SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2002

Commission file number 1-12672

AVALONBAY COMMUNITIES, INC.
(Exact name of registrant as specified in its charter)

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

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

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

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

Common Stock, par value $.01 per share	New York Stock Exchange, Pacific Exchange
8.00% Series D Cumulative Redeemable Preferred Stock, par value $.01 per share	New York Stock Exchange, Pacific Exchange
8.70% Series H Cumulative Redeemable Preferred Stock, par value $.01 per share	New York Stock Exchange, Pacific Exchange
(Title of each class)	*(Name of each exchange on which registered)*

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

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 x No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

Yes x No o

The aggregate market value of the Registrant's Common Stock, par value $.01 per share, held by nonaffiliates of the Registrant, as of June 28, 2002 was $3,239,807,363.

The number of shares of the Registrant's Common Stock, par value $.01 per share, outstanding as of February 1, 2003 was 68,149,232.

Documents Incorporated by Reference

Portions of AvalonBay Communities, Inc.'s Proxy Statement for the 2003 annual meeting of stockholders, a definitive copy of which will be filed with the SEC within 120 days after the year end of the year covered by this Form 10-K, are incorporated by reference herein as portions of Part III of this Form 10-K.

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PART I

This Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Our actual results could differ materially from those set forth in each forward-looking statement. Certain factors that might cause such a difference are discussed in this report, including in the section entitled "Forward-Looking Statements" on page 37 of this Form 10-K.

ITEM 1. BUSINESS

General

AvalonBay Communities, Inc. is a Maryland corporation that has elected to be treated as a real estate investment trust, or REIT, for federal income tax purposes. We focus on the ownership and operation of upscale apartment communities (which generally command among the highest rents in their submarkets) in high barrier-to-entry markets of the United States. This is because we believe that, long term, the limited new supply of upscale apartment homes and lower housing affordability in these markets will result in larger increases in cash flows relative to other markets over an entire business cycle. These barriers-to-entry generally include a difficult and lengthy entitlement process with local jurisdictions and dense urban or suburban areas where zoned and entitled land ("in-fill locations") is in limited supply. Our markets are located in the Northeast, Mid-Atlantic, Midwest, Pacific Northwest, and Northern and Southern California regions of the United States. We believe that we have penetrated substantially all of the high barrier-to-entry markets of the country.

At February 1, 2003, we owned or held a direct or indirect ownership interest in 137 operating apartment communities containing 40,179 apartment homes in eleven states and the District of Columbia, of which two communities containing 1,089 apartment homes were under reconstruction. In addition, we owned or held a direct or indirect ownership interest in 12 communities under construction that are expected to contain an aggregate of 3,429 apartment homes when completed. We also owned a direct or indirect ownership interest in rights to develop an additional 38 communities that, if developed in the manner expected, will contain an estimated 9,950 apartment homes. We generally obtain ownership in an apartment community by developing a new community on vacant land or by acquiring and either repositioning or redeveloping an existing community. In selecting sites for development, redevelopment or acquisition, we favor locations that are near expanding employment centers and convenient to recreation areas, entertainment, shopping and dining.

Our real estate investments consist of Established Communities, Other Stabilized Communities, Development Communities and Redevelopment Communities. A description of these segments and other related information can be found in Note 9, "Segment Reporting," of the Consolidated Financial Statements set forth in Item 8 of this report.

Our principal operating objectives are to develop, own and operate, in our selected markets, high-quality, upscale communities that contain features and amenities desired by prospective residents, and to provide our residents with efficient and effective service. Our principal financial goals are to successfully implement those operating objectives in a cost effective manner and thereby increase long-term stockholder value by increasing operating cash flow and Funds from Operations (as defined by the National Association of Real Estate Investment Trusts). For a description of the meaning of Funds from Operations and its use and limitation as an operating measure, see the discussion titled "Funds from Operations" in Item 7 of this report. Our strategies to achieve these objectives and goals include:

- generating consistent, sustained earnings growth at each community through increased revenue, by balancing high occupancy with premium pricing, and increased operating margins from operating expense management;
- investing selectively in new development, redevelopment and acquisition communities in markets with growing or high potential for demand and high barriers-to-entry;
- selling communities in markets where we seek to reduce our presence or where value creation has been optimized; and
- maintaining a conservative capital structure to provide continuous access to cost-effective capital.

We believe that we can generally implement these strategies best by developing, redeveloping, acquiring and managing upscale assets in high barrier-to-entry markets while maintaining the financial discipline to ensure balance sheet flexibility.

Development Strategy. We carefully select land for development and follow established procedures that we believe minimize both the cost and the risks of development. As one of the largest developers of multifamily apartment communities in high barrier-to-entry markets of the United States, we identify development opportunities through local market presence and access to local market information achieved through our regional offices. In addition to our principal executive offices in Alexandria, Virginia, we also maintain regional offices and administrative or specialty offices in or near the following cities:

- Boston, Massachusetts;
- Chicago, Illinois;
- New Canaan, Connecticut;
- New York, New York;
- Newport Beach, California;
- San Jose, California;
- Seattle, Washington; and
- Woodbridge, New Jersey.

After selecting a target site, we usually negotiate for the right to acquire the site either through an option or a long-term conditional contract. Options and long-term conditional contracts generally enable us to acquire the target site shortly before the start of construction, which reduces development-related risks as well as preserves capital. After we acquire land, we generally shift our focus to construction. Except for certain mid-rise and high-rise apartment communities where we may elect to use third-party general contractors or construction managers, we act as our own general contractor and construction manager. We believe this enables us to achieve higher construction quality, greater control over construction schedules and significant cost savings. Our development, property management and construction teams monitor construction progress to ensure high-quality workmanship and a smooth and timely transition into the leasing and operational phase.

Redevelopment Strategy. When we undertake the redevelopment of a community, our goal is to generally renovate and/or rebuild an existing community so that our total investment is significantly below replacement cost and the community is the highest quality apartment community or best rental value for an upscale apartment community in its local area. We have established procedures to minimize both the cost and risks of redevelopment. Our redevelopment teams, which include key redevelopment, construction and property management personnel, monitor redevelopment progress. We believe we achieve significant cost savings by acting as our own general contractor. More importantly, this helps to ensure high-quality design and workmanship and a smooth and timely transition into the lease-up and restabilization phase.

Disposition Strategy. To optimize our concentration of communities in selected high barrier-to-entry markets, we sell assets that do not meet our long-term investment criteria when market conditions are favorable and redeploy the proceeds from those sales to develop and redevelop communities under construction or reconstruction. This disposition strategy acts as a source of capital because we are able to redeploy the net proceeds from our dispositions in lieu of raising that amount of capital externally by issuing debt or equity securities. When we decide to sell a community, we generally solicit competing bids from unrelated parties for these individual assets and consider the sales price and tax ramifications of each proposal. In connection with this disposition strategy, we have disposed of one community since January 1, 2002. The net proceeds from the sale of this community were approximately $78,454,000. We expect to increase our disposition activity during 2003 in response to current and anticipated real estate and capital markets conditions. However, we cannot assure you that assets can be sold on terms that we consider satisfactory, or at all, or that market conditions will continue to make the sale of assets an appealing strategy.

Acquisition Strategy. Our core competencies in development and redevelopment discussed above allow us to be selective in the acquisitions we target. Between January 1, 2002 and February 1, 2003, we acquired two

communities containing 706 apartment homes, one of which was acquired in connection with a forward purchase contract agreed to in 1997. The acquisition of these communities was designed to achieve rapid penetration into markets that are generally supply constrained and in which we desired an increased presence.

Property Management Strategy. We intend to increase operating income through innovative, proactive property management that will result in higher revenue from communities and controlled operating expenses.

Our principal strategies to maximize revenue include:

- strong focus on resident satisfaction;
- staggering lease terms such that lease expirations are better matched to traffic patterns;
- increasing rents as market conditions permit;
- managing community occupancy for optimal rental revenue levels; and
- applying new technology to optimize revenue from each community.

Controlling operating expenses is another way in which we intend to increase earnings growth. Growth in our portfolio and the resulting increase in revenue allows for fixed operating costs to be spread over a larger volume of revenue, thereby increasing operating margins. We aggressively pursue real estate tax appeals and control operating expenses as follows:

- receive and approve invoices on-site to ensure careful monitoring of budgeted versus actual expenses;
- purchase supplies in bulk where possible;
- bid third-party contracts on a volume basis;
- strive to retain residents through high levels of service in order to eliminate the cost of preparing an apartment home for a new resident and to reduce marketing and vacant apartment utility costs;
- perform turnover work in-house or hire third-parties, generally depending upon the least costly alternative; and
- undertake preventive maintenance regularly to maximize resident satisfaction and property and equipment life.

On-site property management teams receive bonuses based largely upon the net operating income produced at their respective communities. We are also pursuing ancillary services which could provide additional revenue sources.

Technology Strategy. We believe that an innovative management information system infrastructure is an important element in managing our future growth. This is because timely and accurate collection of financial and resident profile data will enable us to maximize revenue through careful leasing decisions and financial management.

We currently have investments in three technology companies. These investments were made with the belief that they would promote the development and application of technology and services which would improve the operating performance of our real estate holdings. Historically, our most significant technology investment has been Realeum, Inc., (“Realeum”), an entity engaged in the development and deployment of an on-site property management and leasing automation system that enables management to capture, review and analyze data to a greater extent than is possible using existing commercial software. To help monitor this investment, Thomas J. Sargeant, our Executive Vice President and Chief Financial Officer, is a director of Realeum. After consideration of our share of Realeum’s losses, the carrying value of our investment in Realeum has been reduced to zero as of December 31, 2002. We are also a member of Constellation Real Technologies LLC, (“Constellation”), an entity formed by a number of real estate investment trusts and real estate operating companies for the purpose of investing in multi-sector real estate technology opportunities. Our original commitment to Constellation was $4,000,000 but, as a result of an agreement among the members reducing the commitment due from each member, our commitment is currently $2,600,000, of which we have contributed $959,000 to date. The remaining unfunded commitment of $1,641,000 is expected to be funded over the next five years. Our third investment is in Rent.com, an internet-based rental housing information provider. The aggregate carrying value of our technology investments at February 1, 2003 was $1,404,000.

Financing Strategy. We have consistently maintained, and intend to continue to maintain, a conservative capital structure. At December 31, 2002, our debt-to-total market capitalization was 46.1%, and our permanent long-term floating rate debt, not including borrowings under the unsecured credit facility, was only 2.0% of total market capitalization. Market capitalization reflects the aggregate of the market value of common stock, the liquidation preference of preferred stock and the principal amount of debt.

Before planned construction or reconstruction activity begins, we intend to arrange adequate capital sources to complete such undertakings, although we cannot assure you that we will be able to obtain such financing. During 2002, substantially all of our construction and reconstruction activities were funded by the issuance of unsecured debt securities, net proceeds from asset sales and retained operating cash. In the event that financing cannot be obtained, we may have to abandon planned development activities, write-off associated pursuit costs and/or forego reconstruction activity. In such instances, we will not realize the increased revenues and earnings that we expected from such pursuits.

We estimate that a portion of our short-term liquidity needs will be met from retained operating cash and borrowings under our $500,000,000 variable rate unsecured credit facility. At February 28, 2003, $155,470,000 was outstanding, $15,529,000 was used to provide letters of credit and $329,001,000 was available for borrowing under the unsecured credit facility.

If required to meet the balance of our liquidity needs, we will attempt to arrange additional capacity under our existing unsecured credit facility, sell additional existing communities or land and/or issue additional debt or equity securities. While we believe we have the financial position to expand our short-term credit capacity and access the capital markets as needed, we cannot assure you that we will be successful in completing these arrangements, sales or offerings. The failure to complete these transactions on a cost-effective basis or at all could have a material adverse impact on our operating results and financial condition, including the abandonment of development pursuits.

Inflation and Deflation

Substantially all of our leases are for a term of one year or less, which may enable us to realize increased rents upon renewal of existing leases or the beginning of new leases. Such short-term leases generally minimize the risk to us of the adverse effects of inflation, although as a general rule these leases permit residents to leave at the end of the lease term without penalty and therefore expose us to the effect of a decline in market rent. Our current policy is generally to allow residents to terminate leases upon an agreed advance written notice and a lease termination payment, as provided for in the resident's lease. Short-term leases combined with relatively consistent demand have allowed rents, and therefore cash flow from the portfolio, to provide an attractive inflation hedge. However, in a deflationary rent environment as is currently being experienced, we are exposed to declining rents more quickly under these shorter-term leases.

Tax Matters

We filed an election with our initial federal income tax return to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, and intend to maintain our qualification as a REIT in the future. As a qualified REIT, with limited exceptions, we will not be taxed under federal and certain state income tax laws at the corporate level on our net income to the extent net income is distributed to our stockholders. We expect to make sufficient distributions to avoid income tax at the corporate level.

Environmental and Related Matters

Under various federal, state and local environmental laws, regulations and ordinances, a current or previous owner or operator of real estate may be required, regardless of knowledge or responsibility, to investigate and remediate the effects of hazardous or toxic substances or petroleum product releases at the property and may be held liable to a governmental entity or to third parties for property damage and for investigation and remediation costs incurred by these parties as a result of the contamination. These damages and costs may be substantial. The presence of such substances, or the failure to properly remediate the contamination, may adversely affect the owner's ability to

borrow against, sell or rent the affected property. In addition, some environmental laws create a lien on the contaminated site in favor of the government for damages and costs it incurs as a result of the contamination.

Certain federal, state and local laws, regulations and ordinances govern the removal, encapsulation or disturbance of asbestos containing materials (“ACMs”) when such materials are in poor condition or in the event of reconstruction, remodeling, renovation, or demolition of a building. These laws may impose liability for release of ACMs and may provide for third parties to seek recovery from owners or operators of real properties for personal injury associated with exposure to ACMs. We are not aware that any ACMs were used in the construction of the communities we developed. ACMs were, however, used in the construction of several of the communities that we acquired. We have implemented an operations and maintenance program for each of the communities at which ACMs have been detected. We do not anticipate that we will incur any material liabilities as a result of the presence of ACMs at our communities.

We are aware that some of our communities have lead paint and have implemented an operations and maintenance program at each of those communities. We do not anticipate that we will incur any material liabilities as a result of the presence of lead paint at our communities.

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

Mold growth may occur when excessive moisture accumulates in buildings or on building materials, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Although the occurrence of mold at multifamily and other structures, and the need to remediate such mold, is not a new phenomenon, there has been increased awareness in recent years that certain molds may in some instances lead to adverse health effects, including allergic or other reactions. To help limit mold growth, we educate residents about the importance of adequate ventilation and request or require that they notify us when they see mold or excessive moisture. We have established procedures for promptly addressing and remediating mold or excessive moisture from apartment homes when we become aware of its presence regardless of whether we or the resident believe a health risk is presented. However, we cannot assure that mold or excessive moisture will be detected and remediated in a timely manner. If a significant mold problem arises at one of our communities, we could be required to undertake a costly remediation program to contain or remove the mold from the affected community and could be exposed to other liabilities.

Additionally, we have occasionally been involved in developing, managing, leasing and operating various properties for third parties. Consequently, we may be considered to have been an operator of such properties and, therefore, potentially liable for removal or remediation costs or other potential costs which could relate to hazardous or toxic substances. We are not aware of any material environmental liabilities with respect to properties managed or developed by us or our predecessors for such third parties.

We cannot assure you that:

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

Other Information

Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to the Securities Exchange Act of 1934 are available free of charge in the "Investor Relations" section of our website (www.avalonbay.com) as soon as reasonably practicable after the reports are filed with or furnished to the SEC.

We were incorporated under the laws of the State of California in 1978. In 1995, we reincorporated in the State of Maryland and have been focused on the ownership and operation of apartment communities since that time. As of December 31, 2002, we had 1,775 employees.

ITEM 2. COMMUNITIES

Our real estate investments consist of current operating apartment communities, communities in various stages of development, and land or land options held for development. 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 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 costs as of the beginning of the prior year. We determine which of our communities fall into the Established Communities category annually as of January 1st of each year and maintain that classification throughout the year. For the year 2002, the Established Communities were communities that had stabilized occupancy and costs as of January 1, 2001 and are not conducting or planning to conduct substantial redevelopment activities, as described below, within the current year. We consider a community 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 have stabilized occupancy and are not conducting or planning redevelopment activities. Other Stabilized Communities therefore include communities that were either acquired or achieved stabilization after January 1, 2001 and that were not conducting or planning to start redevelopment activities within the current year.
- *Lease-Up Communities* are communities where construction has been complete for less than one year and where occupancy has not reached 95%.
- *Redevelopment Communities* are communities 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 exceeds the lesser of $5,000,000 or 10% of the community's acquisition cost.

Development Communities are communities that are under construction and for which a final 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 all related pre-development costs incurred in pursuit of these new developments.

As of December 31, 2002, our communities were classified as follows:

	Number of communities	Number of apartment homes
Current Communities		
Established Communities:		
Northeast	27	7,196
Mid-Atlantic	18	5,154
Midwest	9	2,624
Pacific Northwest	3	907
Northern California	29	8,601
Southern California	11	3,404
Total Established	97	27,886
Other Stabilized Communities:		
Northeast	11	3,040
Mid-Atlantic	2	960
Midwest	—	—
Pacific Northwest	8	2,152
Northern California	2	499
Southern California	6	2,253
Total Other Stabilized	29	8,904
Lease-Up Communities	9	2,300
Redevelopment Communities	2	1,089
Total Current Communities	137	40,179
Development Communities	12	3,429
Development Rights	38	9,950

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

Current Communities

The Current Communities are primarily garden-style apartment communities consisting of two and three-story buildings in landscaped settings. The Current Communities, as of February 1, 2003, include 106 garden-style, 17 high-rise and 14 mid-rise apartment communities. The Current Communities offer many attractive amenities including some or all of the following:

- vaulted ceilings;
- lofts;
- fireplaces;
- patios/decks; and
- modern appliances.

Other features at various communities may include:

- swimming pools;
- fitness centers;
- tennis courts; and
- business centers.

We also have an extensive and ongoing maintenance program to keep all communities and apartment homes substantially free of deferred maintenance and, where vacant, available for immediate occupancy. We believe that the aesthetic appeal of our communities and a service oriented property management team focused on the specific needs of residents enhances market appeal to discriminating residents. We believe this will ultimately achieve higher rental rates and occupancy levels while minimizing resident turnover and operating expenses.

These Current Communities are located in the following geographic markets:

	Number of communities at		Number of apartment homes at		Percentage of total apartment homes at	
	1-1-02	2-1-03	1-1-02	2-1-03	1-1-02	2-1-03
Northeast	**38**	**45**	**10,877**	**12,667**	**29.3%**	**31.5%**
Boston, MA	11	13	2,839	3,142	7.6%	7.8%
Fairfield County, CT	11	13	2,939	3,350	7.9%	8.3%
Long Island, NY	3	3	915	915	2.5%	2.3%
Northern New Jersey	4	5	1,394	1,802	3.8%	4.5%
Central New Jersey	3	4	1,144	1,440	3.1%	3.6%
New York, NY	6	7	1,646	2,018	4.4%	5.0%
Mid-Atlantic	**21**	**22**	**6,422**	**6,754**	**17.2%**	**16.8%**
Baltimore, MD	4	4	1,054	1,054	2.8%	2.6%
Washington, DC	17	18	5,368	5,700	14.4%	14.2%
Midwest	**9**	**9**	**2,624**	**2,624**	**7.1%**	**6.5%**
Chicago, IL	4	4	1,296	1,296	3.5%	3.2%
Minneapolis, MN	5	5	1,328	1,328	3.6%	3.3%
Pacific Northwest	**12**	**12**	**3,159**	**3,159**	**8.5%**	**7.9%**
Seattle, WA	12	12	3,159	3,159	8.5%	7.9%
Northern California	**30**	**32**	**8,889**	**9,318**	**23.8%**	**23.2%**
Oakland-East Bay, CA	6	6	2,090	2,090	5.6%	5.2%
San Francisco, CA	8	8	1,765	1,765	4.7%	4.4%
San Jose, CA	16	18	5,034	5,463	13.5%	13.6%
Southern California	**16**	**17**	**5,257**	**5,657**	**14.1%**	**14.1%**
Los Angeles, CA	4	5	2,001	2,401	5.4%	6.0%
Orange County, CA	8	8	2,022	2,022	5.4%	5.0%
San Diego, CA	4	4	1,234	1,234	3.3%	3.1%
	126	137	37,228	40,179	100.0%	100.0%

We manage and operate all of the Current Communities. During the year ended December 31, 2002, we completed construction of 2,521 apartment homes in ten communities for a total cost of $466,600,000. The average age of the Current Communities, on a weighted average basis according to number of apartment homes, is 8.1 years.

Of the Current Communities, as of February 1, 2003, we own:

- a fee simple, or absolute, ownership interest in 112 operating communities, one of which is on land subject to a land lease expiring in March 2142;
- a general partnership interest in three partnerships that each own a fee simple interest in an operating community;
- a general partnership interest in four partnerships structured as “DownREITs,” as described more fully below, that own an aggregate of 17 communities;
- a membership interest in four limited liability companies that each hold a fee simple interest in an operating community; and
- a 100% interest in a senior participating mortgage note secured by one community, which allows us to share in part of the rental income or resale proceeds of the community.

We also hold a fee simple ownership interest in nine of the Development Communities, a membership interest in a limited liability company that holds a fee simple interest in a Development Community and a general partnership interest in two partnerships structured as "DownREITs" that each own one Development Community.

In each of the six partnerships structured as DownREITs, either we or one of our 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 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 our current common stock dividend amount. Each DownREIT partnership has been structured so that it is unlikely the limited partners will be entitled to a distribution greater than the initial distribution provided for in the applicable partnership agreement. The holders of units of limited partnership interest have the right to present each unit of limited partnership interest for redemption for cash equal to the fair market value of a share of our common stock on the date of redemption. In lieu of cash, we may elect to acquire any unit presented for redemption for one share of our common stock. As of February 1, 2003, there were 975,751 DownREIT partnership units outstanding. The DownREIT partnerships are consolidated for financial reporting purposes.

