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

FORM 10-Q

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

For the quarterly period ended June 30, 2009

Commission file number 1-12672

AVALONBAY COMMUNITIES, INC.

(Exact name of registrant as specified in its charter)

Maryland *(State or other jurisdiction of incorporation or organization)*	77-0404318 *(I.R.S. Employer Identification No.)*

2900 Eisenhower Avenue, Suite 300
Alexandria, Virginia 22314
(Address of principal executive offices, including zip code)

(703) 329-6300
(Registrant's telephone number, including area code)

(Former name, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve (12) months (or 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 ninety (90) days.

Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes þ No o

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

Large accelerated filer þ	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

Yes o No þ

APPLICABLE ONLY TO CORPORATE ISSUERS

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

79,934,963 shares of common stock, par value $0.01 per share, were outstanding as of July 31, 2009

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

	6-30-09 (unaudited)	12-31-08
ASSETS		
Real estate:		
Land	$ 1,212,534	$ 1,151,456
Buildings and improvements	5,874,700	5,569,034
Furniture, fixtures and equipment	183,640	175,480
	7,270,874	6,895,970
Less accumulated depreciation	(1,458,917)	(1,352,744)
Net operating real estate	5,811,957	5,543,226
Construction in progress, including land	783,934	867,061
Land held for development	225,634	239,456
Total real estate, net	6,821,525	6,649,743
Cash and cash equivalents	215,788	65,706
Cash in escrow	240,276	193,599
Resident security deposits	27,859	29,935
Investments in unconsolidated real estate entities	65,094	55,025
Deferred financing costs, net	34,602	31,374
Deferred development costs	74,764	57,365
Prepaid expenses and other assets	94,410	91,606
Total assets	$ 7,574,318	$ 7,174,353
LIABILITIES AND STOCKHOLDERS' EQUITY		
Unsecured notes, net	$ 1,795,590	$ 2,002,965
Variable rate unsecured credit facility	—	124,000
Mortgage notes payable	2,354,298	1,547,492
Dividends payable	71,346	208,209
Payables for construction	55,263	64,363
Accrued expenses and other liabilities	226,577	227,721
Accrued interest payable	34,377	32,651
Resident security deposits	39,436	40,603
Total liabilities	4,576,887	4,248,004
Redeemable noncontrolling interests	6,722	10,234
Stockholders' equity:		
Common stock, $0.01 par value; 140,000,000 shares authorized at both June 30, 2009 and December 31, 2008; 79,931,385 and 77,119,963 shares issued and outstanding at June 30, 2009 and December 31, 2008, respectively	799	771
Additional paid-in capital	3,087,770	2,940,499
Accumulated earnings less dividends	(95,725)	(22,223)
Accumulated other comprehensive loss	(2,135)	(2,932)
Total stockholders' equity	2,990,709	2,916,115
Total liabilities and stockholders' equity	$ 7,574,318	$ 7,174,353

See accompanying notes to Condensed Consolidated Financial Statements.

AVALONBAY COMMUNITIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND OTHER COMPREHENSIVE INCOME
(Unaudited)
(Dollars in thousands, except per share data)

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Revenue:				
Rental and other income	$ 220,067	$ 209,612	$ 438,278	$ 412,146
Management, development and other fees	2,077	1,579	3,545	3,217
Total revenue	222,144	211,191	441,823	415,363
Expenses:				
Operating expenses, excluding property taxes	68,368	61,145	133,527	120,898
Property taxes	20,731	19,018	42,474	38,015
Interest expense, net	37,385	29,598	66,631	57,258
Depreciation expense	53,737	47,648	106,377	93,589
General and administrative expense	5,390	9,383	12,637	17,503
Impairment loss — land holdings	20,302	—	20,302	—
Total expenses	205,913	166,792	381,948	327,263
Equity in income of unconsolidated entities	492	3,800	3,949	3,833
Income from continuing operations	16,723	48,199	63,824	91,933
Discontinued operations:				
Income from discontinued operations	—	5,101	—	9,921
Gain on sale of communities	—	74,139	—	74,139
Total discontinued operations	—	79,240	—	84,060
Net income	16,723	127,439	63,824	175,993
Net loss (income) attributable to redeemable noncontrolling interests	951	(105)	1,275	(210)
Net income attributable to the Company	17,674	127,334	65,099	175,783
Dividends attributable to preferred stock	—	(2,175)	—	(4,350)
Net income attributable to common stockholders	$ 17,674	$ 125,159	$ 65,099	$ 171,433
Other comprehensive income:				
Unrealized gain on cash flow hedges	421	774	797	538
Comprehensive income	$ 18,095	$ 125,933	$ 65,896	$ 171,971
Earnings per common share — basic:				
Income from continuing operations attributable to common stockholders (net of dividends attributable to preferred stock)	$ 0.22	$ 0.60	$ 0.82	$ 1.14
Discontinued operations attributable to common stockholders	—	1.03	—	1.09
Net income attributable to common stockholders	$ 0.22	$ 1.63	$ 0.82	$ 2.23
Earnings per common share — diluted:				
Income from continuing operations attributable to common stockholders, net of preferred stock dividends	$ 0.22	$ 0.59	$ 0.82	$ 1.13
Discontinued operations attributable to common stockholders	—	1.02	—	1.08
Net income attributable to common stockholders	$ 0.22	$ 1.61	$ 0.82	$ 2.21

See accompanying notes to Condensed Consolidated Financial Statements.

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

	For the six months ended	
	6-30-09	6-30-08
Cash flows from operating activities:		
Net income	$ 63,824	$ 175,993
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation expense	106,377	93,589
Depreciation expense from discontinued operations	—	4,553
Amortization of deferred financing costs and debt premium/discount	3,598	2,650
Amortization of stock-based compensation	3,638	6,936
Equity in income of unconsolidated entities, net of eliminations	(4,288)	(3,246)
Impairment loss — land holdings	20,302	—
Gain on retirement of unsecured notes	(1,062)	—
Gain on sale of real estate assets	—	(74,139)
Increase in cash in operating escrows	(775)	(8,120)
Increase in resident security deposits, prepaid expenses and other assets	(5,843)	(16,145)
Increase (decrease) in accrued expenses, other liabilities and accrued interest payable	3,957	(42,946)
Net cash provided by operating activities	189,728	139,125
Cash flows from investing activities:		
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(311,577)	(419,079)
Capital expenditures — existing real estate assets	(1,708)	(1,659)
Capital expenditures — non-real estate assets	(383)	(2,280)
Proceeds from sale of real estate communities, net of selling costs	—	148,660
Decrease in payables for construction	(9,100)	(15,895)
Decrease in cash in construction escrows	47,413	89,402
Increase in investments in unconsolidated real estate entities	(702)	(1,900)
Net cash used in investing activities	(276,057)	(202,751)
Cash flows from financing activities:		
Issuance of common stock	1,114	3,470
Repurchase of common stock	—	(42,159)
Dividends paid	(139,928)	(138,620)
Net repayments under unsecured credit facility	(124,000)	(514,500)
Issuance of mortgage notes payable and draws on construction loans	741,140	525,297
Repayments of mortgage notes payable	(27,774)	(47,295)
Issuance of unsecured notes	—	330,000
Repayment of unsecured notes	(206,173)	(60,000)
Payment of deferred financing costs	(7,727)	(5,294)
Redemption of units for cash by minority partners	(202)	—
Distributions to DownREIT partnership unitholders	(39)	(114)
Distributions to joint venture and profit-sharing partners	—	(96)
Net cash provided by financing activities	236,411	50,689
Net increase (decrease) in cash and cash equivalents	150,082	(12,937)
Cash and cash equivalents, beginning of period	65,706	20,284
Cash and cash equivalents, end of period	$ 215,788	$ 7,347
Cash paid during the period for interest, net of amount capitalized	$ 57,402	$ 53,609

See accompanying notes to Condensed Consolidated Financial Statements.

Supplemental disclosures of non-cash investing and financing activities (dollars in thousands):

During the six months ended June 30, 2009:

- As described in Note 4, “Stockholders’ Equity,” 2,624,641 shares of common stock valued at $139,058 were issued as part of the special dividend declared in the fourth quarter of 2008, 169,851 shares of common stock valued at $8,360 were issued in connection with stock grants, 5,623 shares valued at $307 were issued through the Company’s dividend reinvestment plan, 30,612 shares valued at $1,327 were withheld to satisfy employees’ tax withholding and other liabilities and 1,031 shares valued at $147 were forfeited, for a net value of $146,251. In addition, the Company granted 344,801 options for common stock at a value of $2,252.
- The Company recorded a decrease to other liabilities and a corresponding increase to other comprehensive income of $797 to record the impact of the Company’s hedge accounting activity (as described in Note 5, “Derivative Instruments and Hedging Activities”).
- Common dividends declared but not paid totaled $71,346.
- The Company recorded a decrease of $2,827 in redeemable noncontrolling interests with a corresponding increase to accumulated earnings less dividends to adjust the redemption value associated with the put options held by joint venture partners and DownREIT partnership units. For further discussion of the nature and valuation of these items, see Note 11, “Fair Value.”
- In May 2009, the Company obtained $93,440 in variable rate tax-exempt bond financing related to a Development Right, the proceeds of which will be held in escrow until requisitioned for construction funding. This loan provides an option for the Company to request an additional construction loan of up to $83,560 subject to the lender’s discretion.

During the six months ended June 30, 2008:

- 129,513 shares of common stock valued at $11,567 were issued in connection with stock grants, 2,070 shares valued at $181 were issued through the Company’s dividend reinvestment plan, 24,407 shares valued at $1,357 were issued to members of the Board of Directors in fulfillment of a deferred stock award, 1,101 shares valued at $109 were forfeited and 37,992 shares valued at $3,481 were withheld to satisfy employees’ tax withholding and other liabilities, for a net value of $9,515. In addition, the Company granted 401,212 options for common stock, net of forfeitures, at a value of $3,976.
- The Company recorded an increase to other comprehensive income of $538 to record the impact of the Company’s hedge accounting activity.
- Common and preferred dividends declared but not paid totaled $70,916.
- The Company recorded a decrease of $4,065 in redeemable noncontrolling interests with a corresponding increase to accumulated earnings less dividends to adjust the redemption value associated with the put options held by joint venture partners and DownREIT partnership units.

AVALONBAY COMMUNITIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(Dollars in thousands, except per share data)

1. Organization and Significant Accounting Policies

Organization

AvalonBay Communities, Inc. (the "Company," which term, unless the context otherwise requires, refers to AvalonBay Communities, Inc. together with its consolidated subsidiaries), is a Maryland corporation that has elected to be taxed as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986 ("the Code"), as amended. The Company focuses on the development, acquisition, ownership and operation of apartment communities in high barrier to entry markets of the United States. These markets are located in the New England, Metro New York/New Jersey, Mid-Atlantic, Midwest, Pacific Northwest, and Northern and Southern California regions of the country.

At June 30, 2009, the Company owned or held a direct or indirect ownership interest in 162 operating apartment communities containing 46,476 apartment homes in ten states and the District of Columbia, of which seven communities containing 2,577 apartment homes were under reconstruction. In addition, the Company owned or held a direct or indirect ownership interest in 12 communities under construction that are expected to contain an aggregate of 4,035 apartment homes when completed. The Company also owned or held a direct or indirect ownership interest in rights to develop an additional 26 communities that, if developed as expected, will contain an estimated 6,688 apartment homes.

During the three months ended June 30, 2009:

- The Company completed the redevelopment of two communities: Essex Place, located in Peabody, Massachusetts and Avalon Mountain View, located in Mountain View, California. These two communities contain an aggregate of 534 apartment homes and were redeveloped for a total capitalized cost of approximately $18,600, excluding costs incurred prior to redevelopment.
- The Company commenced the redevelopment of two communities: Avalon Pleasanton, located in Pleasanton, California and Avalon Watch, located in West Windsor, New Jersey. These two communities contain an aggregate of 968 apartment homes and will be redeveloped for an estimated total capitalized cost of $38,300, excluding costs incurred prior to redevelopment.
- The Company completed a 5.86% fixed rate, pooled secured financing transaction for aggregate borrowing of $741,140. The financing consists of fourteen separate mortgage loans each with a 10-year term. Each loan provides for payment of interest only during the first and second years of the loan term, with payment of principal and interest (based on a 30 year amortization schedule) thereafter and the remaining principal amount and any unpaid interest due at maturity on the tenth anniversary.
- The Company announced the second and final closing of AvalonBay Value Added Fund II, LP ("Fund II"). In this closing, a new institutional investor was admitted and the Company reduced its net investment and equity interest, resulting in total equity commitments to Fund II increasing by $67,000.
- Fund II acquired one community, see Note 6, "Investments in Real Estate Entities."

The interim unaudited financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP") for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission ("SEC"). Certain information and footnote disclosures normally included in financial statements required by GAAP have been condensed or omitted pursuant to such rules and regulations. These unaudited financial statements should be read in conjunction with the financial statements and notes included in the Company's 2008 Annual Report on Form 10-K. The results of operations for the three and six months ended June 30, 2009 are not necessarily indicative of the operating results for the full year. Management believes the disclosures are adequate to ensure the information presented is not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods, have been included.

Principles of Consolidation

The accompanying Condensed Consolidated Financial Statements include the accounts of the Company and its wholly owned partnerships, subsidiary companies, certain joint venture partnerships, subsidiary partnerships structured as DownREITs and any variable interest entities consolidated under FASB Interpretation No. 46 ("FIN 46(R)"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51," as revised in December 2003. All significant intercompany balances and transactions have been eliminated in consolidation.

The Company assesses consolidation of variable interest entities under the guidance of FIN 46(R). The Company accounts for joint venture entities and subsidiary partnerships, including those structured as DownREITs, that are not variable interest entities, in accordance with Emerging Issues Task Force ("EITF") Issue No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights," Statement of Position ("SOP") 78-9, "Accounting for Investments in Real Estate Ventures," Accounting Principles Board ("APB") Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock" and EITF Topic D-46, "Accounting for Limited Partnership Investments." The Company uses EITF Issue No. 04-5 to evaluate the partnership of each joint venture entity and determine whether control over the partnership, as defined by the EITF, lies with the general partner, or the limited partners, when the limited partners have certain rights. In accordance with EITF Issue No. 04-5, the Company consolidates an investment when both (i) the Company is the general partner, and (ii) the limited partner interests do not overcome the Company's presumption of control by having either substantive participating rights, the ability to remove the Company as the general partner or the ability to dissolve the partnership. Under all other potential scenarios, including (i) where the Company holds a general partner interest but the presumption of control by the Company is overcome by the limited partner interests as described in the preceding sentence, and (ii) where the Company holds a limited partner interest in a joint venture, the Company determines the accounting framework to apply to the investments in accordance with the guidance in SOP 78-9, APB No. 18 and EITF Topic D-46. The Company generally uses the equity method to account for investments that are not consolidated, unless its ownership interest is so minor that it has virtually no influence over the partnership's operating and financial policies. Investments in which the Company has little or no influence are accounted for using the cost method.

In each of the partnerships structured as DownREITs, either the Company or one of the Company's wholly owned subsidiaries is the general partner, and there are one or more limited partners whose interest in the partnership is represented by units of limited partnership interest. For each DownREIT partnership, limited partners are entitled to receive an initial distribution of current cash flow before any distribution is made to the general partner. Although the partnership agreements for each of the DownREITs are different, generally the distributions per unit paid to the holders of units of limited partnership interests have approximated the Company's current common stock dividend per share. The holders of units of limited partnership interests have the right to present all or some of their units for redemption for a cash amount as determined by the applicable partnership agreement and based on the fair value of the Company's common stock. In lieu of cash redemption, the Company may elect to exchange such units for an equal number of shares of the Company's common stock. In the six months ended June 30, 2009, the Company redeemed 4,077 operating units for cash.

In conjunction with the acquisition and development of investments in unconsolidated entities, the Company may incur costs in excess of its equity in the underlying assets. These costs are capitalized and depreciated over the life of the underlying assets to the extent that the Company expects to recover the costs.

Revenue and Gain Recognition

Rental income related to leases is recognized on an accrual basis when due from residents in accordance with SEC Staff Accounting Bulletin No. 104, "Revenue Recognition," and Statement of Financial Accounting Standards ("SFAS") No. 13, "Accounting for Leases." In accordance with the Company's standard lease terms, rental payments are generally due on a monthly basis. Any cash concessions given at the inception of the lease are amortized over the approximate life of the lease, which is generally one year.

The Company accounts for sales of real estate assets and the related gain recognition in accordance with SFAS No. 66, "Accounting for Sales of Real Estate."

Real Estate

Operating real estate assets are stated at cost and consist of land, 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 asset are capitalized. Expenditures for maintenance and repairs are charged to expense as incurred.

The Company's policy with respect to capital expenditures is generally to capitalize only non-recurring expenditures. Improvements and upgrades are capitalized only if the item exceeds $15, extends the useful life of the asset and is not related to making an apartment home ready for the next resident. Purchases of personal property, such as computers and furniture, are capitalized only if the item is a new addition and exceeds $2.5. The Company generally expenses purchases of personal property made for replacement purposes.

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 probable and (iii) ends when the asset, or a portion of an asset, is delivered and is ready for its intended use. For redevelopment efforts, we capitalize 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 as they accrue.

In accordance with SFAS No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projects," the Company capitalizes pre-development costs incurred in pursuit of new development opportunities for which the Company currently believes future development is probable ("Development Rights"). 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. 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 by the Company no longer probable, any capitalized pre-development costs are written off with a charge to expense. The Company expensed costs related to abandoned pursuits, which includes the abandonment of Development Rights, acquisition pursuits and disposition pursuits, in the amounts of $2,281 and $1,829 for the three months ended June 30, 2009 and 2008, respectively and $3,375 and $2,329 for the six months ended June 30, 2009 and 2008, respectively. These costs are included in operating expenses, excluding property taxes on the accompanying Condensed Consolidated Statements of Operations and Other Comprehensive Income. Abandoned pursuit costs can vary greatly, and the costs incurred in any given period may be significantly different in future years.

The Company acquired as Development Rights 11 land parcels improved with office buildings, industrial space and other commercial and residential ventures occupied by unrelated third parties. As of June 30, 2009 the Company is pursuing development of four of these parcels. For the seven parcels of land for which the Company does not intend to pursue development, rental revenue from the incidental operations are recognized as a component of rental and other income. For those land parcels for which the Company intends to pursue development, the Company will manage the current improvements until such time as all tenant obligations have been satisfied or eliminated through negotiation, and construction of new apartment communities is ready to begin. As provided under the guidance of SFAS No. 67, the revenue from incidental operations received from the current improvements in excess of any incremental costs are being recorded as a reduction of total capitalized costs of the Development Right and not as part of net income.

In connection with the acquisition of an operating community, the Company performs a valuation, allocating to each asset and liability acquired in such transaction, its estimated fair value at the date of acquisition in accordance with SFAS No. 141(R), "Business Combinations." The purchase price allocations to tangible assets, such as land, buildings and improvements, and furniture, fixtures and equipment, are reflected in real estate assets and depreciated over their estimated useful lives. Any purchase price allocation to intangible assets, such as in-place leases, is included in prepaid expenses and other assets on the accompanying Condensed Consolidated Balance Sheets and amortized over the

average remaining lease term of the acquired leases. The fair value of acquired in-place leases is determined based on the estimated cost to replace such leases, including foregone rents during an assumed re-lease period, as well as the impact on projected cash flow of acquired leases with leased rents above or below current market rents. For acquisitions subsequent to December 31, 2008, all costs incurred with these acquisitions will be expensed. Prior to January 1, 2009, third party costs directly associated with the acquisition were capitalized as part of the purchase price.

Depreciation is calculated on buildings and improvements using the straight-line method over their estimated useful lives, which range from seven to thirty years. Furniture, fixtures and equipment are generally depreciated using the straight-line method over their estimated useful lives, which range from three years (primarily computer-related equipment) to seven years.

Asset Impairment Evaluation

It is the Company's policy to perform a quarterly qualitative analysis to determine if there are changes in circumstances that suggest the carrying value of a long-lived asset may not be recoverable. The Company applies the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144") for consolidated operating apartment communities, Development Communities and Development Rights to determine the need for performing impairment analyses, as well as to measure the loss if an impairment has occurred, considering quantitative and qualitative economic factors. If an indication of impairment exists, and the Company's net book value of the related assets are not recoverable based upon an analysis of its estimated undiscounted future cash flows, the assets are written down to their estimated fair value.

The Company also applies the provisions of SFAS No. 144 for assessing the need to perform an impairment analysis and measuring impairment losses on the underlying long-lived assets held by unconsolidated joint venture investments. In addition, if such impairment indicators are present, the Company estimates the fair value of its unconsolidated joint venture investment. If the Company's carrying value of its unconsolidated joint venture investments exceeds the estimated fair value of the unconsolidated joint venture investment, the Company applies the provisions of APB No. 18 to determine if there has been an other than temporary decline in the value of investments in the Company's unconsolidated joint ventures.

In the second quarter of 2009, the Company concluded that the continued economic downturn and the related decline in employment levels does not support the development and construction of certain new apartment communities previously in planning. As a result the Company recognized a charge of $20,302 related to the impairment of two land parcels for which the Company no longer intends to pursue development. The Company looked to third-party pricing estimates to determine the fair values of the land parcels considered to be impaired at June 30, 2009. Given the heterogeneous nature of multifamily real estate, the third party values incorporate significant other unobservable inputs and are therefore considered to be Level 3 prices in the fair value hierarchy under SFAS No. 157 "Fair Value Measurements". In addition, the Company recognized a charge for severance and employment related costs associated with the reduction in planned development activity and general economic conditions of approximately $2,000, reported as a component of general and administrative expense.

Deferred Financing Costs

Deferred financing costs include fees and other 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 term of the loan or the related credit enhancement facility, if applicable. Unamortized financing costs are charged to interest expense, net when debt is retired before the maturity date. Accumulated amortization of deferred financing costs was $23,376 at June 30, 2009 and was $24,264 at December 31, 2008.

Cash, Cash Equivalents and Cash in Escrow

Cash and cash equivalents include all cash and liquid investments with an original maturity of three months or less from the date acquired. Cash in escrow consists primarily of construction financing proceeds that are restricted for use in the construction of a specific community. The majority of the Company's cash, cash equivalents and cash in escrows are held at major commercial banks.

Interest Rate Contracts

The Company uses derivative financial instruments to manage interest rate risk and generally designates these financial instruments as cash flow hedges under the guidance of SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” as amended. As of June 30, 2009 and December 31, 2008, the Company had approximately $60,320 and $61,298, respectively, in variable rate debt subject to cash flow hedges. Excluding debt on communities classified as held for sale, the Company did not apply hedge accounting for an additional $145,055 in variable rate debt which is subject to interest rate caps as of June 30, 2009. See Note 5, “Derivative Instruments and Hedging Activities,” for further discussion of derivative financial instruments.

Redeemable Noncontrolling Interests

Redeemable noncontrolling interests are comprised of potential future obligations of the Company, which allow the investors holding the noncontrolling interest to require the Company to purchase their interest. Under EITF Topic D-98, “Classification and Measurement of Redeemable Securities,” the Company classifies obligations under the redeemable noncontrolling interests at fair value, with a corresponding offset for changes in the fair value recorded in accumulated earnings less dividends. Reductions in fair value are recorded only to the extent that the Company has previously recorded increases in fair value above the redeemable noncontrolling interest’s initial basis. The redeemable noncontrolling interests are presented outside of permanent equity as settlement in the Company’s common shares, where permitted, may not be within the Company’s control. The nature and valuation of the Company’s redeemable noncontrolling interests are discussed further in Note 11, “Fair Value”.

Comprehensive Income

Comprehensive income, as reflected on the Condensed Consolidated Statements of Operations and Other 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 loss as reflected in Note 4, “Stockholders’ Equity,” reflects the effective portion of the cumulative changes in the fair value of derivatives in qualifying cash flow hedge relationships attributable to controlling interests.

Earnings per Common Share

In accordance with the provisions of SFAS No. 128, “Earnings per Share,” basic earnings per share is computed by dividing net income attributable to common stockholders by the weighted average number of shares outstanding during the period. All outstanding unvested restricted share awards, which contain rights to non-forfeitable dividends, participate in undistributed earnings with common shareholders and, accordingly, are considered participating securities that are included in the two-class method of computing basic earnings per share (“EPS”) under the provisions of FASB Staff Position (“FSP”) EITF 03-6-1, as discussed below. All historical periods presented have been restated in accordance with FSP EITF 03-6-1 resulting in an impact of less than $0.01 for all periods presented. Both the unvested restricted shares and other potentially dilutive common shares, and the related impact to earnings, are considered when calculating earnings per share on a diluted basis. The Company’s earnings per common share are determined as follows:

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Basic and diluted shares outstanding				
Weighted average common shares — basic	79,662,223	76,753,951	79,210,349	76,714,437
Weighted average DownREIT units outstanding	15,888	64,019	17,648	64,019
Effect of dilutive securities	364,183	760,647	670,290	706,267
Weighted average common shares — diluted	80,042,294	77,578,617	79,898,287	77,484,723
Calculation of Earnings per Share — basic				
Net income attributable to common stockholders	$ 17,674	$ 125,159	$ 65,099	$ 171,433
Net income allocated to unvested restricted shares	(56)	(406)	(206)	(575)
Net income attributable to common stockholders, adjusted	$ 17,618	$ 124,753	$ 64,893	$ 170,858
Weighted average common shares — basic	79,662,223	76,753,951	79,210,349	76,714,437
Earnings per common share — basic	$ 0.22	$ 1.63	$ 0.82	$ 2.23
Calculation of Earnings per Share — diluted				
Net income attributable to common stockholders	$ 17,674	$ 125,159	$ 65,099	$ 171,433
Add: noncontrolling interests of DownREIT unitholders in consolidated partnerships, including discontinued operations	14	57	39	114
Adjusted net income available to common stockholders	$ 17,688	$ 125,216	$ 65,138	$ 171,547
Weighted average common shares — diluted	80,042,294	77,578,617	79,898,287	77,484,723
Earnings per common share — diluted	$ 0.22	$ 1.61	$ 0.82	$ 2.21

Certain options to purchase shares of common stock in the amounts of 2,368,642 and 1,498,341 were outstanding at June 30, 2009 and 2008, respectively, but were not included in the computation of diluted earnings per share because in applying the treasury stock method under the provisions of SFAS No. 123(R), “Share Based Payments” as discussed below, such options are anti-dilutive.

Under the provisions of SFAS No. 123(R), the Company is required to estimate the forfeiture of stock options and recognize compensation cost net of the estimated forfeitures. The estimated forfeitures included in compensation cost are adjusted to reflect actual forfeitures at the end of the vesting period. The forfeiture rate at June 30, 2009 was 1.7%. The application of estimated forfeitures did not materially impact compensation expense for the three and six months ended June 30, 2009 or 2008.

Legal and Other Contingencies

The Company is currently involved in litigation alleging that 100 communities currently or formerly owned by the Company violated the accessibility requirements of the Fair Housing Act and the Americans with Disabilities Act. The lawsuit, Equal Rights Center v. AvalonBay Communities, Inc., was filed on September 23, 2005 in the federal district court in Maryland. The plaintiff seeks compensatory and punitive damages in unspecified amounts as well as injunctive relief (such as modification of existing communities), an award of attorneys’ fees, expenses and costs of suit. The Company has filed its answer in the lawsuit denying the allegations. In a separate matter related to FHA accessibility matters, on August 13, 2008 the U.S. Attorney’s Office for the Southern District of New York filed a civil lawsuit against the Company and the joint venture in which it has an interest that owns Avalon Chrystie Place. The lawsuit alleges that Avalon Chrystie Place was not designed and constructed in accordance with the accessibility requirements of the FHA. The Company designed and constructed the community to address compliance with New York City’s Local Law 58, which for more than 20 years has been New York City’s code regulating the accessible design and construction of apartments. As there are undetermined questions of law relating to these matters, (such as the applicable statute of limitations, the appropriate remedy if violations occurred, and the legal requirements to meet and demonstrate accessibility under the applicable statutes) and questions of fact (including the cost to remediate, if necessary), the Company cannot predict or determine the outcome of these lawsuits, nor is it reasonably possible at this time to estimate the amount of loss, if any, that would be associated with an adverse decision or settlement.

In addition, the Company is subject to various other legal proceedings and claims that arise in the ordinary course of business. These matters are frequently covered by insurance. If it has been determined that a loss is probable to occur and can be reasonably estimated, the estimated amount of the loss is recorded in the financial statements. While the resolution of these other matters cannot be predicted with certainty, management currently believes the final outcome of such matters will not have a material adverse effect on the financial position or results of operations of the Company. In instances where the Company has a gain contingency associated with legal proceedings, the Company records a gain in the financial statements when it is deemed probable to occur, can be reasonably estimated and is considered to be collectible. In connection with the resolution of several pending legal matters related to two former vendors, the Company recognized the receipt of $2,100 in settlement proceeds as a reduction in general and administrative expense for the three and six months ended June 30, 2009.

Assets Held for Sale & Discontinued Operations

The Company follows SFAS No. 144, which requires that the assets and liabilities of any communities which have been sold, or otherwise qualify as held for sale, be presented separately in the Condensed 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 Company's Condensed Consolidated Statements of Operations and Other Comprehensive Income. Held for sale and discontinued operations classifications are provided in both the current and prior periods presented. Real estate assets held for sale are measured at the lower of the carrying amount or the fair value less the cost to sell. Both the real estate assets and corresponding liabilities are presented separately in the accompanying Condensed Consolidated Balance Sheets. Subsequent to classification of a community as held for sale, no further depreciation is recorded. For those assets qualifying for classification as discontinued operations, the community 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 under SFAS No. 144, the Company reclassified the results of operations to discontinued operations in accordance with SFAS No. 144. In addition, the net gain or loss (including any impairment loss) on the eventual disposal of communities held for sale will be presented as discontinued operations when recognized. A change in presentation for held for sale or discontinued operations will not have any 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 Condensed Consolidated Statements of Cash Flows.

Income Taxes

As of June 30, 2009, the Company did not have any unrecognized tax benefits as defined in FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes – an Interpretation of FASB Statement No. 109," ("FIN 48"). We do not believe that there will be any material changes in our unrecognized tax positions over the next 12 months. The Company is subject to examination by the respective taxing authorities for the tax years 2005 through 2007.

Use of Estimates

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

Reclassifications

Certain reclassifications have been made to amounts in prior years' financial statements to conform to current year presentations.

Recently Adopted Accounting Standards

In April 2009, the FASB issued FSP FAS No. 107-1 and APB Opinion No. 28-1, "Interim Disclosures about Fair Value of Financial Instruments" ("FSP FAS No. 107-1 and APB Opinion No. 28-1"). FSP FAS No. 107-1 and APB Opinion No. 28-1 requires fair value disclosures for financial instruments that are not reflected in the Condensed Consolidated Balance Sheets at fair value. Prior to the issuance of FSP FAS No. 107-1 and APB Opinion No. 28-1, the fair values of those assets and liabilities were disclosed only in the Company's Annual Report on Form 10-K. With the issuance of FSP FAS No. 107-1 and APB Opinion No. 28-1, the Company will now disclose this

information on a quarterly basis, providing quantitative and qualitative information about fair value estimates for all financial instruments not measured in the Condensed Consolidated Balance Sheets at fair value. The Company has included the required disclosure in this quarterly report. See Note 11, "Fair Value."

In April 2009, the FASB issued FSP FAS No. 157-4, "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly" ("FSP FAS No. 157-4"). FSP FAS No. 157-4 clarifies the methodology used to determine fair value when there is no active market or where the price inputs being used represent distressed sales. FSP FAS No. 157-4 also reaffirms the objective of fair value measurement, as stated in SFAS No. 157, which is to reflect how much an asset would be sold for in an orderly transaction. This pronouncement also reaffirms the need to use judgment to determine if a formerly active market has become inactive, as well as to determine fair values when markets have become inactive. The Company adopted the provisions of FSP FAS No. 157-4 on a prospective basis. The adoption did not have a material impact on the Company's financial position or results of operations.

In May 2009, the FASB issued Statement No. 165, "Subsequent Events" ("SFAS No. 165"). SFAS No. 165 defines subsequent events as events or transactions that occur after the balance sheet date but before financial statements are issued or available to be issued. Under SFAS No. 165, the requirements for disclosing subsequent events remain unchanged from the previous requirements. However, SFAS No. 165 contains an additional requirement that companies must disclose the date through which subsequent events have been evaluated and the rationale for selecting that date. The Company has adopted the provisions of SFAS No. 165 in this quarterly report. See Note 12, "Subsequent Events."

