shall be determined by the Board or the Committee in its discretion, and recoupment of compensation paid as annual cash bonuses or long-term incentives may be made, in the Board or the Committee's discretion, through cancellation of vested or unvested stock options, cancellation of unvested restricted stock, and/or cash payment.

6. Tax Considerations

To the extent that, pursuant to this Policy, the Company is entitled to recover any Erroneously Awarded Compensation that is received by a Covered Person, the gross amount received (i.e., the amount the Covered Person received, or was entitled to receive, before any deductions for tax withholding or other payments) shall be returned by the Covered Person.

7. Method of Compensation Recovery

The Committee shall determine, in its sole discretion, the method for recovering Erroneously Awarded Compensation hereunder, which may include, without limitation, any one or more of the following:

a. requiring reimbursement of cash Incentive-Based Compensation previously paid;

b. seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer, or other disposition of any equity-based awards;

c. cancelling or rescinding some or all outstanding vested or unvested equity-based awards;

d. adjusting or withholding from unpaid compensation or other set-off;

e. cancelling or offsetting against planned future grants of equity-based awards; and/or

f. any other method permitted by applicable law or contract.

Notwithstanding the foregoing, a Covered Person will be deemed to have satisfied such person's obligation to return Erroneously Awarded Compensation to the Company if such Erroneously Awarded Compensation is returned in the exact same form in which it was received; provided that equity withheld to satisfy tax obligations will be deemed to have been received in cash in an amount equal to the tax withholding payment made.

8. Policy Interpretation

This Policy shall be interpreted in a manner that is consistent with the Applicable Rules and any other applicable law. The Committee shall take into consideration any applicable interpretations and guidance of the SEC in interpreting this Policy, including, for example, in determining whether a financial restatement qualifies as a Financial Restatement hereunder. To the extent the Applicable Rules require recovery of Incentive-Based Compensation in additional circumstances besides those specified above, nothing in this Policy shall be deemed to limit or restrict the right or obligation of the Company to recover Incentive-Based Compensation to the fullest extent required by the Applicable Rules.

9. Policy Administration

This Policy shall be administered by the Committee. The Committee shall have such powers and authorities related to the administration of this Policy as are consistent with the governing documents of the Company and applicable law. The Committee shall have full power and authority to take, or direct the taking of, all actions and to make all determinations required or provided for under this Policy and shall have full power and authority to take, or direct the taking of, all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of this Policy that the Committee deems to be necessary or appropriate to the administration of this Policy. The interpretation and construction by the Committee of any provision of this Policy and all determinations made by the Committee under this policy shall be final, binding, and conclusive.

10. Compensation Recovery Repayments not Subject to Indemnification

Notwithstanding anything to the contrary set forth in any agreement with, or the organizational documents of, the Company or any of its subsidiaries, Covered Persons are not entitled to indemnification for Erroneously Awarded Compensation or for any losses arising out of or in any way related to Erroneously Awarded Compensation recovered under this Policy. Notwithstanding anything to the contrary set forth in any agreement with, or the organizational documents of, the Company or any of its subsidiaries, Non-Covered Officers are not entitled to indemnification for compensation that is recovered hereunder or for any losses arising out of or in any way related to recovered compensation.