Profile of Current and Development Communities
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion/ acquisition	Average size (Sq. Ft.)
CURRENT COMMUNITIES (1)						
NORTHEAST						
Boston, MA						
Avalon at Center Place	Providence, RI	225	231,671	1.2	1997	1,030
Avalon at Faxon Park	Quincy, MA	171	175,494	8.3	1998	1,026
Avalon at Lexington	Lexington, MA	198	231,182	18.0	1994	1,168
Avalon at Prudential Center	Boston, MA	781	747,954	1.0	1968/98	958
Avalon Essex	Peabody, MA	154	173,520	11.1	2000	1,127
Avalon Estates	Hull, MA	162	188,392	55.0	2001	1,163
Avalon Ledges	Weymouth, MA	304	315,554	58.0	2002	1,023
Avalon Oaks	Wilmington, MA	204	229,748	22.5	1999	1,023
Avalon Oaks West	Wilmington, MA	120	123,960	27.0	2002	1,033
Avalon Orchards	Marlborough, MA	156	186,500	23.0	2002	1,219
Avalon Summit	Quincy, MA	245	203,848	9.1	1996	832
Avalon West	Westborough, MA	120	147,472	10.1	1996	1,229
Fairfield-New Haven, CT						
Avalon at Greyrock Place	Stamford, CT	306	201,500	3.0	2002	1,040
Avalon Corners	Stamford, CT	195	192,174	3.2	2000	986
Avalon Gates	Trumbull, CT	340	381,322	37.0	1997	1,122
Avalon Glen	Stamford, CT	238	221,828	4.1	1991	932
Avalon Haven	North Haven, CT	128	140,107	10.6	2000	1,095
Avalon Lake	Danbury, CT	135	166,231	32.0	1999	1,184
Avalon New Canaan	New Canaan, CT	104	130,104	9.1	2002	1,251
Avalon Springs	Wilton, CT	102	158,259	12.0	1996	1,552
Avalon Valley	Danbury, CT	268	297,479	17.1	1999	1,070
Avalon Walk I & II	Hamden, CT	764	761,441	38.4	1992/94	996
Long Island, NY						
Avalon Commons	Smithtown, NY	312	363,049	20.6	1997	1,164
Avalon Court	Melville, NY	494	597,104	35.4	1997/2000	1,209
Avalon Towers	Long Beach, NY	109	124,836	1.3	1995	1,145
Northern New Jersey						
Avalon at Edgewater	Edgewater, NJ	408	405,144	7.1	2002	993
Avalon at Florham Park	Florham Park, NJ	270	331,560	41.9	2001	1,228
Avalon Cove	Jersey City, NJ	504	574,675	11.1	1997	1,140
Avalon Crest	Fort Lee, NJ	351	371,411	13.1	1998	1,058
The Tower at Avalon Cove	Jersey City, NJ	269	241,825	2.8	1999	905
Central New Jersey						
Avalon at Freehold	Freehold, NJ	296	317,608	42.3	2002	1,073
Avalon Run East	Lawrenceville, NJ	206	265,198	27.0	1996	1,287
Avalon Watch	West Windsor, NJ	512	485,871	64.0	1999	949
New York, NY						
Avalon Riverview I	Long Island City, NY	372	332,940	1.0	2002	895
Avalon Gardens	Nanuet, NY	504	638,439	55.0	1998	1,267
Avalon Green	Elmsford, NY	105	113,538	16.9	1995	1,081

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Physical occupancy at 12/31/02	Average economic occupancy		Average rental rate		Financial reporting cost (5)
		2002	2001	$ per Apt (4)	$ per Sq. Ft.	
CURRENT COMMUNITIES (1)						
NORTHEAST						
Boston, MA						
Avalon at Center Place	94.7%	96.2%	96.1%	$2,172	$2.03	$ 27,318
Avalon at Faxon Park	93.6%	93.9%	97.4%	1,833	1.68	15,231
Avalon at Lexington	93.9%	93.8%	96.5%	1,933	1.55	15,347
Avalon at Prudential Center	93.3%	89.2%(2)	94.9%(2)	2,612	2.43(2)	151,813
Avalon Essex	95.5%	94.0%	96.4%	1,870	1.56	21,537
Avalon Estates	83.3%	88.5%	91.2%(3)	1,736	1.32	20,216
Avalon Ledges	71.1%	37.5%(3)	N/A	1,603	0.58(3)	35,527
Avalon Oaks	94.6%	92.2%	96.3%	1,687	1.38	20,823
Avalon Oaks West	94.6%	76.3%(3)	N/A	1,495	1.10(3)	16,619
Avalon Orchards	93.0%	63.1%(3)	N/A	1,546	0.82(3)	20,835
Avalon Summit	88.2%	90.7%	96.8%	1,375	1.50	16,748
Avalon West	95.0%	92.1%	97.8%	1,625	1.22	10,921

Fairfield-New Haven, CT						
Avalon at Greyrock Place	83.0%	66.7%(3)	N/A	1,998	2.02(3)	69,673
Avalon Corners	82.1%	87.7%	96.5%	2,145	1.91	31,778
Avalon Gates	88.2%	93.0%	98.8%	1,672	1.39	36,100
Avalon Glen	89.1%	91.4%	96.5%	1,763	1.73	31,295
Avalon Haven	82.0%	91.0%	98.8%	1,638	1.36	13,750
Avalon Lake	87.4%	95.2%	98.1%	1,800	1.39	16,995
Avalon New Canaan	69.2%	31.0%(3)	N/A	2,852	0.71(3)	32,050
Avalon Springs	79.4%	86.1%	95.9%	2,777	1.54	16,873
Avalon Valley	90.3%	96.4%	99.0%	1,646	1.43	26,059
Avalon Walk I & II	91.4%	94.6%	98.5%	1,313	1.25	59,044
Long Island, NY						
Avalon Commons	99.7%	98.1%	97.1%	1,796	1.51	33,293
Avalon Court	99.4%	98.9%	99.3%	2,201	1.80	59,272
Avalon Towers	99.1%	97.6%	99.0%	2,850	2.43	16,913
Northern New Jersey						
Avalon at Edgewater	90.2%	71.9%(3)	N/A	2,167	1.57(3)	74,590
Avalon at Florham Park	88.9%	93.4%	91.8%(3)	2,404	1.83	41,569
Avalon Cove	91.7%	87.4%	96.7%	2,565	1.97	91,953
Avalon Crest	83.2%	90.2%	94.2%	2,167	1.85	56,062
The Tower at Avalon Cove	91.5%	85.6%	96.6%	2,364	2.25	49,659
Central New Jersey						
Avalon at Freehold	89.9%	80.7%(3)	N/A	1,560	1.17(3)	34,307
Avalon Run East	93.7%	93.0%	97.2%	1,658	1.20	16,272
Avalon Watch	92.8%	92.0%	96.7%	1,378	1.34	29,597
New York, NY						
Avalon Riverview I	71.5%	37.3%(3)	N/A	2,520	1.05(3)	94,045
Avalon Gardens	95.4%	90.7%	94.3%	1,863	1.33	54,265
Avalon Green	88.6%	94.8%	94.5%	2,419	2.12	12,603

Profile of Current and Development Communities
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion/ acquisition	Average size (Sq. Ft.)
Avalon on the Sound	New Rochelle, NY	412	372,860	2.4	2001	905
Avalon View	Wappingers Falls, NY	288	335,088	41.0	1993	1,164
Avalon Willow	Mamaroneck, NY	227	199,945	4.0	2000	881
The Avalon	Bronxville, NY	110	119,186	1.5	1999	1,085
MID-ATLANTIC						
Baltimore, MD						
Avalon at Fairway Hills I & II	Columbia, MD	720	724,253	42.1	1987/96	1,005
Avalon at Symphony Glen	Columbia, MD	176	179,867	10.0	1986	1,022
Avalon Landing	Annapolis, MD	158	117,033	13.8	1995	741
Washington, DC						
4100 Massachusetts Avenue	Washington, DC	308	298,725	2.7	1982	970
Autumn Woods	Fairfax, VA	420	355,228	24.2	1996	846
Avalon at Arlington Square I	Arlington, VA	510	583,950	14.2	2001	1,145
Avalon at Arlington Square II	Arlington, VA	332	325,499	6.1	2002	980
Avalon at Ballston — Vermont & Quincy Towers	Arlington, VA	454	420,242	2.3	1997	926
Avalon at Ballston — Washington Towers	Arlington, VA	344	294,786	4.1	1990	857
Avalon at Cameron Court	Alexandria, VA	460	467,292	16.0	1998	1,016
Avalon at Decoverly	Rockville, MD	368	368,446	25.0	1995	1,001
Avalon at Dulles	Sterling, VA	236	232,632	15.7	1986	986
Avalon at Fair Lakes	Fairfax, VA	234	285,822	10.0	1998	1,221
Avalon at Fox Mill	Herndon, VA	165	219,360	12.8	2000	1,329
Avalon at Providence Park	Fairfax, VA	141	148,211	4.0	1997	1,051
Avalon Crescent	McLean, VA	558	613,426	19.1	1996	1,099
Avalon Crossing	Rockville, MD	132	147,690	5.0	1996	1,119
Avalon Fields I & II	Gaithersburg, MD	288	292,282	9.2	1998	1,050
Avalon Knoll	Germantown, MD	300	290,365	26.7	1985	968
MIDWEST						
Chicago, IL						
200 Arlington Place	Arlington Heights, IL	409	346,832	2.8	1987/2000	848
Avalon at Danada Farms	Wheaton, IL	295	350,606	19.2	1997	1,188
Avalon at Stratford Green	Bloomingdale, IL	192	237,204	12.7	1997	1,235
Avalon at West Grove	Westmont, IL	400	388,500	17.4	1967	971
Minneapolis, MN						
Avalon at Devonshire	Bloomington, MN	498	470,762	42.0	1988	945
Avalon at Edinburgh	Brooklyn Park, MN	198	222,130	11.3	1992	1,122
Avalon at Town Centre	Eagan, MN	248	235,518	18.7	1986	950
Avalon at Town Square	Plymouth, MN	160	144,026	8.3	1986	900
Avalon at Woodbury	Woodbury, MN	224	287,975	15.0	1999	1,286
PACIFIC NORTHWEST						
Seattle, WA						
Avalon at Bear Creek	Redmond, WA	264	288,250	22.0	1998	1,092
Avalon Bellevue	Bellevue, WA	202	164,226	1.7	2001	813
Avalon Belltown	Seattle, WA	100	80,200	0.7	2001	802
Avalon Brandemoor	Lynwood, WA	424	453,602	22.6	2001	1,070

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Physical occupancy at 12/31/02	Average economic occupancy		Average rental rate		Financial reporting cost (5)
		2002	2001	$ per Apt (4)	$ per Sq. Ft.	
Avalon on the Sound	94.2%	87.7%	35.5%(3)	2,182	2.11	91,614
Avalon View	92.7%	95.3%	98.4%	1,343	1.10	18,290
Avalon Willow	92.1%	90.3%	95.5%	2,276	2.33	47,000
The Avalon	96.4%	96.0%	97.8%	3,373	2.99	31,228
MID-ATLANTIC						
Baltimore, MD						
Avalon at Fairway Hills I & II	95.2%	95.0%	96.8%	1,121	1.06	44,855
Avalon at Symphony Glen	97.7%	97.2%	97.1%	1,143	1.09	9,172
Avalon Landing	96.8%	97.7%	97.5%	1,030	1.36	9,791
Washington, DC						
4100 Massachusetts Avenue	81.5%	88.4%(2)	96.4%	1,822	1.66(2)	36,028
Autumn Woods	93.1%	93.8%	95.7%	1,134	1.26	30,928
Avalon at Arlington Square I	88.0%	90.7%	49.9%(3)	1,730	1.37	69,678
Avalon at Arlington Square II	68.4%	40.1%(3)	N/A	1,619	0.66(3)	42,405
Avalon at Ballston — Vermont & Quincy Towers	87.4%	90.9%	95.3%	1,456	1.43	47,169

Avalon at Ballston — Washington Towers	88.1%	91.9%	96.9%	1,444	1.55	37,359
Avalon at Cameron Court	92.6%	94.6%	96.3%	1,631	1.52	43,246
Avalon at Decoverly	94.6%	92.7%	97.0%	1,327	1.23	31,772
Avalon at Dulles	96.2%	92.2%	95.5%	1,069	1.00	12,164
Avalon at Fair Lakes	96.6%	94.0%	96.0%	1,497	1.15	23,476
Avalon at Fox Mill	88.5%	93.3%	95.6%	1,560	1.09	19,513
Avalon at Providence Park	96.5%	96.0%	96.4%	1,271	1.16	11,299
Avalon Crescent	90.1%	93.4%	93.9%	1,622	1.38	57,283
Avalon Crossing	92.4%	94.0%	95.3%	1,740	1.46	13,895
Avalon Fields I & II	90.9%	92.3%	97.2%	1,341	1.22	22,700
Avalon Knoll	96.3%	95.0%	97.8%	1,067	1.05	8,609
MIDWEST						
Chicago, IL						
200 Arlington Place	91.7%	92.3%	95.1%	1,190	1.30	49,962
Avalon at Danada Farms	92.9%	93.5%	95.7%	1,347	1.06	38,423
Avalon at Stratford Green	86.5%	91.5%	95.2%	1,339	0.99	21,949
Avalon at West Grove	91.5%	91.5%	96.4%	904	0.85	29,915
Minneapolis, MN						
Avalon at Devonshire	91.2%	93.7%	95.4%	1,022	1.01	37,686
Avalon at Edinburgh	93.4%	93.6%	96.5%	1,138	0.95	18,559
Avalon at Town Centre	95.2%	93.6%	95.9%	1,000	0.99	18,214
Avalon at Town Square	93.1%	91.5%	96.8%	1,020	1.04	10,898
Avalon at Woodbury	94.6%	94.9%	93.9%	1,153	0.85	25,985
PACIFIC NORTHWEST						
Seattle, WA						
Avalon at Bear Creek	93.9%	94.3%	94.2%	1,164	1.01	34,437
Avalon Bellevue	98.0%	92.5%	63.5%(3)	1,131	1.29	30,633
Avalon Belltown	98.0%	83.8%	16.1%(3)	1,263	1.32	18,279
Avalon Brandemoor	96.0%	93.9%	96.5%(3)	978	0.86	45,309

Profile of Current and Development Communities
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion/ acquisition	Average size (Sq. Ft.)
Avalon Greenbriar	Renton, WA	421	382,382	20.0	1987/88	908
Avalon HighGrove	Everett, WA	391	422,482	19.8	2000	1,081
Avalon ParcSquare	Redmond, WA	124	127,236	1.9	2000	1,026
Avalon Redmond Place	Redmond, WA	222	206,004	22.0	1991/97	928
Avalon RockMeadow	Mill Creek, WA	206	240,817	11.5	2000	1,169
Avalon WildReed	Everett, WA	234	259,080	22.3	2000	1,107
Avalon WildWood	Lynwood, WA	238	313,107	15.8	2001	1,316
Avalon Wynhaven	Issaquah, WA	333	424,604	11.6	2001	1,275
NORTHERN CALIFORNIA						
Oakland-East Bay, CA						
Avalon at Union Square	Union City, CA	208	150,140	8.5	1973/96	722
Avalon at Willow Creek	Fremont, CA	235	197,575	3.5	1985/94	841
Avalon Dublin	Dublin, CA	204	179,004	13.0	1989/97	877
Avalon Fremont	Fremont, CA	443	446,422	22.3	1992/94	1,008
Avalon Pleasanton	Pleasanton, CA	456	377,438	14.7	1988/94	828
Waterford	Hayward, CA	544	451,937	11.1	1985/86	831
San Francisco, CA						
Avalon at Cedar Ridge	Daly City, CA	195	141,411	8.0	1975/97	725
Avalon at Diamond Heights	San Francisco, CA	154	123,080	2.6	1972/94	799
Avalon at Nob Hill	San Francisco, CA	185	109,238	1.4	1990/95	590
Avalon at Sunset Towers	San Francisco, CA	243	175,511	16.0	1961/96	722
Avalon Foster City	Foster City, CA	288	222,276	11.0	1973/94	772
Avalon Pacifica	Pacifica, CA	220	186,785	7.7	1971/95	849
Avalon Towers by the Bay	San Francisco, CA	226	243,033	1.0	1999	1,075
Crowne Ridge	San Rafael, CA	254	221,525	21.9	1973/96	872
San Jose, CA						
Avalon at Blossom Hill	San Jose, CA	324	322,207	7.5	1995	994
Avalon at Cahill Park	San Jose, CA	218	218,245	3.8	2002	1,001
Avalon at Creekside	Mountain View, CA	294	215,680	13.0	1962/97	734
Avalon at Foxchase	San Jose, CA	396	335,212	12.0	1986/87	844
Avalon at Parkside	Sunnyvale, CA	192	199,353	8.0	1991/96	1,038
Avalon at Pruneyard	Campbell, CA	252	197,000	8.5	1966/97	782
Avalon at River Oaks	San Jose, CA	226	210,050	4.0	1990/96	929
Avalon Campbell	Campbell, CA	348	326,796	8.0	1995	939
Avalon Cupertino	Cupertino, CA	311	293,328	8.0	1999	943
Avalon Mountain View	Mountain View, CA	248	211,552	10.5	1986	853
Avalon on the Alameda	San Jose, CA	305	299,722	8.9	1999	983
Avalon Rosewalk I & II	San Jose, CA	456	450,252	16.6	1997/99	987
Avalon Silicon Valley	Sunnyvale, CA	710	658,591	13.6	1997	928
Avalon Sunnyvale	Sunnyvale, CA	220	159,653	5.0	1987/95	726
Avalon Towers on the Peninsula	Mountain View, CA	211	218,392	1.9	2002	1,035
CountryBrook	San Jose, CA	360	323,012	14.0	1985/96	897
Fairway Glen	San Jose, CA	144	119,492	6.0	1986	830
San Marino	San Jose, CA	248	209,465	11.5	1984/88	845

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Physical occupancy at 12/31/02	Average economic occupancy		Average rental rate		Financial reporting cost (5)
		2002	2001	$ per Apt (4)	$ per Sq. Ft.	
Avalon Greenbriar	93.4%	91.0%	92.2%	807	0.81	36,259
Avalon HighGrove	97.4%	94.8%	93.5%	920	0.81	39,620
Avalon ParcSquare	96.0%	95.7%	94.2%	1,254	1.17	18,995
Avalon Redmond Place	89.2%	94.6%	94.8%	1,104	1.13	26,042
Avalon RockMeadow	95.6%	93.3%	92.7%	1,058	0.84	24,457
Avalon WildReed	96.6%	94.4%	95.9%	939	0.80	22,956
Avalon WildWood	95.4%	94.1%	96.0%(3)	1,149	0.82	32,865
Avalon Wynhaven	86.2%	89.3%	95.1%(3)	1,287	0.90	52,554
NORTHERN CALIFORNIA						
Oakland-East Bay, CA						
Avalon at Union Square	99.5%	94.8%	95.5%	1,188	1.56	21,891
Avalon at Willow Creek	100.0%	95.8%	95.3%	1,371	1.56	34,258
Avalon Dublin	96.6%	94.9%	94.4%	1,417	1.53	26,742
Avalon Fremont	96.4%	93.7%	95.8%	1,568	1.46	77,170
Avalon Pleasanton	96.5%	95.7%	92.8%	1,313	1.52	60,522
Waterford	94.5%	92.9%	94.7%	1,202	1.34	59,066

San Francisco, CA						
Avalon at Cedar Ridge	96.9%	96.6%	96.5%	1,475	1.96	25,530
Avalon at Diamond Heights	98.7%	92.2%	95.2%	1,582	1.82	24,398
Avalon at Nob Hill	94.1%	94.3%	93.7%	1,503	2.40	27,500
Avalon at Sunset Towers	95.8%	95.0%	96.7%	1,606	2.11	28,171
Avalon Foster City	95.8%	96.6%	92.1%	1,457	1.82	42,852
Avalon Pacifica	97.7%	95.9%	97.3%	1,471	1.66	31,298
Avalon Towers by the Bay	94.7%	93.8%	91.4%	2,730	2.38	66,882
Crowne Ridge	92.9%	93.4%	97.1%	1,448	1.55	31,050
San Jose, CA						
Avalon at Blossom Hill	97.2%	93.4%	93.2%	1,637	1.54	60,886
Avalon at Cahill Park	92.7%	39.7%(3)	N/A	1,761	0.70(3)	52,114
Avalon at Creekside	98.3%	96.3%	95.6%	1,437	1.89	42,966
Avalon at Foxchase	97.9%	94.9%	95.6%	1,342	1.50	58,822
Avalon at Parkside	97.9%	95.8%	95.6%	1,756	1.62	37,853
Avalon at Pruneyard	98.0%	94.9%	95.9%	1,341	1.63	31,850
Avalon at River Oaks	96.0%	93.9%	93.4%	1,614	1.63	45,005
Avalon Campbell	92.5%	93.1%	93.1%	1,594	1.58	60,009
Avalon Cupertino	95.2%	93.9%	96.3%	1,868	1.86	49,098
Avalon Mountain View	96.0%	93.8%	97.5%	1,736	1.91	50,512
Avalon on the Alameda	95.7%	92.7%	89.5%	1,882	1.77	56,426
Avalon Rosewalk I & II	96.7%	92.7%	91.9%	1,609	1.51	78,210
Avalon Silicon Valley	94.1%	92.2%	91.2%	1,895	1.88	120,851
Avalon Sunnyvale	98.2%	95.2%	94.9%	1,429	1.87	34,897
Avalon Towers on the Peninsula	97.2%	62.4%(3)	N/A	2,229	1.34(3)	65,581
CountryBrook	95.3%	93.1%	91.6%	1,342	1.39	47,792
Fairway Glen	100.0%	95.1%	94.0%	1,333	1.53	17,128
San Marino	96.8%	93.7%	91.0%	1,369	1.52	34,065

Profile of Current and Development Communities
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion/ acquisition	Average size (Sq. Ft.)
SOUTHERN CALIFORNIA						
Los Angeles, CA						
Avalon at Media Center	Burbank, CA	748	530,114	14.7	1969/97	709
Avalon at Warner Center	Woodland Hills, CA	227	191,645	6.8	1979/98	844
Avalon Westside Terrace	Los Angeles, CA	363	229,296	4.8	1966/97	632
Avalon Woodland Hills	Woodland Hills, CA	663	592,722	18.2	1989/97	894
The Promenade	Burbank, CA	400	360,587	6.9	1988/2002	923
Orange County, CA						
Amberway	Anaheim, CA	272	205,572	9.9	1983/98	756
Avalon at Laguna Niguel	Laguna Niguel, CA	176	174,848	10.0	1988/98	993
Avalon at Pacific Bay	Huntington Beach, CA	304	268,000	9.7	1971/97	882
Avalon at South Coast	Costa Mesa, CA	258	208,890	8.9	1973/96	810
Avalon Huntington Beach	Huntington Beach, CA	400	353,192	16.4	1972/97	883
Avalon Mission Viejo	Mission Viejo, CA	166	124,600	7.8	1984/96	751
Avalon Newport	Costa Mesa, CA	145	120,690	6.6	1956/96	832
Avalon Santa Margarita	Rancho Santa Margarita, CA	301	229,593	20.0	1990/97	763
San Diego, CA						
Avalon at Cortez Hill	San Diego, CA	294	224,840	1.2	1973/98	765
Avalon at Mission Bay	San Diego, CA	564	402,327	5.7	1969/97	713
Avalon at Mission Ridge	San Diego, CA	200	208,100	4.0	1960/97	1,041
Avalon at Penasquitos Hills	San Diego, CA	176	141,120	8.8	1982/97	802
DEVELOPMENT COMMUNITIES						
Avalon at Flanders Hill	Westborough, MA	280	299,978	62.0	N/A	1,099
Avalon at Gallery Place I	Washington, DC	203	183,326	0.5	N/A	903
Avalon at Glen Cove South	Glen Cove, NY	256	270,000	4.0	N/A	1,050
Avalon at Grosvenor Station	North Bethesda, MD	497	478,530	9.9	N/A	963
Avalon at Mission Bay North	San Francisco, CA	250	244,224	1.4	N/A	977
Avalon at Newton Highlands	Newton, MA	294	401,241	7.0	N/A	1,177
Avalon at Rock Spring	North Bethesda, MD	386	388,480	10.2	N/A	1,006
Avalon at Steven's Pond	Saugus, MA	326	360,509	82.0	N/A	1,106
Avalon Darien	Darien, CT	189	242,311	30.0	N/A	1,282
Avalon Glendale	Burbank, CA	223	241,712	5.1	N/A	1,084
Avalon on Stamford Harbor	Stamford, CT	323	336,566	12.1	N/A	1,042
Avalon Traville Phase I	North Potomac, MD	200	231,800	23.8	N/A	1,159

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Physical occupancy at 12/31/02	Average economic occupancy 2002	Average economic occupancy 2001	Average rental rate $ per Apt (4)	Average rental rate $ per Sq. Ft.	Financial reporting cost (5)
SOUTHERN CALIFORNIA						
Los Angeles, CA						
Avalon at Media Center	94.5%	90.3%(2)	83.8%(2)	1,127	1.44(2)	75,508
Avalon at Warner Center	97.4%	96.5%	97.2%	1,329	1.52	26,414
Avalon Westside Terrace	95.6%	92.3%	95.7%	1,171	1.71	37,241
Avalon Woodland Hills	97.6%	95.4%	96.1%	1,273	1.36	71,590
The Promenade	95.0%	92.8%(3)	N/A	1,443	1.49(3)	70,996
Orange County, CA						
Amberway	96.7%	95.7%	93.9%	1,003	1.27	21,400
Avalon at Laguna Niguel	99.4%	96.8%	96.1%	1,232	1.20	20,957
Avalon at Pacific Bay	97.7%	95.3%	96.6%	1,235	1.33	31,941
Avalon at South Coast	98.8%	96.5%	94.8%	1,137	1.35	24,596
Avalon Huntington Beach	95.5%	91.6%	94.7%	1,276	1.32	37,192
Avalon Mission Viejo	98.8%	95.9%	96.9%	1,138	1.45	13,167
Avalon Newport	100.0%	97.7%	97.9%	1,346	1.58	10,112
Avalon Santa Margarita	94.0%	94.4%	96.0%	1,153	1.43	23,635
San Diego, CA						
Avalon at Cortez Hill	96.3%	92.5%	84.0%	1,216	1.47	34,368
Avalon at Mission Bay	97.0%	96.2%	97.1%	1,242	1.67	66,060
Avalon at Mission Ridge	97.0%	96.4%	97.2%	1,389	1.29	21,625
Avalon at Penasquitos Hills	95.5%	95.2%	95.9%	1,105	1.31	14,323
DEVELOPMENT COMMUNITIES						
Avalon at Flanders Hill	N/A	N/A	N/A	N/A	N/A	35,855
Avalon at Gallery Place I	N/A	N/A	N/A	N/A	N/A	41,414
Avalon at Glen Cove South	N/A	N/A	N/A	N/A	N/A	16,777

Avalon at Grosvenor Station	N/A	N/A	N/A	N/A	N/A	40,146
Avalon at Mission Bay North	N/A	N/A	N/A	N/A	N/A	71,470
Avalon at Newton Highlands	N/A	N/A	N/A	N/A	N/A	27,629
Avalon at Rock Spring	N/A	N/A	N/A	N/A	N/A	36,787
Avalon at Steven's Pond	N/A	N/A	N/A	N/A	N/A	23,230
Avalon Darien	N/A	N/A	N/A	N/A	N/A	13,537
Avalon Glendale	N/A	N/A	N/A	N/A	N/A	17,132
Avalon on Stamford Harbor	N/A	N/A	N/A	N/A	N/A	61,146
Avalon Traville Phase I	N/A	N/A	N/A	N/A	N/A	8,882

(1) For the purpose of this table, Current Communities excludes communities held by unconsolidated real estate joint ventures.