Recently Issued Accounting Guidance

In June 2009, the FASB approved the FASB Accounting Standards Codification (the "Codification"). In June 2009, the FASB also issued Statement No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles," which replaces SFAS No. 162, "The Hierarchy of Generally Accepted Accounting Principles." SFAS No. 168 establishes the Codification as the single source of authoritative nongovernmental US GAAP (except for SEC rules and interpretive releases) and will be effective for interim and annual reporting periods ending after September 15, 2009. The Codification is intended to reorganize, rather than change, existing US GAAP. However, all existing accounting standard documents are superseded by the Codification and all accounting literature excluded from the Codification will become nonauthoritative upon the effective date of SFAS No. 168. Accordingly, beginning with the Company's Form 10-Q for the quarter ending September 30, 2009, all references to currently existing US GAAP will be removed and will be replaced with references to the Codification or plain English explanations of our accounting policies. The Company does not expect that the adoption of the Codification will have a material impact on its financial position or results of operations.

In June 2009, the FASB issued Statement No. 167, "Amendments to FASB Interpretation No. 46(R)" ("SFAS No. 167"). SFAS No. 167 significantly amends the consolidation guidance applicable to variable interest entities ("VIEs"). SFAS No. 167 modifies the consolidation model to one based on control and economics, and replaces the current quantitative primary beneficiary analysis with a qualitative analysis. The primary beneficiary of a VIE will be the entity that has (1) the power to direct the activities of the VIE that most significantly impact the VIE's economic performance and (2) the obligation to absorb losses or receive benefits that could potentially be significant to the VIE. If multiple unrelated parties share such power, as defined, no party will be required to consolidate the VIE. Further, SFAS No. 167 requires continual reconsideration of the primary beneficiary of a VIE and adds an additional reconsideration event for determination of whether an entity is a VIE. SFAS No. 167 also requires expanded disclosures related to VIEs which are largely consistent with the disclosure provisions of FSP FAS 140-4 and FIN 46(R)-8, "Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities," which the Company adopted in the fourth quarter of 2008. Upon adoption of SFAS No. 167, the provisions of FSP FAS 140-4 and FIN 46(R)-8 will be nullified. SFAS No. 167 is effective as of the beginning of the first fiscal year that begins after November 15, 2009, or January 1, 2010 for the Company. The Company is currently evaluating the impact that adoption of SFAS No. 167 will have on its financial statements.

2. Interest Capitalized

The Company capitalizes interest during the development and redevelopment of real estate assets in accordance with SFAS No. 34, “Capitalization of Interest Cost.” Capitalized interest associated with communities under development or redevelopment totaled $13,677 and $19,159 for the three months ended June 30, 2009 and 2008, respectively and $26,045 and $38,822 for the six months ended June 30, 2009 and 2008, respectively.

3. Notes Payable, Unsecured Notes and Credit Facility

The Company’s mortgage notes payable, unsecured notes and variable rate unsecured credit facility as of June 30, 2009 and December 31, 2008 are summarized below.

	6-30-09	12-31-08
Fixed rate unsecured notes (1)	$ 1,571,190	$ 1,672,965
Variable rate unsecured notes	224,400	330,000
Fixed rate mortgage notes payable — conventional and tax-exempt	1,635,410	901,181
Variable rate mortgage notes payable — conventional and tax-exempt	718,888	646,311
Total notes payable and unsecured notes	4,149,888	3,550,457
Variable rate unsecured credit facility	—	124,000
Total mortgage notes payable, unsecured notes and unsecured credit facility	$ 4,149,888	$ 3,674,457

(1) Balances at June 30, 2009 and December 31, 2008 include $1,950 and $2,035 of debt discount, respectively.

The following debt activity occurred during the six months ended June 30, 2009:

- In January 2009, the Company made a cash tender offer for any and all of its 7.5% medium-term notes due in August 2009 and December 2010. The Company purchased $37,438 principal amount of its $150,000, 7.5% medium-term notes due in August 2009 at par. In addition, the Company purchased $64,423 principal amount of its $200,000, 7.5% medium-term notes due December 2010 at 98% of par, for approximately $63,135, representing a yield to maturity of 8.66%. The Company recorded a gain of approximately $1,062 net of the write-off of related deferred financing costs during the first quarter of 2009 in conjunction with the purchase of the medium-term notes due December 2010 as a reduction in interest expense, net. All of the notes purchased in the tender offer were cancelled. The Company had previously acquired and cancelled an aggregate of $10,000 of the 7.5% medium-term notes due in August 2009.
- In April 2009, the Company completed a 5.86% fixed rate, pooled secured financing transaction for aggregate borrowing of $741,140. The financing consists of fourteen separate mortgage loans each with a 10-year term. Each loan provides for payment of interest only during the first and second years of the loan term, with payment of principal and interest (based on a 30 year amortization schedule) thereafter and the remaining principal amount and any unpaid interest due at maturity on the tenth anniversary.
- In April 2009, the Company repaid the $4,143 principal, 8.08% fixed rate loan secured by a real estate asset formerly classified as a Development Right in Alexandria, Virginia pursuant to its scheduled maturity.
- In May 2009, the Company repaid $19,470 in variable rate debt secured by Avalon at Flanders Hill, located in Westborough, Massachusetts.
- In May 2009, the Company repaid $105,600 in unsecured debt, representing the first tranche of its $330,000 unsecured variable rate term loan, pursuant to its scheduled maturity.
- In May 2009, the Company obtained $93,440 in variable rate tax exempt bond financing related to a Development Right, the proceeds of which will be held in escrow until requisitioned for construction funding. This loan provides an option for the Company to request an additional construction loan of up to $83,560 subject to the lender’s discretion.

In the aggregate, secured notes payable mature at various dates from December 2009 through July 2066 and are secured by certain apartment communities and improved land parcels (with a net carrying value of $1,878,726 as of June 30, 2009). As of June 30, 2009, the Company has guaranteed approximately $385,390 of mortgage notes payable held by wholly owned subsidiaries; all such mortgage notes payable are consolidated for financial reporting purposes. The weighted average interest rate of the Company’s fixed rate mortgage notes payable (conventional and

tax-exempt) was 5.8% and 5.7% at June 30, 2009 and December 31, 2008, respectively. The weighted average interest rate of the Company's variable rate mortgage notes payable, unsecured term loan and its unsecured credit facility, including the effect of certain financing related fees, was 1.8% at June 30, 2009 and 2.9% at December 31, 2008.

Scheduled payments and maturities of mortgage notes payable and unsecured notes outstanding at June 30, 2009 are as follows:

Year	Secured notes payments (1)	Secured notes maturities	Unsecured notes maturities	Stated interest rate of unsecured notes
2009	$ 3,295	$ 34,230	$ 102,562	7.500%
2010	6,097	29,388	135,577	7.500%
			112,200	1.570%(2)
2011	12,087	36,599	300,000	6.625%
			50,000	6.625%
			112,200	1.570%(2)
2012	14,560	120,601	250,000	6.125%
			235,000	5.500%
2013	14,656	318,370	100,000	4.950%
2014	15,537	33,100	150,000	5.375%
2015	14,481	365,072	—	—
2016	15,342	—	250,000	5.750%
2017	16,260	18,300	—	—
2018	17,234	—	—	—
Thereafter	369,114	899,976	—	—
	$ 498,663	$ 1,855,636	$ 1,797,539	

(1) Secured note payments are comprised of the principal pay downs for amortizing mortgage notes.

(2) The stated interest rate for variable-rate unsecured notes is the rate as of June 30, 2009.

The Company's unsecured notes are redeemable at our option, in whole or in part, 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 of 25 basis points, plus accrued and unpaid interest to the redemption date. The Company may also acquire its unsecured notes as part of a tender offer with the redemption terms set in conjunction with the tender offer.

The Company has a variable rate unsecured credit facility (the "Credit Facility") in the amount of $1,000,000 with a syndicate of commercial banks, to whom the Company pays, in the aggregate, an annual facility fee of approximately $1,250. The Company did not have any amounts outstanding under the Credit Facility and $38,510 outstanding in letters of credit as of June 30, 2009. At December 31, 2008, there was $124,000 outstanding under the Credit Facility and $45,976 outstanding in letters of credit. The Credit Facility bears interest at varying levels based on the London Interbank Offered Rate ("LIBOR"), rating levels achieved on the Company's unsecured notes and on a maturity schedule selected by the Company. The current stated pricing is LIBOR plus 0.40% per annum (0.71% at June 30, 2009). The stated spread over LIBOR can vary from LIBOR plus 0.325% to LIBOR plus 1.00% based on the Company's credit ratings. In addition, the Credit Facility includes a competitive bid option, which allows banks that are part of the lender consortium to bid to make loans to the Company at a rate that is lower than the stated rate provided by the Credit Facility for up to $650,000. The competitive bid option may result in lower pricing than the stated rate if market conditions allow. The Company did not have any amounts outstanding under this competitive bid option as of June 30, 2009. The Credit Facility matures in November 2011, assuming exercise of a one-year renewal option by the Company.

The Company was in compliance at June 30, 2009 with applicable financial and other covenants contained in the Credit Facility, the $224,400 variable rate unsecured term loan and the Company's unsecured notes.

4. Stockholders' Equity

The following summarizes the changes in stockholders' equity for the six months ended June 30, 2009:

	Common stock	Additional paid-in capital	Accumulated earnings less dividends	Accumulated other comprehensive loss	Total stockholders' equity
Balance at December 31, 2008	$ 771	$ 2,940,499	$ (22,223)	$ (2,932)	$ 2,916,115
Net income attributable to Company common stockholders	—	—	65,099	—	65,099
Unrealized gain on cash flow hedges	—	—	—	797	797
Redeemable noncontrolling interests	—	—	2,827	—	2,827
Dividends declared to common stockholders	—	—	(142,631)	—	(142,631)
Issuance of common stock	28	137,975	1,203	—	139,206
Amortization of deferred compensation	—	9,296	—	—	9,296
Balance at June 30, 2009	$ 799	$ 3,087,770	$ (95,725)	$ (2,135)	$ 2,990,709

During the six months ended June 30, 2009, the Company:

(i) issued 42,950 shares of common stock in connection with stock options exercised;

(ii) issued 2,624,641 shares in connection with the dividend declared in December 2008;

(iii) issued 5,623 shares through the Company's dividend reinvestment plan;

(iv) issued 169,851 common shares in connection with stock grants;

(v) withheld 30,612 shares to satisfy employees' tax withholding and other liabilities; and

(vi) had 1,031 shares of restricted stock forfeited.

In addition, the Company granted 344,801 options for common stock to employees. As required under SFAS No. 123(R), any deferred compensation related to the Company's stock option and restricted stock grants during the six months ended June 30, 2009 is not reflected on the Company's Condensed Consolidated Balance Sheet as of June 30, 2009, and will not be reflected until earned as compensation cost.

The Company declared dividends per common share of $0.8925 and $1.785 for the three and six month periods ended June 30, 2008 and 2009. The Company also offers a Dividend Reinvestment and Stock Purchase Plan (the "DRIP"), which allows holders of the Company's common stock to purchase shares of common stock through either reinvested dividends or optional cash payments. The purchase price per share for newly issued shares of common stock under the DRIP will be equal to the last reported sale price for a share of the Company's common stock as reported by the New York Stock Exchange ("NYSE") on the applicable investment date.

5. Derivative Instruments and Hedging Activities

The Company enters into interest rate swap and interest rate cap agreements (collectively, the "Hedging Derivatives") to reduce the impact of interest rate fluctuations on its variable rate, tax-exempt bonds and its variable rate conventional secured debt (collectively, the "Hedged Debt"). The Company has not entered into any interest rate hedge agreements for its conventional unsecured debt and does not enter into derivative transactions for trading or other speculative purposes. The following table summarizes the consolidated Hedging Derivatives at June 30, 2009, excluding derivatives executed to hedge debt on communities classified as held for sale:

	Non-designated Hedges	Cash Flow Hedges	
	Interest Rate Caps	Interest Rate Caps	Interest Rate Swaps
Notional balance	$149,847	$15,994	$44,199
Weighted average interest rate (1)	1.7%	1.9%	6.5%
Weighted average capped interest rate	7.0%	6.0%	n/a
Earliest maturity date	Dec-09	Jun-12	Jun-10
Latest maturity date	Mar-14	Jun-12	Jun-10
Estimated fair value, asset/(liability)	$ 404	$ 35	$ (1,890)

(1) For interest rate caps, this represents the weighted average interest rate on the debt.

Excluding derivatives executed to hedge debt on communities classified as held for sale, the Company had three derivatives designated as cash flow hedges and six derivatives not designated as hedges at June 30, 2009. For the derivative positions that the Company has determined qualify as effective cash flow hedges under SFAS No. 133, the Company has recorded the effective portion of cumulative changes in the fair value of the Hedging Derivatives in other comprehensive income. Amounts recorded in other comprehensive income will be reclassified into earnings in the periods in which earnings are affected by the hedged cash flow. To adjust the Hedging Derivatives to their fair value and recognize the impact of hedge accounting, the Company recorded an increase in other comprehensive income of $797 during the six months ended June 30, 2009 and an increase of $538 during the six months ended June 30, 2008. Amounts in other comprehensive income will be reclassified into earnings in conjunction with the periodic adjustment of the floating rates on the Hedged Debt, in interest expense, net. The amount reclassified into earnings for the six months ended June 30, 2009, as well as the estimated amount included in accumulated other comprehensive loss as of June 30, 2009, expected to be reclassified into earnings within the next twelve months to offset the variability of cash flows of the hedged items during this period are not material.

The Company assesses both at inception and on an on-going basis, the effectiveness of qualifying cash flow hedges. Hedge ineffectiveness, reported as a component of general and administrative expenses, did not have a material impact on earnings of the Company for any period presented, and the Company does not anticipate that it will have a material effect in the future. The fair values of the Hedging Derivatives are included in accrued expenses and other liabilities on the accompanying Condensed Consolidated Balance Sheets.

Derivative financial instruments expose the Company to credit risk in the event of nonperformance by the counterparties under the terms of the Hedging Derivatives. 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. As part of its on-going control procedures, the Company monitors the credit ratings of counterparties and the exposure of the Company to any single entity, thus minimizing credit risk concentration. The Company believes the likelihood of realizing losses from counterparty non-performance is remote. Refer to Note 11, "Fair Value," for further discussion of fair value measurements including the Company's incorporation of credit valuation adjustments under SFAS No. 157.

6. Investments in Real Estate Entities

The Company accounts for its investments in unconsolidated real estate entities in accordance with the literature discussed in Note 1, "Organization and Significant Accounting Policies," under *Principles of Consolidation*. During the six months ended June 30, 2009,

in conjunction with the second closing of Fund II, the Company's equity ownership interest decreased to 31% from 45%. There were no other changes in the Company's ownership interest in, or presentation of, its investments in unconsolidated real estate entities.

As of June 30, 2009, the Company had investments in the following unconsolidated real estate entities:

- a 20% limited liability company membership interest (with a right to 50% of distributions after achievement of a threshold return, which was achieved in the first quarter of 2009) in the limited liability company that owns the Avalon Chrystie Place community;
- a 25% limited liability company membership interest (with a right to 45% of distributions after achievement of a threshold return) in the limited liability company that owns the Avalon at Mission Bay North II community;
- a 30% limited liability company membership interest (with a right to 45% or the residual distribution after the joint venture partners receive both a return of their initial investment and an achievement of a threshold return on that investment) in the limited liability company that owns the Avalon Del Rey community;
- a 50% limited liability company membership interest (with a right to 95% of distributions until the Company receives a return of our invested capital and a threshold return thereon) in the limited liability company that is developing for-sale town homes adjacent to the Company's Avalon Danvers community;
- a 15.2% combined general partner and indirect limited partner equity interest in the Fund (with the opportunity to receive as much as 20% of the Fund's distributions in excess of return of capital, as an additional distribution, based on the achievement of certain threshold returns), which owns the following 19 communities: Avalon at Redondo Beach, Avalon Lakeside, Avalon Columbia, Avalon Sunset, Avalon at Poplar Creek, Avalon at Civic Center, Avalon Paseo Place, Avalon Yerba Buena, Avalon at Aberdeen Station, The Springs, Avalon Lombard, Avalon Cedar Place, Avalon Crystal Hill, Middlesex Crossing, Avalon Centerpoint, Skyway Terrace, Avalon Rutherford Station, South Hills Apartments and Weymouth Place; and
- a 31% combined general partner and indirect limited partner equity interest in Fund II (with the opportunity to receive as much as 20% of Fund II's distributions in excess of return of capital, as an additional distribution, based on the achievement of certain threshold returns). During the three months ended June 30, 2009, Fund II acquired Verona Apartments located in Bellevue, WA for $33,100. Verona Apartments is a mid-rise style community containing 220 apartment homes.

In addition, as part of the formation of the Fund and Fund II, the Company provided separate and distinct guarantees to one of the limited partners in each of the ventures. These guarantees are specific to the respective fund and any impacts or obligation of the Company to perform under one of the guarantees has no impact on the Company's obligations with respect to the other guarantee. The guarantees provide that, if, upon final liquidation of the Fund or Fund II, the total amount of all distributions to the guaranteed partner during the life of the respective fund (whether from operating cash flow or property sales) does not equal the total capital contributions made by that partner, then the Company will pay the guaranteed partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the guaranteed partner (maximum of approximately $7,192 for the Fund and $413 for Fund II as of June 30, 2009). As of June 30, 2009, the expected realizable value of the real estate assets owned by the Fund and Fund II is considered adequate to cover such potential payments under a liquidation scenario. The estimated fair value of and the Company's obligation under these guarantees, both at inception and as of June 30, 2009, was not significant and therefore the Company has not recorded any obligation for either of these guarantees as of June 30, 2009.

The following is a combined summary of the financial position of the entities accounted for using the equity method, as of the dates presented:

	6-30-09 (unaudited)	12-31-08 (unaudited)
Assets:		
Real estate, net	$ 1,016,573	$ 995,680
Other assets	11,369	12,384
Total assets	$ 1,027,942	$ 1,008,064
Liabilities and partners' capital:		
Mortgage notes payable and credit facility	$ 731,446	$ 705,332
Other liabilities	18,775	17,578
Partners' capital	277,721	285,154
Total liabilities and partners' capital	$ 1,027,942	$ 1,008,064

The following is a combined summary of the operating results of the entities accounted for using the equity method, for the periods presented:

	For the three months ended (unaudited)		For the six months ended (unaudited)	
	6-30-09	6-30-08	6-30-09	6-30-08
Rental and other income	$ 26,613	$ 26,845	$ 51,769	$ 53,464
Operating and other expenses	(13,727)	(10,679)	(25,583)	(21,787)
Gain on sale of communities	—	25,417	—	25,417
Interest expense, net	(9,279)	(9,526)	(18,181)	(19,641)
Depreciation expense	(8,222)	(7,848)	(16,028)	(15,879)
Net loss	$ (4,615)	$ 24,209	$ (8,023)	$ 21,574

In conjunction with the acquisition and development of the investments in unconsolidated entities, the Company incurred costs in excess of its equity in the underlying net assets of the respective investments. These costs represent $11,267 at June 30, 2009 and $4,817 at December 31, 2008 of the respective investment balances.

7. Real Estate Disposition Activities

During the six months ended June 30, 2009, the Company did not sell any communities. As of June 30, 2009, the Company did not have any assets that qualified as discontinued operations and held for sale under the provisions of SFAS No. 144.

In accordance with the requirements of SFAS No. 144, the operations for any real estate assets sold from January 1, 2008 through June 30, 2009 and the real estate assets that qualified as discontinued operations and held for sale as of June 30, 2009 have been presented as such in the accompanying Condensed Consolidated Financial Statements. Accordingly, certain reclassifications have been made in prior periods to reflect discontinued operations consistent with current period presentation.

The following is a summary of income from discontinued operations for the periods presented:

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Rental income	$ —	$ 10,625	$ —	$ 22,640
Operating and other expenses	—	(3,276)	—	(7,090)
Interest expense, net	—	(546)	—	(1,076)
Depreciation expense	—	(1,702)	—	(4,553)
Income from discontinued operations	$ —	$ 5,101	$ —	$ 9,921

8. Segment Reporting

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

- *Established Communities (also known as Same Store Communities)* are 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 and operating expenses as of the beginning of the prior year. For the year 2009, the Established Communities are communities that are consolidated for financial reporting purposes, had stabilized occupancy and operating expenses as of January 1, 2008, are not conducting or planning to conduct substantial redevelopment activities and are not held for sale or planned for disposition within the current year. A community is considered to have stabilized occupancy at the earlier of (i) attainment of 95% physical occupancy or (ii) the one-year anniversary of completion of development or redevelopment.
- *Other Stabilized Communities* includes all other completed communities that have stabilized occupancy, as defined above. Other Stabilized Communities does not include communities that are conducting or planning to conduct substantial redevelopment activities within the current year.
- *Development/Redevelopment Communities* consists of communities that are under construction and have not received a final certificate of occupancy, communities where the company owns a majority interest and where substantial redevelopment is in progress or is planned to begin during the current year and communities under lease-up that had not reached stabilized occupancy, as defined above, as of January 1, 2009.

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

SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," requires that segment disclosures present the measure(s) used by the chief operating decision maker for purposes of assessing such segments' performance. The Company's chief operating decision maker is comprised of several members of its executive management team who use net operating income ("NOI") as the primary financial measure for Established Communities and Other Stabilized Communities. NOI is defined by the Company as total revenue less direct property operating expenses. 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 the three and six months ended June 30, 2009 and 2008 is as follows:

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Net income	$ 16,723	$ 127,439	$ 63,824	$ 175,993
Indirect operating expenses, net of corporate income	7,362	8,893	15,936	17,350
Investments and investment management expense	907	1,195	1,822	2,414
Expensed development and other pursuit costs	2,281	1,829	3,375	2,329
Interest expense, net	37,385	29,598	66,631	57,258
General and administrative expense	5,390	9,383	12,637	17,503
Equity in income of unconsolidated entities	(492)	(3,800)	(3,949)	(3,833)
Depreciation expense	53,737	47,648	106,377	93,589
Impairment loss — land holdings	20,302	—	20,302	—
Gain on sale of real estate assets	—	(74,139)	—	(74,139)
Income from discontinued operations	—	(5,101)	—	(9,921)
Net operating income	$ 143,595	$ 142,945	$ 286,955	$ 278,543

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 provides details of the Company’s segment information as of the dates specified. The segments are classified based on the individual community’s status as of the beginning of the given calendar year. Therefore, each year the composition of communities within each business segment is adjusted. Accordingly, the amounts between years are not directly comparable. The accounting policies applicable to the operating segments described above are the same as those described in Note 1, “Organization and Significant Accounting Policies.” Segment information for the three and six months ended June 30, 2009 and 2008 have been adjusted for the communities that were sold from January 1, 2008 through June 30, 2009, or otherwise qualify as discontinued operations as of June 30, 2009, as described in Note 7, “Real Estate Disposition Activities.”

	For the three months ended				For the six months ended			
	Total revenue	NOI	% NOI change from prior year	Gross real estate (1)	Total revenue	NOI	% NOI change from prior year	Gross real estate (1)
For the period ended June 30, 2009								
Established								
New England	$ 32,680	$ 20,575	(8.3)%	$ 916,941	$ 65,257	$ 40,993	(5.6)%	$ 916,941
Metro NY/NJ	42,072	29,199	(3.5)%	1,164,447	84,269	57,270	(3.8)%	1,164,447
Mid-Atlantic/Midwest	32,814	20,533	(3.8)%	823,222	65,621	41,219	(2.2)%	823,222
Pacific Northwest	7,172	4,959	(6.8)%	238,554	14,554	10,173	(3.3)%	238,554
Northern California	26,065	18,939	(5.1)%	893,734	53,057	39,237	(1.7)%	893,734
Southern California	15,776	10,906	(8.6)%	426,653	31,891	22,252	(7.1)%	426,653
Total Established	156,579	105,111	(5.5)%	4,463,551	314,649	211,144	(3.8)%	4,463,551
Other Stabilized	33,628	21,543	n/a	1,480,954	66,564	42,715	n/a	1,480,954
Development / Redevelopment	29,860	16,941	n/a	2,039,259	57,065	33,096	n/a	2,039,259
Land Held for Future Development	n/a	n/a	n/a	225,634	n/a	n/a	n/a	225,634
Non-allocated (2)	2,077	n/a	n/a	71,044	3,545	n/a	n/a	71,044
Total	$ 222,144	$ 143,595	0.5 %	$ 8,280,442	$ 441,823	$ 286,955	3.0 %	$ 8,280,442
For the period ended June 30, 2008								
Established								
New England	$ 31,939	$ 21,233	5.5 %	$ 821,922	$ 63,374	$ 41,130	3.4 %	$ 821,922
Metro NY/NJ	36,197	25,265	2.8 %	929,972	71,901	49,531	2.2 %	929,972
Mid-Atlantic/Midwest	31,231	20,250	6.8 %	761,892	61,870	39,874	5.3 %	761,892
Pacific Northwest	5,359	3,904	8.9 %	174,544	10,683	7,727	10.0 %	174,544
Northern California	31,718	23,592	9.6 %	1,037,118	63,181	47,189	10.3 %	1,037,118
Southern California	15,351	11,063	0.8 %	375,561	30,741	22,169	1.3 %	375,561
Total Established	151,795	105,307	5.6 %	4,101,009	301,750	207,620	5.0 %	4,101,009
Other Stabilized	27,888	18,357	n/a	1,010,672	55,030	36,044	n/a	1,010,672
Development / Redevelopment	29,929	19,281	n/a	2,123,734	55,366	34,879	n/a	2,123,734
Land Held for Future Development	n/a	n/a	n/a	310,296	n/a	n/a	n/a	310,296
Non-allocated (2)	1,579	n/a	n/a	47,638	3,217	n/a	n/a	47,638
Total	$ 211,191	$ 142,945	13.7 %	$ 7,593,349	$ 415,363	$ 278,543	12.7 %	$ 7,593,349

(1) Does not include gross real estate assets held for sale of $0 and $263,768 as of June 30, 2009 and 2008, respectively.

(2) Revenue represents third-party management, accounting and developer fees and miscellaneous income which are not allocated to a reportable segment.

9. Stock-Based Compensation Plans

On May 21, 2009, the stockholders of the Company, upon the recommendation of the Board of Directors, approved the AvalonBay Communities, Inc. 2009 Stock Option and Incentive Plan (the “2009 Plan”). The 2009 Plan includes an authorization to issue up to 4,199,822 shares of the Company’s common stock, par value $0.01 per share, (2,930,000 newly authorized shares plus 1,269,822 shares that were available for grant as of May 21, 2009 under the Company’s 1994 Stock Option and Incentive Plan (the “1994 Plan”)), pursuant to awards under the 2009 Plan. The 2009 Plan provides for various types of equity awards to employees, officers, non-employee directors and agents of the Company and its subsidiaries. The types of awards that may be granted under the 2009 Plan include restricted and deferred stock, stock options that qualify as incentive stock options (“ISOs”) under Section 422 of the Internal Revenue Code, non-qualified options, and stock appreciation rights. The 2009 Plan will expire on May 21, 2019.

Effective as of the close of business on May 21, 2009, and as part of the proposal to approve the 2009 Plan described above, the Board of Directors terminated the 1994 Plan with respect to new awards. The 1994 Plan provided for the same types of equity awards as the 2009 Plan, and would have expired by its terms on May 8, 2011. Outstanding awards previously granted under the 1994 Plan will not be affected by termination of the 1994 Plan, the terms of which shall continue to govern such previously granted awards. In addition to the 4,199,822 shares available for awards under the 2009 Plan as described above, any awards that were outstanding under the 1994 Plan on May 21, 2009 that are subsequently forfeited, canceled, surrendered or terminated (other than by exercise) will become available for awards under the 2009 Plan.

Information with respect to stock options granted under the 1994 Plan is as follows:

	1994 Plan shares	Weighted average exercise price per share
Options Outstanding, December 31, 2008	2,623,135	$ 83.49
Exercised	(42,950)	34.05
Granted	344,801	48.60
Forfeited	(13,365)	103.86
Options Outstanding, June 30, 2009	2,911,621	$ 79.99
Options Exercisable:		
June 30, 2009	2,187,979	$ 80.97

The weighted average fair value of the options granted during the six months ended June 30, 2009 is estimated at $6.53 per share on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions: dividend yield of 8.5% over the expected life of the option, volatility of 36.57%, risk-free interest rate of 2.17% and an expected life of approximately seven years.

At June 30, 2009, the Company had 253,215 outstanding unvested shares granted under restricted stock awards. The Company issued 169,851 shares of restricted stock valued at $8,360 as part of its stock-based compensation plan during the six months ended June 30, 2009. Compensation cost is recognized over the requisite service period, which varies, but does not exceed five years. The fair value of restricted stock is the closing stock price on the date of the grant. Provisions of SFAS No. 123(R) require the Company to recognize compensation cost taking into consideration retirement eligibility. The cost related to stock-based compensation for restricted stock included in the determination of net income is based on actual forfeitures for the given year. Restricted stock awards typically vest over a five-year period with the exception of accelerated vesting provisions. Restricted stock vesting during the six months ended June 30, 2009 totaled 122,082 shares and had fair values ranging from $48.60 to $147.75 per share. The total fair value of shares vested was $10,103 and $10,422 for the six months ended June 30, 2009 and 2008, respectively.

Total employee stock-based compensation cost recognized in income was $6,212 and $8,705 for the six months ended June 30, 2009 and 2008, respectively, and total capitalized stock-based compensation cost was $3,095 and $2,970 for the six months ended June 30, 2009 and 2008, respectively. At June 30, 2009, there was a total of $3,543 and $9,852 in unrecognized compensation cost for unvested stock options and unvested restricted stock, respectively, which does not include estimated forfeitures. The unrecognized compensation cost for unvested stock options and restricted stock is expected to vest over a weighted average period of 1.71 years and 2.54 years, respectively.

Deferred Stock Performance Plan

In 2008 the Company's Board of Directors and its Compensation Committee approved a multiyear performance plan ("the 2008 Performance Plan") and granted awards in connection with this plan with an estimated compensation cost of $8,958 to senior management and other selected officers ("2008 Performance Plan Awards"). The 2008 Performance Plan Awards are initially in the form of deferred stock awards, with no dividend rights, granted under the Company's 1994 Plan. These deferred stock awards will be forfeited in their entirety unless the Company's total return to shareholders, consisting of stock price appreciation plus cumulative dividends without reinvestment or compounding over the measurement period, exceeds the thresholds specified in the 2008 Performance Plan. The measurement period of the 2008 Performance Plan began on June 1, 2008 and will end on May 31, 2011, or earlier, upon a change in control of the Company.

Earned deferred stock awards will convert into vested unrestricted common stock (50%), and unvested restricted common stock with a one-year vesting period (50%), subject to earlier forfeiture or acceleration under certain circumstances. Dividends will be paid on both the unrestricted common stock and the restricted common stock. As of June 30, 2009, the Company has reserved 633,179 shares within the 1994 Plan relating to deferred stock awards under the 2008 Performance Plan.

The Company is recognizing compensation expense for the 2008 Performance Plan over the three year measurement period for the 50% of each award which vests at the end of the measurement period. For the remaining 50% of each award, the Company is recognizing compensation expense over the four year period which includes the measurement period as well as the one-year vesting period subsequent to the end of the measurement period. The recognition of compensation cost will take into account actual forfeitures as well as retirement eligibility. During the three months ended June 30, 2009, the Company recognized the compensation expense associated with the 2008 Performance Plan of $439 and capitalized stock-based compensation costs of $249.

10. Related Party Arrangements

Unconsolidated Entities

The Company manages unconsolidated real estate entities for which it receives asset management, property management, development and redevelopment fee revenue. From these entities, the Company received fees of $2,077 and $1,579 in the three months ended June 30, 2009 and 2008, respectively and $3,545 and $3,217 for the six months ended June 30, 2009 and 2008, respectively. These fees are included in management, development and other fees on the accompanying Condensed Consolidated Statements of Operations and Other Comprehensive Income.

Director Compensation

Directors of the Company who are also employees receive no additional compensation for their service as a director. Following each annual meeting of stockholders starting with the 2008 annual meeting, non-employee directors receive (i) a number of shares of restricted stock (or deferred stock awards) having a value of $125 and (ii) a cash payment of $50, payable in quarterly installments of $12.5. The number of shares of restricted stock (or deferred stock awards) 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 a deferred stock award. In addition, the Lead Independent Director receives an annual fee of $30 payable in equal monthly installments of $2.5.