(2) Represents community which was under redevelopment during the year, resulting in lower average economic occupancy and average rental rate per square foot for the year.

(3) Represents community that completed development or was purchased during the year, which could result in lower average economic occupancy and average rental rate per square foot for the year.

(4) Represents the average rental revenue per occupied apartment home.

(5) Costs are presented in accordance with generally accepted accounting principles. For current Development Communities, cost represents total costs incurred through December 31, 2002.

Features and Recreational Amenities — Current and Development Communities

	1 BR	2BR		3BR						Washer & dryer
	1/1.5 BA	1/1.5 BA	2/2.5/3 BA	2/2.5 BA	3BA	Studios / efficiencies	Other	Total	Parking spaces	hook-ups or units
CURRENT COMMUNITIES (1)										
NORTHEAST										
Boston, MA										
Avalon at Center Place	103	—	111	5	—	6	—	225	345	All
Avalon at Faxon Park	68	—	75	28	—	—	—	171	287	All
Avalon at Lexington	28	24	90	56	—	—	—	198	355	All
Avalon at Prudential Center	361	—	237	—	23	148	12	781	142	None
Avalon Essex	50	—	62	—	—	—	42	154	259	All
Avalon Estates	66	16	80	—	—	—	—	162	354	All
Avalon Ledges	124	—	152	28	—	—	—	304	610	All
Avalon Oaks	60	24	96	24	—	—	—	204	355	All
Avalon Oaks West	48	12	48	12	—	—	—	120	233	All
Avalon Orchards	69	12	75	—	—	—	—	156	312	All
Avalon Summit	154	61	28	2	—	—	—	245	328	None
Avalon West	40	—	55	25	—	—	—	120	145	All
Fairfield-New Haven, CT										
Avalon at Greyrock Place	104	91	99	12	—	—	—	306	459	All
Avalon Corners	118	—	77	—	—	—	—	195	273	All
Avalon Gates	122	—	168	50	—	—	—	340	580	All
Avalon Glen	124	—	114	—	—	—	—	238	400	Most
Avalon Haven	44	60	—	24	—	—	—	128	256	All
Avalon Lake	36	—	46	—	—	24	29	135	382	All
Avalon New Canaan	16	—	64	24	—	—	—	104	202	All
Avalon Springs	—	—	70	32	—	—	—	102	153	All
Avalon Valley	106	—	134	28	—	—	—	268	626	All
Avalon Walk I & II	272	116	122	74	—	—	180	764	1,528	All
Long Island, NY										
Avalon Commons	128	40	112	32	—	—	—	312	538	All
Avalon Court	172	54	194	44	30	—	—	494	1,110	All
Avalon Towers	—	—	37	1	3	1	67	109	198	All
Northern New Jersey										
Avalon at Edgewater	158	—	190	60	—	—	—	408	872	All
Avalon at Florham Park	46	—	107	117	—	—	—	270	611	All
Avalon Cove	190	—	190	46	2	—	76	504	464	All
Avalon Crest	96	—	131	67	—	—	57	351	364	All
The Tower at Avalon Cove	147	24	74	24	—	—	—	269	263	All
Central New Jersey										
Avalon at Freehold	42	41	176	37	—	—	—	296	611	All
Avalon Run East	64	—	106	36	—	—	—	206	345	All
Avalon Watch	252	36	142	82	—	—	—	512	768	Most

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Vaulted ceilings	Lofts	Fireplaces	Large storage or walk-in closet	Balcony, patio, deck or sunroom	Built-in bookcases	Carports	Non-direct access garages	Direct access garages	Homes w/ pre-wired security systems
CURRENT COMMUNITIES (1)										
NORTHEAST										
Boston, MA										
Avalon at Center Place	None	None	None	Half	Some	None	No	No	No	None
Avalon at Faxon Park	Some	Some	Some	All	All	None	No	Yes	No	All
Avalon at Lexington	Some	Some	Some	Most	All	None	Yes	Yes	No	All
Avalon at Prudential Center	None	None	None	Most	Some	None	No	No	No	None
Avalon Essex	None	Some	Some	All	All	None	No	Yes	Yes	All
Avalon Estates	Some	Some	Some	All	All	None	No	Yes	Yes	All
Avalon Ledges	None	Some	Some	All	Some	None	No	Yes	No	All
Avalon Oaks	Some	Some	Some	All	All	None	No	Yes	No	All
Avalon Oaks West	Some	Some	Some	All	All	None	No	Yes	No	All
Avalon Orchards	None	Half	Some	Most	All	None	No	Yes	Yes	All
Avalon Summit	None	None	None	None	All	None	No	Yes	No	None
Avalon West	Some	Some	Some	All	Half	None	No	Yes	Yes	All
Fairfield-New Haven, CT										
Avalon at Greyrock Place	None	None	None	All	All	None	No	No	Yes	All
Avalon Corners	Some	Some	Some	All	All	None	No	Yes	No	All

Avalon Gates	Some	Some	None	All	All	None	Yes	Yes	No	All
Avalon Glen	Some	Some	Some	Half	Most	None	Yes	Yes	No	Most
Avalon Haven	None	Some	Some	All	All	None	Yes	Yes	No	All
Avalon Lake	Some	Some	Some	All	All	None	No	Yes	No	All
Avalon New Canaan	None	Some	Some	All	All	None	No	Yes	Yes	All
Avalon Springs	Half	Half	Most	All	All	None	No	No	Yes	All
Avalon Valley	Some	Some	Some	All	All	None	Yes	Yes	No	All
Avalon Walk I & II	Some	Some	Half	All	All	Some	Yes	No	No	Half
Long Island, NY										
Avalon Commons	Some	Some	Some	All	All	None	No	Yes	No	All
Avalon Court	Some	Most	Some	All	All	None	No	Yes	Yes	All
Avalon Towers	None	None	None	All	Most	None	No	No	Yes	All
Northern New Jersey										
Avalon at Edgewater	None	Some	Some	All	All	None	No	No	Yes	Some
Avalon at Florham Park	Most	None	Some	All	Some	None	No	No	Yes	All
Avalon Cove	Some	Some	Some	All	Most	None	No	Yes	Some	All
Avalon Crest	Some	Some	Some	All	All	None	No	Yes	Yes	All
The Tower at Avalon Cove	None	None	None	Half	Some	None	No	Yes	No	All
Central New Jersey										
Avalon at Freehold	Some	Some	Some	All	All	None	No	Yes	No	None
Avalon Run East	Some	Some	Some	All	All	None	Yes	Yes	Yes	All
Avalon Watch	Some	None	Some	All	All	None	No	Yes	No	None

Features and Recreational Amenities — Current and Development Communities

	1 BR	2BR		3BR						Washer & dryer
	1/1.5 BA	1/1.5 BA	2/2.5/3 BA	2/2.5 BA	3BA	Studios / efficiencies	Other	Total	Parking spaces	hook-ups or units
New York, NY										
Avalon Riverview I	184	—	114	—	31	43	—	372	128	All
Avalon Gardens	208	48	144	104	—	—	—	504	1,008	All
Avalon Green	25	24	56	—	—	—	—	105	179	All
Avalon on the Sound	143	—	184	22	20	43	—	412	645	Most
Avalon View	115	47	62	64	—	—	—	288	576	All
Avalon Willow	150	77	—	—	—	—	—	227	379	All
The Avalon	55	2	43	10	—	—	—	110	167	All
MID-ATLANTIC										
Baltimore, MD										
Avalon at Fairway Hills I & II	283	223	154	60	—	—	—	720	1,137	All
Avalon at Symphony Glen	86	14	54	20	—	—	—	174	266	All
Avalon Landing	65	18	57	—	—	—	18	158	257	All
Washington, DC										
4100 Massachusetts Avenue	160	70	—	3	—	27	48	308	330	All
AutumnWoods	220	72	96	—	—	—	32	420	727	All
Avalon at Arlington Square I	211	20	226	53	—	—	—	510	949	All
Avalon at Arlington Square II	172	—	116	44	—	—	—	332	563	All
Avalon at Ballston — Vermont & Quincy Towers	333	37	84	—	—	—	—	454	498	All
Avalon at Ballston — Washington Towers	205	28	111	—	—	—	—	344	415	All
Avalon at Cameron Court	208	—	168	—	—	—	84	460	736	All
Avalon at Decoverly	156	—	104	64	44	—	—	368	584	All
Avalon at Dulles	104	40	76	—	16	—	—	236	493	All
Avalon at Fair Lakes	45	12	125	26	26	—	—	234	505	All
Avalon at Fox Mill	—	—	92	73	—	—	—	165	343	All
Avalon at Providence Park	19	—	112	4	—	—	6	141	287	All
Avalon Crescent	186	26	346	—	—	—	—	558	662	All
Avalon Crossing	—	27	105	—	—	—	—	132	224	All
Avalon Fields I & II	74	32	84	32	—	—	66	288	443	All
Avalon Knoll	136	55	81	28	—	—	—	300	482	All
MIDWEST										
Chicago, IL										
200 Arlington Place	142	89	148	—	—	30	—	409	650	All
Avalon at Danada Farms	80	52	134	29	—	—	—	295	714	All
Avalon at Stratford Green	45	9	108	21	—	—	9	192	437	All
Avalon at West Grove	200	200	—	—	—	—	—	400	860	None
Minneapolis, MN										
Avalon at Devonshire	194	—	304	—	—	—	—	498	498	Most
Avalon at Edinburgh	56	—	114	26	—	2	—	198	210	All
Avalon at Town Centre	104	—	111	33	—	—	—	248	250	All
Avalon at Town Square	76	—	68	12	—	—	4	160	162	All
Avalon at Woodbury	41	—	147	36	—	—	—	224	513	All

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Vaulted ceilings	Lofts	Fireplaces	Large storage or walk-in closet	Balcony, patio, deck or sunroom	Built-in bookcases	Carports	Non-direct access garages	Direct access garages	Homes w/ pre-wired security systems
New York, NY										
Avalon Riverview I	None	None	None	Most	Some	None	No	Yes	No	Some
Avalon Gardens	Half	Half	Some	All	Most	None	Yes	Yes	Yes	All
Avalon Green	Some	Half	Some	All	All	None	Yes	No	No	All
Avalon on the Sound	None	Some	None	Most	Some	None	No	Yes	No	Some
Avalon View	Some	Some	Some	Most	All	None	Yes	No	No	None
Avalon Willow	Some	Some	None	Most	All	None	No	Yes	Yes	All
The Avalon	Some	Some	Some	Most	Half	None	No	Yes	No	All
MID-ATLANTIC										
Baltimore, MD										
Avalon at Fairway Hills I & II	Some	None	Some	Some	All	Some	No	No	No	None
Avalon at Symphony Glen	Some	None	Most	All	All	Half	No	No	No	None
Avalon Landing	None	None	Most	Most	All	None	Yes	No	No	None
Washington, DC										
4100 Massachusetts Avenue	None	None	Some	Most	All	Some	No	Yes	No	None
AutumnWoods	Some	None	Some	All	All	Some	Yes	No	No	None
Avalon at Arlington Square I	Some	Some	Some	All	Some	Some	No	No	Yes	All

Avalon at Arlington Square II	Some	Some	Some	Some	All	Some	No	No	No	All
Avalon at Ballston — Vermont & Quincy Towers	None	None	None	Most	All	None	No	No	Yes	None
Avalon at Ballston — Washington Towers	None	None	Some	Most	All	None	No	No	Yes	None
Avalon at Cameron Court	Some	Some	Some	All	Most	None	No	Yes	Yes	All
Avalon at Decoverly	Some	Some	Most	Most	All	None	No	No	No	None
Avalon at Dulles	Some	None	Some	All	All	Some	No	No	No	None
Avalon at Fair Lakes	Half	None	Half	All	Most	None	No	Yes	Yes	None
Avalon at Fox Mill	Most	None	Most	All	All	None	No	No	Yes	All
Avalon at Providence Park	None	None	Most	All	All	None	No	No	No	None
Avalon Crescent	Some	Some	Half	Most	All	Some	No	Yes	Yes	All
Avalon Crossing	Some	Some	Half	All	All	Some	No	Yes	Yes	All
Avalon Fields I & II	Some	Some	Half	All	Most	None	No	Yes	No	All
Avalon Knoll	Some	None	Half	All	All	Some	No	No	No	None
MIDWEST										
Chicago, IL										
200 Arlington Place	None	None	None	All	Some	None	No	Yes	No	None
Avalon at Danada Farms	None	None	Some	All	Some	Some	No	No	Yes	None
Avalon at Stratford Green	None	None	Some	Most	Some	Some	No	Yes	Yes	None
Avalon at West Grove	None	None	None	None	All	None	Yes	No	No	None
Minneapolis, MN										
Avalon at Devonshire	Some	None	Some	Most	Most	Some	No	Yes	Yes	None
Avalon at Edinburgh	None	None	Some	Some	All	None	No	Yes	No	None
Avalon at Town Centre	Some	None	Some	Some	All	None	No	Yes	No	None
Avalon at Town Square	Some	None	Some	Some	All	None	No	Yes	No	None
Avalon at Woodbury	None	None	Some	Some	Some	None	No	No	Yes	None

Features and Recreational Amenities — Current and Development Communities

	1 BR	2BR		3BR					Parking	Washer & dryer
	1/1.5 BA	1/1.5 BA	2/2.5/3 BA	2/2.5 BA	3BA	Studios / efficiencies	Other	Total	Parking spaces	hook-ups or units
PACIFIC NORTHWEST										
Seattle, WA										
Avalon at Bear Creek	55	40	110	59	—	—	—	264	470	All
Avalon Bellevue	110	—	67	—	—	25	—	202	304	All
Avalon Belltown	64	—	20	—	—	16	—	100	134	All
Avalon Brandemoor	88	109	149	78	—	—	—	424	732	All
Avalon Greenbriar	16	19	217	169	—	—	—	421	731	All
Avalon HighGrove	84	119	124	56	8	—	—	391	713	All
Avalon ParcSquare	31	26	55	5	7	—	—	124	196	All
Avalon Redmond Place	76	44	67	35	—	—	—	222	384	All
Avalon RockMeadow	28	48	86	28	16	—	—	206	308	All
Avalon WildReed	36	60	78	60	—	—	—	234	462	All
Avalon Wildwood	5	—	211	—	17	—	5	238	16	All
Avalon Wynhaven	3	42	239	13	28	—	8	333	260	All
NORTHERN CALIFORNIA										
Oakland-East Bay, CA										
Avalon at Union Square	124	84	—	—	—	—	—	208	210	None
Avalon at Willow Creek	99	—	136	—	—	—	—	235	240	All
Avalon Dublin	72	8	60	48	—	—	16	204	427	Most
Avalon Fremont	130	81	176	—	56	—	—	443	830	All
Avalon Pleasanton	238	—	218	—	—	—	—	456	856	All
Waterford	208	—	336	—	—	—	—	544	876	Some
San Francisco, CA										
Avalon at Cedar Ridge	117	33	24	—	—	21	—	195	258	None
Avalon at Diamond Heights	90	—	49	15	—	—	—	154	155	None
Avalon at Nob Hill	114	—	25	—	—	46	—	185	104	None
Avalon at Sunset Towers	183	20	20	—	—	20	—	243	244	None
Avalon Foster City	124	123	1	—	—	40	—	288	490	None
Avalon Pacifica	58	106	56	—	—	—	—	220	299	None
Avalon Towers by the Bay	103	—	120	—	3	—	—	226	235	All
Crowne Ridge	158	68	24	—	—	4	—	254	377	Some
San Jose, CA										
Avalon at Blossom Hill	90	—	210	—	24	—	—	324	562	All
Avalon at Cahill Park	118	—	94	—	6	—	—	218	283	All
Avalon at Creekside	158	128	—	—	—	8	—	294	376	None
Avalon at Foxchase	168	—	228	—	—	—	—	396	719	All
Avalon at Parkside	60	—	96	36	—	—	—	192	192	All
Avalon at Pruneyard	212	40	—	—	—	—	—	252	395	All
Avalon at River Oaks	100	—	126	—	—	—	—	226	354	All
Avalon Campbell	156	—	180	—	12	—	—	348	588	All
Avalon Cupertino	145	—	152	—	14	—	—	311	526	All
Avalon Mountain View	108	—	88	52	—	—	—	248	248	All
Avalon on the Alameda	113	—	164	—	28	—	—	305	558	All
Avalon Rosewalk I & II	168	—	264	—	24	—	—	456	648	All
Avalon Silicon Valley	338	—	336	18	15	3	—	710	1,400	All
Avalon Sunnyvale	112	10	54	—	—	44	—	220	394	Some
Avalon Towers on the Peninsula	90	—	115	—	6	—	—	211	512	All
CountryBrook	108	—	252	—	—	—	—	360	694	All
Fairway Glen	60	—	84	—	—	—	—	144	226	All
San Marino	103	—	145	—	—	—	—	248	436	All

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Vaulted ceilings	Lofts	Fireplaces	Large storage or walk-in closet	Balcony, patio, deck or sunroom	Built-in bookcases	Carports	Non-direct access garages	Direct access garages	Homes w/ pre-wired security systems
PACIFIC NORTHWEST										
Seattle, WA										
Avalon at Bear Creek	All	None	Most	All	All	Some	Yes	Yes	Yes	All
Avalon Bellevue	None	Some	Some	All	All	None	No	No	No	None
Avalon Belltown	None	None	None	All	Some	None	No	No	No	Some
Avalon Brandemoor	Some	None	Most	All	All	Some	Yes	Yes	Yes	All
Avalon Greenbriar	Some	None	Most	All	All	Some	Yes	No	No	None
Avalon HighGrove	Some	None	Most	Most	All	Some	Yes	Yes	Yes	All
Avalon ParcSquare	None	None	None	All	All	None	No	No	No	All

Avalon Redmond Place	Some	None	Most	All	All	None	Yes	Yes	No	None
Avalon RockMeadow	Some	None	Most	Most	All	Some	Yes	Yes	Yes	All
Avalon WildReed	Some	None	Most	Most	All	Some	Yes	Yes	No	All
Avalon Wildwood	Some	None	Most	Some	Most	None	No	No	Yes	All
Avalon Wynhaven	Most	Some	Most	All	All	None	Yes	Yes	Yes	All
NORTHERN CALIFORNIA										
Oakland-East Bay, CA										
Avalon at Union Square	None	None	Most	All	All	None	Yes	No	No	None
Avalon at Willow Creek	None	None	None	All	All	None	Yes	No	No	None
Avalon Dublin	Some	None	Most	All	All	None	No	Yes	No	None
Avalon Fremont	Most	None	Some	Most	All	None	Yes	Yes	No	All
Avalon Pleasanton	Some	None	Most	All	All	None	Yes	Yes	Yes	None
Waterford	Some	None	None	All	All	None	Yes	No	No	None
San Francisco, CA										
Avalon at Cedar Ridge	None	Some	None	Some	All	None	Yes	No	Yes	None
Avalon at Diamond Heights	Some	None	None	All	All	None	No	Yes	No	None
Avalon at Nob Hill	None	None	None	None	Some	Most	No	Yes	No	None
Avalon at Sunset Towers	None	None	None	None	Some	None	No	No	Yes	None
Avalon Foster City	None	None	None	Most	Most	None	Yes	No	No	None
Avalon Pacifica	None	None	Some	Some	All	None	Yes	Yes	No	None
Avalon Towers by the Bay	Some	None	Some	Half	Most	None	No	No	Yes	All
Crowne Ridge	Some	None	Some	None	All	None	Yes	No	Yes	None
San Jose, CA										
Avalon at Blossom Hill	Some	None	None	Most	All	None	Yes	Yes	No	All
Avalon at Cahill Park	Some	Some	Some	Most	All	None	No	Yes	No	None
Avalon at Creekside	None	None	Some	None	Most	None	Yes	No	No	None
Avalon at Foxchase	Some	None	None	Some	All	None	Yes	No	No	None
Avalon at Parkside	Some	None	Half	All	All	Some	Yes	Yes	No	None
Avalon at Pruneyard	None	None	None	None	Half	None	Yes	Yes	No	None
Avalon at River Oaks	None	None	Most	All	All	None	No	No	Yes	None
Avalon Campbell	Some	None	None	All	All	None	Yes	Yes	No	All
Avalon Cupertino	Some	None	Some	Some	All	Some	No	Yes	No	None
Avalon Mountain View	Some	None	None	Some	All	None	Yes	No	No	None
Avalon on the Alameda	Some	None	Some	All	All	Some	No	Yes	No	All
Avalon Rosewalk I & II	Some	None	Some	Some	All	Most	Yes	Yes	No	All
Avalon Silicon Valley	Some	Some	Some	Most	All	Some	No	Yes	No	None
Avalon Sunnyvale	None	None	None	All	All	None	No	No	Yes	None
Avalon Towers on the Peninsula	None	None	None	Most	All	None	No	Yes	No	None
CountryBrook	Some	None	All	None	All	None	Yes	Yes	No	None
Fairway Glen	Some	None	None	None	All	None	Yes	No	No	Some
San Marino	Some	None	None	Most	All	None	Yes	No	No	None