The Company recorded non-employee director compensation expense relating to the restricted stock grants and deferred stock awards in the amount of $96 and $179 for the three and six months ended June 30, 2009 as a component of general and administrative expense. Deferred compensation relating to these restricted stock grants and deferred stock awards was $458 and $137 on June 30, 2009 and December 31, 2008, respectively.

11. Fair Value

Fair Value Methodology

As a basis for applying a market-based approach in fair value measurements, SFAS No. 157 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity and the reporting entity's own assumptions about market participant assumptions. The valuation of financial instruments can be determined using widely accepted valuation techniques.

To comply with the provisions of SFAS No. 157, the Company applies widely accepted valuation models such as discounted cash flow analysis on the expected cash flows of each instrument which considers the contractual terms of the instruments, including the period to maturity, and uses observable market-based inputs, including interest rate curves and market prices, as available and applicable. In addition, the Company incorporates credit valuation adjustments to appropriately reflect both its own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements as discussed below. When market-based inputs are not available in valuing the Company's financial instruments, such as for valuing the redeemable noncontrolling interests, the Company uses unobservable inputs considering the assumptions that market participants would make in deriving the fair value. The use of different market assumptions and/or estimation methodologies may have a material effect on the Company's estimates of fair value.

Financial Instruments Carried at Fair Value

Derivative Financial Instruments

Currently, the Company uses interest rate swap and interest rate cap agreements to manage its interest rate risk. These instruments are carried at fair value in the Company's financial statements. See Note 5, "Derivative Instruments and Hedging Activities," for derivative values at June 30, 2009 and a description of where these amounts are recorded in the financial statements. In adjusting the fair value of its derivative contracts for the effect of counterparty nonperformance risk, the Company has considered the impact of its net position with a given counterparty, as well as any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees. 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, the credit valuation adjustments associated with its derivatives use Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by itself and its counterparties. As of June 30, 2009, the Company assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and has determined it is not significant. As a result, the Company has determined that its derivative valuations are classified in Level 2 of the fair value hierarchy.

Redeemable Noncontrolling Interests

Redeemable noncontrolling interests are reported at fair value, with reductions in fair value recorded only to the extent that the Company has previously recorded increases in fair value above the redeemable noncontrolling interest initial basis.

- Puts – The Company provided redemption options (the "Puts") that allow two of our joint venture partners to require the Company to purchase their interests in the investments at the future fair market value. One Put is payable in cash or, at the Company's option, common shares of the Company, and the second is payable in cash. The Company determines the fair value of the Puts based on unobservable inputs considering the assumptions that market participants would make in pricing the obligations, including applying discount factors to the estimated future cash flows of the asset underlying the associated joint venture, which in the case of the Puts is the NOI from an apartment community, as well as potential disposition proceeds utilizing market capitalization rates, to derive the fair value of the position. Given the significance of the unobservable inputs, the valuations are classified in Level 3 of the fair value hierarchy. At December 31, 2008, the Puts' aggregate fair value was $9,057. At June 30, 2009, the aggregate fair value of the Puts was $5,273.
- DownREIT units – The Company issued units of limited partnership interest in DownREITs which provide the DownREIT limited partners the ability to present all or some of their units for redemption for a cash amount as determined by the applicable partnership

agreement. Under the DownREIT agreements, for each limited partnership unit, the limited partner is entitled to receive cash in the amount equal to the fair value of the Company's common stock on or about the date of redemption. In lieu of cash redemption, the Company may elect to exchange such units for an equal number of shares in the Company's common stock. The limited partnership units in DownREITs are valued using the market price of the Company's common stock, a Level 1 price under the fair value hierarchy. At December 31, 2008, the fair value of the DownREIT units was $1,177. At June 30, 2009, the fair value of the DownREIT units was $859.

Financial Instruments Not Carried at Fair Value

Cash and Cash Equivalents

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

Other Financial Instruments

Rents receivable, accounts and construction payable and accrued expenses and other liabilities are carried at their face amounts, which reasonably approximate their fair values.

The Company values its bond indebtedness, notes payable and outstanding amounts under the Credit Facility 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 bond indebtedness and notes payable are Level 2 prices as the majority of the inputs used to value its positions fall within Level 2 of the fair value hierarchy. Bond indebtedness, notes payable and outstanding amounts under the Company's Credit Facility (as applicable) with an aggregate outstanding par amount of approximately $4,152,000 and $3,676,000 had an estimated aggregate fair value of $4,121,585 and $3,612,130 at June 30, 2009 and December 31, 2008, respectively.

12. Subsequent Events

Subsequent events have been evaluated through August 10, 2009, the date the financial statements were issued. Pursuant to the requirements of SFAS 165, there were no events or transactions subsequent to June 30, 2009 that required recognition or disclosure in the financial statements.

2. 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 and results of operations. This MD&A should be read in conjunction with our Condensed Consolidated Financial Statements and the accompanying Notes to Condensed Consolidated Financial Statements included elsewhere in this report. This report, including the following MD&A, contains forward-looking statements regarding future events or trends as described more fully 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 risk factors described in Item 1a, "Risk Factors," of our Form 10-K for the year ended December 31, 2008 (our "Form 10-K").

Executive Overview

Business Description

We are primarily engaged in developing, acquiring, owning and operating apartment communities in high barrier to entry markets of the United States. Barriers to entry in our markets generally include a difficult and lengthy entitlement process with local jurisdictions and dense urban or suburban areas where zoned and entitled land is in limited supply. We believe that apartment communities are an attractive long-term investment opportunity compared to other real estate investments because a broad potential resident base should help reduce demand volatility over a real estate cycle. However, throughout the real estate cycle, apartment market fundamentals, and therefore operating cash flows, are affected by overall economic conditions, such as the current economic downturn. We seek to create long-term shareholder value by accessing capital on cost effective terms; deploying that capital to develop, redevelop and acquire apartment communities in high barrier to entry markets; operating apartment communities; and selling communities when they no longer meet our long-term investment strategy or when pricing is attractive.

We regularly evaluate the allocation of our investments by the amount of invested capital and by product type within our individual markets, which are located in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Midwest, the Pacific Northwest, and the Northern and Southern California regions of the United States. Our strategy is to penetrate these markets with a broad range of products and services and an intense focus on our customer. Our communities are predominately upscale, which generally command among the highest rents in their markets. However, we also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services.

Second Quarter 2009 Highlights

- Net income attributable to common stockholders for the quarter ended June 30, 2009 was $17,674,000, as compared to $125,159,000 for the quarter ended June 30, 2008, a decrease of 85.9%. The decrease is attributable primarily to gains on assets sold during 2008 not present in 2009, coupled with charges for an impairment of land parcels which we no longer intend to develop, the abandonment of development pursuits and an associated severance charge recognized in the second quarter of 2009.
- The results for the quarter ended June 30, 2009 reflect the current recessionary environment. Our Established Community portfolio (as defined later in this report) experienced a 5.5% decrease in net operating income ("NOI") over the comparable period of 2008, driven by a 2.8% decrease in rental revenue and an increase in operating expenses of 3.4%. The rental revenue decline over the comparable period in 2008, attributable primarily to downward pressure on rental rates and increased job losses, was largely consistent with our expectations.

Financial Outlook

During the first six months of 2009, actual job losses materially exceeded those contained in the economic forecasts we used to prepare our initial 2009 financial outlook. Actual job losses nationwide through June 2009 totaled 3.2

million, a 70% increase over assumptions incorporated into the initial 2009 guidance provided in February 2009. We use a composite of third party economic forecasts to develop operating and financial plans, with a particular focus on employment forecasts. Changes in employment conditions have a significant impact on overall demand for rental housing and are highly correlated to changes in revenue growth. A composite of third party economic forecasts now projects a year over year decline in nationwide employment of 5.4 million jobs for 2009 with unemployment peaking between 10.5% to 11.0% by mid-2010.

Based on the revised employment projections, revenue from Established Communities is anticipated to decline by 3.5% to 4.5% for 2009. This compares to the 1.5% to 3.5% decline incorporated into the original financial outlook in February 2009. These projections are based on our outlook for economic conditions for the remainder of 2009, both nationally and in the markets where we operate. There can be no assurance that our outlook for economic conditions and/or their impact on our operating results will be accurate, and actual results could differ materially. Please see "Risk Factors," "Forward Looking Statements" and other discussions in our Form 10-K for a discussion of factors which could affect our results of operations.

Longer-term, we expect apartment fundamentals to strengthen from a reduction in new supply, favorable demographic trends, declining homeownership and an economic recovery that we expect will eventually produce employment growth. Changes in any of the above factors, including if there is a more prolonged or increased deterioration in economic conditions than we currently expect, could materially change our expectations for the remainder of 2009 and future periods.

During 2009 we continue to benefit from a strong balance sheet that allows us to access capital at relatively attractive rates. In the second quarter of 2009, we successfully completed a 10-year, 5.86% fixed rate pooled financing transaction for $741,140,000. We used these proceeds to fund our development and redevelopment activities, repay secured and unsecured debt, prepay certain secured debt with higher interest costs and for other general corporate purposes. We believe that our overall modest level of secured and unsecured debt will continue to provide us with the financial flexibility to access both public and private capital on attractive terms.

During the second quarter of 2009, we added equity commitments for the AvalonBay Value Added Fund II, LP ("Fund II"), our private discretionary investment vehicle that was originally formed in August of 2008. Fund II now has equity commitments from five institutional investors who, with the Company, collectively committed $400,000,000, of which our commitment is $125,000,000. Total equity commitments to Fund II increased by $67,000,000 as a result of the following:

- a new institutional investor made an equity commitment of $75,000,000;
- an existing institutional investor increased its commitment by $17,000,000, based on terms of its existing commitment; and
- we decreased our commitment by $25,000,000, based on terms of our existing commitment, decreasing our equity interest to approximately 31%.

Fund II will acquire, operate and sometimes redevelop (but not develop) multifamily apartment communities primarily in our current markets with the objective of creating value through redevelopment, enhanced operations and/or improving market fundamentals. Fund II has a term that expires in August 2018, plus two one-year extension options. Fund II will serve as the exclusive vehicle through which we will acquire investment interests in apartment communities until August 2011 or, if earlier, until 90% of the committed capital of Fund II is invested, subject to limited exceptions. We will receive, in addition to any returns on our invested equity, asset management fees, property management fees and redevelopment fees. We will also receive a promoted interest if certain return thresholds are met. Fund II can employ leverage of up to 65%, allowing for an investment capacity of approximately $1,100,000,000. In April 2009, Fund II acquired one community, and as of July 31, 2009, Fund II has invested $33,100,000.

Reduced returns relative to the cost of capital and economic risk have resulted in a reduction in new development activity for 2009. We currently have 12 communities under construction with a total projected capitalized cost of approximately $1,396,400,000. As of June 30, 2009, approximately $1,000,800,000 of this development has been funded, with approximately $395,600,000 remaining to fund. We have arranged $112,000,000 of this required

funding through financing from third-party, tax-exempt and taxable debt. During the six months ended June 30, 2009, we did not start any new developments and we do not anticipate starting any development activity during the third quarter of 2009. If we start any new development activity in the fourth quarter of 2009, we do not expect it will have a significant impact on our liquidity, corporate cash flows or earnings. At June 30, 2009, there were seven communities under redevelopment, with an expected incremental capital investment of approximately $116,500,000, of which approximately $61,200,000 remains to be funded**.** We expect to maintain our current level of redevelopment activity through the end of 2009, taking the opportunity to reinvest and reposition our assets to meet the needs of our residents and ensure that our assets are competitively positioned when the economy recovers. We believe that we currently have sufficient committed capital to complete the development and redevelopment activities underway and meet other liquidity uses. See the discussion under *Liquidity and Capital Resources.*

Community Information Overview

Our real estate investments consist primarily of current operating apartment communities, Development Communities and Development Rights both as defined below. Our current operating communities are further distinguished as Established Communities, Other Stabilized Communities, Lease-Up Communities and Redevelopment Communities. The following is a description of each category:

Current Communities are categorized as Established, Other Stabilized, Lease-Up, or Redevelopment according to the following attributes:

- *Established Communities (also known as Same Store Communities)* are 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 and operating expenses as of the beginning of the prior year. For the period ended June 30, 2009, the Established Communities are communities that are consolidated for financial reporting purposes, had stabilized occupancy and operating expenses as of January 1, 2008, are not conducting or planning to conduct substantial redevelopment activities and are not held for sale or planned for disposition within the current year. A community is considered to have stabilized occupancy at the earlier of (i) attainment of 95% physical occupancy or (ii) the one-year anniversary of completion of development or redevelopment.
- *Other Stabilized Communities* are all other completed communities that we own or have a direct or indirect ownership interest in, and that have stabilized occupancy, as defined above. Other Stabilized Communities do not include communities that are conducting or planning to conduct substantial redevelopment activities within the current year.
- *Lease-Up Communities* are communities where construction has been complete for less than one year and where physical occupancy has not reached 95%.
- *Redevelopment Communities* are communities where the Company owns a majority interest and where substantial redevelopment is in progress or is planned to begin during the current year. Redevelopment is considered substantial when capital invested during the reconstruction effort is expected to exceed either $5,000,000 or 10% of the community’s pre-development basis.

Development Communities are communities that are under construction and for which a certificate of occupancy has not been received. These communities may be partially complete and operating.

Development Rights are development opportunities in the early phase of the development process for which we either have an option to acquire land or enter into a leasehold interest, for which we are the buyer under a long-term conditional contract to purchase land or where we own land to

develop a new community. We capitalize related pre-development costs incurred in pursuit of new developments for which we currently believe future development is probable.

In addition, we own approximately 60,000 square feet of office space in Alexandria, Virginia, for our corporate office, with all other regional and administrative offices leased under operating leases.

As of June 30, 2009, 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		
Established Communities:		
New England	24	5,807
Metro NY/NJ	19	6,307
Mid-Atlantic/Midwest	17	6,683
Pacific Northwest	8	1,943
Northern California	16	4,624
Southern California	12	3,679
Total Established	96	29,043
Other Stabilized Communities:		
New England	11	3,171
Metro NY/NJ	9	2,534
Mid-Atlantic/Midwest	8	2,138
Pacific Northwest	3	653
Northern California	14	3,645
Southern California	8	1,426
Total Other Stabilized	53	13,567
Lease-Up Communities	6	1,289
Redevelopment Communities	7	2,577
Total Current Communities	162	46,476
Development Communities	12	4,035
Development Rights	26	6,688

Results of Operations

Our year-over-year operating performance is primarily affected by geographic market conditions and apartment fundamentals that cause changes in NOI of our Established Communities; NOI derived from acquisitions and development completions; the loss of NOI related to disposed communities; and capital market and financing activity. A comparison of our operating results for the three and six months ended June 30, 2009 and 2008 follows (dollars in thousands):

	For the three months ended				For the six months ended			
	6-30-09	6-30-08	$ Change	% Change	6-30-09	6-30-08	$ Change	% Change
Revenue:								
Rental and other income	$220,067	$209,612	$ 10,455	5.0%	$438,278	$412,146	$ 26,132	6.3%
Management, development and other fees	2,077	1,579	498	31.5%	3,545	3,217	328	10.2%
Total revenue	222,144	211,191	10,953	5.2%	441,823	415,363	26,460	6.4%
Expenses:								
Direct property operating expenses, excluding property taxes	55,546	47,650	7,896	16.6%	108,652	95,587	13,065	13.7%
Property taxes	20,731	19,018	1,713	9.0%	42,474	38,015	4,459	11.7%
Total community operating expenses	76,277	66,668	9,609	14.4%	151,126	133,602	17,524	13.1%
Corporate-level property management and other indirect operating expenses	9,634	10,471	(837)	(8.0%)	19,678	20,568	(890)	(4.3%)
Investments and investment management expense	907	1,195	(288)	(24.1%)	1,822	2,414	(592)	(24.5%)
Expensed development and other pursuit costs	2,281	1,829	452	24.7%	3,375	2,329	1,046	44.9%
Interest expense, net	37,385	29,598	7,787	26.3%	66,631	57,258	9,373	16.4%
Depreciation expense	53,737	47,648	6,089	12.8%	106,377	93,589	12,788	13.7%
General and administrative expense	5,390	9,383	(3,993)	(42.6%)	12,637	17,503	(4,866)	(27.8%)
Impairment loss	20,302	—	20,302	N/A	20,302	—	20,302	N/A
Total other expenses	129,636	100,124	29,512	29.5%	230,822	193,661	37,161	19.2%
Equity in income of unconsolidated entities	492	3,800	(3,308)	(87.1%)	3,949	3,833	116	3.0%
Income from continuing operations	16,723	48,199	(31,476)	(65.3%)	63,824	91,933	(28,109)	(30.6%)
Discontinued operations:								
Income from discontinued operations	—	5,101	(5,101)	(100.0%)	—	9,921	(9,921)	(100.0%)
Gain on sale of communities	—	74,139	(74,139)	(100.0%)	—	74,139	(74,139)	(100.0%)
Total discontinued operations	—	79,240	(79,240)	(100.0%)	—	84,060	(84,060)	(100.0%)
Net income	16,723	127,439	(110,716)	(86.9%)	63,824	175,993	(112,169)	(63.7%)
Net loss (income) attributable to redeemable noncontrolling interests	951	(105)	1,056	N/A	1,275	(210)	1,485	N/A
Net income attributable to the Company	17,674	127,334	(109,660)	(86.1%)	65,099	175,783	(110,684)	(63.0%)
Dividends attributable to preferred stock	—	(2,175)	2,175	(100.0%)	—	(4,350)	4,350	(100.0%)
Net income attributable to common stockholders	$ 17,674	$125,159	$(107,485)	(85.9%)	$ 65,099	$171,433	$(106,334)	(62.0%)

Net income attributable to common stockholders decreased $107,485,000 or 85.9%, to $17,674,000 for the three months ended June 30, 2009 and decreased $106,334,000 or 62.0%, to $65,099,000 for the six months ended June 30, 2009. The decreases are attributable primarily to gains on sale of assets during 2008 not present in 2009, coupled with the charges recognized in the second quarter of 2009 for the impairment of land parcels and abandonment of pursuits for Development Rights which we no longer intend to develop, as well as for severance charges related to the reduction in development activity and general economic conditions.

NOI is considered by management to be an important and appropriate supplemental performance measure to net income because it helps both investors and management to understand the core operations of a community or communities prior to the allocation of any corporate-level or financing-related costs. NOI reflects the operating performance of a community and allows for an easy 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 impacts to overhead by acquiring real estate, NOI is considered by many in the real estate industry to be a useful measure for determining the value of a real estate asset or group of assets. We define NOI as total property revenue less direct property operating expenses, including property taxes.

NOI does not represent cash generated from operating activities in accordance with U.S. generally accepted accounting principles ("GAAP"). Therefore, 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 necessarily indicative of cash available to fund cash needs. Reconciliations of NOI for the three and six months ended June 30, 2009 and 2008 to net income for each period are as follows (dollars in thousands):

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Net income	$ 16,723	$ 127,439	$ 63,824	$ 175,993
Indirect operating expenses, net of corporate income	7,362	8,893	15,936	17,350
Investments and investment management expense	907	1,195	1,822	2,414
Expensed development and other pursuit costs	2,281	1,829	3,375	2,329
Interest expense, net	37,385	29,598	66,631	57,258
General and administrative expense	5,390	9,383	12,637	17,503
Equity in income of unconsolidated entities	(492)	(3,800)	(3,949)	(3,833)
Depreciation expense	53,737	47,648	106,377	93,589
Impairment loss – land holdings	20,302	—	20,302	—
Gain on sale of real estate assets	—	(74,139)	—	(74,139)
Income from discontinued operations	—	(5,101)	—	(9,921)
Net operating income	$ 143,595	$ 142,945	$ 286,955	$ 278,543

The NOI increase for the three and six months ended June 30, 2009, as compared to the prior year period, consists of changes in the following categories (dollars in thousands):

	For the three months ended 6-30-09	For the six months ended 6-30-09
Established Communities	$ (6,128)	$ (8,380)
Other Stabilized Communities	4,517	13,612
Development and Redevelopment Communities	2,261	3,180
Total	$ 650	$ 8,412

The NOI decrease for Established Communities in the second quarter and year to date in 2009 as compared to the prior year periods was largely due to the continued challenging economic conditions, including the impact on rental revenue of increased job losses and increased operating expenses. During the six months ended June 30, 2009, we focused on controlling operating expense growth and maintaining occupancy while minimizing the decline in effective rental rates.

Rental and other income increased in the three and six months ended June 30, 2009 as compared to the prior year periods due to additional rental income generated from newly developed communities, partially offset by decreased rental rates and occupancy in our Established Communities.

Overall Portfolio – The weighted average number of occupied apartment homes increased to 39,265 apartment homes for the six months ended June 30, 2009 as compared to 37,597 homes for the prior year period. This change is primarily the result of increased homes available from newly developed communities, partially offset by communities sold during 2008 containing 3,059 apartment homes, as well as declining occupancy levels due to the recession. The weighted average monthly revenue per occupied apartment home decreased to $1,855 for the six months ended June 30, 2009 as compared to $1,925 in the prior year period.

Established Communities – Rental revenue decreased $4,481,000, or 2.8%, for the three months ended June 30, 2009 over the prior year period. Rental revenue decreased $5,578,000, or 1.7%, for the six months ended June 30, 2009 over the prior year period. These decreases are due to a decline in rental rates and economic occupancy. The average economic occupancy decreased 1.0% to 95.4% for the six months ended June 30, 2009. Economic occupancy takes into account the fact that apartment homes of different sizes and locations within a community have different economic impacts on a community’s gross revenue. Economic occupancy is defined as gross potential revenue less vacancy loss, as a percentage of gross potential revenue. Gross potential revenue is determined by valuing occupied homes at leased rates and vacant homes at market rents. For the six months ended June 30, 2009, the weighted average revenue per occupied apartment home decreased 0.7% to $1,891 compared to $1,905 in the prior year period.

Consistent with expected operating results for 2009, we experienced an overall decrease in Established Communities' rental revenue of 1.7% for the six months ended June 30, 2009 as compared to the prior year period. The decrease in rental revenue was comprised of rental revenue declines in each of our markets as compared to the prior year period. Almost 70% of our Established Community rental revenue is generated by the Metro New York/New Jersey, Mid-Atlantic/Midwest, and New England regions, which are discussed in more detail below.

The Metro New York/New Jersey region, which accounted for approximately 27% of Established Community rental revenue for the six months ended June 30, 2009, experienced a decrease in rental revenue of 2.4% as compared to the prior year period. Economic occupancy decreased 0.8% to 95.4% and average rental rates decreased 1.6% to $2,332 for the six months ended June 30, 2009. We expect net job losses to continue through the second half of 2009, driven by workforce reductions in the financial services sector, resulting in further rental revenue declines.

The New England region accounted for approximately 21% of the Established Community rental revenue for the six months ended June 30, 2009 and experienced a decline in rental revenue of 2.7% over the prior year period. Economic occupancy decreased 1.6% to 95.1% and average rental rates decreased 1.1% to $1,970 for the six months ended June 30, 2009, as compared to the prior year period. The financial services sector is an important economic driver in both the Boston metro area and Fairfield-New Haven, and the impact of cumulative job losses in financial services and other sectors impacted by the recession will result in further rental revenue declines in this region for the balance of 2009.

The Mid-Atlantic/Midwest region, which represented approximately 21% of Established Community rental revenue during the six months ended June 30, 2009, experienced a decrease in rental revenue of 0.1% as compared to the prior year period. For the six months ended June 30, 2009, economic occupancy decreased by 0.2% to 96.3%, offset somewhat by an increase in average rental rates of 0.1% to $1,697. This region benefits from a preponderance of government and government services employment, which serves to stabilize the economy relative to other regions. We expect rental revenue in the Mid-Atlantic/Midwest to decline for the balance of 2009, though at a more moderate pace than our other markets.

In accordance with GAAP, cash concessions are amortized as an offset to rental revenue over the approximate lease term, which is generally one year. As a supplemental measure, we also present rental revenue with concessions stated on a cash basis to help investors evaluate the impact of both current and historical concessions on GAAP based rental revenue and to more readily enable comparisons to revenue as reported by other companies. Rental revenue with concessions stated on a cash basis also allows investors to understand historical trends in cash concessions, as well as current rental market conditions.

The following table reconciles total rental revenue in conformity with GAAP to total rental revenue adjusted to state concessions on a cash basis for our Established Communities for the three and six months ended June 30, 2009 and 2008 (dollars in thousands).

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Rental revenue (GAAP basis)	$ 156,457	$ 160,938	$ 314,430	$ 320,008
Concessions amortized	2,182	1,647	4,354	3,283
Concessions granted	(2,231)	(2,178)	(4,061)	(3,467)
Rental revenue adjusted to state concessions on a cash basis	$ 156,408	$ 160,407	$ 314,723	$ 319,824
Year-over-year % change — GAAP revenue		(2.8%)		(1.7%)
Year-over-year % change — cash concession based revenue		(2.5%)		(1.6%)

In response to recent market conditions, we have relied less on concessions and more on market rent adjustments to attract and retain residents, which minimizes the difference between cash and accrual based revenue.

Direct property operating expenses, excluding property taxes increased $7,896,000, or 16.6% for the three months ended June 30, 2009 and increased $13,065,000, or 13.7% for the six months ended June 30, 2009 as compared to the prior year periods, primarily due to the addition of recently developed apartment homes.

For Established Communities, direct property operating expenses, excluding property taxes, increased approximately $2,347,000, or 6.9% to approximately $36,448,000 for the three months ended June 30, 2009, and increased approximately $2,925,000, or 4.2% for the six months ended June 30, 2009, due primarily to increased administrative and community maintenance related costs, offset partially by a decrease in insurance related expenses. The increase in administrative expense is primarily due to an increase in bad debt, due to a general decline in the economy.

Property taxes increased $1,713,000, or 9.0% and $4,459,000, or 11.7% for the three and six months ended June 30, 2009, due primarily to the addition of newly developed and redeveloped apartment homes. Property tax increases are also impacted by the size and timing of successful tax appeals.

For Established Communities, property taxes decreased by approximately $666,000, or 4.2% and approximately $47,000, or 0.1% for the three and six months ended June 30, 2009 due to a refund received in the current period from the successful appeals of prior year assessments, offset partially by higher assessments throughout all regions. The impact of the current economic environment has not been reflected in current assessments, as there is typically a time lag between a change in the economy affecting property valuations and updated real estate tax assessments. Overall we expect property taxes in 2009 to increase over 2008 due primarily to higher tax rates, without the benefit of lower assessed values. Property tax increases are limited by law (Proposition 13) for communities in California. We evaluate property tax increases internally, as well as engage third-party consultants, and appeal increases when appropriate.

Corporate-level property management and other indirect operating expenses decreased by $837,000 or 8.0% and $890,000 or 4.3% for the three and six months ended June 30, 2009. These decreases were due primarily to decreased compensation costs, offset partially by increased costs associated with corporate initiatives focused on both strategic planning and improving efficiency and enhancing controls at our operating communities.

Expensed development and other pursuit costs primarily reflects the costs incurred for abandoned pursuit costs, which include costs incurred for development pursuits not yet considered probable for development, as well as the abandonment of development pursuits, acquisition pursuits and disposition pursuits. Expensed development and other pursuit costs increased during the three and six months ended June 30, 2009 compared to the prior year period due primarily to increases in abandoned pursuit costs. These costs can be volatile, particularly in periods of economic downturn or when there is limited access to capital, and the costs may vary significantly from period to period.

Interest expense, net increased $7,787,000, or 26.3% and $9,373,000, or 16.4% for the three and six months ended June 30, 2009. This category includes both interest expense and interest income. The increase for the three and six months ended June 30, 2009 is due primarily to a decrease in the allocation of our overall interest expenditures to capitalized interest in 2009 as compared to the prior year period. The decrease in the amount of interest capitalized is attributable to the decrease in variable rates and a decrease in our development pipeline, coupled with the repayment of higher coupon fixed rate notes. In addition, interest expense increased in 2009 as compared to 2008 as a result of the additional secured financing activity that closed throughout both years. These increases are offset somewhat by a decrease in interest costs on our Credit Facility, as defined later in this report, principally due to the decline in amounts outstanding and lower rates in 2009. Our year to date 2009 results also reflect the gain of $1,062,000 associated with the purchase of our medium-term notes at a price of 98% of par in the first quarter of 2009.

Depreciation expense increased $6,089,000, or 12.8% and $12,788,000, or 13.7% in the three and six months ended June 30, 2009 primarily due to the completion of development and redevelopment activities.

General and administrative expense decreased $3,993,000, or 42.6% and $4,866,000, or 27.8% for the three and six months ended June 30, 2009 as compared to the prior year period due to the recognition of legal settlement proceeds, decreases in compensation costs as well as

decreases in taxes associated with gains from an investment in a taxable REIT subsidiary in 2009, partially offset by the recognition of the charge for severance and related costs associated with the reduction in our development activities in 2009.

Impairment loss increased for the three and six months ended June 30, 2009 from the prior year periods due to the recognition of an impairment charge on property owned associated with two former Development Rights in 2009, with no comparable expense in the prior year periods. Like abandoned pursuit costs, these costs can be volatile, particularly in periods of economic downturn or when there is limited access to capital, and the costs may vary significantly from period to period.

Equity in income of unconsolidated entities for the three months ended June 30, 2009 decreased from the prior year period due primarily to the recognition of our portion of the gain from the sale of a community by the Fund in 2008. The increase for the six months ended June 30, 2009 is due to the recognition of our promoted interest in the joint venture that owns Avalon Chrystie Place, offset by the gain from the sale of a community by the Fund in 2008.

Income from discontinued operations represents the net income generated by operating real estate assets sold or qualifying as discontinued operations during the period from January 1, 2008 through June 30, 2009.

Net loss (income) attributable to redeemable noncontrolling interests for the three and six months ended June 30, 2009 resulted in income of $951,000 and $1,275,000, respectively compared to a loss of $105,000 and $210,000, respectively in the three and six months ended June 30, 2008 due to recognition of income for our joint venture partners' portion of expenses incurred by Fund II, as well as the conversion and redemption of limited partnership units in 2008 and 2009, thereby reducing outside ownership interests and the allocation of net income to outside ownership interests.

Funds from Operations Attributable to Common Stockholders ("FFO")

FFO is considered by management to be an appropriate supplemental measure of our operating and financial performance. In calculating FFO, we exclude gains or losses related to dispositions of previously depreciated property and exclude real estate depreciation, which can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates. FFO can help one compare the operating performance of a real estate company between periods or as compared to different companies. We believe that in order to understand our operating results, FFO should be examined with net income as presented in our Condensed Consolidated Financial Statements included elsewhere this report.

Consistent with the definition adopted by the Board of Governors of the National Association of Real Estate Investment Trustsâ ("NAREIT"), we calculate FFO as net income or loss computed in accordance with GAAP, adjusted for:

- gains or losses on sales of previously depreciated operating communities;
- extraordinary gains or losses (as defined by GAAP);
- depreciation of real estate assets; and
- adjustments for unconsolidated partnerships and joint ventures.

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

The following is a reconciliation of net income attributable to the Company to FFO (dollars in thousands, except per share data):

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Net income attributable to the Company	$ 17,674	$ 127,334	$ 65,099	$ 175,783
Dividends attributable to preferred stock	—	(2,175)	—	(4,350)
Depreciation — real estate assets, including discontinued operations and joint venture adjustments	54,126	50,258	107,651	100,044
Distributions to noncontrolling interests, including discontinued operations	14	57	39	114
Gain on sale of unconsolidated entities holding previously depreciated real estate assets	—	(3,483)	—	(3,483)
Gain on sale of operating communities	—	(74,139)	—	(74,139)
FFO attributable to common stockholders	$ 71,814	$ 97,852	$ 172,789	$ 193,969
Weighted average common shares outstanding — diluted	80,042,294	77,578,617	79,898,287	77,484,723
EPS per common share — diluted	$ 0.22	$ 1.61	$ 0.82	$ 2.21
FFO per common share — diluted	$ 0.90	$ 1.26	$ 2.16	$ 2.50

FFO also does not represent cash generated from operating activities in accordance with GAAP, and therefore should not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity. Additionally, it is not necessarily indicative of cash available to fund cash needs.

A presentation of GAAP based cash flow metrics is as follows (dollars in thousands) and a discussion of "Liquidity and Capital Resources" can be found later in this report.

	For the three months ended		For the six months ended	
	6-30-09	6-30-08	6-30-09	6-30-08
Net cash provided by operating activities	$ 98,907	$ 119,548	$ 189,728	$ 139,125
Net cash used in investing activities	$ (146,376)	$ (45,806)	$ (276,057)	$ (202,751)
Net cash provided by (used in) financing activities	$ 172,922	$ (335,833)	$ 236,411	$ 50,689

Liquidity and Capital Resources

Our current liquidity needs result primarily from development and redevelopment expenditures, maturing debt and dividend requirements. 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. Operating cash flow has historically been determined by: (i) the number of apartment homes currently owned, (ii) rental rates, (iii) occupancy levels and (iv) operating expenses with respect to apartment homes. The timing and type of capital markets activity in which we engage, as well as our plans for development, redevelopment, acquisition and disposition activity, are affected by changes in the capital markets environment, such as changes in interest rates or the availability of cost-effective capital.

We regularly review our liquidity needs, the adequacy of cash flows from operations and other expected liquidity sources to meet these needs. We believe our principal short-term liquidity needs are to fund:

- development and redevelopment activity in which we are currently engaged;
- the minimum dividend payments on our common stock required to maintain our REIT qualification under the Internal Revenue Code of 1986;
- debt service and maturity payments;
- normal recurring operating expenses;
- DownREIT partnership unit distributions; and
- capital calls for the Fund and Fund II, as required.

While the constrained capital and credit markets experienced in 2008 continue into 2009, our balance sheet provides the financial flexibility to access capital to meet liquidity needs. In 2009, we expect to meet all of our liquidity needs from a variety of internal and external sources,

including borrowing capacity under our Credit Facility (as defined below), secured financings and other public or private sources of liquidity as discussed below, as well as our operating activities. To the extent that currently available internal and external resources do not satisfy our needs, we may seek additional external financing. Additional external financing could come from a variety of sources, such as public sales of debt or equity securities or unsecured or secured loans from financial institutions or other private or governmental lenders, among others. Private equity through joint ventures may also be used. 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. At June 30, 2009, we have unrestricted cash, cash equivalents and cash in escrow of $456,064,000 available for both current liquidity needs as well as development activities, of which $93,440,000 relates to a Development Right for which we have not begun construction.

Unrestricted cash and cash equivalents totaled $215,788,000 at June 30, 2009, an increase of $150,082,000 from $65,706,000 at December 31, 2008. The following discussion relates to changes in cash due to operating, investing and financing activities, which are presented in our Condensed Consolidated Statements of Cash Flows included elsewhere in this report.

Operating Activities – Net cash provided by operating activities increased to $189,728,000 for the six months ended June 30, 2009 from $139,125,000 for the six months ended June 30, 2008. The increase was driven primarily by the timing of general corporate payables and the payment of interest amounts in 2009 as compared to 2008.

Investing Activities – Net cash used in investing activities of $276,057,000 for the six months ended June 30, 2009 related to investments in assets through the development and redevelopment of apartment communities, partially offset by a decrease in construction escrows of $47,413,000. During the six months ended June 30, 2009, we invested $313,668,000 in the development of the following real estate and capital expenditures:

- We had capital expenditures of $2,091,000 for real estate and non-real estate assets.
- We invested approximately $311,577,000 in the development of communities.

Financing Activities — Net cash provided by financing activities totaled $236,411,000 for the six months ended June 30, 2009. The net cash provided is due primarily to the pooled secured financing executed in April 2009 for $741,140,000 partially offset by the repayment of amounts outstanding on the Credit Facility, defined below, of $124,000,000, the redemption of unsecured notes for $206,173,000, the payment of cash dividends in the amount of $139,928,000 and the repayment of secured notes of $27,774,000.

Variable Rate Unsecured Credit Facility

We currently have a $1,000,000,000 revolving variable rate unsecured credit facility (the "Credit Facility") with a syndicate of commercial banks that expires in November 2011 (assuming our exercise of a one-year renewal option). In the aggregate, we pay an annual facility fee of approximately $1,250,000. The Credit Facility bears interest at varying levels based on the London Interbank Offered Rate ("LIBOR"), our credit rating and on a maturity schedule selected by us. The current stated pricing is LIBOR plus 0.40% per annum (0.68% on July 31, 2009). The spread over LIBOR can vary from LIBOR plus 0.325% to LIBOR plus 1.00% based on our credit rating. In addition, a competitive bid option is available for borrowings of up to $650,000,000. This option allows banks that are part of the lender consortium to bid to provide us loans at a rate that is lower than the stated pricing provided by the Credit Facility. The competitive bid option may result in lower pricing if market conditions allow. We had no outstanding balance under this competitive bid option at July 31, 2009. At July 31, 2009, there were no amounts outstanding on the Credit Facility, $40,260,000 was used to provide letters of credit, and $959,740,000 was available for borrowing under the Credit Facility.

We are subject to financial and other covenants contained in the Credit Facility; our $224,400,000 variable rate, unsecured term loan; and the indenture under which our unsecured notes were issued. The financial covenants include the following:

- limitations on the amount of total and secured debt in relation to our overall capital structure;
- limitation 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 June 30, 2009.

In addition, our secured borrowings may 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 our borrowings were secured.

Future Financing and Capital Needs — Debt Maturities

One of our principal long-term liquidity needs is the repayment of long-term debt at the time that such debt matures. For unsecured notes, we anticipate that no significant portion of the principal of these notes will be repaid substantially prior to maturity. 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 the debt. This refinancing may be accomplished by uncollateralized private or public debt offerings, additional debt financing that is secured by mortgages on individual communities or groups of communities, draws on our Credit Facility or by equity offerings. Although we believe we will have the capacity to meet our currently anticipated liquidity needs, we cannot assure you that 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 financing activity occurred during the six months ended June 30, 2009:

- In April 2009, we entered into a loan facility with Deutsche Bank Berkshire Mortgage, Inc. on behalf of Freddie Mac. Under this facility, we completed a 5.86% fixed-rate secured financing for $741,140,000 pursuant to fourteen separate ten-year mortgage loans, each secured by one of our current communities. Each of the loans provides for payments of interest only during the first two years of the loan term, with payments of principal and interest (based on a 30 year amortization schedule) thereafter and the remaining principal amount and any unpaid interest due at maturity on the tenth anniversary. In each case the borrower under the loan is one of our subsidiaries or affiliates that owns the community. The loans are generally non-recourse to us and the borrowers. Each of the notes evidencing the loans is coterminous and subject to (i) a Master Cross-Collateralization Agreement, which provides for cross-collateralization of all of the loans and a cross-default and acceleration of all of the loans if there is an event of default under one

of the loans and (ii) a Master Substitution Agreement, which provides for the substitution of collateral under certain circumstances;

- we obtained $93,440,000 in variable rate tax exempt bond financing related to a Development Right, the proceeds of which will be held in escrow until requisitioned for construction funding. This loan provides an option for us to request an additional construction loan of up to $83,560,000 subject to the lender's discretion;
- we repaid $4,143,000 in 8.08% fixed rate debt secured by a real estate asset formerly classified as a Development Right in Alexandria, VA in April 2009;
- we redeemed $37,438,000 principal amount of our $150,000,000, 7.5% unsecured notes that mature in August 2009 for par and cancelled the notes upon purchase;
- we redeemed $64,423,000 principal amount of our $200,000,000, 7.5% unsecured notes that mature in December 2010 for $63,135,000 with the discount below par recorded as a gain reflected as a reduction in interest expense and cancelled the notes upon purchase;
- we repaid $105,600,000 in unsecured debt, representing the first tranche of our $330,000,000 unsecured variable rate term loan; and
- we repaid $19,470,000 in variable rate debt secured by Avalon at Flanders Hill, located in Westborough, Massachussets.

The following table details debt maturities for the next five years, excluding our Credit Facility and amounts outstanding related to real estate assets classified as held for sale, for debt outstanding at June 30, 2009 (dollars in thousands).

Community	All-In interest rate (1)	Principal maturity date	Balance outstanding 12-31-08	Balance outstanding 6-30-09	2009	2010	Scheduled maturities 2011	Scheduled maturities 2012	2013	Thereafter
Tax-exempt bonds										
Fixed rate										
CountryBrook	6.46%	Mar-2012	$ 14,680	$ 14,326	$ 365	$ 766	$ 816	$ 12,379	$ —	$ —
Avalon at Symphony Glen	5.17%	Jul-2024	9,780	9,780	—	—	—	—	—	9,780
Avalon at Lexington	6.94%	Feb-2025	11,665	11,449	223	466	495	526	559	9,180
Avalon Campbell	6.49%	Jun-2025	30,914	30,406(2)	—	—	—	—	—	30,406
Avalon Pacifica	6.51%	Jun-2025	14,023	13,793(2)	—	—	—	—	—	13,793
Avalon Fields	7.79%	May-2027	9,988	9,854	140	295	316	339	364	8,400
Avalon Oaks	7.49%	Jul-2041	16,940	16,868	75	157	168	180	193	16,095
Avalon Oaks West	7.54%	Apr-2043	16,795	16,729	67	142	152	162	173	16,033
Avalon at Chestnut Hill	6.15%	Oct-2047	41,834	41,670	168	349	368	388	409	39,988
			166,619	164,875	1,038	2,175	2,315	13,974	1,698	143,675
***Variable rate* (3)**										
Avalon Burbank	1.97%	Oct-2010	30,142	29,772	384	29,388	—	—	—	—
Waterford	1.09%	Jul-2014	33,100	33,100(4)	—	—	—	—	—	33,100
Avalon at Mountain View	1.14%	Feb-2017	18,300	18,300(4)	—	—	—	—	—	18,300
Avalon at Mission Viejo	1.40%	Jun-2025	7,635	7,635(4)	—	—	—	—	—	7,635
Avalon at Nob Hill	1.31%	Jun-2025	20,800	20,800(4)	—	—	—	—	—	20,800
Avalon Campbell	1.89%	Jun-2025	7,886	8,394(2)	—	—	—	—	—	8,394
Avalon Pacifica	1.91%	Jun-2025	3,577	3,807(2)	—	—	—	—	—	3,807
Avalon Bowery Place I	1.32%	Nov-2037	93,800	93,800	—	—	—	—	—	93,800
Avalon Bowery Place II	1.75%	Nov-2039	48,500	48,500(5)	—	—	—	—	—	48,500
Avalon Acton	1.76%	Jul-2040	45,000	45,000(5)	—	—	—	—	—	45,000
Avalon Morningside Park	2.08%	Nov-2040	100,000	100,000(5)	—	—	—	—	—	100,000
West Chelsea	0.27%	May-2012	—	93,440(5)	—	—	—	93,440	—	—
Avalon Walnut Creek	3.04%	Mar-2046	116,000	116,000(5)	—	—	—	—	—	116,000
Avalon Walnut Creek	2.95%	Mar-2046	10,000	10,000(5)	—	—	—	—	—	10,000
			534,740	628,548	384	29,388	—	93,440	—	505,336
Conventional loans (6)										
Fixed rate										
$150 million unsecured notes	7.63%	Aug-2009	140,000	102,562(7)	102,562	—	—	—	—	—
$200 million unsecured notes	7.67%	Dec-2010	200,000	135,577(8)	—	135,577	—	—	—	—
$300 million unsecured notes	6.79%	Sep-2011	300,000	300,000	—	—	300,000	—	—	—
$50 million unsecured notes	6.31%	Sep-2011	50,000	50,000	—	—	50,000	—	—	—
$250 million unsecured notes	5.74%	Jan-2012	235,000	235,000(9)	—	—	—	235,000	—	—
$250 million unsecured notes	6.26%	Nov-2012	250,000	250,000	—	—	—	250,000	—	—
$100 million unsecured notes	5.11%	Mar-2013	100,000	100,000	—	—	—	—	100,000	—
$150 million unsecured notes	5.52%	Apr-2014	150,000	150,000	—	—	—	—	—	150,000
$250 million unsecured notes	5.89%	Sep-2016	250,000	250,000	—	—	—	—	—	250,000
Avalon at Twinbrook	7.25%	Oct-2011	7,801	7,691	113	239	7,339	—	—	—
Avalon at Tysons West	5.55%	Jul-2028	6,218	6,132	87	183	193	204	216	5,249
4600 Eisenhower Avenue	—	Apr-2009	4,175	—	—	—	—	—	—	—
Avalon Orchards	7.77%	Jul-2033	19,322	19,169	158	333	357	382	409	17,530
Avalon at Arlington Square	4.81%	Apr-2013	170,125	170,125	—	—	—	—	170,125	—
Avalon at Cameron Court	5.07%	Apr-2013	94,572	94,572	—	—	—	—	94,572	—
Avalon Crescent	5.59%	May-2015	110,600	110,600	—	—	—	—	—	110,600
Avalon Silicon Valley	5.73%	Jul-2015	150,000	150,000	—	—	—	—	—	150,000
Avalon Darien	6.22%	Nov-2015	51,749	51,461	315	660	702	746	793	48,245
Avalon Greyrock Place	6.12%	Nov-2015	62,400	62,045	387	811	861	914	971	58,101
Avalon Commons	6.10%	Dec-2013	55,100	55,100	—	—	693	734	53,673	—
Avalon Walnut Creek	4.00%	Jul-2066	2,500	2,500	—	—	—	—	—	2,500
Avalon Shrewsbury	5.90%	May-2019	—	21,130	—	—	183	285	301	20,361
Avalon Gates	5.91%	May-2019	—	41,321	—	—	357	557	589	39,818
Avalon at Stamford Harbor	5.91%	May-2019	—	65,695	—	—	568	885	937	63,305
Avalon Freehold	5.92%	May-2019	—	36,630	—	—	317	493	522	35,298
Avalon Run East II	5.92%	May-2019	—	39,250	—	—	339	529	560	37,822
Avalon Gardens	6.02%	May-2019	—	66,237	—	—	572	892	945	63,828
Avalon Edgewater	6.05%	May-2019	—	78,565	—	—	679	1,058	1,120	75,708
Avalon Foxhall	6.01%	May-2019	—	59,010	—	—	510	795	841	56,864
Avalon Gallery Place I	6.01%	May-2019	—	45,850	—	—	396	618	654	44,182
Avalon Traville	5.90%	May-2019	—	77,700	—	—	672	1,047	1,108	74,873
Avalon Bellevue	5.90%	May-2019	—	26,698	—	—	231	360	381	25,726
Avalon on the Alameda	5.89%	May-2019	—	53,980	—	—	467	727	770	52,016
Avalon Mission Bay North	5.89%	May-2019	—	73,269	—	—	633	987	1,045	70,604
Avalon Woburn	5.89%	May-2019	—	55,805	—	—	482	752	796	53,775
			2,409,562	3,043,674	103,622	137,803	366,551	497,965	431,328	1,506,405
***Variable rate* (3)**										
Avalon at Flanders Hill	—	May-2009	19,735	—	—	—	—	—	—	—
Avalon at Newton Highlands	2.34%	Dec-2009	34,945	34,230(4)	34,230	—	—	—	—	—
Avalon at Crane Brook	2.24%	Mar-2011	31,530	30,990(4)	561	1,169	29,260	—	—	—
Avalon at Bedford Center	1.88%	May-2012	16,361	16,121(4)	252	527	560	14,782	—	—
Avalon Walnut Creek	3.39%	Mar-2046	9,000	9,000(5)	—	—	—	—	—	9,000
$105.6 million unsecured notes	0.00%	May-2009	105,600	—	—	—	—	—	—	—
$112.2 million unsecured notes	1.95%	Jan-2010	112,200	112,200	—	112,200	—	—	—	—
$112.2 million unsecured notes	1.81%	Jan-2011	112,200	112,200	—	—	112,200	—	—	—
			441,571	314,741	35,043	113,896	142,020	14,782	—	9,000
Total indebtedness — excluding unsecured credit facility			$ 3,552,492	$ 4,151,838	$ 140,087	$283,262	$ 510,886	$ 620,161	$ 433,026	$ 2,164,416

(1) Includes credit enhancement fees, facility fees, trustees' fees and other fees.

(2) Financed by variable rate, tax-exempt debt, but the interest rate on a portion of this debt is effectively fixed at June 30, 2009 and December 31, 2008 through a swap agreement. The portion of the debt fixed through a swap agreement decreases (and therefore the variable portion of the debt increases) monthly as payments are made to a principal reserve fund.

(3) Variable rates are given as of June 30, 2009.

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

(5) Represents full amount of the debt as of June 30, 2009. Actual amounts drawn on the debt as of June 30, 2009 are $45,811 for Bowery Place II, $44,536 for Avalon Acton, $88,115 for Morningside Park, $35,345 for Walnut Creek, and $0 for West Chelsea.

(6) Balances outstanding represent total amounts due at maturity, and are not net of $1,950 of debt discount as of June 30, 2009 and $2,035 of debt discount as of December 31, 2008, as reflected in unsecured notes on our Condensed Consolidated Balance Sheets included elsewhere in this report.

(7) In April 2008, we redeemed $10,000 aggregate principal amount of our $150,000, 7.5% unsecured notes due in August 2009. In January 2009, we redeemed $37,438 principal amount of our $150,000, 7.5% unsecured notes due August 2009.

(8) In January 2009, we redeemed $64,423 principal amount of our $200,000, 7.5% unsecured notes due December 2010.

(9) In November 2008, we redeemed $15,000 aggregate principal amount of our $250,000, 5.5% unsecured notes due January 2012.

Future Financing and Capital Needs — Portfolio and Other Activity

As of June 30, 2009, we had 12 new communities under construction, for which a total estimated cost of $395,611,000 remained to be invested. In addition, we had seven wholly owned communities under reconstruction, for which a total estimated cost of $61,157,000 remained to be invested. Substantially all of the capital expenditures necessary to complete the communities currently under construction and reconstruction, as well as development costs related to pursuing Development Rights, will be funded from:

- cash currently on hand, including cash in construction escrows, invested in highly liquid overnight money market funds and repurchase agreements, and short-term investment vehicles;
- the remaining capacity under our $1,000,000,000 Credit Facility;
- retained operating cash;
- the net proceeds from sales of existing communities;
- the issuance of debt or equity securities; and/or
- private equity funding, including joint venture activity.

Before planned reconstruction activity, including reconstruction activity related to communities acquired by the Fund or Fund II, or the construction of a Development Right begins, we intend to arrange adequate financing 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 have to 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 primarily 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 where our partners bring development and operational expertise to the venture. Each joint venture or partnership agreement has been and will continue to be 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 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 the past business cycle 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, 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. However, we believe that the absence of future cash flows from communities sold will have a minimal impact on our ability to fund future liquidity and capital resource needs.

Off-Balance Sheet Arrangements

In addition to our investment interests in consolidated and unconsolidated real estate entities, we have certain off-balance sheet arrangements with the entities in which we invest. Additional discussion of these entities can be found in Note 6, "Investments in Real Estate Entities," of our Condensed Consolidated Financial Statements located elsewhere in this report.

- CVP I, LLC has outstanding tax-exempt, variable rate bonds maturing in November 2036 in the amount of $117,000,000, which have permanent credit enhancement. We have agreed to guarantee, under limited circumstances, the repayment to the credit enhancer of any advances it may make in fulfillment of CVP I, LLC's repayment obligations under the bonds**.** We have also guaranteed to the credit enhancer that CVP I, LLC will obtain a final certificate of occupancy for the project (Chrystie Place in New York City), which is expected in 2010. Our 80% partner in this venture has agreed that it will reimburse us its pro rata share of any amounts paid relative to these guaranteed obligations. The estimated fair value of, and our obligation under these guarantees, both at inception and as of June 30, 2009 were not significant. As a result we have not recorded any obligation associated with these guarantees at June 30, 2009.

- The Fund has 22 loans secured by individual assets with amounts outstanding in the aggregate of $436,556,000, with varying maturity dates (or dates after which the loans can be prepaid), ranging from October 2011 to September 2016. These mortgage loans are secured by the underlying real estate. The Fund also has $3,000,000 outstanding under a credit facility as of June 30, 2009, that matures in December 2009. The mortgage loans and the credit facility are payable by the Fund with operating cash flow or disposition proceeds from the underlying real estate, and the credit facility is secured by capital commitments. We have not guaranteed the debt of the Fund, nor do we have any obligation to fund this debt should the Fund be unable to do so.

  In addition, as part of the formation of the Fund, we have provided to one of the limited partners a guarantee. The guarantee provides that if, upon final liquidation of the Fund, the total amount of all distributions to that partner during the life of the Fund (whether from operating cash flow or property sales) does not equal a minimum of the total capital contributions made by that partner, then we will pay the partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner (maximum of approximately $7,192,000 as of June 30, 2009). As of June 30, 2009, the expected realizable value of the real estate assets owned by the Fund is considered adequate to cover such potential payment to that partner under the expected Fund liquidation scenario. The estimated fair value of, and our obligation under this guarantee, both at inception and as of June 30, 2009 was not significant and therefore we have not recorded any obligation for this guarantee as of June 30, 2009.

- Fund II has one loan secured by an asset in the amount of $21,515,000 with a maturity of June 2019. This loan is payable by Fund II.

  In addition, as part of the formation of Fund II, we have provided to one of the limited partners a guarantee. The guarantee provides that if, upon final liquidation of Fund II, the total amount of all distributions to that partner during the life of the Fund (whether from operating cash flow or property sales) does not equal a minimum of the total capital contributions made by that partner, then we will pay the partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner (maximum of approximately $412,500 as of June 30, 2009). As of June 30, 2009, the expected realizable value of the real estate assets owned by Fund II is considered adequate to cover such potential payment to that partner under the expected Fund II liquidation scenario. The estimated fair value of, and our obligation under this guarantee, both at inception and as of June 30, 2009 was not significant and therefore we have not recorded any obligation for this guarantee as of June 30, 2009.

- MVP I, LLC, the entity that owns Avalon at Mission Bay North II, has a loan secured by the underlying real estate assets of the community for $105,000,000. The loan is a fixed rate, interest-only note bearing interest at 6.02%, maturing in December 2015. We have not guaranteed the debt of MVP I, LLC, nor do we have any obligation to fund this debt should MVP I, LLC be unable to do so.
- Avalon Del Rey Apartments, LLC has a loan secured by the underlying real estate assets of the community for $46,366,000 maturing in April 2016. The variable rate loan had an interest rate of 3.66% at June 30, 2009. We have not guaranteed the debt of Avalon Del Rey Apartments, LLC, nor do we have any obligation to fund this debt should Avalon Del Rey Apartments, LLC be unable to do so.
- Aria at Hathorne Hill, LLC is a joint venture in which we have a non-managing member interest. The LLC is developing for-sale town homes in Danvers, Massachusetts. The LLC has three separate variable rate loans with aggregate borrowings of $4,124,000 and a weighted average interest rate of 2.93% at June 30, 2009. We have not guaranteed the debt of Aria at Hathorne, nor do we have any obligation to fund this debt should Aria at Hathorne be unable to do so.
- PHVP I, LLC, a consolidated joint venture in which we hold a 99.0% controlling interest, is constructing a public garage adjacent to our Walnut Creek development. As part of the construction management services we provide to PHVP I, LLC for the construction of the public garage, we have provided a construction completion guarantee to the related lender in order to fulfill their standard financing requirements related to the garage construction financing. Our obligations under this guarantee terminate upon (i) the issuance of a certificate of substantial completion and (ii) completion of a list of lender requirements. The certificate of substantial completion was issued on July 11, 2008 and the completion of the lender's requirements list is nearing completion. We expect termination of the guarantee in 2009.
- In 2007 we entered into a non-cancelable commitment (the "Commitment") to acquire parcels of land in Brooklyn, New York for an aggregate purchase price of approximately $111,000,000. Under the terms of the Commitment, we are closing on the various parcels over a period determined by the seller's ability to execute unrelated purchase transactions and achieve deferral of gains for the land sold under this Commitment. However, under no circumstances will the Commitment extend beyond 2011, at which time either we or the seller can compel execution of the remaining transactions. At June 30, 2009, we have an outstanding commitment to purchase the remaining land for approximately $62,500,000.

There are no other lines of credit, side agreements, financial guarantees or any other derivative financial instruments related to or between our unconsolidated real estate entities and us. In evaluating our capital structure and overall leverage, management takes into consideration our proportionate share of this unconsolidated debt.

Contractual Obligations

We currently have contractual obligations consisting primarily of long-term debt obligations and lease obligations for certain land parcels and regional and administrative office space. There has not been any material changes outside the ordinary course of business to our contractual obligations during the six months ended June 30, 2009.

Development Communities

As of June 30, 2009, we had 12 Development Communities under construction. We expect these Development Communities, when completed, to add a total of 4,035 apartment homes to our portfolio for a total capitalized cost, including land acquisition costs, of approximately $1,396,400,000. You should carefully review Item 1a., "Risk Factors," of our Form 10-K for a discussion of the risks associated with development activity.

The following table presents a summary of the Development Communities. We hold a direct or indirect fee simple ownership interest in these communities.

		Number of apartment homes	Total capitalized cost (1) ($ millions)	Construction start	Initial occupancy (2)	Estimated completion	Estimated stabilization (3)
1.	Avalon White Plains *White Plains, NY*	407	$ 153.0	Q2 2007	Q3 2008	Q4 2009	Q2 2010
2.	Avalon Anaheim Stadium *Anaheim, CA*	251	102.3	Q2 2007	Q4 2008	Q3 2009	Q1 2010
3.	Avalon Union City *Union City, CA*	439	120.9	Q3 2007	Q1 2009	Q4 2009	Q2 2010
4.	Avalon at Mission Bay North III *San Francisco, CA*	260	150.0	Q4 2007	Q2 2009	Q4 2009	Q2 2010
5.	Avalon Irvine *Irvine, CA*	279	77.4	Q4 2007	Q2 2009	Q1 2010	Q3 2010
6.	Avalon Fort Greene *New York, NY*	631	306.8	Q4 2007	Q4 2009	Q1 2011	Q3 2011
7.	Avalon Charles Pond *Coram, NY*	200	47.8	Q1 2008	Q1 2009	Q3 2009	Q1 2010
8.	Avalon Blue Hills *Randolph, MA*	276	46.6	Q2 2008	Q1 2009	Q4 2009	Q2 2010
9.	Avalon Walnut Creek (4) *Walnut Creek, CA*	422	151.7	Q3 2008	Q3 2010	Q1 2011	Q3 2011
10.	Avalon Norwalk *Norwalk, CT*	311	86.4	Q3 2008	Q3 2010	Q2 2011	Q4 2011
11.	Avalon Northborough I *Northborough, MA*	163	27.4	Q4 2008	Q2 2009	Q4 2009	Q2 2010
12.	Avalon Towers Bellevue *Bellevue, WA*	396	126.1	Q4 2008	Q2 2010	Q2 2011	Q4 2011
	Total	4,035	$ 1,396.4				

(1) 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. Total capitalized cost for communities identified as having joint venture ownership, either during construction or upon construction completion, represents the total projected joint venture contribution amount.

(2) Future initial occupancy dates are estimates. There can be no assurance that we will pursue to completion any or all of these proposed developments.

(3) Stabilized operations is defined as the earlier of (i) attainment of 95% or greater physical occupancy or (ii) the one-year anniversary of completion of development.

(4) This community is being financed in part by third party, tax-exempt debt.

Redevelopment Communities

As of June 30, 2009, there were seven communities under redevelopment. We expect the total capitalized cost to redevelop these communities to be $116,500,000 excluding costs prior to redevelopment. We have found that the cost to redevelop an existing apartment community is more difficult to budget and estimate than the cost to develop a new community. Accordingly, we expect that actual costs may vary from our budget by a wider range than for a new development community. We cannot assure you that we will meet our schedule for reconstruction completion or restabilized operations, or that we will meet our budgeted costs, either individually or in the aggregate. We anticipate maintaining the level of our redevelopment activity related to communities in our current operating portfolio for the remainder of 2009. You should carefully review Item 1a., "Risk Factors," of our Form 10-K for a discussion of the risks associated with redevelopment activity.

The following presents a summary of these Redevelopment Communities:

		Number of apartment homes	Total cost ($ millions)		Reconstruction start	Estimated reconstruction completion	Estimated restabilized operations (2)
			Pre-redevelopment cost	Total capitalized cost (1)			
1.	Avalon Woodland Hills *Woodland Hills, CA*	663	$ 72.1	$ 110.6	Q4 2007	Q3 2010	Q1 2011
2.	Avalon at Diamond Heights *San Francisco, CA*	154	25.3	30.6	Q4 2007	Q4 2010	Q2 2011
3.	Avalon Symphony Woods I *Columbia, MD*	176	9.4	14.2	Q2 2008	Q3 2009	Q1 2010
4.	Avalon Symphony Woods II *Columbia, MD*	216	36.4	42.6	Q2 2008	Q3 2009	Q1 2010
5.	Avalon Burbank *Burbank, CA*	400	71.0	94.4	Q3 2008	Q3 2010	Q1 2011
6.	Avalon Pleasanton *Pleasenton, CA*	456	63.0	80.9	Q2 2009	Q4 2011	Q2 2012
7.	Avalon Watch *West Windsor, NJ*	512	30.2	50.6	Q2 2009	Q1 2012	Q3 2012
	Total	2,577	$ 307.4	$ 423.9			

(1) Total capitalized cost includes all capitalized costs projected to be or actually incurred to develop the respective Redevelopment Community, including land acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees, all as determined in accordance with GAAP.

(2) Restabilized operations is defined as the earlier of (i) attainment of 95% or greater physical occupancy or (ii) the one-year anniversary of completion of redevelopment.

Development Rights

At June 30, 2009 we held 26 Development Rights for the future development of new apartment communities on land that is either owned by us, under contract, subject to a leasehold interest or for which we hold either a purchase or lease option. We generally prefer to hold Development Rights through options to acquire land, although for 13 of the Development Rights we currently own the land on which a community would be built if we proceeded with development. 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 6,688 apartment homes to our portfolio. Substantially all of these apartment homes will offer features like those offered by the communities we currently own. At June 30, 2009, there were cumulative capitalized costs (including legal fees, design fees and related overhead costs, but excluding land costs) of $74,764,000 relating to Development Rights that we consider probable for future development. In addition, land costs related to the pursuit of Development Rights (consisting of original land and additional carrying costs) of $225,634,000 are reflected as land held for development on the Condensed Consolidated Balance Sheet as of June 30, 2009.

The properties comprising 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 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 capitalized pre-development costs are charged to expense.

The Company continues to evaluate its business, and in particular its development pipeline, in light of continued weakness in the economy and the capital markets. As part of this review, for the six months ended June 30, 2009 we recognized a charge of $22,583,000 related to the impairment of two land parcels as well as the write-off of pursuit costs with respect to Development Rights for land under option agreements that we no longer intend to develop. Should the Company decide not to proceed with other Development Rights, additional impairment charges and/or abandoned pursuit charges may be recognized in future periods. The timing and amount of any future impairment charges will be dependent on management’s decisions regarding future development, as well as future economic and capital market conditions.

You should carefully review Section 1a., “Risk Factors,” of our Form 10-K for a discussion of the risks associated with Development Rights.

	Location	Estimated number of homes	Total capitalized cost ($ millions) (1)
1.	Rockville Centre, NY Phase I	210	$ 78
2.	Northborough, MA Phase II	219	43
3.	Greenburgh, NY Phase II	288	77
4.	West Long Branch, NJ	180	34
5.	Plymouth, MA Phase II	92	20
6.	Wood-Ridge, NJ	406	92
7.	Seattle, WA	204	58
8.	Lynnwood, WA Phase II	82	18
9.	San Francisco, CA	173	65
10.	Wilton, CT	100	30
11.	Greenburgh, NY Phase III	156	43
12.	Rockville Centre, NY Phase II	139	51
13.	New York, NY	691	307
14.	Shelton, CT	251	66
15.	Roselle Park, NJ	249	54
16.	Dublin, CA Phase II	405	126
17.	Cohasset, MA	200	38
18.	North Bergen, NJ	164	47
19.	Brooklyn, NY	861	443
20.	Boston, MA	180	97
21.	Rockville, MD	240	62
22.	Stratford, CT	130	22
23.	Yaphank, NY	343	57
24.	Tysons Corner, VA	338	87
25.	Seattle, WA II	272	81
26.	Andover, MA	115	26
	Total	6,688	$ 2,122

(1) 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 acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees.

Other Land and Real Estate Assets

We currently own land parcels with a carrying basis of approximately $106,193,000, that we are no longer holding for development. We believe that the current carrying basis of these assets is such that there is no charge for impairment, or further charge in the case of assets previously impaired, required. However we may be subject to the recognition of further charges for impairment in the event that there are indicators of such impairment, and we determine that the carrying basis of the assets is greater than the current fair value, less costs to dispose.