Features and Recreational Amenities — Current and Development Communities

	1 BR	2BR		3BR					Parking	Washer & dryer
	1/1.5 BA	1/1.5 BA	2/2.5/3 BA	2/2.5 BA	3BA	Studios / efficiencies	Other	Total	Parking spaces	hook-ups or units
SOUTHERN CALIFORNIA										
Los Angeles, CA										
Avalon at Media Center	296	102	117	12	—	221	—	748	838	Some
Avalon at Warner Center	88	54	65	20	—	—	—	227	252	All
Avalon Westside Terrace	126	—	102	—	—	135	—	363	487	None
Avalon Woodland Hills	222	—	441	—	—	—	—	663	1,300	Some
The Promenade	153	—	196	51	—	—	—	400	720	Some
Orange County, CA										
Amberway	114	48	48	—	—	62	—	272	454	None
Avalon at Laguna Niguel	—	—	176	—	—	—	—	176	335	None
Avalon at Pacific Bay	144	56	104	—	—	—	—	304	478	All
Avalon at South Coast	124	—	86	—	—	48		258	403	Some
Avalon Huntington Beach	—	36	324	40	—	—	—	400	790	None
Avalon Mission Viejo	94	28	44	—	—	—	—	166	250	None
Avalon Newport	44	54	—	35	—	12	—	145	235	Most
Avalon Santa Margarita	160	—	141	—	—	—	—	301	523	All
San Diego, CA										
Avalon at Cortez Hill	114	—	83	—	—	97	—	294	292	None
Avalon at Mission Bay	270	9	165	—	—	120	—	564	695	None
Avalon at Mission Ridge	18	1	98	83	—	—	—	200	384	Most
Avalon at Penasquitos Hills	48	48	80	—	—	—	—	176	176	All
DEVELOPMENT COMMUNITIES										
Avalon at Flanders Hill	108	—	142	30	—	—	—	280	569	All
Avalon at Gallery Place I	111	77	—	4	—	11	—	203	125	All
Avalon at Glen Cove South	112	—	91	—	—	53	—	256	458	All
Avalon at Grosvenor Station	265	33	185	13	—	1	—	497	742	All
Avalon at Mission Bay North	148	—	95	6	—	1	—	250	198	All
Avalon at Newton Highlands	90	46	92	56	4	6	—	294	540	All
Avalon at Rock Spring	178	39	133	36	—	—	—	386	678	All
Avalon at Steven's Pond	102	—	202	22	—	—	—	326	663	All
Avalon Darien	77	—	78	32	—	—	2	189	472	All
Avalon Glendale	75	—	121	—	27	—	—	223	460	All
Avalon on Stamford Harbor	159	—	130	20	—	14	—	323	543	All
Avalon Traville Phase I	67	16	87	30	—	—	—	200	431	All

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Vaulted ceilings	Lofts	Fireplaces	Large storage or walk-in closet	Balcony, patio, deck or sunroom	Built-in bookcases	Carports	Non-direct access garages	Direct access garages	Homes w/ pre-wired security systems
SOUTHERN CALIFORNIA										
Los Angeles, CA										
Avalon at Media Center	None	None	Some	Some	Some	None	Yes	Yes	No	None
Avalon at Warner Center	Some	None	Some	Some	All	None	Yes	No	No	None
Avalon Westside Terrace	None	None	None	None	All	Some	No	No	No	None
Avalon Woodland Hills	None	Some	None	Most	All	None	No	No	No	None
The Promenade	None	Some	All	Some	All	None	No	No	No	None
Orange County, CA										
Amberway	Some	None	None	None	All	None	Yes	Yes	No	None
Avalon at Laguna Niguel	Some	None	All	None	Most	None	Yes	No	No	None
Avalon at Pacific Bay	None	None	None	Half	All	None	Yes	Yes	No	None
Avalon at South Coast	Half	None	None	Half	All	None	Yes	Yes	No	None
Avalon Huntington Beach	None	None	None	Most	Most	None	Yes	Yes	No	None
Avalon Mission Viejo	None	None	None	None	All	None	Yes	Yes	No	None
Avalon Newport	Some	None	Some	Most	Most	Some	Yes	Yes	No	None
Avalon Santa Margarita	None	None	None	None	All	None	Yes	Yes	No	None
San Diego, CA										
Avalon at Cortez Hill	None	None	None	None	All	None	No	No	Yes	None
Avalon at Mission Bay	None	None	None	Some	All	None	No	Yes	No	None
Avalon at Mission Ridge	None	None	Most	Most	Most	None	No	Yes	No	None
Avalon at Penasquitos Hills	None	None	All	Some	All	All	Yes	No	No	None
DEVELOPMENT COMMUNITIES										
Avalon at Flanders Hill	None	Some	Some	All	Some	None	No	Yes	Yes	All
Avalon at Gallery Place I	Some	None	None	All	Some	None	No	No	No	None
Avalon at Glen Cove South	None	None	Some	Most	Some	None	No	No	No	Some

Avalon at Grosvenor Station	Some	Some	Some	Most	All	None	No	No	Yes	All
Avalon at Mission Bay North	None	Some	None	All	Some	None	No	Yes	No	None
Avalon at Newton Highlands	Some	Some	Some	Most	Most	None	No	Yes	No	All
Avalon at Rock Spring	Some	Some	Some	Most	Most	Some	No	No	Yes	All
Avalon at Steven's Pond	Some	Some	Some	All	All	Some	No	Yes	Yes	All
Avalon Darien	Some	Some	Some	Some	All	None	No	No	Yes	All
Avalon Glendale	None	None	Some	All	All	None	No	Yes	No	All
Avalon on Stamford Harbor	Some	Some	Some	Most	All	None	No	No	No	All
Avalon Traville Phase I	Some	Some	Some	Most	All	Some	No	Yes	Yes	None

Features and Recreational Amenities — Current and Development Communities

	Buildings w/ security systems	Community entrance controlled access	Building entrance controlled access	Under-ground parking	Aerobics dance studio	Car wash	Picnic area	Walking / jogging trail	Pool	Sauna / whirlpool
CURRENT COMMUNITIES (1)										
NORTHEAST										
Boston, MA										
Avalon at Center Place	None	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No
Avalon at Faxon Park	None	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon at Lexington	None	No	Yes	No	No	No	Yes	No	Yes	No
Avalon at Prudential Center	None	No	Yes	Yes	No	No	Yes	No	No	No
Avalon Essex	None	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon Estates	None	No	No	No	No	No	Yes	Yes	Yes	Yes
Avalon Ledges	All	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon Oaks	None	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon Oaks West	All	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon Orchards	None	No	No	No	No	No	Yes	Yes	Yes	Yes
Avalon Summit	None	No	Yes	No	No	No	Yes	No	Yes	No
Avalon West	None	No	Yes	No	No	No	Yes	No	Yes	No
Fairfield-New Haven, CT										
Avalon at Greyrock Place	All	Yes	No	Yes	No	No	Yes	No	Yes	No
Avalon Corners	All	Yes	Yes	Yes	No	No	Yes	No	Yes	No
Avalon Gates	None	Yes	No	No	No	No	Yes	No	Yes	No
Avalon Glen	None	No	Yes	Yes	No	No	No	No	Yes	No
Avalon Haven	None	No	No	No	No	No	Yes	No	Yes	No
Avalon Lake	None	No	No	No	No	No	Yes	No	Yes	No
Avalon New Canaan	All	No	Yes	No	No	No	Yes	Yes	Yes	No
Avalon Springs	All	No	No	No	No	No	Yes	Yes	Yes	No
Avalon Valley	None	No	No	No	No	No	Yes	No	Yes	No
Avalon Walk I & II	None	No	No	No	Yes	No	Yes	Yes	Yes	No
Long Island, NY										
Avalon Commons	All	No	Yes	No	No	No	Yes	No	Yes	No
Avalon Court	All	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No
Avalon Towers	All	No	No	Yes	No	Yes	No	No	Yes	No
Northern New Jersey										
Avalon at Edgewater	All	Yes	Yes	Yes	No	No	No	No	Yes	No
Avalon at Florham Park	None	No	No	No	No	No	No	No	Yes	No
Avalon Cove	All	Yes	Yes	No	No	No	Yes	Yes	Yes	No
Avalon Crest	All	Yes	Yes	No	No	No	No	No	Yes	No
The Tower at Avalon Cove	All	No	Yes	No	No	No	Yes	Yes	Yes	No
Central New Jersey										
Avalon at Freehold	None	No	No	No	No	No	Yes	No	Yes	No
Avalon Run East	None	No	No	No	No	No	Yes	Yes	Yes	No
Avalon Watch	None	No	Yes	No	No	No	Yes	No	Yes	No

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Tennis court	Racquetball	Fitness center	Sand volleyball	Indoor / outdoor basketball	Clubhouse / clubroom	Business center	Totlot	Concierge
CURRENT COMMUNITIES (1)									
NORTHEAST									
Boston, MA									
Avalon at Center Place	No	No	Yes	No	No	Yes	No	No	Yes
Avalon at Faxon Park	No	No	Yes	No	No	Yes	No	Yes	No
Avalon at Lexington	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon at Prudential Center	No	No	No	No	No	Yes	No	No	Yes
Avalon Essex	No	No	Yes	No	No	Yes	No	No	No
Avalon Estates	No	No	Yes	No	No	No	Yes	Yes	No
Avalon Ledges	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon Oaks	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Oaks West	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Orchards	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Summit	No	No	Yes	No	No	No	No	No	No
Avalon West	No	No	No	No	Yes	Yes	No	Yes	No
Fairfield-New Haven, CT									
Avalon at Greyrock Place	Yes	No	Yes	No	No	Yes	Yes	Yes	Yes
Avalon Corners	No	No	Yes	No	No	Yes	Yes	No	Yes
Avalon Gates	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No

Avalon Glen	No	Yes	Yes	No	No	Yes	No	No	Yes
Avalon Haven	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Lake	No	No	Yes	No	No	No	No	No	No
Avalon New Canaan	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Springs	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Valley	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon Walk I & II	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No
Long Island, NY									
Avalon Commons	No	No	Yes	No	Yes	Yes	Yes	Yes	No
Avalon Court	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Avalon Towers	No	No	Yes	No	No	Yes	No	No	Yes
Northern New Jersey									
Avalon at Edgewater	No	No	Yes	No	No	Yes	Yes	No	Yes
Avalon at Florham Park	No	No	Yes	No	No	Yes	No	No	No
Avalon Cove	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Avalon Crest	No	No	Yes	No	Yes	Yes	Yes	No	No
The Tower at Avalon Cove	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Central New Jersey									
Avalon at Freehold	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Run East	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Watch	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No

Features and Recreational Amenities — Current and Development Communities

	Buildings w/ security systems	Community entrance controlled access	Building entrance controlled access	Under-ground parking	Aerobics dance studio	Car wash	Picnic area	Walking / jogging trail	Pool	Sauna / whirlpool
New York, NY										
Avalon Riverview I	All	Yes	Yes	No	No	No	Yes	Yes	No	No
Avalon Gardens	All	No	No	No	No	No	Yes	No	Yes	No
Avalon Green	All	No	No	No	No	No	No	No	Yes	No
Avalon on the Sound	All	Yes	Yes	No	No	No	Yes	Yes	Yes	No
Avalon View	None	No	No	No	No	No	Yes	No	Yes	No
Avalon Willow	All	Yes	Yes	Yes	No	No	Yes	No	Yes	No
The Avalon	All	No	Yes	Yes	No	No	No	No	No	No
MID-ATLANTIC										
Baltimore, MD										
Avalon at Fairway Hills I & II	None	No	No	No	No	Yes	Yes	No	Yes	No
Avalon at Symphony Glen	None	No	No	No	No	Yes	Yes	Yes	Yes	No
Avalon Landing	None	No	No	No	No	Yes	Yes	Yes	Yes	No
Washington, DC										
4100 Massachusetts Avenue	None	Yes	Yes	Yes	No	No	No	Yes	Yes	No
AutumnWoods	None	No	No	No	No	Yes	Yes	Yes	Yes	No
Avalon at Arlington Square I	None	No	Yes	No	No	No	Yes	No	Yes	No
Avalon at Arlington Square II	All	No	Yes	No	No	No	Yes	No	Yes	No
Avalon at Ballston — Vermont & Quincy Towers	None	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes
Avalon at Ballston — Washington Towers	None	Yes	Yes	Yes	No	No	Yes	No	Yes	No
Avalon at Cameron Court	All	Yes	No	No	Yes	Yes	Yes	No	Yes	Yes
Avalon at Decoverly	None	No	No	No	No	Yes	Yes	Yes	Yes	No
Avalon at Dulles	None	No	No	No	No	Yes	No	Yes	Yes	Yes
Avalon at Fair Lakes	None	Yes	No	No	No	Yes	Yes	No	Yes	No
Avalon at Fox Mill	None	No	No	No	No	Yes	Yes	No	Yes	No
Avalon at Providence Park	None	No	No	No	No	Yes	No	No	Yes	No
Avalon Crescent	None	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No
Avalon Crossing	None	Yes	No	No	No	Yes	Yes	No	Yes	No
Avalon Fields I & II	All	No	No	No	No	Yes	Yes	No	Yes	No
Avalon Knoll	None	No	Yes	No	No	Yes	Yes	Yes	Yes	No
MIDWEST										
Chicago, IL										
200 Arlington Place	None	No	Yes	No	No	No	No	No	Yes	No
Avalon at Danada Farms	None	No	No	No	No	No	No	No	Yes	No
Avalon at Stratford Green	None	No	No	No	No	Yes	Yes	Yes	Yes	No
Avalon at West Grove	None	No	Yes	No	No	No	Yes	No	Yes	Yes
Minneapolis, MN										
Avalon at Devonshire	None	No	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Avalon at Edinburgh	None	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Avalon at Town Centre	None	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Avalon at Town Square	None	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Avalon at Woodbury	None	No	No	No	No	No	No	Yes	Yes	No

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Tennis court	Racquetball	Fitness center	Sand volleyball	Indoor / outdoor basketball	Clubhouse / clubroom	Business center	Totlot	Concierge
New York, NY									
Avalon Riverview I	No	No	Yes	No	No	Yes	Yes	No	Yes
Avalon Gardens	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Avalon Green	No	No	No	Yes	No	Yes	No	No	No
Avalon on the Sound	No	No	Yes	No	Yes	Yes	Yes	No	Yes
Avalon View	Yes	No	Yes	No	Yes	Yes	No	Yes	No
Avalon Willow	No	Yes	Yes	No	No	Yes	Yes	No	Yes
The Avalon	No	No	Yes	No	No	Yes	Yes	No	Yes
MID-ATLANTIC									
Baltimore, MD									
Avalon at Fairway Hills I & II	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No
Avalon at Symphony Glen	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Landing	No	No	Yes	No	No	Yes	No	No	No
Washington, DC									
4100 Massachusetts Avenue	No	No	Yes	No	No	Yes	No	No	No
AutumnWoods	Yes	No	Yes	Yes	Yes	Yes	No	Yes	No
Avalon at Arlington Square I	No	No	Yes	No	Yes	Yes	Yes	Yes	No

Avalon at Arlington Square II	No	No	Yes	No	Yes	Yes	Yes	Yes	No
Avalon at Ballston — Vermont & Quincy Towers	No	No	Yes	No	No	Yes	No	No	No
Avalon at Ballston — Washington Towers	Yes	No	Yes	No	No	Yes	No	No	Yes
Avalon at Cameron Court	No	No	Yes	Yes	Yes	Yes	Yes	No	No
Avalon at Decoverly	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No
Avalon at Dulles	Yes	No	Yes	No	No	Yes	No	No	No
Avalon at Fair Lakes	Yes	No	Yes	No	No	Yes	Yes	No	No
Avalon at Fox Mill	No	No	Yes	No	No	Yes	No	Yes	No
Avalon at Providence Park	No	No	Yes	No	No	Yes	Yes	No	No
Avalon Crescent	No	No	Yes	No	No	Yes	Yes	Yes	Yes
Avalon Crossing	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Fields I & II	No	No	Yes	No	No	Yes	No	Yes	No
Avalon Knoll	Yes	No	Yes	No	Yes	No	No	Yes	No
MIDWEST									
Chicago, IL									
200 Arlington Place	No	No	Yes	No	No	Yes	No	No	No
Avalon at Danada Farms	No	No	Yes	No	No	Yes	Yes	No	Yes
Avalon at Stratford Green	No	No	No	No	No	Yes	No	No	Yes
Avalon at West Grove	No	Yes	Yes	No	No	Yes	Yes	Yes	No
Minneapolis, MN									
Avalon at Devonshire	Yes	No	Yes	No	No	Yes	No	No	No
Avalon at Edinburgh	No	No	Yes	No	No	Yes	No	No	No
Avalon at Town Centre	Yes	No	Yes	Yes	No	Yes	No	Yes	No
Avalon at Town Square	Yes	No	Yes	Yes	No	Yes	No	Yes	No
Avalon at Woodbury	No	No	Yes	No	No	No	No	No	No

Features and Recreational Amenities — Current and Development Communities

	Buildings w/ security systems	Community entrance controlled access	Building entrance controlled access	Under-ground parking	Aerobics dance studio	Car wash	Picnic area	Walking / jogging trail	Pool	Sauna / whirlpool
PACIFIC NORTHWEST										
Seattle, WA										
Avalon at Bear Creek	All	Yes	No	No	No	No	Yes	Yes	Yes	Yes
Avalon Bellevue	None	No	Yes	Yes	No	No	No	No	No	No
Avalon Belltown	None	Yes	Yes	Yes	No	No	No	No	No	No
Avalon Brandemoor	All	No	No	No	No	No	Yes	No	Yes	Yes
Avalon Greenbriar	None	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon HighGrove	None	No	No	No	No	No	No	No	Yes	Yes
Avalon ParcSquare	None	Yes	Yes	Yes	No	No	No	Yes	No	No
Avalon Redmond Place	None	No	No	No	No	Yes	No	Yes	Yes	Yes
Avalon RockMeadow	None	No	No	No	No	No	Yes	No	Yes	Yes
Avalon WildReed	None	No	No	No	No	No	Yes	Yes	Yes	Yes
Avalon Wildwood	All	No	No	No	No	No	No	Yes	Yes	Yes
Avalon Wynhaven	None	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes
NORTHERN CALIFORNIA										
Oakland-East Bay, CA										
Avalon at Union Square	None	Yes	No	No	No	No	No	No	Yes	No
Avalon at Willow Creek	Some	Yes	No	No	No	Yes	Yes	No	Yes	Yes
Avalon Dublin	None	No	No	No	No	Yes	Yes	No	Yes	Yes
Avalon Fremont	All	No	No	Yes	Yes	Yes	No	No	Yes	Yes
Avalon Pleasanton	None	No	No	No	No	Yes	No	No	Yes	Yes
Waterford	Some	Yes	No	No	No	Yes	No	No	Yes	Yes
San Francisco, CA										
Avalon at Cedar Ridge	None	No	No	No	No	No	No	No	Yes	Yes
Avalon at Diamond Heights	None	No	Yes	Yes	No	No	No	No	Yes	Yes
Avalon at Nob Hill	None	Yes	Yes	Yes	No	No	Yes	No	No	No
Avalon at Sunset Towers	All	Yes	Yes	Yes	No	Yes	Yes	No	No	No
Avalon Foster City	Some	No	No	No	No	Yes	No	Yes	Yes	No
Avalon Pacifica	None	No	No	No	No	No	No	No	Yes	No
Avalon Towers by the Bay	None	Yes	Yes	Yes	No	No	No	No	No	Yes
Crowne Ridge	None	No	No	Yes	No	No	No	Yes	Yes	Yes
San Jose, CA										
Avalon at Blossom Hill	None	Yes	Yes	No	No	Yes	No	No	Yes	Yes
Avalon at Cahill Park	All	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
Avalon at Creekside	Some	No	No	No	No	No	Yes	Yes	Yes	No
Avalon at Foxchase	None	No	No	Yes	No	Yes	No	No	Yes	Yes
Avalon at Parkside	None	No	No	Yes	No	No	Yes	No	Yes	Yes
Avalon at Pruneyard	None	No	No	No	No	No	Yes	No	Yes	Yes
Avalon at River Oaks	None	No	No	No	No	No	Yes	No	Yes	Yes
Avalon Campbell	Some	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Avalon Cupertino	None	Yes	Yes	Yes	No	No	No	No	Yes	Yes
Avalon Mountain View	None	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon on the Alameda	All	Yes	Yes	Yes	No	No	No	No	Yes	Yes
Avalon Rosewalk I & II	None	Yes	No	No	Yes	No	Yes	Yes	Yes	Yes
Avalon Silicon Valley	Some	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes
Avalon Sunnyvale	None	No	No	Yes	Yes	Yes	Yes	No	Yes	Yes
Avalon Towers on the Peninsula	All	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
CountryBrook	None	Yes	No	No	No	Yes	No	No	Yes	Yes
Fairway Glen	Some	No	No	No	No	Yes	Yes	No	Yes	Yes
San Marino	None	Yes	No	No	No	Yes	No	No	Yes	Yes

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Tennis court	Racquetball	Fitness center	Sand volleyball	Indoor / outdoor basketball	Clubhouse / clubroom	Business center	Totlot	Concierge
PACIFIC NORTHWEST									
Seattle, WA									
Avalon at Bear Creek	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Bellevue	No	No	Yes	No	No	Yes	Yes	No	Yes
Avalon Belltown	No	No	Yes	No	No	Yes	No	No	No
Avalon Brandemoor	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Greenbriar	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon HighGrove	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon ParcSquare	No	No	Yes	No	No	Yes	Yes	No	No
Avalon Redmond Place	No	No	Yes	No	No	Yes	No	Yes	No

Avalon RockMeadow	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon WildReed	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Wildwood	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Wynhaven	No	No	Yes	No	Yes	Yes	Yes	Yes	No
NORTHERN CALIFORNIA									
Oakland-East Bay, CA									
Avalon at Union Square	No	No	Yes	No	No	No	No	No	No
Avalon at Willow Creek	No	No	Yes	No	No	No	No	No	No
Avalon Dublin	No	No	Yes	Yes	Yes	No	Yes	No	No
Avalon Fremont	No	No	Yes	No	No	Yes	No	No	No
Avalon Pleasanton	No	No	Yes	No	Yes	No	Yes	Yes	No
Waterford	No	No	Yes	No	Yes	No	No	Yes	No
San Francisco, CA									
Avalon at Cedar Ridge	No	No	Yes	No	No	Yes	No	No	No
Avalon at Diamond Heights	No	No	Yes	No	No	Yes	No	No	No
Avalon at Nob Hill	No	No	Yes	No	No	No	No	No	Yes
Avalon at Sunset Towers	No	No	No	No	No	No	No	No	No
Avalon Foster City	No	No	No	No	No	Yes	No	Yes	No
Avalon Pacifica	No	No	Yes	No	No	No	No	No	No
Avalon Towers by the Bay	No	No	Yes	No	No	Yes	Yes	No	Yes
Crowne Ridge	No	No	Yes	No	No	No	Yes	No	No
San Jose, CA									
Avalon at Blossom Hill	No	No	Yes	No	No	No	Yes	No	No
Avalon at Cahill Park	No	No	Yes	No	No	Yes	Yes	No	No
Avalon at Creekside	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No
Avalon at Foxchase	No	No	Yes	No	No	No	No	No	No
Avalon at Parkside	No	No	Yes	No	Yes	Yes	Yes	Yes	No
Avalon at Pruneyard	No	No	Yes	Yes	Yes	No	Yes	No	No
Avalon at River Oaks	No	No	Yes	No	No	No	Yes	No	No
Avalon Campbell	No	No	Yes	Yes	No	No	Yes	Yes	No
Avalon Cupertino	No	No	Yes	No	No	No	Yes	No	No
Avalon Mountain View	No	No	Yes	No	No	No	Yes	Yes	No
Avalon on the Alameda	No	No	Yes	No	No	No	No	No	No
Avalon Rosewalk I & II	No	No	Yes	No	No	No	Yes	No	No
Avalon Silicon Valley	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes
Avalon Sunnyvale	No	No	Yes	No	No	No	Yes	Yes	No
Avalon Towers on the Peninsula	No	No	Yes	No	No	No	No	No	Yes
CountryBrook	No	No	Yes	No	No	No	No	No	No
Fairway Glen	No	No	Yes	No	No	No	No	Yes	No
San Marino	No	No	Yes	No	No	No	No	Yes	No

Features and Recreational Amenities — Current and Development Communities

	Buildings w/ security systems	Community entrance controlled access	Building entrance controlled access	Under-ground parking	Aerobics dance studio	Car wash	Picnic area	Walking / jogging trail	Pool	Sauna / whirlpool
SOUTHERN CALIFORNIA										
Los Angeles, CA										
Avalon at Media Center	None	No	Yes	No	No	No	Yes	No	Yes	No
Avalon at Warner Center	None	Yes	Yes	No	No	No	No	No	Yes	Yes
Avalon Westside Terrace	None	Yes	Yes	Yes	No	No	No	No	Yes	Yes
Avalon Woodland Hills	None	Yes	No	Yes	No	No	No	No	Yes	Yes
The Promenade	None	Yes	Yes	Yes	No	No	Yes	No	Yes	Yes
Orange County, CA										
Amberway	None	Yes	No	No	No	No	No	No	Yes	Yes
Avalon at Laguna Niguel	None	No	No	Yes	No	No	No	No	Yes	Yes
Avalon at Pacific Bay	None	Yes	No	No	No	No	No	No	Yes	Yes
Avalon at South Coast	None	Yes	No	No	No	Yes	No	No	Yes	Yes
Avalon Huntington Beach	None	Yes	No	No	No	No	Yes	No	Yes	Yes
Avalon Mission Viejo	None	Yes	No	No	No	No	No	Yes	Yes	Yes
Avalon Newport	None	No	No	No	No	Yes	No	No	Yes	Yes
Avalon Santa Margarita	None	No	No	No	No	No	Yes	Yes	Yes	Yes
San Diego, CA										
Avalon at Cortez Hill	All	Yes	Yes	No	No	No	No	Yes	Yes	Yes
Avalon at Mission Bay	None	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes
Avalon at Mission Ridge	Some	No	No	No	No	No	Yes	No	Yes	Yes
Avalon at Penasquitos Hills	None	No	No	No	No	No	Yes	Yes	Yes	Yes
DEVELOPMENT COMMUNITIES										
Avalon at Flanders Hill	All	No	Yes	No	No	No	Yes	No	Yes	Yes
Avalon at Gallery Place I	All	Yes	Yes	Yes	No	No	No	No	No	No
Avalon at Glen Cove South	Some	Yes	Yes	No	Yes	No	Yes	Yes	Yes	No
Avalon at Grosvenor Station	All	Yes	Yes	Yes	No	Yes	Yes	No	Yes	No
Avalon at Mission Bay North	All	Yes	Yes	Yes	Yes	No	No	No	No	No
Avalon at Newton Highlands	All	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Avalon at Rock Spring	None	No	Yes	No	No	No	Yes	No	Yes	No
Avalon at Steven's Pond	All	No	Yes	No	Yes	No	Yes	No	Yes	Yes
Avalon Darien	None	No	No	No	No	No	Yes	Yes	Yes	No
Avalon Glendale	None	Yes	Yes	Yes	No	No	No	No	Yes	No
Avalon on Stamford Harbor	All	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No
Avalon Traville Phase I	None	No	Yes	No	No	No	Yes	Yes	Yes	No

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Tennis court	Racquetball	Fitness center	Sand volleyball	Indoor / outdoor basketball	Clubhouse / clubroom	Business center	Totlot	Concierge
SOUTHERN CALIFORNIA									
Los Angeles, CA									
Avalon at Media Center	No	No	Yes	No	No	No	Yes	No	No
Avalon at Warner Center	Yes	No	Yes	No	No	No	Yes	No	No
Avalon Westside Terrace	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No
Avalon Woodland Hills	No	No	Yes	No	No	No	Yes	No	No
The Promenade	No	No	Yes	No	No	Yes	Yes	Yes	No
Orange County, CA									
Amberway	No	No	Yes	No	No	No	No	No	No
Avalon at Laguna Niguel	No	No	Yes	No	No	No	No	Yes	No
Avalon at Pacific Bay	No	No	Yes	No	No	No	Yes	Yes	No
Avalon at South Coast	Yes	No	Yes	Yes	No	Yes	Yes	No	No
Avalon Huntington Beach	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon Mission Viejo	No	No	Yes	No	No	No	Yes	No	No
Avalon Newport	No	No	Yes	No	No	No	Yes	No	No
Avalon Santa Margarita	No	No	Yes	No	No	No	No	Yes	No
San Diego, CA									
Avalon at Cortez Hill	Yes	No	Yes	No	No	Yes	Yes	No	No
Avalon at Mission Bay	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No
Avalon at Mission Ridge	No	No	Yes	No	No	No	No	Yes	No
Avalon at Penasquitos Hills	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No
DEVELOPMENT COMMUNITIES									
Avalon at Flanders Hill	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon at Gallery Place I	No	No	Yes	No	No	No	Yes	No	Yes
Avalon at Glen Cove South	No	No	Yes	No	No	Yes	Yes	No	Yes
Avalon at Grosvenor Station	No	No	Yes	No	No	Yes	Yes	No	Yes

Avalon at Mission Bay North	No	No	Yes	No	No	Yes	No	No	Yes
Avalon at Newton Highlands	No	No	Yes	No	No	Yes	Yes	Yes	Yes
Avalon at Rock Spring	No	No	Yes	No	No	Yes	Yes	Yes	No
Avalon at Steven's Pond	No	No	Yes	No	Yes	Yes	No	Yes	No
Avalon Darien	No	Yes	Yes	No	No	Yes	Yes	Yes	No
Avalon Glendale	No	No	Yes	No	No	Yes	Yes	No	No
Avalon on Stamford Harbor	No	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Avalon Traville Phase I	No	No	Yes	No	Yes	Yes	Yes	Yes	No

(1) For the purpose of this table, Current Communities excludes communities held by unconsolidated real estate joint ventures.

Development Communities

As of February 1, 2003, we had 12 Development Communities under construction. We expect these Development Communities, when completed, to add a total of 3,429 apartment homes to our portfolio for a total capitalized cost, including land acquisition costs, of approximately $645,700,000. Statements regarding the future development or performance of the Development Communities are forward-looking statements. We cannot assure you that:

- we will complete the Development Communities;
- our budgeted costs or estimates of occupancy rates will be realized;
- our schedule of leasing start dates, construction completion dates or stabilization dates will be achieved; or
- future developments will realize returns comparable to our past developments.

You should carefully review the discussion under "Risks of Development and Redevelopment" included elsewhere in this Item 2.

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

		Number of apartment homes	Total budgeted cost (1) ($ millions)	Construction start	Initial occupancy (2)	Estimated completion date	Estimated stabilization date (3)
1.	Avalon on Stamford Harbor *Stamford, CT*	323	$ 60.7	Q3 2000	Q1 2002	Q1 2003	Q3 2003
2.	Avalon at Mission Bay North *San Francisco, CA*	250	79.5	Q1 2001	Q4 2002	Q2 2003	Q4 2003
3.	Avalon at Flanders Hill *Westborough, MA*	280	38.4	Q3 2001	Q2 2002	Q1 2003	Q3 2003
4.	Avalon at Rock Spring (4) *North Bethesda, MD*	386	45.9	Q4 2001	Q4 2002	Q3 2003	Q1 2004
5.	Avalon at Gallery Place I (5) *Washington, DC*	203	50.0	Q4 2001	Q2 2003	Q4 2003	Q2 2004
6.	Avalon Glendale *Glendale, CA*	223	40.4	Q1 2002	Q2 2003	Q1 2004	Q3 2004
7.	Avalon at Grosvenor Station (6) *North Bethesda, MD*	499	82.3	Q1 2002	Q3 2003	Q4 2004	Q2 2005
8.	Avalon at Newton Highlands (6) *Newton, MA*	294	58.7	Q2 2002	Q3 2003	Q1 2004	Q3 2004
9.	Avalon at Glen Cove South *Glen Cove, NY*	256	62.0	Q3 2002	Q1 2004	Q2 2004	Q4 2004
10.	Avalon at Steven's Pond *Saugus, MA*	326	55.4	Q3 2002	Q2 2003	Q2 2004	Q4 2004
11.	Avalon Darien *Darien, CT*	189	43.6	Q4 2002	Q4 2003	Q3 2004	Q1 2005
12.	Avalon Traville Phase I *North Potomac, MD*	200	28.8	Q4 2002	Q4 2003	Q2 2004	Q4 2004
	Total	3,429	$645.7				

(1) Total budgeted cost includes all capitalized costs projected to be incurred to develop the respective Development Community, determined in accordance with generally accepted accounting principles (“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.

(2) Future initial occupancy dates are estimates.

(3) Stabilized operations is defined as the first full quarter of 95% or greater physical occupancy after completion of construction.

(4) This community is owned by a limited liability company in which we are a majority equity holder. The costs reflected above exclude construction and management fees due to us. This limited liability company is consolidated for financial reporting purposes.

(5) The total budgeted cost for this community is net of approximately $4,000,000 of proceeds that we estimate we will receive upon the sale of transferable development rights associated with the development of the community. These rights do not become transferable until construction completion and there can be no assurance that the projected amount of proceeds will be achieved.

(6) The community is owned by a DownREIT partnership in which one of our wholly-owned subsidiaries is the general partner with a majority equity interest. This partnership is consolidated for financial reporting purposes.

Redevelopment Communities

As of February 1, 2003, we had two communities under redevelopment. We expect the total budgeted cost to complete these communities, including the cost of acquisition, capital expenditures subsequent to acquisition and redevelopment, to be approximately $197,800,000, of which approximately $28,200,000 is the additional capital invested or expected to be invested during redevelopment and $5,800,000 has been invested since acquisition unrelated to redevelopment. Statements regarding the future redevelopment or performance of the Redevelopment Communities are forward-looking statements. 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 schedules for reconstruction completion or restabilized operations, or that we will meet our budgeted costs, either individually or in the aggregate. See the discussion under “Risks of Development and Redevelopment” included elsewhere in this Item 2.

The following presents a summary of these Redevelopment Communities:

			Total cost ($ millions)				
		Number of apartment homes	Acquisition cost (1)	Total budgeted cost (2)	Reconstruction start	Reconstruction completion (3)	Estimated restabilized operations (4)
1.	4100 Massachusetts Avenue *Washington, DC*	308	$ 35.7	$ 43.3	Q4 2002	Q2 2004	Q4 2004
2.	Avalon at Prudential Center *Boston, MA*	781	133.9	154.5	Q4 2000	Q1 2003	Q3 2003
	Total	1,089	$169.6	$ 197.8			

(1) Acquisition cost includes capital expenditures subsequent to acquisition unrelated to redevelopment.

(2) Total budgeted cost includes all capitalized costs projected to be incurred to redevelop the respective Redevelopment Community, including costs to acquire the community, reconstruction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated redevelopment overhead and other regulatory fees determined in accordance with GAAP.

(3) Reconstruction completion dates are estimates.

(4) Restabilized operations is defined as the first full quarter of 95% or greater physical occupancy after completion of reconstruction.

Development Rights

As of February 1, 2003, we are considering the development of 38 new apartment communities on land that is either owned by us, under contract, subject to a leasehold interest, or for which we hold a purchase option. We generally hold Development Rights through options to acquire land, although for 11 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 9,950 upscale apartment homes to our portfolio. Substantially all of these apartment homes will offer features like those offered by the communities we currently own. At December 31, 2002, there were cumulative net capitalized costs (including legal fees, design fees and related overhead costs, but excluding land costs) of $31,461,000 relating to Development Rights. In addition, land costs related to the pursuit of Development Rights (consisting of original land and additional carrying costs) of $78,688,000 are reflected as land held for development on the accompanying Consolidated Balance Sheets as of December 31, 2002. These land costs include $19,939,000 associated with two land parcels that were determined not likely to proceed to development and were planned for disposition as of December 31, 2002.

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 pursue, 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. To recognize the possibility of such loss, we recognize a charge to expense to provide an allowance for potentially unrecoverable capitalized pre-development costs. The determination of a charge to expense relative to pursuits involves management judgment regarding the probability that a pursuit will not proceed to development. The amount charged to expense and reflected in operating expenses in the accompanying Consolidated Financial Statements related to possible abandoned pursuits was $2,800,000 and $2,200,000 for the years ended December 31, 2002 and 2001, respectively.

Because we intend to limit the percentage of debt used to finance new developments, other financing alternatives may be required to help finance the development of those Development Rights scheduled to start construction after January 1, 2003.

Although the development of any particular Development Right cannot be assured, we believe that the Development Rights, in the aggregate, present attractive potential opportunities for future development and growth of long-term stockholder value.

Statements regarding the future development of the Development Rights are forward-looking statements. We cannot assure you that:

- we will succeed in obtaining zoning and other necessary governmental approvals or the financing required to develop these communities, or that we will decide to develop any particular community; or

- if we undertake construction of any particular community, that we will complete construction at the total budgeted cost assumed in the financial projections in the following table.

The following presents a summary of the 38 Development Rights we are currently pursuing:

	Location		Estimated number of homes	Total budgeted cost ($ millions)
1.	Plymouth, MA Phase I	(1)	98	$ 21
2.	Milford, CT	(1)	246	37
3.	New York, NY	(2)	361	138
4.	Lawrence, NJ		312	43
5.	Danvers & Peabody, MA		387	63
6.	Danbury, CT	(1)	234	36
7.	Coram, NY Phase I		298	49
8.	Los Angeles, CA	(1)	309	63
9.	Washington, DC	(1)	144	30
10.	Kirkland, WA		211	50
11.	Oakland, CA	(1)	180	40
12.	Norwalk, CT		314	63
13.	New Rochelle, NY Phase II and III		588	144
14.	Hingham, MA		236	44
15.	Long Island City, NY Phase II and III		552	162
16.	Glen Cove, NY		111	31
17.	Plymouth, MA Phase II		72	13
18.	North Potomac, MD Phase II	(1)	320	46
19.	Bedford, MA		139	21
20.	Quincy, MA	(1)	156	24
21.	Orange, CT	(1)	168	22
22.	Andover, MA		115	21
23.	Milford, CT		284	41
24.	Seattle, WA	(1)	154	50
25.	Bellevue, WA		368	71
26.	Newton, MA		235	60
27.	San Francisco, CA		313	100
28.	Stratford, CT		146	18
29.	Los Angeles, CA		173	47
30.	Camarillo, CA	(1)	249	43
31.	Cohasset, MA		200	38
32.	Sharon, MA		190	31
33.	Greenburgh, NY Phase II		766	139
34.	Coram, NY Phase II		152	26
35.	Long Beach, CA		299	57
36.	Wilton, CT		100	24
37.	Yaphank, NY		450	71
38.	College Park, MD		320	44
	Total		9,950	$2,021

(1) We own the land parcel, but construction has not yet begun.

(2) Total budgeted cost for this community includes costs associated with the construction of 89,000 square feet of retail space and 30,000 square feet for a neighborhood facility.

Risks of Development and Redevelopment

We intend to continue to pursue the development and redevelopment of apartment home communities. Our development and redevelopment activities may be exposed to the following:

- we may abandon opportunities we have already begun to explore based on further review of, or changes in, financial, demographic, environmental or other factors;
- we may encounter liquidity constraints, including the unavailability of financing on favorable terms for the development or redevelopment of a community;
- we may be unable to obtain, or we may experience delays in obtaining, all necessary zoning, land-use, building, occupancy, and other required governmental permits and authorizations;
- we may incur construction or reconstruction costs for a community that exceed our original estimates due to increased materials, labor or other expenses, which could make completion of development or redevelopment of the community uneconomical;
- occupancy rates and rents at a newly completed development or redevelopment community may fluctuate depending on a number of factors, including market and general economic conditions, and may not be sufficient to make the community profitable; and
- we may be unable to complete construction and lease-up on schedule, resulting in increased debt service expense and construction costs.

The occurrence of any of the events described above could adversely affect our ability to achieve our projected yields on communities under development or redevelopment and could affect results of operations and our payment of distributions to our stockholders.

Construction costs are projected by us based on market conditions prevailing in the community's market at the time our budgets are prepared and reflect changes to those market conditions that we anticipated at that time. Although we attempt to anticipate changes in market conditions, we cannot predict with certainty what those changes will be. Construction costs have been increasing and, for some of our Development Communities, the total construction costs have been or are expected to be higher than the original budget. Total budgeted cost includes all capitalized costs projected to be incurred to develop the respective Development or Redevelopment Community, determined in accordance with GAAP, including:

- land and/or property acquisition costs;
- construction or reconstruction costs;
- real estate taxes;
- capitalized interest;
- loan fees;
- permits;
- professional fees;
- allocated development or redevelopment overhead; and
- other regulatory fees.

Costs to redevelop communities that have been acquired have, in some cases, exceeded our original estimates and similar increases in costs may be experienced in the future. We cannot assure you that market rents in effect at the time new development communities or redevelopment communities complete lease-up will be sufficient to fully offset the effects of any increased construction or reconstruction costs.

Capitalized Interest

In accordance with GAAP, we capitalize interest expense during construction or reconstruction until a building obtains a final certificate of occupancy. Interest that is incurred thereafter and allocated to a completed apartment

home within the community is expensed. Capitalized interest during the years ended December 31, 2002 and 2001 totaled $29,937,000 and $27,635,000, respectively.

Acquisition Activities and Other Recent Developments

Acquisitions of Existing Communities. During the year ended December 31, 2002, we acquired two communities. The Promenade, located in Burbank, California, contains 400 apartment homes and was acquired for a total price of $70,300,000, which includes the assumption of $33,900,000 of floating-rate, tax-exempt debt. Avalon Greyrock, located in Stamford, Connecticut, contains 306 apartment homes and was acquired pursuant to a forward purchase contract agreed to in 1997 with an unaffiliated third party for a total acquisition cost of approximately $69,900,000.

One DownREIT partnership was formed since January 1, 2002 in conjunction with the acquisition of land by that partnership.

Sales of Existing Communities. We seek to increase our geographical concentration in selected high barrier-to-entry markets where we believe we can:

- apply sufficient market and management presence to enhance revenue growth;
- reduce operating expenses; and
- leverage management talent.

To achieve this increased concentration, we sell assets that do not meet our long term investment criteria and redeploy the proceeds from those sales to develop and redevelop communities. Pending such redeployment, we will generally use the proceeds from the sale of these communities to reduce amounts outstanding under our variable rate unsecured credit facility. On occasion, we will set aside the proceeds from the sale of communities into a cash escrow account to facilitate a nontaxable, like-kind exchange transaction. We sold one community, totaling 277 apartment homes, since January 1, 2002. Net proceeds from the sale of this asset were $78,454,000.

Land Acquisitions and Leases for New Developments. We carefully select land for development and follow established procedures that we believe minimize both the cost and the risks of development. During 2002, we acquired the following land parcels which are currently held for future development:

		Gross acres	Estimated number of apartment homes	Total budgeted cost (1) ($ millions)	Date acquired	Construction start (2)	Construction completion (2)
1.	Avalon at Pinehills Phase I *Plymouth, MA*	6.0	98	$ 21	September 2002	Q3 2003	Q3 2004
2.	Avalon at Milford Phase I *Milford, CT*	22.0	246	37	December 2002	Q3 2003	Q4 2004
3.	Avalon Traville Phase II *North Potomac, MD*	42.0	320	46	October 2002	Q1 2004	Q2 2005
4.	Avalon at Faxon West *Quincy, MA*	14.4	156	24	July 2002	Q1 2004	Q1 2005
5.	Avalon Camarillo *Camarillo, CA*	9.6	249	43	November 2002	Q2 2004	Q4 2005
	Total	94.0	1,069	$ 171			

(1) Total budgeted cost includes all capitalized costs projected to be incurred to develop the respective Development 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 determined in accordance with GAAP.

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

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 are not economically feasible. If an uninsured property loss or a property loss in excess of insured limits were to occur, we could lose our capital invested in a community, as well as the anticipated future revenues from such community. We would also continue to be obligated to repay any mortgage indebtedness or other obligations related to the community. If an uninsured liability to a third party were to occur, we would incur the cost of defense and settlement with, or court ordered damages to, that third party. A significant uninsured property or liability loss could materially and adversely affect our business and our financial condition and results of operations.

We have noted that the insurance and reinsurance markets have worsened as compared to the prior year, which we believe have resulted in higher insurance costs for the entire real estate sector. Although we will continue to maintain commercially reasonable insurance coverage, we believe that the cost of such coverage will increase at a faster rate than other operating expenses.

Many of our West Coast communities are located in the general vicinity of active earthquake faults. A large concentration of our communities lie near, and thus are susceptible to, the major fault lines in the San Francisco Bay Area, including the San Andreas fault and Hayward fault. We cannot assure you that an earthquake would not cause damage or losses greater than insured levels. In November 2002, we renewed our earthquake insurance. 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. The five percent deductible is subject to a minimum of $100,000 per occurrence. 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 $65,000,000. Our earthquake insurance outside of California provides for a $100,000 deductible per occurrence. In

addition, up to an annual aggregate of $2,000,000, the next $400,000 of loss per occurrence outside California will be treated as an additional deductible.

Our annual general liability policy and workman's compensation coverage was renewed on August 1, 2002. Although the insurance coverage provided for in the renewal policies did not materially change from the preceding year, the level of our deductible and premiums costs has increased. Including the costs we may incur as a result of deductibles, we expect the cost related to these insurance categories for the policy period from August 1, 2002 to July 31, 2003 to increase approximately $1,200,000 as compared to the prior period.

Our property insurance, which includes the earthquake coverage as previously described and builder's risk, was renewed on November 1, 2002, with an increase in the annual premium of approximately $1,100,000 over the prior period.

Just as with office buildings, transportation systems and government buildings, there have been recent reports that apartment communities could become targets of terrorism. In November 2002, Congress passed the Terrorism Risk Insurance Act ("TRIA") which is designed to make terrorism insurance available. In connection with this legislation, we have purchased insurance for property damage due to terrorism up to $200,000,000, with the first $15,000,000 of damage costs payable by us. Our general liability policy provides coverage (subject to deductibles and insured limits) for liability to third parties that result from terrorist acts at our communities. In connection with TRIA, we purchased third party liability terrorism insurance for communities with greater than 24 floors, which were previously excluded under our general liability policy.

We cannot assure that we will have full 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. See discussion under "Environmental Matters" included in Item 1 of this report.

In March 2003, we expect to renew our directors and officers insurance ("D&O"). In the past year, the D&O market has experienced increased and high profile claim activity. We estimate that our costs for this insurance will increase approximately 80% at renewal.