Insurance and Risk of Uninsured Losses

We carry commercial general liability insurance and property insurance with respect to all of our communities. These policies, and other insurance policies we carry, have policy specifications, insured limits and deductibles that we consider commercially reasonable. There are, however, certain types of losses (such as losses arising from 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 Item 1a., “Risk Factors,” of our Form 10-K for a discussion of risks associated with an uninsured property or liability loss.

Many of our West Coast communities are located in 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

and the Hayward Fault. We cannot assure you that an earthquake would not cause damage or losses greater than insured levels. We have in place with respect to communities located in California, for any single occurrence and in the aggregate, $75,000,000 of coverage with a deductible per building equal to five percent of the insured value of that building. Earthquake coverage outside of California is subject to a $100,000,000 limit, except with respect to the state of Washington, for which the limit is $75,000,000. Our earthquake insurance outside of California provides for a $100,000 deductible per occurrence except that the next $350,000 of loss per occurrence outside California will be treated as an additional deductible until the total deductible incurred exceeds $1,400,000.

In May 2009, we renewed our property insurance policy for a one year term and experienced an increase in premiums of approximately 7% as a result of increased property values and an increased coverage level for certain insurable events. There were no other material changes in coverage.

In August 2009, we renewed our general liability policy and worker's compensation coverage for a one year term, and experienced a decrease in the premium on these policies of approximately 25%, with no material changes in the coverage.

Just as with office buildings, transportation systems and government buildings, there have been reports that apartment communities could become targets of terrorism. In December 2007, Congress passed the Terrorism Risk Insurance Program Reauthorization Act ("TRIPRA") which is designed to make terrorism insurance available through a federal back-stop program until 2014. In connection with this legislation, we have purchased insurance for property damage due to terrorism up to $250,000,000. Additionally, we have purchased insurance for certain terrorist acts, 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. Our general liability policy provides TRIPRA coverage (subject to deductibles and insured limits) for liability to third parties that result from terrorist acts at our communities.

An additional consideration for insurance coverage and potential uninsured losses is mold growth. 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 the Company's related prevention and remediation activities, please refer to the discussion under Item 1a., "Risk Factors — We may incur costs due to environmental contamination or non-compliance," in our Form 10-K. 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 carry crime policies (also commonly referred to as a fidelity policy or employee dishonesty policy) that protect the company, up to $5,000,000 per occurrence, from employee theft of money, securities or property.

Inflation and Deflation

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 minimize our risk from the adverse effects of inflation, although these leases generally permit residents to leave at the end of the lease term and therefore expose us to the effect of a decline in market rents. In a deflationary rent environment, we may be exposed to declining rents more quickly under these shorter-term leases.

Forward-Looking Statements

This Form 10-Q contains "forward-looking statements" as that term is defined under the Private Securities Litigation Reform Act of 1995. You can identify forward-looking statements by our use of the words "believe," "expect," "anticipate," "intend," "estimate," "assume," "project," "plan," "may," "shall," "will" and other similar expressions in this Form 10-Q, 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;
- our declaration or payment of distributions;
- our joint venture and discretionary fund activities;
- our policies regarding investments, indebtedness, acquisitions, dispositions, financings and other matters;
- our qualification as a REIT under the Internal Revenue Code;
- the real estate markets in Northern and Southern California and markets in selected states in the Mid-Atlantic, Midwest, New England, Metro NY/NJ 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 recent economic downturn; and
- trends affecting our financial condition or results of operations.

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. 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," on our Form 10-K for a discussion of risks associated with forward-looking statements.

In addition, these forward-looking statements represent our estimates and assumptions only as of the date of this report. 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.

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;
- 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 the Fund, Fund II or the REIT vehicles that are used with each respective investment fund; and
- we may be unsuccessful in managing changes in our portfolio composition.

Critical Accounting Policies

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 and Significant Accounting Policies" of our Condensed Consolidated Financial Statements.

Principles of Consolidation

We may enter into various joint venture agreements with unrelated third parties to hold or develop real estate assets. We must determine for each of these ventures whether to consolidate the entity or account for our investment under the equity or cost basis of accounting.

We determine whether to consolidate certain entities based on our rights and obligations under the joint venture agreements, applying the guidance of FIN 46(R), "Consolidation of Variable Interest Entities*"* (as revised) and Emerging Issues Task Force Issue No. 04-5, "Determining Whether a General Partner, or the General Partners as a Group, Controls a Limited Partnership or Similar Entity When the Limited Partners Have Certain Rights." For investment interests that we do not consolidate, we look to the guidance in AICPA Statement of Position 78-9, "Accounting for Investments in Real Estate Ventures," Accounting Principles Board Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," and Emerging Issues Task Force Topic D-46, "Accounting for Limited Partnership Investments," to determine the accounting framework to apply. The application of these rules in evaluating the accounting treatment for each joint venture is complex and requires substantial management judgment. Therefore, we believe the decision to choose an appropriate accounting framework is a critical accounting estimate.

If we were to consolidate the joint ventures that we accounted for using the equity method at June 30, 2009, our assets would have increased by $962,848,000 and our liabilities would have increased by $750,221,000 with the balance presented as noncontrolling interests. We would be required to consolidate those joint ventures currently not consolidated for financial reporting purposes if the facts and circumstances changed,

including but not limited to the following reasons, none of which are currently expected to occur:

- For entities not considered to be variable interest entities under FIN 46(R), the nature of the entity changed such that it would be considered a variable interest entity and if we were considered the primary beneficiary.
- For entities in which we do not hold a controlling voting and/or variable interest, the contractual arrangement changed resulting in our investment interest being either a controlling voting and/or variable interest.

We evaluate our accounting for investments on a quarterly basis or when a significant change in the design of an entity occurs.

Cost Capitalization

We capitalize costs during the development of assets beginning when we determine that development of a future asset is probable 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 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 expenses incurred during the initial lease-up or post-redevelopment lease-up period are fully recognized as they accrue.

During the development and redevelopment efforts we capitalize all direct and those 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. 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 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. For example, if in the three months ended June 30, 2009 our development activities decreased by 10%, and there were no corresponding decrease in our indirect project costs, our operating expenses would have increased by $661,000.

We capitalize pre-development costs incurred in pursuit of Development Rights for which we currently believe future development is probable. 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 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 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 acquisition or development of an apartment community, and therefore should be capitalized, the accounting for pursuit costs is a critical accounting estimate. If it were determined that 10% of our capitalized pursuits were no longer probable of occurring, net income for the quarter ended June 30, 2009 would have decreased by $7,476,400.

Asset Impairment Evaluation

We apply the provisions of SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (“SFAS No. 144”) for consolidated operating apartment communities, Development Communities and Development Rights to determine the need for performing impairment analyses, as well as to measure the loss if an impairment

has occurred on a regular basis, considering qualitative economic factors**.** We also apply the provisions of SFAS No. 144 for assessing the need to perform an impairment analysis and measuring impairment losses on the underlying long-lived assets held by unconsolidated joint venture investments. In addition, we apply the provisions of APB No. 18, “The Equity Method of Accounting for Investments in Common Stock” (“APB No. 18”), to determine if there has been an other than temporary decline in the value of investments in the Company’s unconsolidated joint ventures.

For both analyses, management judgment is required both to determine if a significant event has occurred, such that an impairment analysis is necessary, as well as for the assessment and measurement of any potential impairment. Under APB 18, in the event that there has been a loss in value for an investment, a loss is only recognized if it is other than temporary which requires management judgment.

REIT Status

We are a Maryland corporation that has elected to be treated, for federal income tax purposes, as a REIT. We elected to be taxed as a REIT under the Internal Revenue Code of 1986 (“the Code”), as amended, for the year ended December 31, 1994 and have not revoked such election. A corporate REIT is a legal entity which holds real estate interests and must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its adjusted taxable income to stockholders. As a REIT, we generally will not be subject to corporate level federal income tax on taxable income if we distribute 100% of taxable income to our stockholders over time periods allowed under the Code. If we fail to qualify as a REIT in any taxable year, we will be subject to federal and state income taxes at regular corporate rates (subject to any applicable alternative minimum tax) and may not be able to elect to qualify as a REIT for four subsequent taxable years. For example, if we failed to qualify as a REIT in 2008, our net income would have decreased by approximately $210,500,000.

Our qualification as a REIT requires management to exercise significant judgment and consideration with respect to operational matters and accounting treatment. Therefore, we believe our REIT status is a critical accounting estimate.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes to our exposures to market risk since December 31, 2008.

Item 4. Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

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 as of June 30, 2009. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms.

We continue to review and document our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.

(b) Changes in internal controls over financial reporting.

None.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

We are currently involved in litigation alleging that communities constructed by us violate the accessibility requirements of the Fair Housing Act ("FHA") and the Americans with Disabilities Act. The Equal Rights Center filed a complaint against us on September 23, 2005 in the U.S. District Court, District of Maryland with respect to 100 properties. The lawsuit seeks monetary damages as well as injunctive relief, such as modifications to assets. On August 13, 2008 the U.S. Attorney's Office for the Southern District of New York filed a civil lawsuit against the Company and the joint venture (CVP I, LLC) in which it has an interest that owns Avalon Chrystie Place. The lawsuit alleges that Avalon Chrystie Place was not designed and constructed in accordance with the accessibility requirements of the FHA. The Company designed and constructed Avalon Chrystie Place with a view to compliance with New York City's Local Law 58, which for more than 20 years has been New York City's code regulating the accessible design and construction of apartments. The Company intends to vigorously defend against these actions. We cannot predict or determine the outcome of these matters, nor is it reasonably possible to estimate the amount of loss, if any, that would be associated with an adverse decision or settlement.

On August 1, 2008, we filed a lawsuit in the Superior Court of the State of Washington in the County of King (*Avalon DownREIT V, L.P., v Grand-Glacier, LLC et al)* relating to our assertion that the homeowners association in which our former Avalon Wynhaven community is a part systematically overcharged us for various shared costs. We recently sold this property and agreed to indemnify the buyer for annual association fees to the extent they exceed an amount that we each agreed was reasonable. The defendants have

filed a cross-claim against Avalon DownREIT V, L.P. seeking foreclosure of the property and satisfaction of all amounts alleged to be due. We intend to vigorously pursue our claim and defend against the counter claim. We cannot predict the likely terms of a final judgment or settlement.

In addition to the matters described above, we are involved in various other claims and/or administrative proceedings that arise in the ordinary course of our business. While no assurances can be given, we do not believe that any of these other outstanding litigation matters, individually or in the aggregate, will have a material adverse effect on our operations.

Item 1a. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the risk factors which could materially affect our business, financial condition or future results discussed in the Form 10-K in Part I, "Item 1a. Risk Factors." The risks described in our Form 10-K are not the only risks that could affect the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results in the future. There have been no material changes to our risk factors since December 31, 2008.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

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 Dollar Amount that May Yet be Purchased Under the Plans or Programs (in thousands) (2)
April 1— April 30, 2009	966	$ 42.48	—	$ 200,000
May 1— May 31, 2009	372	$ 51.28	—	$ 200,000
June 1— June 30, 2009	31	$ 42.42	—	$ 200,000

(1) Reflects shares surrendered to the Company in connection with vesting of restricted stock or exercise of stock options as payment of taxes or as payment of exercise price.

(2) As disclosed in our Form 10-Q for the quarter ended March 31, 2008, represents amounts outstanding under the Company's $500,000,000 Stock Repurchase Program. There is no scheduled expiration date to this program.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Submission of Matters to a Vote of Security Holders

The Company held its 2009 Annual Meeting of Stockholders on May 21, 2009. The stockholders voted to elect Bryce Blair, Bruce A. Choate, John J. Healy, Jr., Gilbert M. Meyer, Timothy J. Naughton, Peter S. Rummell, Lance R. Primis, H. Jay Sarles and W. Edward Walter to serve as directors of the Company until the 2010 Annual Meeting of Stockholders and until their respective successors are duly elected and qualified.

69,097,751 votes were cast for and 1,395,319 votes were withheld from the election of Mr. Blair.

69,437,236 votes were cast for and 1,055,834 votes were withheld from the election of Mr. Choate.

69,436,750 votes were cast for and 1,056,320 votes were withheld from the election of Mr. Healy.

69,936,011 votes were cast for and 530,060 votes were withheld from the election of Mr. Meyer.

69,976,786 votes were cast for and 516,284 votes were withheld from the election of Mr. Naughton.

69,430,119 votes were cast for and 1,062,951 votes were withheld from the election of Mr. Primis.

70,034,478 votes were cast for and 458,592 votes were withheld from the election of Mr. Rummell.

69,984,887 votes were cast for and 508,184 votes were withheld from the election of Mr. Sarles.

70,073,564 votes were cast for and 419,506 votes were withheld from the election of Mr. Walter.

Stockholders voted to approve the AvalonBay Communities, Inc. 2009 Stock Option and Incentive Plan. 63,271,452 votes were cast in favor of approving the Plan, 3,450,877 votes were cast against, and 185,172 abstained. There were 3,585,569 broker non-votes on this matter.

Stockholders ratified the selection of Ernst & Young LLP as the Company’s independent auditors for 2009. 69,601,422 votes were cast in favor of ratifying the selection of Ernst & Young LLP, 856,375 votes were cast against, and 35,271 abstained.

Item 5. Other Information

None.

Item 6. Exhibits

Exhibit No.		Description
3(i).1	—	Articles of Amendment and Restatement of Articles of Incorporation of AvalonBay Communities (the "Company"), dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-K of the Company filed on 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 on March 1, 2007.)
3(ii).1	—	Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on May 21, 2009. (Incorporated by reference to Exhibit 3.2 to Form 8-K of the Company filed on May 28, 2009.)
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	—	First Supplemental Indenture, dated as of January 20, 1998, between the Company and the State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.2 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.3	—	Second Supplemental Indenture, dated as of July 7, 1998, between the Company and State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.3 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.4	—	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.)
4.5	—	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.)
4.6	—	Dividend Reinvestment and Stock Purchase Plan of the Company. (Incorporated by reference to Exhibit 8.1 to Registration Statement on Form S-3 of the Company (File No. 333-87063), filed September 14, 1999.)
4.7	—	Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on December 17, 1999. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(2) of the Securities Act of 1933 on December 17, 1999.)
4.8	—	Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on March 26, 2004. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(3) of the Securities Act of 1933 on March 26, 2004.)
4.9	—	Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on May 15, 2006. (Incorporated by references to the Prospectus Supplement filed pursuant to Rule 424(b)(3) of the Securities Act of 1933 on May 15, 2006.)

Exhibit No.		Description
10.1	—	AvalonBay Communities, Inc. 2009 Stock Option and Incentive Plan. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed on May 28, 2009.)
10.2	—	Master Cross-Collateralization Agreement, dated as of April 24, 2009, between Deutsche Bank Berkshire Mortgage, Inc., parties identified on Exhibit A-Schedule 1 attached thereto and incorporated herein by reference., and Shady Grove Financing, LLC. (Filed herewith.)
10.3	—	Master Substitution Agreement, dated April 23, 2009, between Deutsche Bank Berkshire Mortgage, Inc., AvalonBay Traville, LLC and the entities identified on Schedule B attached thereto and incorporated therein by reference. (Filed herewith.)
10.4	—	Form of MultiFamily Note, dated April 24, 2009. (Used in connection with the properties identified on Exhibit B to the Master Cross-Collateralization Agreement dated April 23, 2009.) (Filed herewith.)
10.5	—	Form of Guaranty, dated April 24, 2009. (Used in connection with the properties identified on Exhibit B to the Master Cross-Collateralization Agreement dated April 23, 2009.) (Filed herewith.)
10.6	—	Form of Incentive Stock Option Agreement. (Incorporated by reference to Exhibit 10.1 to Registration Statement on Form S-8 of the Company filed on May 22, 2009.)
10.7	—	Form of Non-Qualified Stock Option Agreement. (Incorporated by reference to Exhibit 10.2 to Registration Statement on Form S-8 of the Company filed on May 22, 2009.)
10.8	—	Form of Stock Grant and Restricted Stock Agreement. (Incorporated by reference to Exhibit 10.3 to Registration Statement on Form S-8 of the Company filed on May 22, 2009.)
10.9	—	Form of Director Restricted Stock Agreement. (Incorporated by reference to Exhibit 10.4 to Registration Statement on Form S-8 of the Company filed on May 22, 2009.)
10.10	—	Form of Director Restricted Unit Agreement. (Incorporated by reference to Exhibit 10.5 to Registration Statement on Form S-8 of the Company filed on May 22, 2009.)
12.1	—	Statements re: Computation of Ratios. (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.)
101	—	XBRL (Extensible Business Reporting Language). The following materials from AvalonBay Communities, Inc.'s Quarterly Report on Form 10-Q for the period ended June 30, 2009, formatted in XBRL: (i) condensed consolidated balance sheets, (ii) condensed consolidated statements of operations, (iii) condensed consolidated statements of cash flows and (iv) notes to condensed consolidated financial statements.*

* As provided in Rule 406T of Regulation S-T, this information is furnished and not filed for purposes of Sections 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

AVALONBAY COMMUNITIES, INC.

Date: August 10, 2009	/s/ Bryce Blair
	Bryce Blair Chief Executive Officer (Principal Executive Officer)
Date: August 10, 2009	/s/ Thomas J. Sargeant
	Thomas J. Sargeant Chief Financial Officer (Principal Financial Officer)

MASTER CROSS-COLLATERALIZATION AGREEMENT

(Revision Date 02/09/2009)

THIS MASTER CROSS-COLLATERALIZATION AGREEMENT (this "**Agreement**") is made as of the 24th day of April, 2009 by **DEUTSCHE BANK BERKSHIRE MORTGAGE, INC.**, a Delaware corporation ("**Lender**"), those parties identified on Exhibit A — Schedule 1 attached hereto (each referred to individually as a "**Grantor**" and all referred to collectively as the "**Grantors**") and Shady Grove Road Financing, LLC, a Delaware limited liability company (the "**Traville Borrower**").

RECITALS

A. Lender has agreed to make a loan to each of those parties identified on Exhibit A — Schedule 2 attached hereto (each referred to individually as a "**Borrower**" and all referred to collectively as the "**Borrowers**") (each a "**Loan**" and collectively, the "**Loans**") in the original principal amounts set forth on Exhibit A — Schedule 2 attached hereto.

B. Included among the Loans is a Loan to the Traville Borrower, as more fully set forth on Exhibit A — Schedule 2 (the "**Traville Loan**").

C. Each Loan (other than the Traville Loan) is secured by a Multifamily Mortgage/Deed of Trust/Deed to Secure Debt, Assignment of Rents and Security Agreement (the "**Security Instruments**"), and the Traville Loan is guaranteed by AvalonBay Traville, LLC, a Maryland limited liability company (the "**IDOT Grantor**") pursuant to a Guaranty (the "**IDOT Guaranty**"), which IDOT Guaranty is secured by a Multifamily Indemnity Deed of Trust, Assignment of Rents and Security Agreement (the **"IDOT"**) (the Security Instruments and the IDOT are each a "**Mortgage**" and collectively, the "**Mortgages**"). The Mortgages encumber the real property identified in Exhibit B attached hereto and other property included within the definition of "Mortgaged Property" in the applicable Mortgage.

D. Each Grantor is an affiliate of the other Grantors and will receive a direct and material benefit from the Loans to the Borrowers. Lender is willing to make a Loan to each Borrower only if each Grantor agrees to pay all of the Indebtedness of the Borrowers with respect to the Borrowers' Loans as set forth in this Agreement.

E. Each Grantor is executing this Agreement to evidence its agreement (a) to pay as and when due all of the Indebtedness of the Borrowers under the Borrowers' Loan Documents and (b) to bear joint and several liability for the Indebtedness of all Borrowers as set forth in this Agreement.

F. Each Grantor (except Gardens Financing, LLC) executing a Mortgage further agrees that its obligations under this Agreement shall be secured by such Mortgage under the terms hereof. The obligations of Gardens Financing, LLC hereunder shall not be secured by the Mortgage securing the Loan to Gardens Financing, LLC (the "**Avalon Gardens Mortgage**")

1. Definitions. For purposes of this Agreement, the following terms shall have the meanings indicated:

"**Event of Default**" shall have the meaning set forth in Section 4.

"**Foreclosure**" means, with respect to any Mortgage, a judicial or non-judicial foreclosure of or trustee's sale under the Mortgage, a deed in lieu of such foreclosure or sale, a sale of the Property pursuant to lawful order of a court of competent jurisdiction in a bankruptcy case filed under Title 11 of the United States Code, or any other similar disposition of any of the Property encumbered by the Mortgage.

"**Fraudulent Transfer Laws**" means Section 548 of Title 11 of the United States Code or any applicable provisions of comparable state law, including any provisions of the Uniform Fraudulent Conveyance Act or Uniform Fraudulent Transfer Act, as adopted under state law.

"**Indebtedness**" means, with respect to each Grantor, the "Indebtedness" as defined in such Grantor's Mortgage without regard to additional obligations of such Grantor that are created by this Agreement.

"**Loans**" means the loans identified in Exhibit A — Schedule 2.

"**Mortgage**" means that as set forth in the Recitals to this Agreement.

"**Note**" with respect to each Borrower means the Multifamily Note evidencing that Borrower's obligation to repay its Loan.

"**Property**" means, with respect to each Grantor, the "Mortgaged Property" as defined in the Mortgage executed by such Grantor.

"**Release Date**" means the date that the applicable Property will be released pursuant to Section 14 hereof.

"**Total Indebtedness**" means, with respect to each Grantor, that Grantor's obligation both (a) to pay its Indebtedness and (b) to pay all other amounts payable under this Agreement and under the Borrowers' Loan Documents, whether such obligations arise directly or under a guaranty of such obligations.

"**Total Property**" means the aggregate of all the Properties, now or hereafter made subject to this Agreement, except that, for purposes of Sections 2 and 18 of this Agreement only, the Property described in the Mortgage securing the Loan to Gardens Financing, LLC shall not be part of the "Total Property".

Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Mortgages.

2. Joint and Several Liability; Integration of Obligations.

(a) Notwithstanding anything to the contrary in this Agreement or any Borrower's or the IDOT Grantor's, as the case may be, Loan Documents, subject to the terms and conditions of this Agreement, each Grantor (other than the IDOT Grantor) hereby agrees to pay the Indebtedness of each Borrower, as and when due and the IDOT Grantor hereby guaranties and becomes a surety for the prompt payment of the Indebtedness of each other Grantor, as and when

due. Accordingly, the Indebtedness of each Borrower listed in Exhibit A — Schedule 2 shall be the joint and several obligation of each Grantor, subject to and in accordance with the terms of this Agreement.

(b) While each Loan represents a separate and independent obligation of each Grantor, whether direct or indirect, the Grantors acknowledge that, in requesting Lender to make the Loans, they intend, subject to and upon the terms and conditions of this Agreement:

i. that the Loans be treated as if they were a single, integrated indebtedness of the Grantors, and

ii. that the Total Property secure to Lender the payment and performance of all of the Grantors' Total Indebtedness.

Accordingly, if any Grantor or the Traville Borrower fails to pay fully, when due, subject to applicable notice and cure periods, any amount payable to Lender under this Agreement or any Loan Document, then Lender may elect, in its discretion, to treat that amount as being due and owing by the Grantors listed in Exhibit A — Schedule 1, on a joint and several basis; may enforce its rights and remedies against and collect such amounts from the Grantors listed in Exhibit A — Schedule 1 on a joint and several basis; and may recover such amounts from the value of each of the Properties, on a pro rata basis or otherwise, as determined by Lender in its discretion. Subject to and upon the terms and conditions of this Agreement, the Total Property secures all Grantors' Total Indebtedness, without apportionment or allocation of any Property or any portion of any Property (except that the Total Indebtedness may be apportioned among the Properties for the sole and limited purpose of determining the amount of transfer or recordation taxes or documentary stamps required in connection with this Agreement and the Mortgages).

3. IDOT and IDOT Guaranty. Notwithstanding anything to the contrary set forth in this Agreement, the parties hereto agree that (i) the IDOT, together with the IDOT Guaranty, evidences a contingent liability of the IDOT Grantor as set forth in those documents; (ii) the IDOT Grantor shall not be primarily liable for any Indebtedness described in this Agreement; and (iii) the IDOT Grantor shall guarantee and become a surety for the prompt payment of the Indebtedness of each Borrower and each other Grantor, as and when due, as set forth in this Agreement.

4. Events of Default. Each of the following events shall constitute an "Event of Default" under this Agreement:

(a) a default or breach by any Grantor of any provision of this Agreement; and

(b) any event or condition constituting an "Event of Default" under any Loan Document.

5. Avalon Gardens Mortgage. Any event or condition constituting an "Event of Default" under this Agreement or any Loan Document shall also constitute an "Event of Default" under the Avalon Gardens Mortgage. Notwithstanding anything in this Agreement to the contrary, the parties hereto agree that the Avalon Gardens Mortgage secures only the Indebtedness described in the Avalon Gardens Mortgage and does not secure any additional obligations of Gardens Financing, LLC under this Agreement.

6. Remedies. Upon the occurrence of a continuing Event of Default, Lender, in its sole and absolute discretion, may exercise any or some or all of the following remedies, in such order and at such times as Lender shall elect:

(a) declare immediately due and payable the Indebtedness of any or all Grantors and/or the Traville Borrower whether or not Lender exercises its right to declare immediately due and payable the Indebtedness related to a particular Mortgage under which the Event of Default may have occurred; and

(b) exercise any or all of its rights and remedies under this Agreement, any Loan Document or applicable law.

Lender may exercise such remedies in one or more proceedings, whether contemporaneous or consecutive or a combination of both, to be determined by Lender in its sole discretion. Lender may enforce its rights against any one or more Properties or portions of Properties, in such order and manner as it may elect in its sole discretion. The enforcement of any one Mortgage shall not constitute an election of remedies, and shall not limit or preclude the enforcement of any other Mortgage or Loan Document, through one or more additional proceedings. Lender may bring any action or proceeding, including but not limited to judicial or non-judicial foreclosure proceedings, without regard to the fact that one or more other proceedings may have been commenced elsewhere with respect to the same Property or Properties or any portion of them. Each Grantor hereby unconditionally and irrevocably waives any rights it may have, now or in the future, whether at law or in equity, to require Lender to enforce or exercise any of its rights or remedies under this Agreement, under any Mortgage, or under any other Loan Document in any particular manner or order or in any particular state or county, or to apply the proceeds of any foreclosure sale or sales in any particular manner or order. The foregoing waiver includes, without limitation, any and all benefits arising under or referred to in California Civil Code Sections 2845, 2849 and 2850.

No judgment obtained by Lender in any one or more enforcement proceedings shall merge the related Indebtedness into that judgment, and all Indebtedness which remains unpaid shall remain a continuing obligation of the Grantors. Notwithstanding any foreclosure of any Mortgage, the Grantors shall remain bound under this Agreement.

7. Application of Proceeds. Proceeds of the enforcement or foreclosure of any Mortgage shall be applied to the payment of the Total Indebtedness (including prepayment premiums) in such order as Lender may determine in Lender’s sole discretion, subject to the requirements of applicable law.

8. Adjustment of Obligations. If the Total Indebtedness of any Grantor, or any portion thereof, are subject to avoidance under any Fraudulent Transfer Law, then the Total Indebtedness of that Grantor automatically shall be limited to the largest amount that would not be subject to avoidance as a fraudulent transfer or conveyance under such Fraudulent Transfer Law.

At any time at Lender’s sole option, Lender may record among the applicable land records a complete or partial termination of this Agreement evidencing Lender’s election to treat this Agreement as null and void with respect to one or more or all of the Properties (each a “**Terminated Property**” and collectively, the “**Terminated Properties**”). Each Grantor, as applicable, at Lender’s request, must join in any such termination or partial termination, and each Grantor hereby irrevocably appoints Lender as such Grantor’s agent and attorney-in-fact to execute, deliver and record such termination or partial termination in such Grantor’s name following written notice to Grantor and Grantor’s failure to execute the same within ten (10)

business days following such notice. Following any such termination or partial termination of this Agreement, Lender may enforce the Mortgages and other Loan Documents in accordance with their respective terms as if this Agreement had never been executed and delivered as to any Terminated Properties.

9. Grantors' Rights of Subrogation, Etc.

(a) Until the Total Indebtedness have been paid and performed in full, and the maximum period thereafter during which any payment to Lender with respect to the Total Indebtedness could be deemed a preference under the United States Bankruptcy Code has expired, each Grantor hereby waives any right of subrogation, contribution, reimbursement or indemnity (whether contractual, statutory, equitable, under common law or otherwise) and any other rights to enforce any claims or remedies which it has now or may have in the future against any other Grantor, the Traville Borrower or any of the Properties or against any guarantor or security for the Total Indebtedness.

(b) If a Grantor's agreement under Subsection (a) is found by a court of competent jurisdiction to be void or voidable for any reason, any such rights a Grantor may have against another Grantor, the Traville Borrower, any Properties or any guarantor or security for the Total Indebtedness shall be subordinate to any rights Lender may have against the other Grantors, the Traville Borrower, such Properties, such guarantor or such security.

(c) Each Grantor understands that the exercise by Lender of certain rights and remedies contained in any Mortgage may affect or eliminate any Grantor's right of subrogation against any or all of the other Grantors and that such Grantor may therefore incur a partially or totally non-reimbursable liability under this Agreement. Nevertheless, each Grantor authorizes and empowers Lender, in Lender's sole and absolute discretion, to exercise any right or remedy, or any combination thereof, which may then be available.

10. Subordination of Obligations Between Grantors. Any indebtedness or other obligation of a Grantor (a "**Debtor Grantor**") held by another Grantor (a "**Creditor Grantor**") shall be subordinate to the rights of Lender against that Debtor Grantor. If Lender so requests at a time when an Event of Default has occurred and is continuing, any Creditor Grantor shall enforce and collect any such indebtedness or other obligation as trustee for Lender and shall pay over to Lender any amount collected, on account of the Total Indebtedness of the Debtor Grantor.

11. Lender's Rights. Each Grantor agrees that Lender may, without demand and at any time and from time to time and without the consent of, or notice to, the Grantor, without incurring responsibility to the Grantor, and without impairing or releasing the Total Indebtedness of any Grantor, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment, or change or extend the time of payment of, or renew, increase, accelerate or alter, any of the Indebtedness or Total Indebtedness of any of the Grantors, any security for such Indebtedness or Total Indebtedness, or any liability incurred directly or indirectly with respect to such Indebtedness or Total Indebtedness;

(b) take and hold security for the payment of the Indebtedness or Total Indebtedness of any of the other Grantors and sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property pledged or mortgaged to secure such Indebtedness or Total Indebtedness;

(c) exercise or refrain from exercising any rights against any Grantor, the Traville Borrower, any guarantor or any Properties;

(d) release or substitute any one or more endorsers, guarantors, or other obligors with respect to the Indebtedness or Total Indebtedness of any of the other Grantors;

(e) settle or compromise any of the Indebtedness or Total Indebtedness of any of the other Grantors (including but not limited to obligations under this Agreement), any security for such Indebtedness or Total Indebtedness or any liability incurred directly or indirectly with respect to such Indebtedness or Total Indebtedness, or subordinate the payment of all or any part of such Indebtedness or Total Indebtedness to the payment of any liability (whether due or not) of any other Grantor to its creditors other than Lender;

(f) apply any sums realized to any liability or liabilities of any other Grantor, the Traville Borrower or guarantor to Lender regardless of what liability or liabilities of the Grantors, the Traville Borrower or guarantor to Lender remain unpaid; and

(g) consent to or waive any breach by any other Grantor, the Traville Borrower or guarantor of, or any act, omission or default by any other Grantor, the Traville Borrower or guarantor under, this Agreement or any of the Loan Documents.

12. Indemnification. The Grantors, jointly and severally, for themselves, their personal representatives, successors and assigns, hereby indemnify and hold harmless Lender and each of the trustees named in the Mortgages, as applicable, and their successors in the trust and Lender and its successors in interest in each of the Mortgages and their respective controlling persons, directors, officers, agents, employees, contractors, subcontractors, and the personal representatives, successors and assigns of each of them (all hereinafter collectively referred to as the "**Indemnitees**") of and from any and all claims, debts, demands, rights, liabilities, actions and causes of action of whatsoever kind and nature, either direct or consequential, and all costs and expenses arising out of or relating thereto (including attorneys' fees) which any person or entity has or may have against the Indemnitees, or any of them, on account of, or because of, the failure to pay in full all transfer, mortgage, recordation, documentary, or similar taxes, if any, or any portion thereof that may be due because of the making of the Loans, execution, delivery or recordation of any of the Mortgages and this Agreement or execution or delivery of any guaranty or otherwise arising out of the loan transactions and all interest, penalties and fines that may be or may become due. The Indemnitees may, at the cost of the Grantors, defend all claims made that are or may be covered by this Agreement unless the Grantors retain counsel acceptable to the Indemnitees. This indemnification shall survive payment of each of the Loans and release of any or all of the Mortgages and this Agreement.