Americans with Disabilities Act

The apartment communities we own and any apartment communities that we acquire must comply with Title III of the Americans with Disabilities Act to the extent that such properties are "public accommodations" and/or "commercial facilities" as defined by the Americans with Disabilities Act. Compliance with the Americans with Disabilities Act requirements could require removal of structural barriers to handicapped access in certain public areas of our properties where such removal is readily achievable. The Americans with Disabilities Act does not, however, consider residential properties, such as apartment communities, to be public accommodations or commercial facilities, except to the extent portions of such facilities, such as leasing offices, are open to the public. We believe our properties comply in all material respects with all present requirements under the Americans with Disabilities Act and applicable state laws. Noncompliance could result in imposition of fines or an award of damages to private litigants.

ITEM 3. LEGAL PROCEEDINGS

We are from time to time subject to claims and administrative proceedings arising in the ordinary course of business. Some of these claims and proceedings are expected to be covered by liability insurance. The following matter, for

which we believe we have meritorious defenses and are therefore vigorously defending against, is not covered by liability insurance. However, outstanding litigation matters, individually and in the aggregate, including the matter described below, are not expected to have a material adverse effect on our business or financial condition.

We are currently involved in litigation with York Hunter Construction, Inc. and National Union Fire Insurance Company. The action arises from our October 1999 termination of York Hunter as construction manager under a contract relating to construction of the Avalon Willow community in Mamaroneck, New York, because of alleged failures and deficiencies by York Hunter and its subcontractors in performing under the contract. York Hunter initiated the litigation in October 1999 by filing a complaint against us and other defendants claiming more than $15,000,000 in damages. We have filed counterclaims against York Hunter seeking more than $9,000,000 in compensatory damages, including lost rental income and costs to complete the community. We have also filed a claim against National Union Fire Insurance, which furnished construction and performance bonds to us on behalf of York Hunter. We believe that we have meritorious defenses against all of York Hunter’s claims and are vigorously contesting those claims. We also intend to pursue our counterclaims against York Hunter and National Union Fire Insurance aggressively. The litigation is pending in the Supreme Court of the State of New York, County of Westchester. A trial date has been set for April 2003.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF STOCKHOLDERS

No matter was submitted to a vote of our security holders during the fourth quarter of 2002.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock is traded on the New York Stock Exchange (NYSE) and the Pacific Exchange (PCX) under the ticker symbol AVB. The following table sets forth the quarterly high and low sales prices per share of our common stock on the NYSE for the years 2002 and 2001, as reported by the NYSE. On February 1, 2003 there were 795 holders of record of an aggregate of 68,149,232 shares of our outstanding common stock. The number of holders does not include individuals or entities who beneficially own shares but whose shares are held of record by a broker or clearing agency, but does include each such broker or clearing agency as one recordholder.

	2002			2001		
	Sales Price			Sales Price		
	High	Low	Dividends declared	High	Low	Dividends declared
Quarter ended March 31	$50.660	$44.440	$ 0.70	$50.000	$45.200	$ 0.64
Quarter ended June 30	$52.650	$45.660	$ 0.70	$47.450	$42.450	$ 0.64
Quarter ended September 30	$46.150	$40.480	$ 0.70	$51.900	$43.800	$ 0.64
Quarter ended December 31	$41.830	$36.720	$ 0.70	$49.700	$44.010	$ 0.64

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

ITEM 6. SELECTED FINANCIAL DATA

The following table provides historical consolidated financial, operating and other data for AvalonBay Communities, Inc. You should read the table with our Consolidated Financial Statements and the Notes included in this report. Dollars in thousands, except per share information.

	Years ended				
	12-31-02	12-31-01	12-31-00	12-31-99	12-31-98
Revenue:					
Rental income	$ 630,502	$ 629,545	$ 564,613	$ 497,824	$ 364,522
Management fees	1,355	1,325	1,051	1,176	1,377
Other income	7,109	2,953	401	236	(403)
Total revenue	638,966	633,823	566,065	499,236	365,496
Expenses:					
Operating expenses, excluding property taxes	176,587	159,665	140,633	133,730	102,679
Property taxes	56,352	51,686	46,409	42,203	31,279
Interest expense	121,380	103,189	83,582	74,689	54,642
Depreciation expense	143,782	128,642	120,915	108,367	76,512
General and administrative	14,332	15,224	13,013	9,592	9,124
Non-recurring items	—	—	—	16,782	—
Impairment loss	6,800	—	—	—	—
Total expenses	519,233	458,406	404,552	385,363	274,236
Equity in income of unconsolidated entities	55	856	2,428	2,867	2,638
Interest income	3,978	6,823	4,764	7,362	3,508
Minority interest in consolidated partnerships	(2,570)	(597)	(1,908)	(1,975)	(1,770)
Income before gain on sale of communities and extraordinary item	121,196	182,499	166,797	122,127	95,636
Gain on sale of communities	—	62,852	40,779	47,093	25,270
Income from continuing operations before extraordinary item	121,196	245,351	207,576	169,220	120,906
Discontinued operations:					
Operating income	3,529	3,646	3,028	3,056	2,874
Gain on sale of communities	48,893	—	—	—	—
Total discontinued operations	52,422	3,646	3,028	3,056	2,874
Income before extraordinary item	173,618	248,997	210,604	172,276	123,780
Extraordinary item	—	—	—	—	(245)
Net income	173,618	248,997	210,604	172,276	123,535
Dividends attributable to preferred stock	(17,896)	(32,497)	(39,779)	(39,779)	(28,132)
Net income available to common stockholders	$ 155,722	$ 216,500	$ 170,825	$ 132,497	$ 95,403
Per Common Share and Share Information:					
Per common share — basic					
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.50	$ 3.11	$ 2.53	$ 2.00	$ 1.83
Discontinued operations	$ 0.76	$ 0.08	$ 0.05	$ 0.05	$ 0.06
Net income available to common stockholders	$ 2.26	$ 3.19	$ 2.58	$ 2.05	$ 1.89
Weighted average common shares outstanding	68,772,139	67,842,752	66,309,707	64,724,799	50,387,258
Per common share — diluted					
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.49	$ 3.05	$ 2.49	$ 1.98	$ 1.82
Discontinued operations	$ 0.74	$ 0.07	$ 0.04	$ 0.05	$ 0.06
Net income available to common stockholders	$ 2.23	$ 3.12	$ 2.53	$ 2.03	$ 1.88
Weighted average common shares and units outstanding	70,674,211	69,781,719	68,140,998	66,110,664	51,771,247
Cash dividends declared	$ 2.80	$ 2.56	$ 2.24	$ 2.06	$ 2.04

	Years ended				
	12-31-02	12-31-01	12-31-00	12-31-99	12-31-98
Other Information:					
Net income	$ 173,618	$ 248,997	$ 210,604	$ 172,276	$ 123,535
Depreciation — continuing operations	143,782	128,642	120,915	108,367	76,512
Depreciation — discontinued operations	695	1,437	1,695	1,392	862
Interest expense — continuing operations	121,380	103,189	83,582	74,689	54,642
Interest expense — discontinued operations	2	14	27	10	8
Interest income	(3,978)	(6,823)	(4,764)	(7,362)	(3,508)
Non-recurring items	—	—	—	16,782	—
Gain on sale of communities, net of impairment loss on planned dispositions	(42,093)	(62,852)	(40,779)	(47,093)	(25,270)
Extraordinary item	—	—	—	—	245
Gross EBITDA (1)	$ 393,406	$ 412,604	$ 371,280	$ 319,061	$ 227,026
Funds from Operations (2)	$ 258,210	$ 283,293	$ 252,013	$ 196,058	$ 148,487
Number of Current Communities (3)	137	126	126	122	127
Number of apartment homes	40,179	37,228	37,147	36,008	37,911
Balance Sheet Information:					
Real estate, before accumulated depreciation	$5,369,453	$4,837,869	$4,535,969	$4,266,426	$4,006,456
Total assets	$4,950,835	$4,664,289	$4,397,255	$4,154,662	$4,005,013
Notes payable and unsecured credit facilities	$2,471,163	$2,082,769	$1,729,924	$1,593,647	$1,484,371
Cash Flow Information:					
Net cash flows provided by operating activities	$ 308,109	$ 320,606	$ 302,083	$ 251,779	$ 192,339
Net cash flows used in investing activities	$ (440,331)	$ (270,406)	$ (258,155)	$ (236,687)	$ (566,516)
Net cash flows provided by (used in) financing activities	$ 72,589	$ (34,444)	$ 5,685	$ (16,361)	$ 376,345

Notes to Selected Financial Data

(1) Gross EBITDA represents earnings before interest, income taxes, depreciation and amortization, non-recurring items, gain on sale of communities, impairment loss on planned dispositions and extraordinary items. Gross EBITDA is relevant to an understanding of the economics of AvalonBay because it is one indication of cash flow available from continuing operations to service fixed obligations. Gross EBITDA should not be considered as an alternative to operating income (as determined in accordance with generally accepted accounting principles, or “GAAP”), as an indicator of our operating performance, or to cash flows from operating activities (as determined in accordance with GAAP) as a measure of liquidity. Our calculation of gross EBITDA may not be comparable to gross EBITDA as calculated by other companies.

(2) We generally consider Funds from Operations, or FFO, to be an appropriate measure of our operating performance because it helps investors understand our ability to incur and service debt and to make capital expenditures. We believe that to gain a clear understanding of our operating results, FFO should be examined with net income as presented in the Consolidated Statements of Operations included elsewhere in this report. Consistent with the definition adopted by the Board of Governors of the National Association of Real Estate Investment Trusts®, we calculate FFO as:

- net income or loss computed in accordance with GAAP, except that excluded from net income or loss are gains or losses on sales of property (including any impairment loss on planned dispositions) and extraordinary gains or losses (as defined by GAAP);
- plus depreciation of real estate assets; and
- after adjustments for unconsolidated partnerships and joint ventures.

FFO does not represent cash generated from operating activities in accordance with GAAP. Therefore it should not be considered as an alternative to net income as an indication of performance. FFO should also not be considered an alternative to net cash flows from operating activities, as determined by GAAP, or as a measure of liquidity. Additionally, it is not necessarily indicative of cash available to fund cash needs. Further, FFO as calculated by other REITs may not be comparable to our calculation of FFO. Calculations for FFO are presented below:

	Years ended				
	12-31-02	12-31-01	12-31-00	12-31-99	12-31-98
Net income	$ 173,618	$ 248,997	$ 210,604	$ 172,276	$ 123,535
Dividends attributable to preferred stock	(17,896)	(32,497)	(39,779)	(39,779)	(28,132)
Depreciation — real estate assets	140,964	125,547	117,721	106,536	74,752
Depreciation — discontinued operations	695	1,437	1,695	1,392	862
Joint venture adjustments	1,321	1,102	792	751	725
Minority interest expense	1,601	1,559	1,759	1,975	1,770
Gain on sale of communities, net of impairment loss on planned dispositions	(42,093)	(62,852)	(40,779)	(47,093)	(25,270)
Extraordinary items	—	—	—	—	245
Funds from Operations	$ 258,210	$ 283,293	$ 252,013	$ 196,058	$ 148,487
Net cash provided by operating activities	$ 308,109	$ 320,606	$ 302,083	$ 251,779	$ 192,339
Net cash used in investing activities	$(440,331)	$(270,406)	$(258,155)	$(236,687)	$(566,516)
Net cash provided by (used in) financing activities	$ 72,589	$ (34,444)	$ 5,685	$ (16,361)	$ 376,345

(3) Current Communities consist of all communities other than those which are still under construction and have not received a final certificate of occupancy.

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

Forward-Looking Statements

This Form 10-K, including the footnotes to our Consolidated Financial Statements which immediately follow, 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," "will" and other similar expressions in this Form 10-K, that predict or indicate future events and trends or that do not report historical matters. In addition, information concerning the following are forward-looking statements:

- 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;
- cost, yield and earnings estimates; and
- the development of management information systems by companies in which we have an investment and our implementation and use of those systems.

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. 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 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 and increases in the cost of capital;
- 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 expense and construction costs and reduced rental revenues;
- occupancy rates and market rents may be adversely affected by local economic and market conditions which are beyond our control;
- financing may not be available on favorable terms or at all, and our cash flow from operations and access to cost effective capital may be insufficient for the development of our pipeline and could limit our pursuit of opportunities;
- our cash flow 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 managing our current growth in the number of apartment communities; and
- companies developing software applications and ancillary services in which we have invested may be unsuccessful in achieving their business plans or unsuccessful in obtaining additional funding, which could lead to a partial or complete loss of our investment in these companies.

You should read our Consolidated Financial Statements and notes included in this report in conjunction with the following discussion. These forward-looking statements represent our estimates and assumptions only as of the date of this report. We do not undertake to update these forward-looking statements, and you should not rely upon them after the date of this report.

Business Description and Community Information

We are a Maryland corporation that has elected to be treated as a real estate investment trust, or REIT, for federal income tax purposes. We focus on the ownership and operation of upscale apartment communities (which generally command among the highest rents in their submarkets) in high barrier-to-entry markets of the United States. This is because we believe that, long term, the limited new supply of upscale apartment homes and lower housing affordability in these markets will result in larger increases in cash flows relative to other markets over an entire business cycle. However, we are in a period of a business cycle where rents are resetting to lower levels, resulting in a decline in cash flows in 2002 compared to 2001. These barriers-to-entry generally include a difficult and lengthy entitlement process with local jurisdictions and dense urban or suburban areas where zoned and entitled land ("in-fill locations") is in limited supply. Our markets are located in the Northeast, Mid-Atlantic, Midwest, Pacific Northwest, and Northern and Southern California regions of the United States.

We are a fully-integrated real estate organization with in-house expertise in the following areas:

- development and redevelopment;
- construction and reconstruction;
- leasing and management;
- acquisition and disposition;
- financing;
- marketing; and
- information technologies.

We believe apartment communities present an attractive long-term investment opportunity compared to other real estate investments because a broad potential resident base should result in relatively stable demand over a real estate cycle. We intend to pursue real estate investments in markets where constraints to new supply exist and where new household formations are expected to out-pace multifamily permit activity over the course of the real estate cycle. A number of our markets are experiencing economic contraction due to continuing job losses, particularly in the technology, telecom and financial services sectors. We expect these conditions to continue for most of 2003.

Although we believe we are well-positioned to continue to pursue opportunities to develop and acquire upscale apartment homes based on our in-house capabilities and expertise, we expect to decrease acquisition and development activity during 2003 as compared to prior years and plan to increase disposition activity. The level of disposition, acquisition or development volume is heavily influenced by capital market conditions, including prevailing interest rates. Given current capital market and real estate market conditions, we are evaluating the appropriate allocation of capital investment among development and redevelopment communities, the acquisition of existing communities, and stock redemptions/repurchases. In addition, we expect to increase disposition activity to realize a portion of the value created over the past business cycle as well as to provide additional liquidity. See "Liquidity and Capital Resources" and "Future Financing and Capital Needs."

Our real estate investments consist primarily of current operating apartment communities, communities in various stages of development, and development rights (i.e., land or land options held for development). Our current operating communities are further distinguished as Established, Other Stabilized, Lease-Up and Redevelopment. A description of these categories and operating performance information can be found in Note 9, "Segment Reporting," in our Consolidated Financial Statements included in this report.

On December 31, 2002, we owned or had an ownership interest in these categories as follows:

	Number of communities	Number of apartment homes
Current Communities		
Established Communities:		
Northeast	27	7,196
Mid-Atlantic	18	5,154
Midwest	9	2,624
Pacific Northwest	3	907
Northern California	29	8,601
Southern California	11	3,404
Total Established	97	27,886
Other Stabilized Communities:		
Northeast	11	3,040
Mid-Atlantic	2	960
Midwest	—	—
Pacific Northwest	8	2,152
Northern California	2	499
Southern California	6	2,253
Total Other Stabilized	29	8,904
Lease-Up Communities	9	2,300
Redevelopment Communities	2	1,089
Total Current Communities	137	40,179
Development Communities	12	3,429
Development Rights	38	9,950

Results of Operations and Funds From Operations

A comparison of our operating results for the years 2002, 2001 and 2000 follows (dollars in thousands):

	2002	2001	Change $	Change %	2001	2000	Change $	Change %
Revenue:								
Rental income	$630,502	$629,545	$ 957	0.2%	$629,545	$564,613	$64,932	11.5%
Management fees	1,355	1,325	30	2.3%	1,325	1,051	274	26.1%
Other income	7,109	2,953	4,156	140.7%	2,953	401	2,552	636.4%
Total revenue	638,966	633,823	5,143	0.8%	633,823	566,065	67,758	12.0%
Expenses:								
Direct property operating expenses, excluding property taxes	144,424	126,698	17,726	14.0%	126,698	112,522	14,176	12.6%
Property taxes	56,352	51,686	4,666	9.0%	51,686	46,409	5,277	11.4%
Total community operating expenses	200,776	178,384	22,392	12.6%	178,384	158,931	19,453	12.2%
Net operating income	438,190	455,439	(17,249)	(3.8%)	455,439	407,134	48,305	11.9%
Property management and other indirect operating expenses	32,163	32,967	(804)	(2.4%)	32,967	28,111	4,856	17.3%
Interest expense	121,380	103,189	18,191	17.6%	103,189	83,582	19,607	23.5%
Depreciation expense	143,782	128,642	15,140	11.8%	128,642	120,915	7,727	6.4%
General and administrative expense	14,332	15,224	(892)	(5.9%)	15,224	13,013	2,211	17.0%
Impairment loss	6,800	—	6,800	100.0%	—	—	—	—
Total other expenses	318,457	280,022	38,435	13.7%	280,022	245,621	34,401	14.0%
Equity in income of unconsolidated entities	55	856	(801)	(93.6%)	856	2,428	(1,572)	(64.7%)
Interest income	3,978	6,823	(2,845)	(41.7%)	6,823	4,764	2,059	43.2%
Minority interest in consolidated partnerships	(2,570)	(597)	(1,973)	330.5%	(597)	(1,908)	1,311	(68.7%)
Income before gain on sale of communities	121,196	182,499	(61,303)	(33.6%)	182,499	166,797	15,702	9.4%
Gain on sale of communities	—	62,852	(62,852)	(100.0%)	62,852	40,779	22,073	54.1%
Income from continuing operations	121,196	245,351	(124,155)	(50.6%)	245,351	207,576	37,775	18.2%
Discontinued operations:								
Operating income	3,529	3,646	(117)	(3.2%)	3,646	3,028	618	20.4%
Gain on sale of communities	48,893	—	48,893	100.0%	—	—	—	—
Total discontinued operations	52,422	3,646	48,776	1,337.8%	3,646	3,028	618	20.4%
Net income	173,618	248,997	(75,379)	(30.3%)	248,997	210,604	38,393	18.2%
Dividends attributable to preferred stock	(17,896)	(32,497)	14,601	(44.9%)	(32,497)	(39,779)	7,282	(18.3%)
Net income available to common stockholders	$155,722	$216,500	$ (60,778)	(28.1%)	$216,500	$170,825	$45,675	26.7%

Net income available to common stockholders decreased $60,778,000 (28.1%) to $155,722,000 in 2002. This decrease is primarily attributable to fewer gains on sales of communities in 2002, coupled with a decline in net operating income due to deteriorating market conditions in several of our principal markets and increases in interest and depreciation expenses. Net income available to common stockholders increased by $45,675,000 (26.7%) to $216,500,000 in 2001 due to additional net operating income from newly developed and redeveloped communities, as well as growth in net operating income from Established Communities and increased gain on sale of communities.

Net operating income ("NOI") is calculated at the community level and represents total revenue less direct property operating expenses, including property taxes, and excludes property management and other indirect operating expenses, interest expense, depreciation expense, general and administrative expense and impairment losses. We believe that NOI is an appropriate supplemental measure of our operating performance because it helps investors to understand the recurring operations of our real estate portfolio, as well as provide insight into how management evaluates operations on a segment basis. NOI does not represent cash generated from operating activities in accordance with generally accepted accounting principles ("GAAP"). Therefore, it 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 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 calculation of NOI, along with a reconciliation to net income, is provided in the preceding table.

The NOI decrease of $17,249,000 for the year ended December 31, 2002 and the increase of $48,305,000 for the year ended December 31, 2001 as compared to the prior years consist of changes in the following categories:

	2002 Increase (Decrease)	2001 Increase (Decrease)
Established Communities	$(36,680,000)	$ 21,783,000
Other Stabilized Communities	10,830,000	23,267,000
Communities sold	(13,037,000)	(12,841,000)
Development and Redevelopment Communities	21,638,000	16,096,000
Total NOI	$(17,249,000)	$ 48,305,000

The NOI decrease in Established Communities in 2002 was largely due to the effects of the weakened economy in many of our submarkets. Strong single family home sales, partially fueled by a low mortgage rate environment, in addition to continuing job losses in many of our submarkets, have aggravated a weak demand environment, causing market rental rates and occupancies to decline. We currently expect to continue to experience weak demand during most of 2003. We also anticipate that any growth or improvement that we may experience in late 2003 will be at a slower rate than that experienced by the overall market and economy, if any, due to the types of industries (technology, telecom, financial services) that make up a large proportion of the jobs in our markets.

Rental income increased due to rental income generated from acquired and newly developed communities offset by a decline in occupancies and effective rental rates for Established Communities.

Overall Portfolio – The weighted average number of occupied apartment homes increased to 34,888 apartment homes for 2002 compared to 34,417 apartment homes for 2001 and 33,976 in 2000. This change in 2002 is primarily the result of increased homes available from acquired and newly developed communities, offset by occupancy declines related to the weakened demand in certain of our submarkets. The weighted average monthly revenue per occupied apartment home decreased to $1,522 in 2002 compared to $1,543 in 2001 and $1,402 in 2000.

Established Communities – Rental revenue decreased $30,679,000 (6.1%) in 2002 and increased by $26,268,000 (6.6%) in 2001. The decrease in 2002 is due to both declining effective rental rates and declining economic occupancy. The increase in 2001 is due to market conditions during the year that allowed for higher average rents partially offset by lower economic occupancy. For 2002, the weighted average monthly revenue per occupied apartment home decreased (4.1%) to $1,511 compared to $1,576 for 2001, partially due to increased concessions granted in 2002. The average economic occupancy decreased from 95.5% in 2001 to 93.5% for 2002. 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 contract rates and vacant homes at market rents.

Although most of our markets have experienced weak demand, we have observed the most significant declines in average rental rates and occupancy during 2002 in certain Northern California and Northeast submarkets. Northern California, which accounts for approximately 32.0% of current Established Community rental revenue, experienced a decline in rental revenue in 2002, partially related to job losses in the technology sector. Although economic occupancy remained flat in Northern California in 2002 as compared to 2001, average rental rates dropped 12.6% from $1,788 to $1,562 for those same periods.

The Northeast region also accounts for approximately 32.0% of current Established Community rental revenue and has been experiencing a decline in rental revenue, primarily the result of job losses in the financial services sector. Economic occupancy decreased in the Northeast, from 96.9% in 2001 to 92.6% for 2002, while average rental rates improved slightly during 2002.

Other income increased primarily due to the recognition of $5,800,000 and $2,500,000 in 2002 and 2001, respectively, of business interruption insurance related to the settlement of a fire insurance claim that occurred during the construction of Avalon at Edgewater. In addition, we recognized $711,000 in the first quarter of 2002 in construction management fees in connection with the redevelopment of a community owned by a limited liability company in which we have a membership interest.