13. Waivers of Presentment, Marshalling, Certain Suretyship Defenses, etc.

(a) With respect to its obligations under this Agreement, each Grantor waives presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting such obligations (not including, however, notices and grace periods expressly provided for in the Loan Documents).

(b) Notwithstanding the existence of any other security interests in any Property held by Lender or by any other party, Lender shall have the right to determine in its discretion the order in which any or all of the Properties or portions of any of the Properties shall be subjected to the remedies provided in this Agreement and the Loan Documents or applicable law. Lender

shall have the right to determine in its discretion the order in which any or all portions of the Total Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Each Grantor hereby unconditionally and irrevocably waives any and all right to require the marshalling of assets or to require that any of the Properties or portions of any of the Properties be sold in the inverse order of alienation or in parcels or as an entirety in connection with the exercise of any such remedies.

(c) To the extent that, notwithstanding Section 2 of this Agreement or any provisions of this Agreement to the contrary, any Grantor may be deemed to be a surety or guarantor with respect to any of the Loans, then in such capacity the following provisions will apply:

(i) The following provisions apply only to any Property located in the State of California:

(A) Each Grantor hereby waives any and all benefits and defenses under California Civil Code **Section 2810** and agrees that by doing so such Grantor shall be liable for the Loans even if one or more of the Grantors ceases to be liable therefor. Each Grantor hereby waives any and all benefits and defenses under California Civil Code **Section 2809** and agrees that by doing so such Grantor's liability may be larger in amount and more burdensome than that of any other Grantor.

(B) Each Grantor understands that the exercise by Lender of certain rights and remedies contained in any of the Mortgages (such as a non-judicial foreclosure sale) may affect or eliminate such Grantor's right of subrogation against another Grantor, and that such Grantor may therefore incur a partially or totally un-reimbursable liability under this Agreement. Nevertheless, each Grantor hereby authorizes and empowers Lender to exercise, in its sole and absolute discretion, any right or remedy, or any combination thereof, which may then be available, since it is the intent and purpose of such Grantor that the obligations under this Agreement shall be absolute, independent and unconditional under any and all circumstances. Each Grantor expressly waives any defense (which defense, if such Grantor had not given this waiver, such Grantor might otherwise have) to a personal judgment against such Grantor by reason of a non-judicial foreclosure of any of the Total Property. Without limiting the generality of the foregoing, such Grantor hereby expressly waives any and all benefits under (1) California Code of Civil Procedure **Section 580a** (which Section, if this waiver had not been given, might otherwise limit such Grantor's liability after a nonjudicial foreclosure sale to the difference between the obligations of such Grantor under this Agreement and the fair market value of the property or interests sold at such nonjudicial foreclosure sale), (2) California Code of Civil Procedure **Sections 580b** and **580d** (which Sections, if this waiver had not been given, might otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after a nonjudicial foreclosure sale, respectively), and (3) California Code of Civil Procedure **Section 726** (which Section, if this waiver had not been given, among other things, might otherwise require Lender to exhaust all of its security before a personal judgment could be obtained for a deficiency). Notwithstanding any foreclosure of the lien of any Mortgage, whether by the exercise of the power of sale contained in that any Mortgage, by an action for judicial foreclosure or by Lender's acceptance of a deed in lieu of foreclosure, each Grantor shall remain bound under this Agreement.

(C) In accordance with **Section 2856** of the California Civil Code, each Grantor also waives any right or defense based upon an election of remedies by Lender, even though such election (*e.g.*, nonjudicial foreclosure with respect to any collateral held by Lender to secure repayment of the Total Indebtedness) destroys or otherwise impairs the subrogation rights of such Grantor or any right of such Grantor (after payment of the Total

Indebtedness) to proceed against any other Grantor for reimbursement, or both, by operation of **Section 580d** of the California Code of Civil Procedure or otherwise.

(D) In accordance with **Section 2856** of the California Civil Code, each Grantor waives any and all other rights and defenses available to such Grantor by reason of **Sections 2787** through **2855**, inclusive, of the California Civil Code, including, without limitation, any and all rights or defenses such Grantor may have by reason of protection afforded to such Grantor with respect to any of the obligations of such Grantor under this Agreement pursuant to the antideficiency or other laws of the State of California limiting or discharging any or part of the Total Indebtedness or Lender's right of recovery of such Total Indebtedness, including, without limitation, **Sections 580a, 580b, 580d,** and **726** of the California Code of Civil Procedure.

(E) In accordance with **Section 2856** of the California Civil Code, each Grantor agrees to withhold the exercise of any and all subrogation and reimbursement rights against any other Grantors, against any other person, and against any collateral or security for the Total Indebtedness, including, without limitation, any such rights pursuant to **Sections 2847** and **2848** of the California Civil Code, until the Total Indebtedness have been indefeasibly paid and satisfied in full, all obligations owed to Lender under the Total Indebtedness have been fully performed, and Lender has released, transferred or disposed of all of its right, title and interest in such collateral or security.

(ii) The following provision applies only to any Property located in the State of Connecticut:

(A) EACH GRANTOR ACKNOWLEDGES THAT THE TRANSACTION CONTEMPLATED BY THE LOAN DOCUMENTS IS A "COMMERCIAL TRANSACTION" AS SUCH IS DEFINED IN §52-278a OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED ("**G.S.A.**"). EACH GRANTOR FURTHER ACKNOWLEDGES THAT, PURSUANT TO G.S.A. §52-278a THROUGH 52-278n, THE GRANTORS HAVE A RIGHT TO A NOTICE AND HEARING PRIOR TO THE ISSUANCE OF ANY "PREJUDGMENT REMEDY." NOTWITHSTANDING THE FOREGOING, EACH GRANTOR HEREBY WAIVES ALL RIGHTS TO SUCH NOTICE, JUDICIAL HEARING OR PRIOR COURT ORDER IN CONNECTION WITH THE ISSUANCE OF ANY SUCH PREJUDGMENT HEARING IN CONNECTION WITH A SUIT BROUGHT IN A COURT OF COMPETENT JURISDICTION IN THE STATE OF CONNECTICUT TO ENFORCE THE GRANTORS OBLIGATIONS AS GUARANTORS UNDER THIS AGREEMENT.

(iii) The following provisions apply only to any Property located in the State of New Jersey:

(A) If any Grantor is deemed to be a surety or guarantor with respect to any of the Loans, such Grantor further waives all defenses based on suretyship or impairment of collateral (such Grantor and Lender intending this waiver to have the effects described in Section 48 of the Restatement (Third) of the Law of Suretyship and Guaranty).

(B) If any Grantor is deemed to be a surety or guarantor with respect to any of the Loans, such Grantor hereby acknowledges that it has read and understands all of the provisions of this Agreement, including the waiver of jury trial set forth in Section 32, and has been advised by legal counsel as such Grantor has deemed to be necessary or appropriate.

14. Release Provisions.

(a) Anything in any of the Mortgages to the contrary notwithstanding, Lender will release any Property from this Agreement and the lien created hereby only upon payment in full of all of the Total Indebtedness or as set forth below in Section 14(b).

(b) In the event any Grantor or the Traville Borrower requests a release of a Property from the lien of a corresponding Mortgage in connection with (y) payment in full of the entire Indebtedness allocated to its related Property or (z) a Transfer of such Property to an unaffiliated third party, Lender will release (the "**Release**") such Property from the applicable Mortgage and this Agreement upon the satisfaction of all of the following conditions; provided, however, the grantor of such Mortgage will not be released from liability pursuant to Section 18 of the applicable Mortgage arising out of conditions existing on or before the Release (collectively, "**Preexisting Conditions**"), and any existing guarantor of the Indebtedness allocated to the related Property ("**Guarantor**") will not be released from its obligations under the Guaranty executed concurrently with and in connection with the applicable Mortgage to the extent such Guarantor guarantees the obligations of the applicable grantor of such Mortgage under Section 18 of the applicable Mortgage arising out of Preexisting Conditions:

(i) Lender has received from the applicable Grantor or the Traville Borrower at least thirty (30) days' prior written notice of the date proposed for such release (the "**Release Date**"), which notice shall include such additional information as Lender may require in accordance with Lender's then-standard underwriting procedures, in order to consider approval (which approval shall be granted in Lender's sole, but reasonable, discretion based on the Lender's then-current underwriting standards) of such Release, and must be accompanied by a non-refundable review fee in the amount of $10,000.00 per Release. Lender shall promptly identify the specific additional information required to be delivered pursuant to this paragraph after any request for such information from the applicable Grantor or the Traville Borrower.

(ii) No Event of Default has occurred and is continuing and no event or circumstance exists on the Release Date which with the giving of notice or the passage of time or both could constitute such an Event of Default.

(iii) The applicable Grantor (or the Traville Borrower) requesting such Release shall have paid to Lender in full all of the following:

(A) The entire Indebtedness allocated to such Property, including but not limited to principal, accrued and unpaid interest and any prepayment premium;

(B) All of Lender's reasonable third party costs and expenses, including without limitation reasonable fees of outside counsel, in connection with the release of such Property; and

(C) On or before the Release Date, a Loan Servicer fee in the amount of $10,000.

(iv) The following requirements shall have been met:

(A) The Total Property that would remain as security for the outstanding Indebtedness under each remaining Mortgage must meet the following requirements, as determined by Lender in Lender's sole and absolute discretion: (1) a debt service coverage ratio ("**DCR**") as of the Release Date of not less than 1.25:1; and (2) a loan to value ratio ("**LTV**") as of the Release Date of not more than seventy percent (70%). When calculating the DCR, Lender (y) shall assume the Loans are amortizing on a 30-year basis, and (z) shall use the

net operating income (“NOI”) calculated on an annual basis based upon December 31 operating statements of the remaining Total Property, using Lender’s standard underwriting procedures.

Notwithstanding the foregoing, not more than once in any twelve (12) month period in connection with a proposed Release, a Transfer (as defined in the applicable Mortgage) of a Property under Section 21(f) of the applicable Mortgage or a Substitution (as defined in the Master Substitution Agreement dated the date of this Agreement by and among Lender, the Grantors and the Traville Borrower (the “Substitution Agreement”)) under the Substitution Agreement, a Grantor or the Traville Borrower may request that Lender calculate the DCR for purposes of the foregoing requirement using an updated NOI, under Lender’s standard underwriting procedures, provided that such Grantor (or the Traville Borrower) (1) notifies Lender of such request and provides Lender with the applicable operating statements not less than ninety (90) days prior to the Release Date, (2) pays to Lender a fee equal to the greater of (x) $1,800 per property comprising the Total Property immediately following the Release or (y) $25,000 and (3) pays to Loan Servicer an aggregate fee equal to $7,500.

(B) [Intentionally Omitted.]

(C) The applicable Grantor or the Traville Borrower shall provide Lender such financial statements and other information as Lender may reasonably require to make the determinations hereunder, certified by either the chief financial officer or senior financial officer of such Grantor or the Traville Borrower as being true, correct and complete in all material respects.

Notwithstanding the foregoing, Lender will not require that the Total Property that would remain as security for the remaining Total Indebtedness be subject to an evaluation of geographic diversity.

15. Obligations Absolute. No invalidity, irregularity or unenforceability of all or any part of the Total Indebtedness of any Grantor shall affect, impair or be a defense to the recovery by Lender of the Indebtedness or Total Indebtedness of any other Grantor, and the liability of each Grantor under this Agreement and the Loan Documents with respect to the Indebtedness of each other Grantor shall be primary, absolute and unconditional notwithstanding the occurrence of any event or the existence of any other circumstances which might constitute a legal or equitable discharge of a surety or guarantor for the Indebtedness of any other Grantor except payment and performance in full of that other Grantor’s Indebtedness.

16. Limited-Recourse Liability. Each Grantor’s (other than the IDOT Grantor’s) personal liability for the Total Indebtedness shall be limited as and to the same extent as set forth in its Note and the IDOT Grantor’s personal liability for the Total Indebtedness shall be limited as and to the same extent as set forth in the IDOT Guaranty.

17. Notices. All notices to each Grantor under this Agreement shall be in writing and shall be given in the manner provided in that Grantor’s Mortgage for notices to that Grantor. All notices to Lender by any Grantor under this Agreement shall be in writing and shall be given in the manner described in the Mortgage executed in connection with the Loan.

18. Governing Law; Jurisdiction and Venue. The parties intend that Lender will assign the Loans, the Mortgages and this Agreement to the Federal Home Loan Mortgage Corporation, a congressionally-chartered government-sponsored enterprise having its principal place of business in McLean, Virginia. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Each of the Grantors hereby

submits to the *in personam* jurisdiction of any federal or state court in (i) any state or jurisdiction in which any Property is located and (ii) the Commonwealth of Virginia with respect to any proceeding arising out of or relating to this Agreement. Each of the Grantors irrevocably waives, to the fullest extent permitted under applicable law, any objections they may now or hereafter have to the venue of any suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each Grantor acknowledges that it has received material and substantial consideration for the cross-collateralization of the Total Property (other than the Avalon Gardens Property) and that the foregoing venue provision is integral to Lender's realization of its rights hereunder. Each Grantor further acknowledges that it is not in a disparate bargaining position, that it is a commercial enterprise, with sophisticated financial, legal and economic experience, and that the venue selections contained herein are not unreasonable, unjust, inconvenient or overreaching.

19. Captions, Cross References and Exhibits. The captions assigned to provisions of this Agreement are for convenience only and shall be disregarded in construing this Agreement. Any reference in this Agreement to a "Section", a "Subsection" or an "Exhibit" shall, unless otherwise explicitly provided, be construed as referring to a section of this Agreement, to a subsection of the section of this Agreement in which the reference appears or to an Exhibit attached to this Agreement. All Exhibits referred to in this Agreement are hereby incorporated by reference.

20. Number and Gender. Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.

21. Statutes and Regulations. Any reference in this Agreement to a statute or regulation shall include all amendments to and successors to such statute or regulation, whether adopted before or after the date of this Agreement.

22. No Partnership. This Agreement is not intended to, and shall not, create a partnership or joint venture among the parties, and no party to this Agreement shall have the power or authority to bind any other party except as explicitly provided in this Agreement.

23. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, successors, and assigns.

24. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

25. Entire Agreement. This Agreement, together with the Note, Mortgage and Loan Documents relating to each Loan, contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Agreement. To the extent that this Agreement conflicts with the terms of the other Loan Documents, this Agreement shall govern and control.

26. Waiver; No Remedy Exclusive. Any forbearance by a party to this Agreement in exercising any right or remedy given under this Agreement or existing at law or in equity shall not constitute a waiver of or preclude the exercise of that or any other right or remedy. Unless otherwise explicitly provided, no remedy under this Agreement is intended to be exclusive of any other available remedy, but each remedy shall be cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity.

27. Third Party Beneficiaries. Neither any creditor of any party to this Agreement, nor any other person, is intended to be a third party beneficiary of this Agreement.

28. Course of Dealing. No course of dealing among the parties to this Agreement shall operate as a waiver of any rights of any party under this Agreement.

29. Further Assurances and Corrective Instruments. To the extent permitted by law, the parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements to this Agreement and such further instruments as Lender may reasonably require for carrying out the intention of or facilitating the performance of this Agreement.

30. No Party Deemed Drafter. No party shall be deemed the drafter of this Agreement, and this Agreement shall not be construed against either party as the drafter of the Agreement.

31. Additional Rights Upon Default. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, if an Event of Default shall occur and continue pursuant to Sections 22 (d) or (f) through (j) of the Mortgage for a particular Property (a "**Default Property**"), then upon the applicable Grantor or the Traville Borrower causing a substitution of collateral with respect to, or release of, the Default Property, all in compliance with the applicable provisions of the Loan Documents, (1) such Event of Default shall be deemed cured, (2) any related acceleration of the Loans shall be rescinded, and (3) any other remedy relating to such Event of Default shall cease to apply. Such substitution or release must occur, if it is to occur at all pursuant to this Section 31, within 60 days after any acceleration of one or more of the Loans. Each Grantor agrees that during such 60 day period (unless the release or substitution of collateral is accomplished prior to the end of such 60 day period), Lender may commence any remedy allowable under the Loan Documents, but may not cause the sale of any Property and the transfer of title thereto to occur until after the end of such 60 day period.

32. WAIVER OF TRIAL BY JURY. EACH GRANTOR AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

33. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the day and year first written above.

BORROWER/GRANTOR:

ALAMEDA FINANCING, L.P., a Delaware limited partnership

By: California Multiple Financing, Inc., a Maryland corporation, its general partner

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Connecticut

County of Fairfield

On 22nd day of April, 2009 before me, Beth Deitz , Notary Public, personally appeared Joanne M. Lockridge, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

BORROWER/GRANTOR:

MISSION BAY NORTH FINANCING, L.P., a Delaware limited partnership

By: California Multiple Financing, Inc., a Maryland corporation, its general partner

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Connecticut

County of Fairfield

On 22nd day of April, 2009 before me Beth Meryl Deitz, Notary Public, personally appeared Joanne M. Lockridge, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

BORROWER/GRANTOR:

WITNESS:

GATES FINANCING, LLC, a Delaware limited liability company

/s/ Debra G. Cruzan
Print Name: Debra G. Cruzan

/s/ Robert Rosevear
Print Name: Robert Rosevear

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT ____________)
) ss:
COUNTY OF FAIRFIELD ____________)

On this 22nd day of April, 2009, before me Beth Meryl Dietz the undersigned officer, personally appeared Joanne M. Lockridge, who acknowledged herself to be the Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Gates Financing, LLC, a Delaware limited liability company, and that she as such Senior Vice President-Finance authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by herself as Senior Vice President-Finance, as her free act and deed and the free act and deed of such limited liability company.

IN WITNESS WHEREOF, I hereby set my hand.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

[AFFIX SEAL]

My Commission expires: April 30, 2009

BORROWER/GRANTOR:

WITNESS:

HARBOR FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland Corporation, its sole member

/s/ Debra G. Cruzan
Print Name: Debra G. Cruzan

/s/ Robert Rosevear
Print Name: Robert Rosevear

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

STATE OF CONNECTICUT __________)
) ss:
COUNTY OF FAIRFIELD __________)

On this 22nd day of April, 2009, before me Beth Meryl Dietz the undersigned officer, personally appeared Joanne M. Lockridge, who acknowledged herself to be the Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Harbor Financing, LLC, a Delaware limited liability company, and that she as such Senior Vice President-Finance authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by herself as Senior Vice President-Finance, as her free act and deed and the free act and deed of such limited liability company.

IN WITNESS WHEREOF, I hereby set my hand.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

[AFFIX SEAL]

My Commission expires: April 30, 2009

BORROWER/GRANTOR:

4100 MASSACHUSETTS AVENUE ASSOCIATES, L.P., a District of Columbia limited partnership

By: AvalonBay Communities, Inc., a Maryland corporation, its general partner

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

I, Beth Meryl Deitz, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Joanne M. Lockridge, who is named as Senior Vice President for AvalonBay Communities, Inc., a Maryland Corporation, general partner of 4100 Massachusetts Avenue Associates, L.P., a District of Columbia limited partnership, personally appeared before me in said jurisdiction, and as said Senior Vice President-Finance and by virtue of the authority vested in her by said Instrument, acknowledged said Instrument to be the act and deed of said limited partnership, and that she delivered the same as such.

WITNESS my hand and official seal this 22nd day of April, 2009.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

AVALONBAY COMMUNITIES, INC., a Maryland corporation

By: /s/ Joanne M. Lockridge (SEAL)
Joanne M. Lockridge
Senior Vice President-Finance

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

I, Beth Meryl Deitz, a Notary Public, in and for the jurisdiction aforesaid, do hereby certify that Joanne M. Lockridge, who is named as Senior Vice President for AvalonBay Communities, Inc., a Maryland Corporation, personally appeared before me in said jurisdiction, and as said Senior Vice President-Finance and by virtue of the authority vested in her by said Instrument, acknowledged said Instrument to be the act and deed of said corporation, and that she delivered the same as such.

WITNESS my hand and official seal this 22nd day of April, 2009.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

IDOT GRANTOR:

AVALONBAY TRAVILLE, LLC,
a Maryland limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge (SEAL)
Joanne M. Lockridge
Senior Vice President — Finance

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

I HEREBY CERTIFY, that on April 22nd , 2009, before me, the undersigned, a Notary Public of the State aforesaid, duly qualified and commissioned as such, personally appeared Joanne M. Lockridge, Senior Vice President — Finance of Avalon Bay Communities, Inc., in its capacity as the sole member of **AVALONBAY TRAVILLE, LLC**, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and Notarial Seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public
My Commission Expires: April 30, 2009

TRAVILLE BORROWER:

SHADY GROVE ROAD FINANCING, LLC, a
Delaware limited liability company

By: AvalonBay Traville, LLC, a Maryland
limited liability company, its sole member

By: AvalonBay Communities, Inc., a
Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge (SEAL)
Joanne M. Lockridge
Senior Vice President — Finance

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

I HEREBY CERTIFY, that on April 22nd, 2009, before me, the undersigned, a Notary Public of the State aforesaid, duly qualified and commissioned as such, personally appeared Joanne M. Lockridge, Senior Vice President — Finance of Avalon Bay Communities, Inc., in its capacity as the sole member of AvalonBay Traville, LLC, a Maryland limited liability company, in its respective capacity as the sole member of **SHADY GROVE ROAD FINANCING, LLC**, a Delaware limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and Notarial Seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public
My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

EDGEWATER FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT ______)
) ss:
COUNTY OF FAIRFIELD ______)

On this 22nd day of April, 2009, before me, the undersigned officer, personally appeared Joanne M. Lockridge, Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Edgewater Financing, LLC, a Delaware limited liability company, and who, I am satisfied, is the person who signed the within instrument, and acknowledged that she, as such officer, signed and delivered the same as the voluntary act and deed of said limited liability company, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public
My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

FREEHOLD FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT ________)
) ss:
COUNTY OF FAIRFIELD ________)

On this 22nd day of April, 2009, before me, the undersigned officer, personally appeared Joanne M. Lockridge, Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Freehold Financing, LLC, a Delaware limited liability company, and who, I am satisfied, is the person who signed the within instrument, and acknowledged that she, as such officer, signed and delivered the same as the voluntary act and deed of said limited liability company, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public
My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

RUN EAST II FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT ________)
) ss:
COUNTY OF FAIRFIELD)

On this 22nd day of April, 2009, before me, the undersigned officer, personally appeared Joanne M. Lockridge, Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Run East II Financing, LLC, a Delaware limited liability company, and who, I am satisfied, is the person who signed the within instrument, and acknowledged that she, as such officer, signed and delivered the same as the voluntary act and deed of said limited liability company, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

BELLEVUE FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT, Fairfield County ss:

On this 22nd day of April, 2009, before me, the undersigned, a Notary Public in and for the State of Connecticut, duly commissioned and sworn, personally appeared Joanne M. Lockridge, to me known to be Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Bellevue Financing, LLC, a Delaware limited liability company, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

AVALONBAY SHREWSBURY, INC., a
Maryland corporation

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT, Fairfield County ss:

On this 22nd day of April, 2009, before me, the undersigned notary public, personally appeared Joanne M. Lockridge, proved to me through satisfactory evidence of identification or personally known to me to be the Senior Vice President-Finance of AvalonBay Shrewsbury, Inc., a Maryland corporation, and acknowledged to me that she signed it voluntarily for its stated purpose.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

WOBURN FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT, Fairfield County ss:

On this 22nd day of April, 2009, before me, the undersigned notary public, personally appeared Joanne M. Lockridge, proved to me through satisfactory evidence of identification or personally known to me to be the Senior Vice President-Finance of AvalonBay Communities, Inc., a Maryland corporation, sole member of Woburn Financing, LLC, a Delaware limited liability company, and acknowledged to me that she signed it voluntarily for its stated purpose.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

BORROWER/GRANTOR:

GARDENS FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President—Finance

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD _) ss:

On the 22nd day of April, in the year 2009, before me, the undersigned, a Notary Public in and for said State, personally appeared Joanne M. Lockridge personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

/s/ Beth Meryl Deitz
Beth Meryl Deitz
Notary Public

My Commission Expires: April 30, 2009

LENDER:

DEUTSCHE BANK BERKSHIRE MORTGAGE, INC., a Delaware corporation

By: /s/ Steven B. Wendel (SEAL)
Name: Steven B. Wendel
Title: Officer

By: /s/ Denis G. Leger (SEAL)
Name: Denis G. Leger
Title: Officer

STATE OF MASSACHUSETTS, Suffolk County ss:

On this 24th day of April, 2009, before me, the undersigned notary public, personally appeared Steven B. Wendel and Denis G. Leger, proved to me through satisfactory evidence of identification or personally known to me to be the Officer and Officer, respectively of Deutsche Bank Berkshire Mortgage, Inc., a Delaware corporation and acknowledged to me that they signed it voluntarily for its stated purpose.

/s/ George Eugene Moore
George Eugene Moore
Notary Public

My Commission Expires: February 18, 2016

EXHIBIT A — SCHEDULE 1

GRANTORS

Grantors
Alameda Financing, L.P.
Mission Bay North Financing, L.P.
Gates Financing, LLC
Harbor Financing, LLC
4100 Massachusetts Avenue Associates, L.P.
AvalonBay Communities, Inc.
AvalonBay Shrewsbury, Inc.
Woburn Financing, LLC
AvalonBay Traville, LLC
Edgewater Financing, LLC
Freehold Financing, LLC
Run East II Financing, LLC
Gardens Financing, LLC
Bellevue Financing, LLC

EXHIBIT A — SCHEDULE 2

BORROWERS, LOAN NUMBERS AND LOAN AMOUNTS

Loan Number	Borrower	Loan Amount
968714285	Alameda Financing, L.P.	$ 53,980,000.00
968714293	Mission Bay North Financing, L.P.	$ 73,269,000.00
968714307	Gates Financing, LLC	$ 41,321,000.00
968714315	Harbor Financing, LLC	$ 65,695,000.00
968714404	4100 Massachusetts Avenue Associates, L.P.	$ 59,010,000.00
968714331	AvalonBay Communities, Inc.	$ 45,850,000.00
968714331	AvalonBay Shrewsbury, Inc.	$ 21,130,000.00
968714323	Woburn Financing, LLC	$ 55,805,000.00
968714390	Shady Grove Road Financing, LLC	$ 77,700,000.00
968714358	Edgewater Financing, LLC	$ 78,565,000.00
968714420	Freehold Financing, LLC	$ 36,630,000.00
968714366	Run East II Financing, LLC	$ 39,250,000.00
968714374	Gardens Financing, LLC	$ 66,237,000.00
968714412	Bellevue Financing, LLC	$ 26,698,000.00

EXHIBIT B

DESCRIPTION OF MORTGAGES

Borrower	Property Name	County and State
Alameda Financing, L.P.	Avalon on the Alameda	San Jose, CA
Mission Bay North Financing, L.P.	Avalon at Mission Bay North	San Francisco, CA
Gates Financing, LLC	Avalon Gates	Stamford, CT
Harbor Financing, LLC	Avalon on Stamford Harbor	Trumbull, CT
4100 Massachusetts Avenue Associates, L.P.	Avalon at Foxhall	Washington, DC
AvalonBay Communities, Inc.	Avalon at Gallery Place	Washington, DC
AvalonBay Shrewsbury, Inc.	Avalon Shrewsbury	Shrewsbury, MA
Woburn Financing, LLC	Avalon Woburn	Woburn, MA
Shady Grove Road Financing, LLC	Avalon at Traville	Rockville, MD
Edgewater Financing, LLC	Avalon at Edgewater	Edgewater, NJ
Freehold Financing, LLC	Avalon at Freehold	Freehold, NJ
Run East II Financing, LLC	Avalon Run East II	Lawrenceville, NJ
Gardens Financing, LLC	Avalon Gardens	Nanuet, NY
Bellevue Financing, LLC	Avalon Bellevue	Bellevue, WA

See Schedule B-1 to B-14 to Exhibit B for legal descriptions

Exhibit 10.3

MASTER SUBSTITUTION AGREEMENT

(Revision Date 02/23/2009)

THIS MASTER SUBSTITUTION AGREEMENT (this "**Agreement**") is made to be effective as of the 23rd day of April, 2009, among **DEUTSCHE BANK BERKSHIRE MORTGAGE, INC.**, a Delaware corporation ("**Lender**"), **AVALONBAY TRAVILLE, LLC**, a Maryland limited liability company (the "**IDOT Guarantor**") and the entities identified on **Schedule B** attached hereto and incorporated herein by reference (each such entity is sometimes referred to individually as an "**Original Borrower**", and all are sometimes referred to collectively as the "**Original Borrowers**"). An Original Borrower, the IDOT Guarantor or "**New Borrower**" described below, is sometimes referred to as a "**Borrower**", and all Original Borrowers, the IDOT Guarantor and New Borrowers are sometimes referred to collectively as "**Borrowers**".

RECITALS

A. Lender has agreed to make certain loans to the Original Borrowers (each a "**Loan**" and collectively, the "**Loans**") described in the Substitution Schedule described in **Schedule A** attached hereto and incorporated herein by reference.

B. Each Loan will be secured by a Multifamily Mortgage, Deed to Secure Debt or Deed of Trust (a "**Security Instrument**") encumbering the multifamily residential rental project identified in the Schedule A as an "**Original Property**" (collectively, the "**Original Properties**").

C. AvalonBay Communities, Inc. ("**AvalonBay**") is a Borrower and each other Borrower is owned directly or indirectly 100% by an entity controlled by AvalonBay. Each Borrower is an affiliate of the other Borrowers.

D. Each Loan will be subject to a Master Cross-Collateralization Agreement of even date with this Agreement and executed by each of the Borrowers (the "**Cross-Collateralization Agreement**").

E. The Original Borrowers have requested, and Lender has consented to, certain limited rights on the part of Borrowers to substitute other multifamily residential rental projects as security for Loans. The purpose of this Agreement is to set forth the terms and conditions of such limited rights.

THEREFORE, Lender and the Borrowers agree as follows:

1. **Definitions.** With respect to each Loan, terms used in this Agreement and not defined herein have the meanings given to those terms (i) in the Security Instrument initially securing such Loan until such time, if ever, that a "**Substitute Security Instrument**" is delivered with respect to such Loan; and thereafter (ii) in the then-effective Substitute Security Instrument. As used herein, a "**Substitution**" means the substitution of another multifamily residential rental project (the "**Substitute Property**") for either an Original Property or a previously substituted Substitute Property (as applicable, the "**To-Be-Released Property**"), as security for a Loan, all in accordance with the terms and conditions of this Agreement.

2. **Substitution Requirements.** Not more than seven (7) times in the aggregate during the period that any of the Loans remain outstanding (the "**Substitution Number**"), Lender will consent to a Substitution upon the Borrowers' satisfaction, as determined by Lender in its sole, but reasonable, discretion based on Lender's then-current underwriting standards, of all of the requirements set forth below.

(a) The Borrower proposing to effect the Substitution must deliver to Lender a written request for Lender's approval of the proposed Substitution, such written request (the "**Substitution Request**") to be delivered to Lender not less than sixty (60) days prior to the proposed effective date of the requested Substitution. The Borrower's Substitution Request must specifically identify the Loan to which the Substitution Request relates and the To-Be-Released Property, and must include all of the items set forth in subsections 2(i)(i) through (vii) below. The sixty (60) day period will not be calculated until Lender receives the requirements of this subsection and subsection 2(i) in full. Upon Borrowers' written request, Lender will confirm in writing that Borrower has delivered all required items pursuant to this Section 2(a) and the date on which the sixty (60) day period commenced to run. The Borrower's Substitution Request must be accompanied by a non-refundable review fee in the amount of $10,000. The Borrower may rescind its request for a Substitution by written notice to Lender at any time prior to implementation of the Substitution, as set forth in Section 4 below, but will not receive a refund of the review fee.

(b) Lender will not consider Borrower's Substitution Request if an Event of Default under any Loan Document has occurred and is continuing or if an event or condition that, with the giving of notice or the passage of time, or both, could constitute such an Event of Default exists.

(c) As the Substitution rights under this Agreement are personal to the Original Borrowers, the IDOT Guarantor and to New Borrowers described herein, (i) all Borrowers must continue to be owned directly or indirectly 100% by an entity controlled by AvalonBay (or any successors to such entities permitted pursuant to Section 21(c) of the Security Instrument), and (ii) an entity controlled by AvalonBay (or a successor to such entity pursuant to Section 21(c) of the Security Instrument) must own, directly or indirectly, not less than a 51% managing interest in all Borrowers and must be the sole party controlling (directly or indirectly) the day to day management of the Borrower and operation of each Original Property and each Substitute Property.

(d) The aggregate LTV, at the time of the Substitution, of (i) the Substitute Property, as determined by Lender using Lender's then-standard underwriting procedures, including an evaluation of market condition, and (ii) all remaining Original Properties as the same may have been previously substituted in accordance with the terms hereof (collectively, the "**New Pool**"), may not exceed seventy percent (70%). As used herein, "**LTV**" means, the ratio, expressed as a percentage, of (1) the aggregate outstanding principal balance of the Loans attributable to the properties comprising the New Pool, to (2) the value of the properties comprising the New Pool, as determined by Lender using Lender's then-standard underwriting procedures. In the event the Substitute Property fails to satisfy this requirement, Lender reserves the right, in its sole discretion, to accept the Substitute Property and require additional credit enhancement, including but not limited to additional guaranties, in such amounts as shall be determined by Lender using Lender's then-standard underwriting procedures.

(e) The aggregate DCR, at the time of the Substitution, of the New Pool, may not be less than 1.25:1.00, assuming the Loans are amortizing on a 30-year basis. As

used herein, the term "**DCR**" means, the ratio, expressed as a percentage, of (A) the aggregate annual net operating income ("**NOI**") from the operations of the properties comprising the New Pool, calculated on an annual basis based upon December 31 operating statements of such properties, using Lender's standard underwriting procedures, to (B) the aggregate annual principal and interest payable on the Loans attributable to the properties comprising the New Pool. In the event the Substitute Property fails to satisfy this requirement, Lender reserves the right, in its sole discretion, to accept the Substitute Property and require additional credit enhancement, including but not limited to, additional guaranties, in such amounts as shall be determined by Lender using Lender's then-standard underwriting procedures.

Notwithstanding the foregoing, not more than once in any twelve (12) month period in connection with a Substitution under this Agreement, a proposed Transfer of a Mortgaged Property (as such terms are defined in each Security Instrument) under Section 21(f) of the applicable Security Instrument or a release under Section 14 of the Cross —Collateralization Agreement, a Borrower may request that Lender calculate the DCR for purposes of the foregoing requirements using an updated NOI, under Lender's standard underwriting procedures, provided that such Borrower (1) notifies Lender of such request and provides Lender with the applicable operating statements not less than ninety (90) days prior to the proposed Substitution, (2) pays to Lender a fee equal to the greater of (x) $1,800 per property in the New Pool or (y) $25,000 and (3) pays to Loan Servicer an aggregate fee equal to $7,500.

(f) Lender will not consider a Substitution Request for a Substitution for which the effective date of such Substitution will occur earlier than twelve months after the date of the Note evidencing the Loan to which the Substitution relates. The Substitution must be completed no later than twelve (12) months prior to the Scheduled Maturity Date set forth in the Note evidencing the Loan to which the Substitution relates.

(g) [Intentionally Deleted.]

(h) The Substitute Property must be the same type of property as the To-Be-Released Property (*i.e.*, a seniors housing property must be replaced with another seniors housing property and a multifamily property must be replaced with another multifamily property)

(i) Lender must have received, and in its sole discretion approved the following, all meeting Lender's then current requirements for such items:

(i) a detailed description of the Substitute Property, including historical and year-to-date operating statements,

(ii) a appraisal of the Substitute Property prepared by a member of the Appraisal Institute (Borrower acknowledges that Lender is not bound by any value set forth in such appraisal); provided, however, that Lender will not require an appraisal of the To-Be-Released Property,

(iii) a Phase I environmental report on the Substitute Property, and, if, required by the Phase I environmental report, a Phase II environmental report,

(iv) an engineering report on the Substitute Property (unless waived in writing by Lender),

(v) a current ALTA/ACSM urban land survey of the Substitute Property,

(vi) a commitment for a mortgagee's title insurance policy to insure the first lien mortgage to be secured by and encumber the Substitute Property, in the form (including endorsements) required by Lender, and containing only such exceptions as are acceptable to Lender; provided, however, that Lender will not require Borrower to provide date down endorsements with respect to the other properties comprising the New Pool if no Supplemental Mortgage (as defined in the Security Instruments) is being granted at such time on any of the properties comprising the New Pool, and

(vii) such other reports, certificates, and documents with respect to the Substitute Property as Lender at any time may require in its sole discretion.

(j) The physical condition, market condition, and other aspects of the Substitute Property must be acceptable to Lender in Lender's sole, but reasonable, discretion based on Lender's then-standard underwriting requirements. Lender will not require an evaluation of the geographic diversity of the New Pool in connection with the Substitution, however, market factors and conditions will be evaluated in Lender's sole, but reasonable, discretion.

(k) Borrower must pay to Lender all of Lender's and Loan Servicer's attorneys' fees (including imputed fees of Lender's salaried attorneys) and all other out of pocket third party costs incurred by Lender in connection with the Substitution, including, but not limited to, all costs of engineering reports, appraisals and environmental reports, all title insurance charges and all recordation charges.

(l) **[**Intentionally Deleted.**]**

(m) **[**Intentionally Deleted.**]**

(n) Notwithstanding Borrowers' right, as set forth above to seven (7) Substitutions, at any time, the unpaid principal balance of the Loans secured by the Substitute Properties must not exceed $370,570,000.

3. Implementation of Substitution Approval. If Lender consents to a Substitution in accordance with Section 2 of this Agreement, the Borrowers must comply with the requirements set forth below with respect to such Substitution.

(a) Upon closing of the Substitution, the Borrower that requested the Substitution must pay (i) a Substitution approval fee to Lender equal to (0.15%) of the unpaid principal balance of the Loan to which the Substitution relates, but not to exceed $100,000 per Substitution and (ii) a Substitution approval fee to Loan Servicer equal to 0.15% of the unpaid principal balance of the Loan to which the Substitution relates, but not to exceed $100,000 per Substitution. The review fee paid pursuant to Section 2(a) will be credited to the Substitution approval fee set forth in clause (i) of the immediately preceding sentence.

(b) The Borrower that requested the Substitution must execute and deliver to Lender the following documents, all of which must be acceptable in form and substance to Lender in its sole, but reasonable, discretion:

(i) an amendment to the Note, or an amended and restated note, signed by the Borrower and acknowledged by the Guarantor, to change the reference to

"Mortgaged Property" to the "Substitute Property", to change the reference to "Security Instrument" to the "Substitute Security Instrument" (described below), to change the governing law to the law of the jurisdiction in which the Substitute Property is located, and to incorporate any changes to the Note necessitated by reason of the change in the governing law or by changes in the form of the Substitute Security Instrument; provided, however, any amended and restated note will include the document modifications contained in Exhibit A to the Note (other than property-specific modifications);

(ii) an amendment to the Security Instrument or a new security instrument (the "Substitute Security Instrument") encumbering the Substitute Property, in the then-current Freddie Mac form of Security Instrument for the jurisdiction in which the Substitute Property is located, and including all of the document modifications contained in Exhibit B to the Security Instrument (other than property-specific modifications) and such additional property-specific modifications, as Lender may require, recorded among the appropriate land records for the Substitute Property;

(iii) a new Repair Agreement and/or Repair Escrow Agreement, as applicable, with respect to the Substitute Property, in the then-current Freddie Mac form of Repair Agreement and/or Repair Escrow Agreement including all of the document modifications contained in the document modifications exhibit forming part of any Repair Agreement or Repair Escrow Agreement pertaining to the Mortgaged Property (other than property-specific modifications);

(iv) a new Replacement Reserve Agreement with respect to the Substitute Property, in the then-current Freddie Mac form of Replacement Reserve Agreement and including all of the document modifications contained in the document modifications exhibit forming part of the Replacement Reserve Agreement pertaining to the Mortgaged Property (other than property-specific modifications);

(v) new Uniform Commercial Code financing statements properly filed and recorded to perfect Lender's security interest in the Substitute Property to the extent that such security interests may be perfected by filing or recording financing statements;

(vi) an amendment to the Cross-Collateralization Agreement substituting the Substitute Property for the To-Be-Released Property and cross-defaulting and cross-collateralizing the Substitute Property with such other Loans and properties as well as any other documentation that Lender may reasonably require in connection with the Cross-Collateralization Agreement;

(vii) opinion for Borrower and Guarantor, if applicable, in substantially the same form delivered in connection with the origination of the Loan;

(viii) such additional documentation as Lender in its sole discretion may require to grant to Lender a perfected first lien and security interest in the Substitute Property and to otherwise implement the Substitution; and

(ix) if requested by Lender, a ratification and confirmation of the continued obligation of each Guarantor.

(c) At the option of the Borrower, immediately prior to the Substitution, another entity meeting the ownership requirements set forth in Section 2 (c) above (such entity being a "**New Borrower**"), may assume the obligations of the Borrower under the Note for the Loan to which the Substitution relates, pursuant to an endorsement to the Note prepared by Lender and executed and delivered by the New Borrower. The New Borrower will then execute, deliver, record, and file the documents referred to in subsection 3(b).

(d) The Borrowers must cause to be delivered to Lender a mortgagee's title insurance policy, dated the date of the recording of the Substitute Security Instrument, in accordance with the commitment for title insurance referred to in subsection 2(i).

(e) Any New Borrower must sign, and all other Borrowers must execute an update to the Substitution Schedule prepared by Lender. The Substitution Schedule will be updated to reflect the Substitution and will include, among other information required, Lender's underwritten LTV and DCR for the Substitute Property.

(f) Upon completion of the Substitution, at the expense of the Borrowers, the To-Be-Released Property will be released from the lien of the Security Instrument and the Cross-Collateralization Agreement; provided that any document effecting such release must expressly provide that the Indebtedness has not been paid in full and that the recording of the release is not intended to create any presumption to the contrary.

(g) If Lender consents to the Substitution pursuant to Section 2 of this Agreement, but the Borrower that requested the Substitution is unable to effect a contemporaneous Substitution of the Substitute Property for the To-Be-Released Property, such Borrower will have the following option, subject to the conditions set forth below:

(i) Borrower must provide Lender with thirty (30) days prior written notice that Borrower intends to complete the Substitution subsequent to the release of the Mortgaged Property ("**Release**").

(ii) Borrower must deliver to Lender an unconditional, irrevocable letter of credit ("**Letter of Credit**") in form and content, from an issuer and accompanied by an opinion of counsel to the Letter of Credit issuer, all acceptable to Lender, for a term of not less than twelve (12) months, in an amount determined by Lender in Lender's discretion.

(iii) Borrower must continue to make monthly payments under the applicable Note in accordance with the terms of the Note until the Substitution has been completed, and thereafter under the terms of the Note, as amended or amended and restated pursuant to Section 3(b)(i) above.

(iv) Borrower must complete the Substitution within six (6) months after the Release. If Borrower completes the Substitution prior to the end of the 6-month period, Lender will return the Letter of Credit to the Borrower.

(v) If Borrower does not complete the Substitution within the 6-month period, or if an Event of Default occurs and is continuing, Lender will provide written notice to Borrower of its intent to draw on the Letter of Credit, and, if Borrower does not deposit with Lender cash in an amount equal to the face amount of the Letter of Credit to be so drawn by Lender (the **"Substitute Cash"**) within five (5) business days after such notice from Lender, Lender shall have the right to thereafter draw on the Letter of

Credit and apply the proceeds to the Indebtedness and Borrower must pay any prepayment premium due and payable as a result of such application. If Borrower does deposit the Substitute Cash with Lender in accordance with the foregoing provisions, (y) Lender shall have the right to apply the Substitute Cash to the Indebtedness and Borrower must pay any prepayment premium due and payable as a result of such application and (z) Lender shall promptly return the original Letter of Credit to the Borrower. No portion of the Letter of Credit proceeds or Substitute Cash may be used by Borrower to satisfy the prepayment premium. If Lender draws on the Letter of Credit or receives Substitute Cash in lieu thereof, under the circumstances set forth in this Section, it will be deemed to be a "Release" of a Property pursuant to Section 14 of the Cross-Collateralization Agreement.

(vi) At any time, (A) no more than two (2) Loans secured by Letters of Credit under this Section may be outstanding, (B) the aggregate unpaid principal balance of all Loans secured by Letters of Credit under this Section must be less than fifty percent (50%) of the aggregate unpaid principal balance of all Loans then outstanding, and (C) the number of Loans secured by Letters of Credit under this Section must be less than fifty percent (50%) of the aggregate number of Loans then subject to the Cross-Collateralization Agreement.

(vii) Except as set forth in this Section, Substitutions made pursuant to this Section are subject to all other requirements for Substitutions set forth in this Agreement.

4. Notices. All notices under this Agreement must be in writing and must be given in the manner provided in the Security Instruments.

5. Successors and Assigns. The Borrowers' rights under this Agreement may not be assigned, except that a New Borrower must become a Borrower as provided in this Agreement. This Agreement shall be binding upon and shall inure to the benefit of Lender and Lender's successors and assigns.

6. Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The Borrowers irrevocably submit to the jurisdiction of any federal or state court (without intending to limit any right on the part of Lender or any successor to Lender to remove a matter to a particular court) sitting in the Commonwealth of Virginia, over any suit, action or proceeding arising out of or relating to this Agreement. The Borrowers hereby submit to the *in personam* jurisdiction of each such court in any matter involving this Agreement. Each Borrower irrevocably waives, to the fullest extent permitted under applicable law, any objections it may now or hereafter have to the venue of any suit, action or proceeding brought in any such court and any claim that the same has been brought in an inconvenient forum. Each Borrower acknowledges that it has received material and substantial consideration for the right to effect Substitutions under this Agreement and that the foregoing venue provisions of this Section 6 are integral to Lender's entering into and performance of this Agreement.

7. Course of Dealing. No course of dealing among the parties to this Agreement must operate as a waiver of any rights of any party under this Agreement.

8. <u>WAIVER OF TRIAL BY JURY</u>. EACH BORROWER AND LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT THAT IS

TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

9. **Entire Agreement.** This Agreement, together with the Note, Mortgage and Loan Documents relating to each Loan, contain the entire agreement among the parties as to the rights granted and the obligations assumed in this Agreement. To the extent that this Agreement conflicts with the terms of the other Loan Documents, this Agreement shall govern and control.

10. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

ORIGINAL BORROWER:

ALAMEDA FINANCING, L.P., a Delaware limited partnership

By: California Multiple Financing, Inc., a Maryland corporation, its general partner

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

MISSION BAY NORTH FINANCING, L.P., a
Delaware limited partnership

By: California Multiple Financing, Inc., a Maryland
corporation, its general partner

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

GATES FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

HARBOR FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

4100 MASSACHUSETTS AVENUE ASSOCIATES, L.P., a District of Columbia limited partnership

By: AvalonBay Communities, Inc., a Maryland corporation, its general partner

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

AVALONBAY COMMUNITIES, INC., a Maryland corporation

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL IDOT GUARANTOR:

AVALONBAY TRAVILLE, LLC, a Maryland limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

SHADY GROVE ROAD FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Traville, LLC, a Maryland limited liability company, its sole member

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

GARDENS FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

EDGEWATER FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

FREEHOLD FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

RUN EAST II FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

BELLEVUE FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

AVALONBAY SHREWSBURY, INC., a Maryland corporation

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

ORIGINAL BORROWER:

WOBURN FINANCING, LLC, a Delaware limited liability company

By: AvalonBay Communities, Inc., a Maryland corporation, its sole member

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

LENDER:

DEUTSCHE BANK BERKSHIRE MORTGAGE, INC., a Delaware corporation

By: /s/ Steven B. Wendel
Steven B. Wendel
Officer

By: /s/ Denis G. Leger
Denis G. Leger
Officer

FORM OF MULTIFAMILY NOTE
MULTISTATE — FIXED RATE
(REVISION DATE 2-15-2008)

US $[Loan Amount] Effective Date: As of April 24, 2009

FOR VALUE RECEIVED, the undersigned (together with such party's or parties' successors and assigns, "**Borrower**") jointly and severally (if more than one) promises to pay to the order of **DEUTSCHE BANK BERKSHIRE MORTGAGE, INC.**, a Delaware corporation, the principal sum of [Loan Amount] (US $[Loan Amount]), with interest on the unpaid principal balance, as hereinafter provided.

1. Defined Terms.

(a) As used in this Note:

"**Base Recourse**" means a portion of the Indebtedness equal to zero percent (0%) of the original principal balance of this Note.

"**Business Day**" means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

"**Default Rate**" means an annual interest rate equal to four (4) percentage points above the Fixed Interest Rate. However, at no time will the Default Rate exceed the Maximum Interest Rate.

"**Fixed Interest Rate**" means the annual interest rate of five and eighty-six hundredths percent (5.86%).

"**Installment Due Date**" means, for any monthly installment of interest only or principal and interest, the date on which such monthly installment is due and payable pursuant to Section 3 of this Note. The "**First Installment Due Date**" under this Note is June 1, 2009.

"**Lender**" means the holder from time to time of this Note.

"**Loan**" means the loan evidenced by this Note.

"**Maturity Date**" means the earlier of (i) May 1, 2019 (the "**Scheduled Maturity Date**"), and (ii) the date on which the unpaid principal balance of this Note becomes due and payable by acceleration or otherwise pursuant to the Loan Documents or the exercise by Lender of any right or remedy under any Loan Document.

"**Maximum Interest Rate**" means the rate of interest that results in the maximum amount of interest allowed by applicable law.

"**Prepayment Premium Period**" means the period during which, if a prepayment of principal occurs, a prepayment premium will be payable by Borrower to

Lender. The Prepayment Premium Period is the period from and including the date of this Note until but not including the first day of the Window Period.
"**Security Instrument**" means the multifamily mortgage, deed to secure debt or deed of trust effective as of the effective date of this Note, from Borrower to or for the benefit of Lender and securing this Note.

"**Treasury Security**" means the 3.750% U.S. Treasury Security due November 15, 2018.

"**Window Period**" means the three (3) consecutive calendar month period prior to the Scheduled Maturity Date.

"**Yield Maintenance Period**" means the period from and including the date of this Note until but not including November 1, 2018.

(b) Other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Security Instrument.

2. Address for Payment. All payments due under this Note shall be payable at One Beacon Street, 14th Floor, Boston, Massachusetts 02108, or such other place as may be designated by Notice to Borrower from or on behalf of Lender.

3. Payments.

(a) Interest will accrue on the outstanding principal balance of this Note at the Fixed Interest Rate, subject to the provisions of Section 8 of this Note.

(b) Interest under this Note shall be computed, payable and allocated on the basis of an actual/360 interest calculation schedule (interest is payable for the actual number of days in each month, and each month's interest is calculated by multiplying the unpaid principal amount of this Note as of the first day of the month for which interest is being calculated by the Fixed Interest Rate, dividing the product by 360, and multiplying the quotient by the number of days in the month for which interest is being calculated). The portion of the monthly installment of principal and interest under this Note attributable to principal and the portion attributable to interest will vary based upon the number of days in the month for which such installment is paid. Each monthly payment of principal and interest will first be applied to pay in full interest due, and the balance of the monthly installment payment paid by Borrower will be credited to principal.

(c) Unless disbursement of principal is made by Lender to Borrower on the first day of a calendar month, interest for the period beginning on the date of disbursement and ending on and including the last day of such calendar month shall be payable by Borrower simultaneously with the execution of this Note. If disbursement of principal is made by Lender to Borrower on the first day of a calendar month, then no payment will be due from Borrower at the time of the execution of this Note. The Installment Due Date for the first monthly installment payment under Section 3(d) of interest only or principal and interest, as applicable, will be the First Installment Due Date set forth in Section 1(a) of this Note. Except as provided in this Section 3(c) and in Section 10, accrued interest will be payable in arrears.

(d) (i) Beginning on the First Installment Due Date, and continuing until and including the monthly installment due on May 1, 2011, accrued interest only shall be payable by Borrower in consecutive monthly installments due and payable on the first day of each calendar month. The amount of each monthly installment of interest only payable pursuant to this

Subsection 3(d)(i) on an Installment Due Date shall vary, and shall equal $[__________] multiplied by the number of days in the month prior to the Installment Due Date.

(ii) Beginning on June 1, 2011, and continuing until and including the monthly installment due on the Maturity Date, principal and accrued interest shall be payable by Borrower in consecutive monthly installments due and payable on the first day of each calendar month. The amount of the monthly installment of principal and interest payable pursuant to this Subsection 3(d)(ii) on an Installment Due Date shall be __________ and ___/100 Dollars ($__________).

(e) All remaining Indebtedness, including all principal and interest, shall be due and payable by Borrower on the Maturity Date.

(f) All payments under this Note shall be made in immediately available U.S. funds.

(g) Any regularly scheduled monthly installment of interest only or principal and interest payable pursuant to this Section 3 that is received by Lender before the date it is due shall be deemed to have been received on the due date for the purpose of calculating interest due.

(h) Any accrued interest remaining past due for 30 days or more, at Lender's discretion, may be added to and become part of the unpaid principal balance of this Note and any reference to "accrued interest" shall refer to accrued interest which has not become part of the unpaid principal balance. Any amount added to principal pursuant to the Loan Documents shall bear interest at the applicable rate or rates specified in this Note and shall be payable with such interest upon demand by Lender and absent such demand, as provided in this Note for the payment of principal and interest.

4. Application of Payments. If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, Lender may apply the amount received to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Borrower agrees that neither Lender's acceptance of a payment from Borrower in an amount that is less than all amounts then due and payable nor Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. Security. The Indebtedness is secured by, among other things, the Security Instrument, and reference is made to the Security Instrument for other rights of Lender as to collateral for the Indebtedness.

6. Acceleration. If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, any prepayment premium payable under Section 10, and all other amounts payable under this Note and any other Loan Document, shall at once become due and payable, at the option of Lender, without any prior notice to Borrower (except if notice is required by applicable law, then after such notice). Lender may exercise this option to accelerate regardless of any prior forbearance. For purposes of exercising such option, Lender shall calculate the prepayment premium as if prepayment occurred on the date of acceleration. If prepayment occurs thereafter, Lender shall recalculate the prepayment premium as of the actual prepayment date.

7. Late Charge.

(a) If any monthly installment of interest or principal and interest or other amount payable under this Note or under the Security Instrument or any other Loan Document is not

received in full by Lender within ten (10) days after the installment or other amount is due, counting from and including the date such installment or other amount is due (unless applicable law requires a longer period of time before a late charge may be imposed, in which event such longer period shall be substituted), Borrower shall pay to Lender, immediately and without demand by Lender, a late charge equal to five percent (5%) of such installment or other amount due (unless applicable law requires a lesser amount be charged, in which event such lesser amount shall be substituted).

(b) Borrower acknowledges that its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan and that it is extremely difficult and impractical to determine those additional expenses. Borrower agrees that the late charge payable pursuant to this Section represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional expenses Lender will incur by reason of such late payment. The late charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 8.

8. Default Rate.

(a) So long as (i) any monthly installment under this Note remains past due for thirty (30) days or more or (ii) any other Event of Default has occurred and is continuing, then notwithstanding anything in Section 3 of this Note to the contrary, interest under this Note shall accrue on the unpaid principal balance from the Installment Due Date of the first such unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate.

(b) From and after the Maturity Date, the unpaid principal balance shall continue to bear interest at the Default Rate until and including the date on which the entire principal balance is paid in full.

(c) Borrower acknowledges that (i) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Loan, (ii) during the time that any monthly installment under this Note is delinquent for thirty (30) days or more, Lender will incur additional costs and expenses arising from its loss of the use of the money due and from the adverse impact on Lender’s ability to meet its other obligations and to take advantage of other investment opportunities; and (iii) it is extremely difficult and impractical to determine those additional costs and expenses. Borrower also acknowledges that, during the time that any monthly installment under this Note is delinquent for thirty (30) days or more or any other Event of Default has occurred and is continuing, Lender’s risk of nonpayment of this Note will be materially increased and Lender is entitled to be compensated for such increased risk. Borrower agrees that the increase in the rate of interest payable under this Note to the Default Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Note, of the additional costs and expenses Lender will incur by reason of the Borrower’s delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquent loan.

9. Limits on Personal Liability.

(a) Except as otherwise provided in this Section 9, Borrower shall have no personal liability under this Note, the Security Instrument or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents and Lender’s only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be Lender’s exercise of its rights and remedies with respect to the Mortgaged Property and to any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower’s liability shall not limit or impair Lender’s enforcement of its rights against any guarantor of the Indebtedness or any guarantor of any other obligations of Borrower.

(b) Borrower shall be personally liable to Lender for the amount of the Base Recourse, plus any other amounts for which Borrower has personal liability under this Section 9.

(c) In addition to the Base Recourse, Borrower shall be personally liable to Lender for the repayment of a further portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of the occurrence of any of the following events:

(i) Borrower fails to pay to Lender upon demand after an Event of Default all Rents to which Lender is entitled under Section 3(a) of the Security Instrument and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this subsection (i) if Borrower is unable to pay to Lender all Rents and security deposits as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.

(ii) Borrower fails to apply all insurance proceeds and condemnation proceeds as required by the Security Instrument. However, Borrower will not be personally liable for any failure described in this subsection (ii) if Borrower is unable to apply insurance or condemnation proceeds as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding.

(iii) Borrower fails to comply with Section 14(g) or (h) of the Security Instrument relating to the delivery of books and records, statements, schedules and reports.

(iv) Borrower fails to pay when due in accordance with the terms of the Security Instrument the amount of any item below marked “Deferred”; provided however, that if no item is marked “Deferred”, this Section 9(c)(iv) shall be of no force or effect.

[Deferred] Hazard Insurance premiums or other insurance premiums,

[Deferred] Taxes,

[Deferred] water and sewer charges (that could become a lien on the Mortgaged Property),

[N/A] ground rents,

[Deferred] assessments or other charges (that could become a lien on the Mortgaged Property)

(d) In addition to the Base Recourse, Borrower shall be personally liable to Lender for:

(i) the performance of all of Borrower’s obligations under Section 18 of the Security Instrument (relating to environmental matters);

(ii) the costs of any audit under Section 14(g) of the Security Instrument; and

(iii) any costs and expenses incurred by Lender in connection with the collection of any amount for which Borrower is personally liable under this Section 9, including Attorneys’ Fees and Costs and the costs of conducting any independent audit of Borrower’s books and records to determine the amount for which Borrower has personal liability.

(e) All payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument and the other Loan Documents shall be applied first to the portion of the Indebtedness for which Borrower has no personal liability.

(f) Notwithstanding the Base Recourse, Borrower shall become personally liable to Lender for the repayment of all of the Indebtedness upon the occurrence of any of the following Events of Default:

(i) Borrower's ownership of any property or operation of any business not permitted by Section 33 of the Security Instrument;

(ii) a Transfer (including, but not limited to, a lien or encumbrance) that is an Event of Default under Section 21 of the Security Instrument, other than a Transfer consisting solely of the involuntary removal or involuntary withdrawal of a general partner in a limited partnership or a manager in a limited liability company; or

(iii) fraud or written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender.

(g) To the extent that Borrower has personal liability under this Section 9, Lender may exercise its rights against Borrower personally without regard to whether Lender has exercised any rights against the Mortgaged Property or any other security, or pursued any rights against any guarantor, or pursued any other rights available to Lender under this Note, the Security Instrument, any other Loan Document or applicable law. To the fullest extent permitted by applicable law, in any action to enforce Borrower's personal liability under this Section 9, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

10. Voluntary and Involuntary Prepayments.

(a) Any receipt by Lender of principal due under this Note prior to the Maturity Date, other than principal required to be paid in monthly installments pursuant to Section 3, constitutes a prepayment of principal under this Note. Without limiting the foregoing, any application by Lender, prior to the Maturity Date, of any proceeds of collateral or other security to the repayment of any portion of the unpaid principal balance of this Note constitutes a prepayment under this Note.

(b) Borrower may voluntarily prepay all of the unpaid principal balance of this Note on an Installment Due Date so long as Borrower designates the date for such prepayment in a Notice from Borrower to Lender given at least 30 days prior to the date of such prepayment. If an Installment Due Date (as defined in Section 1(a)) falls on a day which is not a Business Day, then with respect to payments made under this Section 10 only, the term "Installment Due Date" shall mean the Business Day immediately preceding the scheduled Installment Due Date.

(c) Notwithstanding subsection (b) above, Borrower may voluntarily prepay all of the unpaid principal balance of this Note on a Business Day other than an Installment Due Date if Borrower provides Lender with the Notice set forth in subsection (b) and meets the other requirements set forth in this subsection. Borrower acknowledges that Lender has agreed that Borrower may prepay principal on a Business Day other than an Installment Due Date only because Lender shall deem any prepayment received by Lender on any day other than an Installment Due Date to have been received on the Installment Due Date immediately following

such prepayment and Borrower shall be responsible for all interest that would have been due if the prepayment had actually been made on the Installment Due Date immediately following such prepayment.

(d) Unless otherwise expressly provided in the Loan Documents, Borrower may not voluntarily prepay less than all of the unpaid principal balance of this Note. In order to voluntarily prepay all or any part of the principal of this Note, Borrower must also pay to Lender, together with the amount of principal being prepaid, (i) all accrued and unpaid interest due under this Note, plus (ii) all other sums due to Lender at the time of such prepayment, plus (iii) any prepayment premium calculated pursuant to Section 10(e).

(e) Except as provided in Section 10(f), a prepayment premium shall be due and payable by Borrower in connection with any prepayment of principal under this Note during the Prepayment Premium Period. The prepayment premium shall be computed as follows:

(i) For any prepayment made during the Yield Maintenance Period, the prepayment premium shall be whichever is the greater of subsections (A) and (B) below:

(A) 1.0% of the amount of principal being prepaid; or

(B) the product obtained by multiplying:

(1) the amount of principal being prepaid or accelerated,

by

(2) the excess (if any) of the Monthly Note Rate over the Assumed Reinvestment Rate,

by

(3) the Present Value Factor.

For purposes of subsection (B), the following definitions shall apply:

Monthly Note Rate: one-twelfth (1/12) of the Fixed Interest Rate, expressed as a decimal calculated to five digits.

Prepayment Date: in the case of a voluntary prepayment, the date on which the prepayment is made; in the case of the application by Lender of collateral or security to a portion of the principal balance, the date of such application.

Assumed Reinvestment Rate: one-twelfth (1/12) of the yield rate, as of the close of the trading session which is 5 Business Days before the Prepayment Date, on the Treasury Security, as reported in *The Wall Street Journal*, expressed as a decimal calculated to five digits. In the event that no yield is published on the applicable date for the Treasury Security, Lender, in its discretion, shall select the non-callable Treasury Security maturing in the same year as the Treasury Security with the lowest yield published in *The Wall Street Journal* as of the applicable date. If the publication of such yield rates in *The Wall Street Journal* is discontinued for any reason, Lender shall select a security with a comparable rate and

term to the Treasury Security. The selection of an alternate security pursuant to this Section shall be made in Lender's discretion.

Present Value Factor: the factor that discounts to present value the costs resulting to Lender from the difference in interest rates during the months remaining in the Yield Maintenance Period, using the Assumed Reinvestment Rate as the discount rate, with monthly compounding, expressed numerically as follows:

$$\frac{1-\left(\frac{1}{1+ARR}\right)^{n}}{ARR}$$

n = the number of months remaining in Yield Maintenance Period; provided, however, if a prepayment occurs on an Installment Due Date, then the number of months remaining in the Yield Maintenance Period shall be calculated beginning with the month in which such prepayment occurs and if such prepayment occurs on a Business Day other than an Installment Due Date, then the number of months remaining in the Yield Maintenance Period shall be calculated beginning with the month immediately following the date of such prepayment.

ARR = Assumed Reinvestment Rate

(ii) For any prepayment made after the expiration of the Yield Maintenance Period but during the remainder of the Prepayment Premium Period, the prepayment premium shall be 1.0% of the amount of principal being prepaid.

(f) Notwithstanding any other provision of this Section 10, no prepayment premium shall be payable with respect to (i) any prepayment made during the Window Period, or (ii) any prepayment occurring as a result of the application of any insurance proceeds or condemnation award under the Security Instrument.

(g) Unless Lender agrees otherwise in writing, a permitted or required prepayment of less than the unpaid principal balance of this Note shall not extend or postpone the due date of any subsequent monthly installments or change the amount of such installments.