Direct property operating expenses, excluding property taxes increased due to the addition of newly developed, redeveloped and acquired apartment homes coupled with increased insurance, marketing and bad debt. Insurance expense has increased over the past two years, particularly during 2001 as the insurance and reinsurance markets deteriorated, resulting in higher insurance costs for the entire real estate sector. We renewed our general liability policy on August 1, 2002 and our property coverage on November 1, 2002. See "Insurance and Risk of Uninsured Losses" for a discussion of our insurance policies and related coverage. Insurance and other costs associated with Development and Redevelopment Communities are expensed as communities move from the initial construction and lease-up phase to the stabilized operating phase. Marketing initiatives have been expanded in response to the weak demand, and bad debt expense has increased as a direct result of continuing job losses and the weakened economy.

For Established Communities, direct property operating expenses, excluding property taxes, increased $5,579,000 (6.1%) to $97,082,000 due to the increases in insurance, marketing and bad debt expenses discussed above. During 2001, operating expenses increased $3,559,000 (4.8%) due to increases in insurance, utilities, marketing and office and administration expenses.

Property taxes increased due to higher assessments and the addition of newly developed and redeveloped apartment homes. Property taxes on Development and Redevelopment Communities are capitalized while the community is under construction. We begin to expense these costs as homes within the community receive a final certificate of occupancy.

For Established Communities, the increases in property taxes in 2002 and 2001 of $550,000 and $969,000, respectively, were primarily due to higher assessments throughout all regions.

Property management and other indirect operating expenses decreased in 2002 and increased in 2001 as a result of executive separation costs that were recognized in 2001 but not in 2002 or 2000. The decrease in 2002 is partially offset by increases in unallocated central marketing costs and abandoned pursuit costs. Similar to the community level, central marketing initiatives have been expanded in response to the weak demand. Abandoned pursuit costs increased $600,000 from $2,200,000 in 2001 to $2,800,000 in 2002 related to development rights which may not be developed as planned.

Interest expense increased in 2002 due to the issuance of $750,000,000 of unsecured notes between September 2001 and December 2002, partially offset by the repayment of $100,000,000 of unsecured notes in September 2002 and overall lower interest rates on both short-term and long-term borrowings. In addition, higher average outstanding balances on our unsecured credit facility resulted in higher interest expense between years. Interest expense increased in 2001 due to the issuance of $650,000,000 of unsecured notes during 2000 and 2001.

Depreciation expense increased primarily related to acquisitions and completion of development or redevelopment activities. We expect depreciation expense to continue to increase as we complete additional development and redevelopment communities, partially offset by the elimination of depreciation of communities that are sold or designated as held for sale during 2003**.**

General and administrative expense decreased in 2002 and increased in 2001 as a result of additional compensation expense recognized in the fourth quarter of 2001 due to the retirement of a senior executive. Unfilled positions and lower incentive compensation also contributed to the decrease in 2002.

Impairment loss of $6,800,000 was recorded during 2002 related to two land parcels that as of December 31, 2002 were determined not likely to proceed to development and therefore were planned for disposition. This loss was recorded to reflect the parcels at fair market value (based on their entitlement status as of December 31, 2002), less estimated selling costs. In February 2003, we won an appeal regarding the entitlement status of one of these parcels. If we decide to continue with the planned disposition, this change in entitlement status may increase the potential value of the land and therefore decrease the previously estimated loss that would be recognized at the date of disposal. However, we are currently reevaluating our plans for this parcel, which may result in 2003 in the partial recovery of the impairment loss recognized in 2002, if we decide to hold the land for development.

Equity in income of unconsolidated entities decreased during 2002 primarily due to losses recorded for an investment in a technology company accounted for under the equity method. During 2002 and 2001, we recorded losses of $3,166,000 and $1,730,000, respectively, related to this investment, bringing the carrying value of this investment to zero as of December 31, 2002. In addition, a $934,000 valuation allowance was recorded during 2001 for an investment in a different technology company which contributed to the decrease in 2001 over the prior year period.

Interest income during 2002 decreased due to lower average cash balances invested and lower interest rates. The increase in interest income during 2001 resulted from higher average cash balances invested.

Gain on sale of communities, including discontinued operations, of $48,893,000, $62,852,000 and $40,779,000 were realized in 2002, 2001 and 2000, respectively. These gains on the sale of communities are the result of our strategy to sell communities that do not meet our long-term strategic objectives and redeploy the proceeds to current Development and Redevelopment Communities. The amount of gains realized depend on many factors, including the number of communities sold, the size and carrying value of those communities, and the market conditions in the local area. In 2003, we expect to increase our disposition activity as compared to 2002.

Funds from Operations

We consider Funds from Operations ("FFO") to be an appropriate supplemental measure of our operating performance because it helps investors understand our ability to incur and service debt and to make capital expenditures. We believe that in order to understand our operating results, FFO should be examined with net income as presented in the Consolidated Statements of Operations and Other Comprehensive Income included elsewhere in this report. Consistent with the definition adopted by the Board of Governors of the National Association of Real Estate Investment Trusts®, we calculate FFO as:

- net income or loss computed in accordance with GAAP, except that excluded from net income or loss are gains or losses on sales of property (including any impairment loss on planned dispositions) and extraordinary gains or losses (as defined by GAAP);
- plus depreciation of real estate assets; and
- after adjustments for unconsolidated partnerships and joint ventures.

FFO does not represent cash generated from operating activities in accordance with GAAP. Therefore it should not be considered an alternative to net income as an indication of our performance. FFO should also 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. Further, FFO as calculated by other REITs may not be comparable to our calculation of FFO.

The following is a reconciliation of net income to FFO and a presentation of GAAP based cash flow metrics (dollars in thousands):

	Years ended		
	2002	2001	2000
Funds from Operations			
Net income	$ 173,618	$ 248,997	$ 210,604
Dividends attributable to preferred stock	(17,896)	(32,497)	(39,779)
Depreciation — real estate assets	140,964	125,547	117,721
Depreciation — discontinued operations	695	1,437	1,695
Joint venture adjustments	1,321	1,102	792
Minority interest expense	1,601	1,559	1,759
Gain on sale of communities, net of impairment loss on planned dispositions	(42,093)	(62,852)	(40,779)
Funds from Operations	$ 258,210	$ 283,293	$ 252,013
GAAP based Cash Flow Metrics			
Net cash provided by operating activities	$ 308,109	$ 320,606	$ 302,083
Net cash used in investing activities	$(440,331)	$(270,406)	$(258,155)
Net cash provided by (used in) financing activities	$ 72,589	$ (34,444)	$ 5,685

Capitalization of Fixed Assets and Community Improvements

Our policy with respect to capital expenditures is generally to capitalize only non-recurring expenditures. We capitalize improvements and upgrades only if the item:

- exceeds $15,000;
- extends the useful life of the asset; and
- is not related to making an apartment home ready for the next resident.

Under this policy, virtually all capitalized costs are non-recurring, as recurring make-ready costs are expensed as incurred. Recurring make-ready costs include the following:

- carpet and appliance replacements;
- floor coverings;
- interior painting; and
- other redecorating costs.

We capitalize purchases of personal property, such as computers and furniture, only if the item is a new addition and the item exceeds $2,500. We generally expense purchases of personal property made for replacement purposes. For Established and Other Stabilized Communities, we recorded non-revenue generating capitalized expenditures of approximately $302 per apartment home in 2002 and $251 per apartment home in 2001. The average maintenance costs charged to expense, including carpet and appliance replacements, related to these communities was $1,224 per apartment home in 2002 and $1,196 in 2001. We anticipate that capitalized costs per apartment home will gradually increase as the average age of our communities increases. We expect expensed maintenance costs to increase as the average age of our communities increases, and to fluctuate with changes in turnover.

We have expanded our Consolidated Statements of Cash Flows included elsewhere in this report to include additional information on capital expenditures. For the years ended December 31, 2002 and 2001, the amounts capitalized (excluding land costs) related to (i) acquisitions, development and redevelopment were $457,851,000 and $401,359,000, respectively, (ii) revenue generating expenditures, such as water sub-metering equipment and cable installations were $697,000 and $1,675,000, respectively, and (iii) non-revenue generating expenditures were $11,375,000 and $12,234,000, respectively.

Liquidity and Capital Resources

Liquidity. The primary source of liquidity is our cash flows from operations. Operating cash flows have historically been determined by:

- the number of apartment homes;
- rental rates;
- occupancy levels; and
- our expenses with respect to these apartment homes.

The timing, source and amount of cash flows provided by financing activities and used in investing activities are sensitive to the capital markets environment, particularly to changes in interest rates. Changes in the capital markets environment affect our plans for undertaking construction and development as well as acquisition and disposition activity.

Cash and cash equivalents totaled $13,357,000 at December 31, 2002, a decrease of $59,633,000 for the year. The following discussion relates to changes in cash due to operating, investing and financing activities, which are presented in our Consolidated Statements of Cash Flows included in this report.

Operating Activities – Net cash provided by operating activities decreased to $308,109,000 in 2002 from $320,606,000 in 2001 primarily due to the decline in operating income from Established Communities and the loss of operating income from communities sold during 2002 and 2001, partially offset by additional operating income from newly developed and redeveloped communities.

Investing Activities – Net cash used in investing activities of $440,331,000 in 2002 related to investments in assets through development, redevelopment and acquisition of apartment communities, partially offset by proceeds from the sales of apartment communities.

During 2002, we invested $545,202,000 in the purchase and development of real estate and capital expenditures.

- We began the development of seven new communities. These communities, if developed as expected, will contain a total of 1,987 apartment homes, and the total investment, including land acquisition costs, is projected to be approximately $371,200,000. We also completed the development of ten new communities containing a total of 2,521 apartment homes for a total investment, including land acquisition cost, of $466,600,000.

- We completed the redevelopment of two communities containing 1,116 apartment homes for a total investment in redevelopment (excluding acquisition costs) of $44,200,000.

- We acquired two communities containing 706 apartment homes for a total investment of $140,200,000, including the assumption of $33,900,000 in debt.

- We had capital expenditures relating to current communities' real estate assets of $10,930,000 and non-real estate capital expenditures of $1,142,000.

The development and redevelopment of communities involve risks that the investment will fail to perform in accordance with expectations. See "Risks of Development and Redevelopment" in Item 2 of this report for our discussion of these and other risks inherent in developing or redeveloping communities.

We sold one community during 2002, generating net proceeds of $78,454,000. These proceeds are being used to develop and redevelop communities currently under construction and reconstruction, as well as to repay and redeem certain debt and equity securities, as discussed below.

Financing Activities – Net cash provided by financing activities totaled $72,589,000 for the year ended December 31, 2002, primarily due to the issuance of unsecured notes and an increase in borrowings under our unsecured credit facility, partially offset by dividends paid, common stock repurchases, and the redemption of the Series C Preferred Stock. See Note 3, "Notes Payable, Unsecured Notes and Credit Facility," and Note 4, "Stockholders' Equity," in our Consolidated Financial Statements, for additional information.

We regularly review our short and long-term liquidity needs, the adequacy of Funds from Operations, as defined above, and other expected liquidity sources to meet these needs. We believe our principal short-term liquidity needs are to fund:

- normal recurring operating expenses;

- debt service and maturity payments;

- the distributions required with respect to preferred stock;

- the minimum dividend payments required to maintain our REIT qualification under the Internal Revenue Code of 1986;

- opportunities for the acquisition of improved property; and

- development and redevelopment activity in which we are currently engaged.

We anticipate that we can fully satisfy these needs from a combination of cash flows provided by operating activities, proceeds from asset dispositions and borrowing capacity under the unsecured credit facility.

One of our principal long-term liquidity needs is the repayment of medium and 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 prior to maturity. On January 15, 2003, $50,000,000 in unsecured notes matured and was paid, including the balance of accrued interest. During the remainder of 2003, we have

$100,000,000 in maturing unsecured notes. If we do not have funds on hand sufficient to repay our indebtedness, it will be necessary for us to refinance this debt. This refinancing may be accomplished by uncollateralized private or public debt offerings, additional debt financing that is collateralized by mortgages on individual communities or groups of communities, draws on our credit facility or by additional equity offerings. We also anticipate having retained cash flow available in each year so that when a debt obligation matures, some or all of each maturity can be satisfied from this retained cash. Although we believe we will have the capacity to meet our long-term 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.

Capital Resources. We intend to match the long-term nature of our real estate assets with long-term cost-effective capital to the extent permitted by prevailing market conditions. From January 1, 2000 through February 1, 2003, we issued $1,100,000,000 of unsecured notes through public offerings. We expect this source of capital, together with cash flow from operating activities, dispositions, and other sources of capital, to remain available to meet our capital needs, for the foreseeable future, although no assurance can be provided that the debt capital markets will remain available or that such debt will be available on attractive terms.

Variable Rate Unsecured Credit Facility

Our unsecured revolving credit facility is furnished by a syndicate of banks and provides up to $500,000,000 in short-term credit. Under the terms of the credit facility, if we elect to increase the facility up to $650,000,000, and one or more banks (from the syndicate or otherwise) voluntarily agree to provide the additional commitment, then we will be able to increase the facility up to $650,000,000, and no member of the syndicate of banks can prohibit such increase; such an increase in the facility will only be effective to the extent banks (from the syndicate or otherwise) choose to commit to lend additional funds. We pay participating banks, in the aggregate, an annual facility fee of $750,000 in equal quarterly installments. The unsecured credit facility bears interest at varying levels based on the London Interbank Offered Rate (“LIBOR”), rating levels achieved on our unsecured notes and on a maturity schedule selected by us. The current stated pricing is LIBOR plus 0.60% per annum (1.94% on February 28, 2003). Pricing could vary if there is a change in rating by either of the two leading national rating agencies; a change in rating of one level would impact the unsecured credit facility pricing by 0.05% to 0.15%. A competitive bid option is available for borrowings of up to $400,000,000. 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 unsecured credit facility. The competitive bid option may result in lower pricing if market conditions allow. Pricing under the competitive bid option resulted in average pricing of LIBOR plus 0.34% for amounts most recently borrowed under the competitive bid option. The existing facility matures in May 2005 assuming exercise of a one-year renewal at our option. At February 28, 2003, $155,470,000 was outstanding, $15,529,000 was used to provide letters of credit and $329,001,000 was available for borrowing under the unsecured credit facility.

Interest Rate Protection Agreements

We are not a party to any long-term interest rate agreements, other than interest rate protection and swap agreements on approximately $166,000,000 of our variable rate tax-exempt indebtedness. We intend, however, to evaluate the need for long-term interest rate protection agreements as interest rate market conditions dictate, and we have engaged a consultant to assist in managing our interest rate risks and exposure.

Future Financing and Capital Needs

As of December 31, 2002, we had 12 new communities under construction, for which a total estimated cost of $254,146,000 remained to be invested. In addition, we had two communities under reconstruction, for which a total estimated cost of $7,656,000 remained to be invested.

Substantially all of the capital expenditures necessary to complete the communities currently under construction and reconstruction will be funded from:

- the remaining capacity under our current $500,000,000 unsecured credit facility;
- the net proceeds from sales of existing communities;
- retained operating cash; and/or
- the issuance of debt or equity securities.

We expect to continue to fund development costs related to pursuing development rights from retained operating cash and borrowings under the unsecured credit facility. We believe these sources of capital will be adequate to take the proposed communities to the point in the development cycle where construction can begin. Before planned reconstruction activity 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 pursuit 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 pursuits.

Our liquidity could be adversely impacted by expanding development and acquisition activities and/or reduced capital (as compared to prior years) available from asset sales. To meet the balance of our liquidity needs under such conditions, we would need to arrange additional capacity under our existing unsecured credit facility, sell additional existing communities and/or issue additional debt or equity securities. While we believe we have the financial position to expand our short-term credit capacity and support our capital markets activity, we cannot assure you that we will be successful in completing these arrangements, sales or offerings. The failure to complete these transactions on a cost-effective basis could have a material adverse impact on our operating results and financial condition, including the abandonment of development pursuits.

It is our policy to sell assets that do not meet our long-term investment criteria when market conditions are favorable, and to redeploy the proceeds. When we decide to sell a community, we generally solicit competing bids from unrelated parties for these individual assets and consider the sales price and tax ramifications of each proposal. We intend to actively seek buyers for communities that we determine to hold for sale. We expect to accelerate our disposition program during 2003 in response to current and anticipated real estate and capital markets conditions. However, we cannot assure you that assets can be sold on terms that we consider satisfactory or that market conditions will continue to make the sale of assets an appealing strategy. 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 is to reduce total revenues, total expenses and funds from operations. Therefore, an acceleration of our disposition program in 2003 may adversely impact total revenues and funds from operations. As of February 28, 2003, we have six communities classified as held for sale under GAAP. We are actively pursuing the disposition of these communities and expect to close during the first and second quarters of 2003. However, we cannot assure you that these communities will be sold as planned.

We have minority interest investments in three technology companies, including Constellation Real Technologies LLC, (“Constellation”), an entity formed by a number of real estate investment trusts and real estate operating companies for the purpose of investing in multi-sector real estate technology opportunities. Our original commitment to Constellation was $4,000,000 but, as a result of an agreement among the members reducing the commitment due from each member, our commitment is currently $2,600,000, of which we have contributed $959,000 to date. The remaining unfunded commitment of $1,641,000 is expected to be funded over the next five years. In January 2002, we invested an additional $2,300,000 in Realeum, Inc., (“Realeum”), a company involved in the development and deployment of a property management and leasing automation system. Pursuant to an agreement with Realeum, we utilize the property management and leasing automation system in exchange for payments under a licensing

arrangement. Realeum is negotiating licensing arrangements with other real estate companies that we are unaffiliated with. If unsuccessful in negotiating additional licensing agreements, Realeum may be required to obtain additional sources of funding. Our third technology investment is in Rent.com, an internet-based rental housing information provider. We have no obligation to contribute additional funds to these technology investments, other than the commitment to Constellation as previously described.

Debt Maturities

The following table details debt maturities for the next five years, excluding the unsecured credit facility for debt outstanding at December 31, 2002 (dollars in thousands):

Community	All-In interest rate (1)	Principal maturity date	Balance Outstanding 12-31-01	Balance Outstanding 12-31-02
Tax-Exempt Bonds				
Fixed Rate				
Avalon at Foxchase I	5.88%	Nov-2007	$ 16,800	$ 16,800 (2)
Avalon at Foxchase II	5.88%	Nov-2007	9,600	9,600 (2)
Fairway Glen	5.88%	Nov-2007	9,580	9,580 (2)
CountryBrook	6.30%	Mar-2012	18,577	18,124
Waterford	5.88%	Aug-2014	33,100	33,100 (2)
Avalon at Mountain View	5.88%	Mar-2017	18,300	18,300 (2)
Avalon at Dulles	7.04%	Jul-2024	12,360	12,360
Avalon at Symphony Glen	7.00%	Jul-2024	9,780	9,780
Avalon View	7.55%	Aug-2024	18,115	17,743
Avalon at Lexington	6.56%	Feb-2025	14,073	13,784
Avalon at Nob Hill	5.80%	Jun-2025	19,745	19,457 (2)
Avalon Campbell	6.48%	Jun-2025	36,386	35,749 (2)
Avalon Pacifica	6.48%	Jun-2025	16,505	16,216 (2)
Avalon Knoll	6.95%	Jun-2026	13,193	12,978
Avalon Landing	6.85%	Jun-2026	6,525	6,417
Avalon Fields	7.05%	May-2027	11,454	11,286
Avalon West	7.73%	Dec-2036	8,522	8,461
Avalon Oaks	7.45%	Feb-2041	17,718	17,628
			290,333	287,363
Variable Rate				
Avalon at Laguna Niguel		Mar-2009	10,400	10,400
The Promenade		Jan-2010	—	33,670
Avalon at Mission Viejo		Jun-2025	7,256	7,151 (3)
Avalon Devonshire		Dec-2025	27,305	27,305
Avalon Greenbriar		May-2026	18,755	18,755
Avalon at Fairway Hills I		Jun-2026	11,500	11,500
			75,216	108,781
Conventional Loans (4)				
Fixed Rate				
$100 Million unsecured notes	7.375%	Sep-2002	100,000	—
$50 Million unsecured notes	6.25%	Jan-2003	50,000	50,000
$100 Million unsecured notes	6.50%	Jul-2003	100,000	100,000
$125 Million unsecured notes	6.58%	Feb-2004	125,000	125,000
$100 Million unsecured notes	6.625%	Jan-2005	100,000	100,000
$50 Million unsecured notes	6.50%	Jan-2005	50,000	50,000
$150 Million unsecured notes	6.80%	Jul-2006	150,000	150,000
$150 Million unsecured notes	5.00%	Aug-2007	—	150,000
$110 Million unsecured notes	6.875%	Dec-2007	110,000	110,000
$50 Million unsecured notes	6.625%	Jan-2008	50,000	50,000
$150 Million unsecured notes	8.25%	Jul-2008	150,000	150,000
$150 Million unsecured notes	7.50%	Aug-2009	150,000	150,000
$200 Million unsecured notes	7.50%	Dec-2010	200,000	200,000
$300 Million unsecured notes	6.625%	Sep-2011	300,000	300,000
$50 Million unsecured notes	6.625%	Sep-2011	—	50,000
$250 Million unsecured notes	6.125%	Nov-2012	—	250,000
Avalon at Pruneyard	7.25%	May-2004	12,870	12,870
Avalon Walk II	8.93%	Aug-2004	12,036	11,748
			1,659,906	2,009,618
Variable Rate				
Avalon on the Sound		2003	57,314	36,089
Total indebtedness — excluding unsecured credit facility			$2,082,769	$2,441,851

[Additional columns below]

[Continued from above table, first column(s) repeated]

Community	Scheduled Maturities 2003	2004	2005	2006	2007	Thereafter
Tax-Exempt Bonds						
Fixed Rate						
Avalon at Foxchase I	$ —	$ —	$ —	$ —	$ 16,800	$ —
Avalon at Foxchase II	—	—	—	—	9,600	—
Fairway Glen	—	—	—	—	9,580	—
CountryBrook	496	528	562	599	638	15,301
Waterford	—	—	—	—	—	33,100
Avalon at Mountain View	—	—	—	—	—	18,300
Avalon at Dulles	—	—	—	—	—	12,360
Avalon at Symphony Glen	—	—	—	—	—	9,780
Avalon View	398	425	455	485	518	15,462
Avalon at Lexington	307	326	347	368	391	12,045
Avalon at Nob Hill	308	331	355	380	408	17,675
Avalon Campbell	684	733	786	843	904	31,799
Avalon Pacifica	310	332	356	382	410	14,426
Avalon Knoll	229	246	263	282	302	11,656
Avalon Landing	116	124	132	142	152	5,751
Avalon Fields	181	193	207	222	239	10,244
Avalon West	65	70	75	80	85	8,086
Avalon Oaks	98	104	112	120	128	17,066
	3,192	3,412	3,650	3,903	40,155	233,051
Variable Rate						
Avalon at Laguna Niguel	—	—	—	—	—	10,400
The Promenade	485	522	562	605	652	30,844
Avalon at Mission Viejo	112	121	129	139	149	6,501
Avalon Devonshire	—	—	—	—	—	27,305
Avalon Greenbriar	—	—	—	—	—	18,755
Avalon at Fairway Hills I	—	—	—	—	—	11,500
	597	643	691	744	801	105,305
Conventional Loans (4)						
Fixed Rate						
$100 Million unsecured notes	—	—	—	—	—	—
$50 Million unsecured notes	50,000	—	—	—	—	—
$100 Million unsecured notes	100,000	—	—	—	—	—
$125 Million unsecured notes	—	125,000	—	—	—	—
$100 Million unsecured notes	—	—	100,000	—	—	—
$50 Million unsecured notes	—	—	50,000	—	—	—
$150 Million unsecured notes	—	—	—	150,000	—	—
$150 Million unsecured notes	—	—	—	—	150,000	—
$110 Million unsecured notes	—	—	—	—	110,000	—
$50 Million unsecured notes	—	—	—	—	—	50,000
$150 Million unsecured notes	—	—	—	—	—	150,000
$150 Million unsecured notes	—	—	—	—	—	150,000
$200 Million unsecured notes	—	—	—	—	—	200,000
$300 Million unsecured notes	—	—	—	—	—	300,000
$50 Million unsecured notes	—	—	—	—	—	50,000
$250 Million unsecured notes	—	—	—	—	—	250,000
Avalon at Pruneyard	—	12,870	—	—	—	—
Avalon Walk II	315	11,433	—	—	—	—
	150,315	149,303	150,000	150,000	260,000	1,150,000
Variable Rate						
Avalon on the Sound	36,089	—	—	—	—	—
Total indebtedness — excluding unsecured credit facility	$190,193	$153,358	$154,341	$154,647	$300,956	$1,488,356

(1) Includes credit enhancement fees, facility fees, trustees, etc.