(h) Borrower recognizes that any prepayment of any of the unpaid principal balance of this Note, whether voluntary or involuntary or resulting from an Event of Default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional expense and frustration or impairment of Lender's ability to meet its commitments to third parties. Borrower agrees to pay to Lender upon demand damages for the detriment caused by any prepayment, and agrees that it is extremely difficult and impractical to ascertain the extent of such damages. Borrower therefore acknowledges and agrees that the formula for calculating prepayment premiums set forth in this Note represents a reasonable estimate of the damages Lender will incur because of a prepayment. Borrower further acknowledges that the prepayment premium provisions of this Note are a material part of the consideration for the Loan, and that the terms of this Note are in other respects more favorable to Borrower as a result of the Borrower's voluntary agreement to the prepayment premium provisions.

11. Costs and Expenses. To the fullest extent allowed by applicable law, Borrower shall pay all expenses and costs, including Attorneys' Fees and Costs incurred by Lender as a result of any default under this Note or in connection with efforts to collect any amount due under this Note, or to enforce the provisions of any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding.

12. Forbearance. Any forbearance by Lender in exercising any right or remedy under this Note, the Security Instrument, or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Lender of any security for Borrower's obligations under this Note shall not constitute an election by Lender of remedies so as to preclude the exercise of any other right or remedy available to Lender.

13. Waivers. Borrower and all endorsers and guarantors of this Note and all other third party obligors waive presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness.

14. Loan Charges. Neither this Note nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the Maximum Interest Rate. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower in connection with the Loan is interpreted so that any interest or other charge provided for in any Loan Document, whether considered separately or together with other charges provided for in any other Loan Document, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, shall be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

15. Commercial Purpose. Borrower represents that Borrower is incurring the Indebtedness solely for the purpose of carrying on a business or commercial enterprise, and not for personal, family, household, or agricultural purposes.

16. Counting of Days. Except where otherwise specifically provided, any reference in this Note to a period of "days" means calendar days, not Business Days.

17. Governing Law. This Note shall be governed by the law of the Property Jurisdiction.

18. Captions. The captions of the Sections of this Note are for convenience only and shall be disregarded in construing this Note.

19. Notices; Written Modifications.

(a) All Notices, demands and other communications required or permitted to be given pursuant to this Note shall be given in accordance with Section 31 of the Security Instrument.

(b) Any modification or amendment to this Note shall be ineffective unless in writing signed by the party sought to be charged with such modification or amendment; provided, however, in the event of a Transfer under the terms of the Security Instrument that requires Lender's consent, any or some or all of the Modifications to Multifamily Note set forth in Exhibit A to this Note may be modified or rendered void by Lender at Lender's option, by Notice to Borrower and the transferee, as a condition of Lender's consent.

20. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Note may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies that shall arise under or in relation to this Note. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Note is intended to limit any right that Lender may have to bring any suit, action or proceeding relating to matters arising under this Note in any court of any other jurisdiction.

21. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

22. State-Specific Provisions. [Vary by state where property is located.]

ATTACHED EXHIBIT. The Exhibit noted below, if marked with an "X" in the space provided, is attached to this Note:

þ Exhibit A Modifications to Multifamily Note

IN WITNESS WHEREOF, and in consideration of the Lender's agreement to lend Borrower the principal amount set forth above, Borrower has signed and delivered this Note under seal or has caused this Note to be signed and delivered under seal by its duly authorized representative.

[Borrower]

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

____
Borrower's Social Security/Employer ID Number

Endorsement page to that Multifamily Note dated as of April ___, 2009 in the amount of $[Loan Amount].

PAY TO THE ORDER OF FEDERAL HOME LOAN MORTGAGE
CORPORATION, WITHOUT RECOURSE.

DEUTSCHE BANK BERKSHIRE MORTGAGE, INC., a Delaware corporation

By: ______________________________

Name:
Title:

By: ______________________________

Name:
Title:

FHLMC Loan No. 968714285

EXHIBIT A

MODIFICATIONS TO MULTIFAMILY NOTE

The following modifications are made to the text of the Note that precedes this Exhibit.

1. [Intentionally omitted.]

2. [Intentionally omitted.]

3. [Intentionally omitted.]

4. Section 7(a) is modified by inserting "(other than the payment of principal due on the Maturity Date)" after the word "Note".

5. [Intentionally omitted.]

6. Section 9(c) is modified by inserting "(including any costs and expenses incurred by Lender in collecting any amounts for which Borrower is personally liable under this Section 9)" before the words "as a result" in the introductory language.

7. Section 9(c)(iii) is modified by

   inserting "(including with respect to the payment of the costs of audits)" after "Section 14(g)";

   and

   by inserting "and such failure continues beyond the notice and cure period provided for in Section 14(g) of the Security Instrument" after the word "reports" and before the period at the end of the Section.

8. Section 9(c) is modified by replacing the first sentence of Section 9(c)(iv) with the following:

   > "Borrower fails to apply Rents to pay when due in accordance with the terms of the Security Instrument the amount of any item below marked "Deferred"; provided however that if no item is marked "Deferred" (excluding any of such "Deferred" items for which Borrower has deposited funds in escrow with Lender, to the extent of such deposited funds), this Section 9(c)(iv) shall be of no force or effect. However, Borrower will not be personally liable for any failure described in this subsection (iv) if (1) Borrower is unable to apply such Rents to any item below marked "Deferred" as required by the Security Instrument because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding; or (2) Borrower has, within the applicable calendar year during which such Rents became available to Borrower, paid and is current with respect to all operating expenses of the Mortgaged Property and amounts due and payable in respect of the Indebtedness for such calendar year.

   and

by adding in Section 9(c)(iv) the words “or that are otherwise provided for in recorded covenants affecting the Land” after the words Mortgaged Property” in the following provision:

[Deferred]   assessments or other charges (that could become a lien on the Mortgaged Property)

and

by adding new Section 9(c)(v) as follows:

> “(v) Written material misrepresentation by Borrower or any officer, director, partner, member or employee of Borrower in connection with the application for or creation of the Indebtedness or any request for any action or consent by Lender, to the extent relied upon by Lender to its detriment.”

9. Section 9(d)(i) is modified by adding the following proviso at the end of the Section:

   “provided, that, notwithstanding anything to the contrary set forth in this Note or in Section 18 of the Security Instrument, Lender agrees that Borrower’s obligations under this subsection (d) shall be limited to the assets of Borrower; and Lender further agrees that Lender shall not seek to recover any deficiency from any natural persons who are (i) general or limited partners, members, managers, principals, officers, directors or shareholders in Borrower; or (ii) general or limited partners, members, managers, principals, officers, directors or shareholders of any entity general partner, member or manager of Borrower.”

10. Sections 9(d)(ii) and (iii) are deleted in their entirety.

11. Section 9(f)(iii) is modified by (i) deleting the phrase “or written material misrepresentation” and (ii) adding the following phrase immediately before the period:

    “, provided that, notwithstanding anything to the contrary set forth in any cross-collateralization agreement to which this Note may be subject (if any), the Borrower’s liability under this Section 9(f)(iii) shall not exceed the Indebtedness evidenced by (and defined in) this Note.”

12. Section 9 is modified by adding a new Section 9(h):

    “(h) To the extent Borrower has personal liability under this Note or any of the other Loan Documents, such personal liability shall be limited to the assets of Borrower; and Lender further agrees that Lender shall not seek to recover any deficiency from any natural persons who are (i) general or limited partners, members, managers, principals, officers, directors or shareholders in Borrower; or (ii) general or limited partners, members, managers, principals, officers, directors or shareholders of any entity general partner, member or manager of Borrower; provided, however, the foregoing shall not affect the obligations of any guarantor under any guaranty or indemnity executed on or after the date hereof in connection with the Loan”

13. [Intentionally omitted.]

14. Section 13 is modified by inserting ”, except as otherwise set forth in this Note or the other Loan Documents” before the period.

15. Section 19(b) is modified by replacing the words “Transfer under the terms of the Security Instrument that requires Lender’s consent” with the words “Section 21(f) Transfer”.

16. Section 20 is modified by:

    changing “may” to “shall” in the first sentence;

    inserting “exclusive” before the second “jurisdiction” in the second sentence;

    inserting “and Lender” after “Borrower” in third sentence; and

    deleting the last sentence and replacing it with —“Nothing in this Section 20 is intended to limit Lender’s right to remove a matter to federal court within the Property Jurisdiction.”.

17. Section 1(a) is amended to delete the definition of “Security Instrument” in its entirety and replace it with the following:

    “**Security Instrument**” means, collectively, the multifamily mortgage, deed to secure debt or deed of trust effective as of the effective date of this Note, from Borrower to or for the benefit of Lender, together with all of the other Mortgages (as defined in that certain Master Cross-Collateralization Agreement dated as of the date of this Note, by and among the Lender, the Borrower and the other entities identified as Borrower on Exhibit A attached thereto), each of which is securing this Note.

Exhibit 10.5

FORM OF GUARANTY

REVISION DATE 05/06/2005

This Guaranty ("**Guaranty**") is entered into to be effective as of April 24, 2009, by the undersigned person(s) (the "**Guarantor**" jointly and severally if more than one), for the benefit of **DEUTSCHE BANK BERKSHIRE MORTGAGE, INC.**, a Delaware corporation (the "**Lender**").

RECITALS

A. [Borrowing Entity] (the "**Borrower**") has requested that Lender make a loan to Borrower in the amount of $[Loan Amount] (the "**Loan**"). The Loan will be evidenced by a Multifamily Note from Borrower to Lender dated effective as of the effective date of this Guaranty (the "**Note**"). The Note will be secured by a Multifamily Mortgage, Deed of Trust, or Deed to Secure Debt dated effective as of the effective date of the Note (the "**Security Instrument**"), encumbering the **Mortgaged Property** described in the Security Instrument.

B. As a condition to making the Loan to Borrower, Lender requires that the Guarantor execute this Guaranty.

NOW, THEREFORE, in order to induce Lender to make the Loan to Borrower, and in consideration thereof, Guarantor agrees as follows:

1. Defined Terms. "**Indebtedness,**" "**Loan Documents" and** "**Property Jurisdiction**" and other capitalized terms used but not defined in this Guaranty shall have the meanings assigned to them in the Security Instrument.

2. Scope of Guaranty.

(a) Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Lender:

(i) the full and prompt payment when due, whether at the Maturity Date or earlier, by reason of acceleration or otherwise, and at all times thereafter, of each of the following:

(A) a portion of the Indebtedness equal to zero percent (0%) of the original principal balance of the Note (the "**Base Guaranty**"); and

(B) in addition to the Base Guaranty, all other amounts for which Borrower is personally liable under Sections 9(c), 9(d) and 9(f) of the Note; and

(C) all costs and expenses, including reasonable Attorneys' Fees and Costs incurred by Lender in enforcing its rights under this Guaranty; and

(ii) the full and prompt payment and performance when due of all of Borrower's obligations under Sections 18 and 51 of the Security Instrument.

(b) If the Base Guaranty stated in Section 2(a)(i)(A) is 100 percent of the original principal balance of the Note, then (i) the Base Guaranty shall mean and include the full and complete guaranty of payment of the entire Indebtedness and the performance of all Borrower's obligations under the Loan Documents; and (ii) for so long as the Base Guaranty remains in effect (there being no limit to the duration of the Base Guaranty unless otherwise expressly provided in this Guaranty), the obligations guaranteed pursuant to Sections 2(a)(i)(B), 2(a)(i)(C) and Section 3 shall be part of, and not in addition to or in limitation of, the Base Guaranty.

If the Base Guaranty stated in Section 2(a)(i)(A) is less than 100 percent of the original principal balance of the Note, then this Section 2(b) shall be completely inapplicable and shall be treated as if not a part of this Guaranty.

(c) If Guarantor is not liable for the entire Indebtedness, then all payments made by Borrower with respect to the Indebtedness and all amounts received by Lender from the enforcement of its rights under the Security Instrument and the other Loan Documents (except this Guaranty) shall be applied first to the portion of the Indebtedness for which neither Borrower nor Guarantor has personal liability.

3. Additional Guaranty Relating to Bankruptcy.

(a) Notwithstanding any limitation on liability provided for elsewhere in this Guaranty, Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Lender the full and prompt payment when due, whether at the Maturity Date or earlier, by reason of acceleration or otherwise, and at all times thereafter, the entire Indebtedness, in the event that:

(i) Borrower voluntarily files for bankruptcy protection under the United States Bankruptcy Code; or

(ii) Borrower voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights; or

(iii) an order of relief is entered against Borrower pursuant to the United States Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a "**Related Party**."

(b) For purposes of this Section, the term "Related Party" means:

(i) Borrower or Guarantor; and

(ii) any person or entity that holds, directly or indirectly, any ownership interest in or right to manage Borrower or Guarantor, including without limitation, any shareholder, member or partner of Borrower or Guarantor; and

(iii) any person or entity in which any ownership interest (direct or indirect) or right to manage is held by Borrower, Guarantor or any partner, shareholder or member of, or any other person or entity holding an interest in, Borrower or Guarantor; and

(iv) any other creditor of Borrower that is related by blood, marriage or adoption to Borrower, Guarantor or any partner, shareholder or

member of, or any other person or entity holding an interest in, Borrower or Guarantor.

(c) If Borrower, Guarantor or any Related Party has solicited creditors to initiate or participate in any proceeding referred to in this Section, regardless of whether any of the creditors solicited actually initiates or participates in the proceeding, then such proceeding shall be considered as having been initiated by a Related Party.

4. Guarantor's Obligations Survive Foreclosure. The obligations of Guarantor under this Guaranty shall survive any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the Security Instrument, and, in addition, the obligations of Guarantor relating to Borrower's obligations under Sections 18 and 51 of the Security Instrument shall survive any repayment or discharge of the Indebtedness. Notwithstanding the foregoing, if Lender has never been a mortgagee-in-possession of or held title to the Mortgaged Property, Guarantor shall have no obligation under this Guaranty relating to Borrower's obligations under Sections 18 and 51 of the Security Instrument after the date of the release of record of the lien of the Security Instrument as a result of the payment in full of the Indebtedness on the Maturity Date or by voluntary prepayment in full.

5. Guaranty of Payment and Performance. Guarantor's obligations under this Guaranty constitute an unconditional guaranty of payment and performance and not merely a guaranty of collection.

6. No Demand by Lender Necessary; Waivers by Guarantor. The obligations of Guarantor under this Guaranty shall be performed without demand by Lender and shall be unconditional regardless of the genuineness, validity, regularity or enforceability of the Note, the Security Instrument, or any other Loan Document, and without regard to any other circumstance which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor. Guarantor hereby waives, to the fullest extent permitted by applicable law:

(a) [subsections (a) and (b) for California properties only] any and all benefits and defenses under California Civil Code Section 2810 and agrees that by doing so Guarantor shall be liable even if Borrower had no liability at the time of execution of the Note, the Security Instrument or any other Loan Document, or thereafter ceases to be liable;

(b) any and all benefits and defenses under California Civil Code Section 2809 and agrees that by doing so Guarantor's liability may be larger in amount and more burdensome than that of Borrower;

(c) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and agrees that Guarantor's obligations shall not be affected by any circumstances, whether or not referred to in this Guaranty, which might otherwise constitute a legal or equitable discharge of a surety, a guarantor, a borrower or a mortgagor;

(d) the benefits of any right of discharge under any and all statutes or other laws relating to a guarantor, a surety, a borrower or a mortgagor, and any other rights of a surety, a guarantor, a borrower or a mortgagor under such statutes or laws;

(e) diligence in collecting the Indebtedness, presentment, demand for payment, protest, all notices with respect to the Note and this Guaranty which may be required by statute, rule of law or otherwise to preserve Lender's rights against Guarantor under this Guaranty, including, but not limited to, notice of acceptance, notice of any amendment of the Loan Documents, notice of the occurrence of any default or Event of Default, notice of intent to

accelerate, notice of acceleration, notice of dishonor, notice of foreclosure, notice of protest, and notice of the incurring by Borrower of any obligation or indebtedness;

(f) all rights to cause a marshalling of the Borrower's assets or to require Lender to (i) proceed against Borrower or any other guarantor of Borrower's payment or performance with respect to the Indebtedness (an "**Other Guarantor**"), (ii) if Borrower or any Other Guarantor is a partnership, proceed against any general partner of Borrower or any Other Guarantor, (iii) proceed against or exhaust any collateral held by Lender to secure the repayment of the Indebtedness, or (iv) pursue any other remedy it may now or hereafter have against Borrower, or, if Borrower is a partnership, any general partner of Borrower, [including any and all benefits under California Civil Code Sections 2845, 2849 and 2850] [for California properties only]; and

(g) any right to revoke this Guaranty as to any future advances by Lender under the terms of the Security Instrument to protect Lender's interest in the Mortgaged Property.

7. Modification of Loan Documents. At any time or from time to time and any number of times, without notice to Guarantor and without affecting the liability of Guarantor, Lender may:

(a) extend the time for payment of the principal of or interest on the Indebtedness or renew the Indebtedness in whole or in part;

(b) extend the time for Borrower's performance of or compliance with any covenant or agreement contained in the Note, the Security Instrument or any other Loan Document, whether presently existing or hereinafter entered into, or waive such performance or compliance;

(c) accelerate the Maturity Date of the Indebtedness as provided in the Note, the Security Instrument, or any other Loan Document;

(d) with Borrower, modify or amend the Note, the Security Instrument, or any other Loan Document in any respect, including, but not limited to, an increase in the principal amount; and/or

(e) modify, exchange, surrender or otherwise deal with any security for the Indebtedness or accept additional security that is pledged or mortgaged for the Indebtedness.

8. Joint and Several Liability. The obligations of Guarantor (and each party named as a Guarantor in this Guaranty) and any Other Guarantor shall be joint and several. Lender, in its sole and absolute discretion, may:

(a) bring suit against Guarantor, or any one or more of the parties named as a Guarantor in this Guaranty, and any Other Guarantor, jointly and severally, or against any one or more of them;

(b) compromise or settle with Guarantor, any one or more of the parties named as a Guarantor in this Guaranty, or any Other Guarantor, for such consideration as Lender may deem proper;

(c) release one or more of the parties named as a Guarantor in this Guaranty, or any Other Guarantor, from liability; and

(d) otherwise deal with Guarantor and any Other Guarantor, or any one or more of them, in any manner, and no such action shall impair the rights of Lender to collect from Guarantor any amount guaranteed by Guarantor under this Guaranty.

9. Subordination of Borrower's Indebtedness to Guarantor. Any indebtedness of Borrower held by Guarantor now or in the future is and shall be subordinated to the Indebtedness and Guarantor shall collect, enforce and receive any such indebtedness of Borrower as trustee for Lender, but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

10. Waiver of Subrogation. Guarantor shall have no right of, and hereby waives any claim for, subrogation or reimbursement against Borrower or any general partner of Borrower by reason of any payment by Guarantor under this Guaranty, whether such right or claim arises at law or in equity or under any contract or statute, until the Indebtedness has been paid in full and there has expired the maximum possible period thereafter during which any payment made by Borrower to Lender with respect to the Indebtedness could be deemed a preference under the United States Bankruptcy Code.

11. Preference. If any payment by Borrower is held to constitute a preference under any applicable bankruptcy, insolvency, or similar laws, or if for any other reason Lender is required to refund any sums to Borrower, such refund shall not constitute a release of any liability of Guarantor under this Guaranty. It is the intention of Lender and Guarantor that Guarantor's obligations under this Guaranty shall not be discharged except by Guarantor's performance of such obligations and then only to the extent of such performance.

12. Financial Statements. Guarantor, from time to time upon written request by Lender, shall deliver to Lender such financial statements as Lender may reasonably require.

13. Assignment. Lender may assign its rights under this Guaranty in whole or in part and upon any such assignment, all the terms and provisions of this Guaranty shall inure to the benefit of such assignee to the extent so assigned. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors and assigns of such parties, and the term "**Lender**" shall also include any lawful owner, holder or pledgee of the Note. Reference in this Guaranty to "person" or "persons" shall be deemed to include individuals and entities.

14. Complete and Final Agreement. This Guaranty and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements. There are no unwritten oral agreements between the parties. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Guaranty and the other Loan Documents. Guarantor acknowledges that Guarantor has received a copy of the Note and all other Loan Documents. Neither this Guaranty nor any of its provisions may be waived, modified, amended, discharged, or terminated except by a writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that writing.

15. Governing Law. This Guaranty shall be governed by and enforced in accordance with the laws of the Property Jurisdiction, without giving effect to the choice of law principles of the Property Jurisdiction that would require the application of the laws of a jurisdiction other than the Property Jurisdiction.

16. Jurisdiction; Venue. Guarantor agrees that any controversy arising under or in relation to this Guaranty may be litigated in the Property Jurisdiction, and that the state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have jurisdiction over all controversies which shall arise under or in relation to this Guaranty. Guarantor

irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Lender's right to bring any suit, action or proceeding relating to matters arising under this Guaranty against Guarantor or any of Guarantor's assets in any court of any other jurisdiction.

17. Guarantor's Interest in Borrower. Guarantor represents to Lender that Guarantor has a direct or indirect ownership or other financial interest in Borrower and/or will otherwise derive a material financial benefit from the making of the Loan.

18. [For California properties only] [California Waiver Provisions. To the extent any special California provision in this section is inconsistent with any other section of this Guaranty, the provision set forth below shall control.

(a) Guarantor understands that the exercise by Lender of certain rights and remedies contained in the Security Instrument (such as a nonjudicial foreclosure sale) may affect or eliminate Guarantor's right of subrogation against Borrower and that Guarantor may therefore incur a partially or totally nonreimburseable liability under this Guaranty. Nevertheless, Guarantor hereby authorizes and empowers Lender to exercise, in its sole and absolute discretion, any right or remedy, or any combination thereof, which may then be available, since it is the intent and purpose of Guarantor that the obligations under this Guaranty shall be absolute, independent and unconditional under any and all circumstances. Guarantor expressly waives:

(i) any defense (which defense, if Guarantor had not given this waiver, Guarantor might otherwise have) to a judgment against Guarantor by reason of a nonjudicial foreclosure;

(ii) any and all benefits under

(A) California Code of Civil Procedure Section 580a (which Section, if Guarantor had not given this waiver, would otherwise limit Guarantor's liability after a nonjudicial foreclosure sale to the difference between the obligations of Guarantor under this Guaranty and the fair market value of the property or interests sold at such nonjudicial foreclosure sale),

(B) California Code of Civil Procedure Sections 580b and 580d (which Sections, if Guarantor had not given this waiver, would otherwise limit Lender's right to recover a deficiency judgment with respect to purchase money obligations and after a nonjudicial foreclosure sale, respectively), and

(C) California Code of Civil Procedure Section 726 (which Section, if Guarantor had not given this waiver, among other things, would otherwise require Lender to exhaust all of its security before a personal judgment could be obtained for a deficiency).

(b) Notwithstanding any foreclosure of the lien of the Security Instrument, whether by the exercise of the power of sale contained in the Security Instrument, by an action for judicial foreclosure or by Lender's acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty.

(c) In accordance with Section 2856 of the California Civil Code, Guarantor also waives any right or defense based upon an election of remedies by Lender, even though such election (*e.g.*, nonjudicial foreclosure with respect to any collateral held by Lender to secure repayment of the Indebtedness) destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor (after payment of the obligations guaranteed by Guarantor under this Guaranty) to proceed against Borrower for reimbursement, or both, by operation of Section 580d of the Code of Civil Procedure or otherwise.

(d) In accordance with Section 2856 of the California Civil Code, Guarantor waives any and all other rights and defenses available to Guarantor by reason of Sections 2787 through 2855, inclusive, of the California Civil Code, including any and all rights or defenses Guarantor may have by reason of protection afforded to Borrower with respect to any of the obligations of Guarantor under this Guaranty pursuant to the antideficiency or other laws of the State of California limiting or discharging Borrower's Indebtedness, including Sections 580a, 580b, 580d, and 726 of the California Code of Civil Procedure.

(e) In accordance with Section 2856 of the California Civil Code, Guarantor agrees to withhold the exercise of any and all subrogation and reimbursement rights against Borrower, against any other person, and against any collateral or security for the Indebtedness, including any such rights pursuant to Sections 2847 and 2848 of the California Civil Code, until the Indebtedness has been indefeasibly paid and satisfied in full, all obligations owed to Lender under the Loan Documents have been fully performed, and Lender has released, transferred or disposed of all of its right, title and interest in such collateral or security.]

19. Residence; Community Property Provision.

(a) Guarantor represents and warrants that his/her state of residence is N/A.

(b) Guarantor warrants and represents that s/he is: N/A.

[__________] single
[__________] married

20. GUARANTOR AND LENDER EACH (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS GUARANTY OR THE RELATIONSHIP BETWEEN THE PARTIES AS GUARANTOR AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

ATTACHED EXHIBIT. The following Exhibit is attached to this Guaranty:

þ	Exhibit A	Modifications to Guaranty

IN WITNESS WHEREOF, Guarantor has signed and delivered this Guaranty under seal or has caused this Guaranty to be signed and delivered under seal by its duly authorized representative.

AVALONBAY COMMUNITIES, INC., a Maryland corporation

By: /s/ Joanne M. Lockridge
Joanne M. Lockridge
Senior Vice President-Finance

[For California properties only] [CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of ____________________
County of ____________________
On ____________________ before me, ____________________,
DATE NAME, TITLE OF OFFICER — E.G., “JANE DOE, NOTARY PUBLIC

personally appeared ____________________ ,
NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

____
Signature of Notary]

Name and Address of Guarantor:

Name: AvalonBay Communities, Inc.
Address: 2900 Eisenhower Avenue, Suite 300
Alexandria, Virginia 22314

EXHIBIT A

MODIFICATIONS TO GUARANTY

The following modifications are made to the text of the Guaranty that precedes this Exhibit:

1. Section 2(a)(i)(B) is restated in its entirety as follows:

   (B) in addition to the Base Guaranty, all other amounts for which Borrower is personally liable under Sections 9(c), and 9(f) of the Note; and

2. Section 2(a)(ii) is deleted in its entirety.

3. Section 3 is deleted in its entirety.

4. Section 4 is modified by inserting a period after the words "Security Instrument" the first time they appear in Section, and deleting the remainder of the Section.

5. Section 6 is modified by inserting ", except as set forth herein and in the other Loan Documents" after "by Lender" in the first sentence.

6. Section 6(e) is modified by inserting ", except as set forth herein and in the other Loan Documents" before the semi-colon.

7. [Intentionally omitted.]

8. Section 7(d) is modified by inserting "but expressly excluding Section 9 of the Note or any other provision of the Loan Documents that impacts Section 9 of the Note" before the semi-colon.

9. Section 11 is modified by inserting "and Lender actually refunds the same" after the words "sums to Borrower" in the first sentence.

10. Section 12 is deleted in its entirety and replaced with the following:

    12. **Financial Statements.** Guarantor, annually upon written request by Lender, shall deliver to Lender Guarantor's annual financial statements. In addition, following an Event of Default, Guarantor shall provide to Lender such additional financial statements as Lender may reasonably require.

11. Section 16 is modified by:

    changing "may" to "shall" in the first sentence;

    inserting "exclusive" before "jurisdiction" the last time it appears in the first sentence;

    inserting "and Lender" after "Guarantor" in second sentence; and

    and

    deleting the last sentence and replacing it with — "Nothing in this Section 16 is intended to limit Lender's right to remove a matter to federal court within the Property Jurisdiction.".

12. Section 17 is modified by adding the following to the end of the Section:

“Guarantor will maintain its interest in Borrower during the term of the Loan as provided in the Security Instrument. In addition, until the Indebtedness is paid in full, Guarantor shall maintain its existence as a Maryland corporation in good standing, exercising each extension of the term of its existence as necessary to do so.”

13. A new Section 21 is added, reading as follows:

“**21.** The obligations of Guarantor shall not be impaired or in any way limited by (i) any action taken by Lender to enforce its rights under or realize upon collateral for any of the “Loans” as defined in the Master Cross-Collateralization Agreement dated the same date as this Guaranty among Lender and the Borrowers identified therein (the “Cross-Collateralization Agreement”), (ii) the fact that Lender may be seeking to realize upon some but not all of the collateral for the “Loans” as defined in the Cross-Collateralization Agreement, or (iii) the exercise or not, concurrently, consecutively or otherwise, of any of the rights or remedies available to Lender under the Cross-Collateralization Agreement or applicable law.”

Exhibit 12.1

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

	Six Months Ended June 30, 2009	Year Ended December 31, 2008 (1)	Year Ended December 31, 2007 (1)	Year Ended December 31, 2006 (1)	Year Ended December 31, 2005 (1)	Year Ended December 31, 2004 (1)
Income from continuing operations before gain on sale of communities and cumulative effect of change in accounting principle	$ 65,099	$ 114,378	$ 231,184	$ 148,942	$ 84,802	$ 45,969
(Plus):						
Net (loss) income attributable to noncontrolling interests	(1,275)	(741)	1,585	573	1,481	150
Amortization of capitalized interest (2)	6,648	12,428	9,941	7,503	5,957	5,114
Earnings before fixed charges	$ 70,472	$ 126,065	$ 242,710	$ 157,018	$ 92,240	$ 51,233
(Plus) Fixed charges:						
Portion of rents representative of the interest factor	$ 420	$ 855	$ 722	$ 518	$ 354	$ 323
Interest expense	66,631	114,878	94,540	106,271	122,787	127,123
Interest capitalized	26,045	74,621	73,118	46,388	25,284	20,566
Preferred dividend	—	10,454	8,700	8,700	8,700	8,700
Total fixed charges (3)	$ 93,096	$ 200,808	$ 177,080	$ 161,877	$ 157,125	$ 156,712
(Less):						
Interest capitalized	26,045	74,621	73,118	46,388	25,284	20,566
Preferred dividend	—	10,454	8,700	8,700	8,700	8,700
Earnings (4)	$ 137,523	$ 241,798	$ 337,972	$ 263,807	$ 215,381	$ 178,679
Ratio (4 divided by 3)	1.48	1.20	1.91	1.63	1.37	1.14

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO FIXED CHARGES

	Six Months Ended June 30, 2009	Year Ended December 31, 2008 (1)	Year Ended December 31, 2007 (1)	Year Ended December 31, 2006 (1)	Year Ended December 31, 2005 (1)	Year Ended December 31, 2004 (1)
Income from continuing operations before gain on sale of communities and cumulative effect of change in accounting principle	$ 65,099	$ 114,378	$ 231,184	$ 148,942	$ 84,802	$ 45,969
(Plus):						
Net (loss) income attributable to noncontrolling interests	(1,275)	(741)	1,585	573	1,481	150
Amortization of capitalized interest (2)	6,648	12,428	9,941	7,503	5,957	5,114
Earnings before fixed charges	$ 70,472	$ 126,065	$ 242,710	$ 157,018	$ 92,240	$ 51,233
(Plus) Fixed charges:						
Portion of rents representative of the interest factor	$ 420	$ 855	$ 722	$ 518	$ 354	$ 323
Interest expense	66,631	114,878	94,540	106,271	122,787	127,123
Interest capitalized	26,045	74,621	73,118	46,388	25,284	20,566
Total fixed charges (3)	$ 93,096	$ 190,354	$ 168,380	$ 153,177	$ 148,425	$ 148,012
(Less):						
Interest capitalized	26,045	74,621	73,118	46,388	25,284	20,566
Earnings (4)	$ 137,523	$ 241,798	$ 337,972	$ 263,807	$ 215,381	$ 178,679
Ratio (4 divided by 3)	1.48	1.27	2.01	1.72	1.45	1.21

(1) The results of operations for 2004 through 2008 have been adjusted to reflect discontinued operations for properties sold or held for sale as of June 30, 2009.

(2) Represents an estimate of capitalized interest costs based on the Company's established depreciation policy and an analysis of interest costs capitalized since 1998 (the year in which AvalonBay was formed).

Exhibit 31.1

CERTIFICATION

I, Bryce Blair, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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: August 10, 2009

/s/ Bryce Blair

Bryce Blair
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Thomas J. Sargeant, certify that:

1. I have reviewed this quarterly report on Form 10-Q 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: August 10, 2009

/s/ Thomas J. Sargeant

Thomas J. Sargeant
Chief Financial Officer

EXHIBIT 32

CERTIFICATION

The undersigned officers of AvalonBay Communities, Inc. (the "Company") hereby certify that the Company's quarterly report on Form 10-Q 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: August 10, 2009

/s/ Bryce Blair
Bryce Blair
Chief Executive Officer

/s/ Thomas J. Sargeant
Thomas J. Sargeant
Chief 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.