(2) Financed by variable rate tax exempt debt, but interest rate is effectively fixed at the rate indicated through a swap agreement. The weighted average maturity of these swap agreements is 3.6 years.

(3) Financed by variable rate tax exempt debt, but interest rate is capped through an interest rate cap agreement. The remaining term of this interest rate cap agreement is 4.7 years.

(4) Balances outstanding as of December 31, 2002 do not include $342 of debt premium reflected in unsecured notes on our Consolidated Balance Sheets included elsewhere in this report.

Stock Repurchase Program

In July 2002 we announced that our Board of Directors had authorized a common stock repurchase program. Under this program, we may acquire shares of our common stock in open market or negotiated transactions up to an aggregate purchase price of $100,000,000. Actual purchases of stock will vary with market conditions. The size of the stock repurchase program was designed so that retained cash flow, as well as the proceeds from sales of existing apartment communities and a reduction in planned acquisitions, will provide the source of funding for the program, with our unsecured credit facility providing temporary funding as needed. Through February 28, 2003, we have acquired 2,042,600 shares at an aggregate cost of $77,381,000 under this program.

Redemption of Preferred Stock

In July 2002, we redeemed all 2,300,000 outstanding shares of our 8.50% Series C Cumulative Redeemable Preferred Stock at a price of $25.00 per share, plus $0.1417 in accrued and unpaid dividends, for an aggregate redemption price of $57,826,000, including accrued dividends of $326,000. The redemption price was funded in part by the sale on July 11, 2002 of 592,000 shares of Series I Cumulative Redeemable Preferred Stock through a private placement to an institutional investor for a net purchase price of $14,504,000. The dividend rate on such shares was initially equal to 3.36% per annum (three month LIBOR plus 1.5%) of the liquidation preference. As permitted under the terms of such preferred stock, we redeemed all of the Series I Cumulative Redeemable Preferred Stock on August 29, 2002 for an aggregate redemption price of $14,609,000 including accrued dividends of $68,000.

As of February 1, 2003, we have the following series of redeemable preferred stock outstanding at an aggregate stated value of $181,692,500. These series have no stated maturity and are not subject to any sinking fund or mandatory redemptions. As these series become redeemable, we will evaluate the requirements necessary for such redemptions as well as the cost-effectiveness based on the existing market conditions.

Series	Shares outstanding February 1, 2003	Payable quarterly	Annual rate	Liquidation preference	Non-redeemable prior to
D	3,267,700	March, June, September, December	8.00%	$ 25	December 15, 2002 — Currently Redeemable
H	4,000,000	March, June, September, December	8.70%	$ 25	October 15, 2008

On February 18, 2003, we gave notice of our intent to redeem all 3,267,700 outstanding shares of our 8.00% Series D Cumulative Redeemable Preferred Stock. We anticipate closing this redemption on March 20, 2003 at a price of $25.00 per share, plus $0.0167 in accrued and unpaid dividends, for an aggregate redemption price of $81,747,000, including accrued dividends of $55,000. This redemption will be funded by the sale of shares of Series J Cumulative Redeemable Preferred Stock through a private placement to an institutional investor. The dividend rate on such shares will initially be based on three month LIBOR plus 1.5%. The Series J Cumulative Redeemable Preferred Stock will be redeemable at any time at our option.

Inflation and Deflation

Substantially all of our apartment leases are for a term of one year or less. In the event of significant inflation, this may enable 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 without penalty and therefore expose us to the effect of a decline in market rents. In a deflationary rent environment, as is currently being experienced, we are exposed to declining rents more quickly under these shorter-term leases.

Critical Accounting Policies

Our accounting policies are in conformity with GAAP. 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. These judgments 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. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, it is possible that different accounting policies would have been applied resulting in a different presentation of our financial statements. Below is a discussion of accounting policies which we consider critical in that they may require complex judgment in their application or require estimates about matters which are inherently uncertain. Additional discussion of accounting policies which we consider significant, including further discussion of the critical accounting policies described below, can be found in the Notes to our Consolidated Financial Statements.

Real Estate Development Rights

We capitalize pre-development costs incurred in pursuit of new development opportunities for which we currently believe future development is probable. These costs include legal fees, design fees and related overhead costs. The accompanying Consolidated Financial Statements include a charge to expense to provide an allowance for potentially unrecoverable capitalized pre-development costs. The determination of the charge to expense involves management judgement regarding the probability that a pursuit will not proceed to development.

Revenue Recognition

Rental income related to leases is recognized on an accrual basis when due from residents in accordance with SEC Staff Accounting Bulletin No. 101, “Revenue Recognition in Financial Statements.” In accordance with our 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 – generally one year.

Real Estate

If there is an event or change in circumstance that indicates an impairment in the value of a community, our policy is to assess the impairment by making a comparison of the current and projected operating cash flows of the community over its remaining useful life, on an undiscounted basis, to the carrying amount of the community. If the carrying amount is in excess of the estimated projected operating cash flows of the community, we would recognize an impairment loss equivalent to an amount required to adjust the carrying amount to its estimated fair market value.

Discontinued Operations

On January 1, 2002, we adopted Statement of Financial Accounting Standards ("SFAS") No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," which requires that the assets and liabilities and the results of operations of any communities which have been sold during 2002, or otherwise qualify as held for sale as of December 31, 2002, be presented as discontinued operations in our Consolidated Financial Statements in both current and prior periods presented. The community specific components of net income that are presented as discontinued operations include net operating income, depreciation and interest expense. In addition, the net gain or loss (including any impairment loss) on the eventual disposal of communities held for sale is presented as discontinued operations when recognized. Real estate assets held for sale are measured at the lower of the carrying amount or the fair value less the cost to sell, and are presented separately in our Consolidated Balance Sheets. Subsequent to classification of a community as held for sale, no further depreciation is recorded on the assets.

Investments in Technology Companies

We account for our investments in technology companies in accordance with Accounting Principles Board Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock." If there is an event or change in circumstance that indicates a loss in the value of an investment, our policy is to record the loss and reduce the value of the investment to its fair value. A loss in value would be indicated if we could not recover the carrying value of the investment or if the investee could not sustain an earnings capacity that would justify the carrying amount of the investment. Due to the nature of these investments, an impairment in value can be difficult to determine.

Stock-Based Compensation

During the periods presented in this report, we applied APB Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations, in accounting for our employee stock options. No stock-based employee compensation cost is reflected in net income, as all options granted under those plans had an exercise price equal to the market value of the underlying common stock on the date of grant. See Note 10, "Stock-Based Compensation Plans," in our Consolidated Financial Statements for information regarding the effect on net income and earnings per share if we had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," to stock-based employee compensation.

Legal Contingencies

We are subject to various legal proceedings and claims that arise in the ordinary course of business. These matters are frequently covered by insurance. While the resolution of these matters cannot be predicted with certainty, we believe the final outcome of such matters will not have a material adverse effect on our financial position or the results of operations. Once it has been determined that a loss is probable to occur, the estimated amount of the loss is recorded in the financial statements. Both the amount of the loss and the point at which its occurrence is considered probable can be difficult to determine.

ITEM 7a. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to certain financial market risks, the most predominant being fluctuations in interest rates. We monitor interest rate fluctuations as an integral part of our overall risk management program, which recognizes the unpredictability of financial markets and seeks to reduce the potentially adverse effect on our results of operations. The effect of interest rate fluctuations historically has been small relative to other factors affecting operating results, such as rental rates and occupancy. The specific market risks and the potential impact on our operating results are described below.

Our operating results are affected by changes in interest rates as a result of borrowings under our variable rate unsecured credit facility as well as outstanding bonds with variable interest rates. We had

$173,840,000 and $125,274,000 in variable rate debt outstanding as of December 31, 2002 and 2001, respectively. If interest rates on the variable rate debt had been 100 basis points higher throughout 2002 and 2001, our annual interest costs would have increased by approximately $2,557,000 and $1,500,000, respectively, based on balances outstanding during the applicable years.

We currently use interest rate swap agreements to reduce the impact of interest rate fluctuations on certain variable rate indebtedness. Under swap agreements,

- we agree to pay to a counterparty the interest that would have been incurred on a fixed principal amount at a fixed interest rate (generally, the interest rate on a particular treasury bond on the date the agreement is entered into, plus a fixed increment), and

- the counterparty agrees to pay to us the interest that would have been incurred on the same principal amount at an assumed floating interest rate tied to a particular market index.

As of December 31, 2002, the effect of swap agreements is to fix the interest rate on approximately $166,000,000 of our variable rate tax-exempt debt. Furthermore, a swap agreement to fix the interest rate on approximately $22,500,000 of unconsolidated variable rate debt exists as of December 31, 2002. The swap agreements on the consolidated variable rate tax-exempt debt were not electively entered into by us but, rather, were a requirement of either the bond issuer or the credit enhancement provider related to certain of our tax-exempt bond financings. Because the counterparties providing the swap agreements are major financial institutions which have an A+ or better credit rating by the Standard & Poor’s Ratings Group and the interest rates fixed by the swap agreements are significantly higher than current market rates for such agreements, we do not believe there is exposure at this time to a default by a counterparty provider.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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

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

As discussed more fully in the registrant's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 14, 2003, during 2002 the Company dismissed Arthur Andersen LLP and engaged Ernst & Young LLP to be the Company's principal independent public accountant.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF REGISTRANT

Information pertaining to directors and executive officers of the registrant is incorporated herein by reference to the registrant's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 14, 2003.

ITEM 11. EXECUTIVE COMPENSATION

Information pertaining to executive compensation is incorporated herein by reference to the registrant's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 14, 2003.

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

Information pertaining to security ownership of management and certain beneficial owners of the registrant's Common Stock is incorporated herein by reference to the registrant's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 14, 2003.

The Company maintains the 1994 Stock Incentive Plan (the "1994 Plan") and the 1996 Non-Qualified Employee Stock Purchase Plan (the "ESPP"), pursuant to which common stock or other equity awards may be issued or granted to eligible persons.

The following table gives information about equity awards under the Company's 1994 Plan and ESPP as of December 31, 2002:

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders [1]	3,245,145[2] [3]	$ 39.05[3][4]	1,415,862[5]
Equity compensation plans not approved by security holders[6]	—	n/a	702,342
Total	3,245,145	$ 39.05[3][4]	2,118,204

[1] Consists of the 1994 Plan.

[2] Includes 79,138 deferred units granted under the 1994 Plan, which, subject to vesting requirements, will convert in the future to common stock on a one-for-one basis, but does not include 199,127 shares of restricted stock that are outstanding and that are already reflected in the Company's outstanding shares.

[3] Does not include outstanding options to acquire 640,506 shares, at a weighted-average exercise price of $35.27 per share, that were assumed, in connection with the 1998 merger of Avalon Properties, Inc. with and into the Company, under the Avalon Properties, Inc. 1995 Equity Incentive Plan and the Avalon Properties, Inc. 1993 Stock Option and Incentive Plan.

[4] Excludes deferred units granted under the 1994 Plan, which, subject to vesting requirements, will convert in the future to common stock on a one-for-one basis.

[5] The 1994 Plan incorporates an evergreen formula pursuant to which the aggregate number of shares reserved for issuance under the 1994 Plan will increase annually. On each January 1, the aggregate number of shares reserved for issuance under the 1994 Plan will increase by a number of shares equal to a percentage (ranging from 0.48% to 1.00%) of all outstanding shares of Common Stock at the end of the year. The exact percentage used is determined based on the percentage of all awards made under the 1994 Plan during the calendar year that were in the form of stock options with an exercise price equal to the fair market value of a share of Common Stock on the date of the grant. In accordance with this procedure, on January 1, 2003, the maximum number of shares remaining available for future issuance under the 1994 Plan was increased by 664,115 to 2,079,977.

[6] Consists of the ESPP.

The ESPP, which was adopted by the Board of Directors on October 29, 1996, has not been approved by our shareholders. A further description of the ESPP appears in Note 10, "Stock-Based Compensation Plans," of our Consolidated Financial Statements included in this report.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Information pertaining to certain relationships and related transactions is incorporated herein by reference to the registrant's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 14, 2003.

ITEM 14. CONTROLS AND PROCEDURES

(a) Evaluation of Disclosure Controls and Procedures.

Within the 90 days prior to the date of this report, the Company carried out an evaluation under the supervision and with the participation of the Company’s management, including the Company’s Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company’s disclosure controls and procedures. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company’s disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission’s rules and forms. We continue to review and document our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.

(b) Changes in Internal Controls.

There were no significant changes in the Company’s internal controls or in other factors that could significantly affect these controls, subsequent to the date of their evaluation.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULE AND REPORTS ON FORM 8-K

15(a)(1) Financial Statements

Index to Financial Statements

Consolidated Financial Statements and Financial Statement Schedule:

Report of Independent Auditors	F-1
Consolidated Balance Sheets as of December 31, 2002 and 2001	F-2
Consolidated Statements of Operations and Other Comprehensive Income for the years ended December 31, 2002, 2001 and 2000	F-3
Consolidated Statements of Stockholders’ Equity for the years ended December 31, 2002, 2001, and 2000	F-4
Consolidated Statements of Cash Flows for the years ended December 31, 2002, and 2000	F-5
Notes to Consolidated Financial Statements	F-7

15(a)(2) Financial Statement Schedule

Schedule III – Real Estate and Accumulated Depreciation	F-30

15(a)(3) Exhibits

The exhibits listed on the accompanying Index to Exhibits are filed as a part of this report.

15(b) Reports on Form 8-K

None.

INDEX TO EXHIBITS

EXHIBIT NO.		DESCRIPTION
3(i).1	—	Articles of Amendment and Restatement of Articles of Incorporation of the Company, dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-Q of the Company filed August 14, 1998.)
3(i).2	—	Articles of Amendment, dated as of October 2, 1998. (Incorporated by reference to Exhibit 3.1(ii) to the Company's Current Report on Form 8-K filed October 6, 1998.)
3(i).3	—	Articles Supplementary, dated as of October 13, 1998, relating to the 8.70% Series H Cumulative Redeemable Preferred Stock. (Incorporated by reference to Exhibit 1 to Form 8-A of the Company filed October 14, 1998.)
3(i).4	—	Articles Supplementary of the Company relating to its Series I Cumulative Redeemable Preferred Stock. (Incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed July 15, 2002.)
3(ii)	—	Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on February 13, 2003. (Filed herewith.)
4.1	—	Indenture of Avalon Properties, Inc. (hereinafter referred to as "Avalon Properties") dated as of September18, 1995. (Incorporated by reference to Avalon Properties' Registration Statement on Form S-3 (33-95412), filed on August 4, 1995.)
4.2	—	First Supplemental Indenture of Avalon Properties dated as of September 18, 1995. (Incorporated by reference to Exhibit 4.2 to Form 10-K of the Company filed March 26, 2002.)
4.3	—	Second Supplemental Indenture of Avalon Properties dated as of December 16, 1997. (Filed herewith.)
4.4	—	Third Supplemental Indenture of Avalon Properties dated as of January 22, 1998. (Filed herewith.)
4.5	—	Indenture, dated as of January 16, 1998, between the Company and State Street Bank and Trust Company, as Trustee. (Filed herewith.)
4.6	—	First Supplemental Indenture, dated as of January 20, 1998, between the Company and the Trustee. (Filed herewith.)
4.7	—	Second Supplemental Indenture, dated as of July 7, 1998, between the Company and the Trustee. (Incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed July 9, 1998.)
4.8	—	Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and the Trustee, including forms of Floating Rate Note and Fixed Rate Note. (Incorporated by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K filed July 11, 2000.)

EXHIBIT NO.		DESCRIPTION
4.9	—	Dividend Reinvestment and Stock Purchase Plan of the Company filed September 14, 1999. (Incorporated by reference to Form S-3 of the Company, File No. 333-87063.)
4.10	—	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.)
4.11	—	Shareholder Rights Agreement (Expired), dated March 9, 1998 (the "Rights Agreement"), between the Company and First Union National Bank (as successor to American Stock Transfer and Trust Company) as Rights Agent (including the form of Rights Certificate as Exhibit B) (Incorporated by reference to Exhibit 4.1 to Form 8-A of the Company filed March 11, 1998); Amendment No. 1 to the Rights Agreement, dated as of February 28, 2000, between the Company and the Rights Agent (Incorporated by reference to Exhibit 4.2 to Form 8-A/A of the Company filed February 28, 2000); Amendment No. 2 to the Rights Agreement, dated January 4, 2002, between the Company and the Rights Agent (Incorporated by reference to Exhibit 4.3 to Form 8-K of the Company filed January 7, 2000). The Shareholder Rights Agreement, as amended, expired on March 31, 2002.
10.1	—	Distribution Agreement, dated December 21, 1998, among AvalonBay Communities, Inc. (the "Company") and the Agents, including Administrative Procedures, relating to the MTNs. (Incorporated by reference to Exhibit 4.4 to the Company's Current Report on Form 8-K filed December 21, 1998.)
10.2	—	First Amendment, dated as of June 27, 2000, to Distribution Agreement, dated December 21, 1998, among the Company and the Agents. (Incorporated by reference to Exhibit 1.2 to the Company's Current Report on Form 8-K filed July 11, 2000.)
10.3	—	Second Amendment, dated as of August 31, 2001, to Distribution Agreement, dated December 21, 1998, among the Company and the Agents. (Incorporated by reference to Exhibit 1.3 to the Company's Current Report on Form 8-K filed September 4, 2001.)
10.4+	—	Employment Agreement, dated as of March 9, 1998, between the Company and Thomas J. Sargeant. (Incorporated by reference to Exhibit 10.4 to Form 10-Q of the Company filed August 14, 1998.)
10.5+	—	Employment Agreement, dated as of January 10, 2003, between the Company and Bryce Blair. (Filed herewith.)
10.6+	—	Employment Agreement, dated as of February 26, 2001, between the Company and Timothy J. Naughton. (Incorporated by reference to Exhibit 10.5 to Form 10-K of the Company filed March 29, 2001.)
10.7+	—	Employment Agreement, dated as of September 10, 2001, between the Company and Leo S. Horey. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed November 14, 2001.)

EXHIBIT NO.		DESCRIPTION
10.8+	—	Employment Agreement, dated as of December 31, 2001, between the Company and Samuel B. Fuller. (Incorporated by reference to Exhibit 10.9 to Form 10-K of the Company filed March 26, 2002.)
10.9+	—	Letter Agreement regarding departure, dated February 26, 2001, by and between the Company and Robert H. Slater. (Incorporated by reference to Exhibit 10.8 to Form 10-K of the Company filed March 29, 2001.)
10.10+	—	Mutual Release and Separation Agreement, dated as of March 24, 2000, between the Company and Gilbert M. Meyer. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed May 15, 2000.)
10.11+	—	Retirement Agreement, dated as of March 24, 2000, between the Company and Gilbert M. Meyer. (Incorporated by reference to Exhibit 10.2 to Form 10-Q of the Company filed May 15, 2000.)
10.12+	—	Consulting Agreement, dated as of March 24, 2000, between the Company and Gilbert M. Meyer. (Incorporated by reference to Exhibit 10.3 to Form 10-Q of the Company filed May 15, 2000.)
10.13+	—	Avalon Properties, Inc. 1993 Stock Option and Incentive Plan. (Incorporated by reference to Exhibit 10.14 to Form 10-K of the Company filed March 29, 2001.)
10.14+	—	Avalon Properties, Inc. 1995 Equity Incentive Plan. (Incorporated by reference to Exhibit 10.15 to Form 10-K of the Company filed March 29, 2001.)
10.15+	—	Amendment, dated May 6, 1999, to the Avalon Properties Amended and Restated 1995 Equity Incentive Plan. (Incorporated by reference to Exhibit 10.7 to Form 10-Q of the Company filed August 16, 1999.)
10.16+	—	AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated in full on May 8, 2001. (Incorporated by reference to Exhibit B to the Company's Schedule 14A filed March 30, 2001.)
10.17+	—	1996 Non-Qualified Employee Stock Purchase Plan, dated June 26, 1997, as amended and restated. (Incorporated by reference to Exhibit 99.1 to Post-effective Amendment No. 1 to Form S-8 of the Company filed June 26, 1997, File No. 333-16837.)
10.18+	—	1996 Non-Qualified Employee Stock Purchase Plan — Plan Information Statement dated June 26, 1997. (Incorporated by reference to Exhibit 99.2 to Form S-8 of the company, File No. 333-16837.)
10. 19+	—	Indemnification Agreements between the Company and the Directors of the Company. (Incorporated by reference to Exhibit 10.39 to Form 10-K of the Company filed March 31, 1999.)
10.20+	—	The Company's Officer Severance Plan. (Incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed July 11, 2000.)
10.21	—	Revolving Loan Agreement, dated as of May 24, 2001, among the Company, as Borrower, The Chase Manhattan Bank, as a Bank, Co-Agent and Syndication Agent, Fleet National Bank, as a Bank and Co-Agent, Bank of America, N.A., First Union National Bank and Citicorp Real Estate,

EXHIBIT NO.		DESCRIPTION
		Inc., each as a Bank and Documentation Agent, the other banks signatory thereto, each as a Bank, J.P. Morgan Securities, Inc., as Sole Bookrunner and Lead Arranger, and Fleet National Bank, as Administrative Agent. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed August 14, 2001.)
12.1	—	Statements re: Computation of Ratios. (Filed herewith.)
21.1	—	Schedule of Subsidiaries of the Company. (Filed herewith.)
23.1	—	Consent of Ernst & Young LLP. (Filed herewith.)
99.1	—	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer). (Filed herewith.)
99.2	—	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer). (Filed herewith.)

+ Management contract or compensatory plan or arrangement required to be filed or incorporated by reference as an exhibit to this Form 10-K pursuant to Item 14(c) of Form 10-K.

SIGNATURES

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

AvalonBay Communities, Inc.

Date: March 11, 2003 By: /s/ Bryce Blair

Bryce Blair, Chairman of the Board, Chief Executive Officer and President

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

Date: March 11, 2003 By: /s/ Bryce Blair

Bryce Blair, Chairman of the Board, Chief Executive Officer and President
(Principal Executive Officer)

Date: March 11, 2003 By: /s/ Thomas J. Sargeant

Thomas J. Sargeant, Executive VP and Chief Financial Officer
(Principal Financial and Accounting Officer)

Date: March 11, 2003 By: /s/ Bruce A. Choate

Bruce A. Choate, Director

Date: March 11, 2003 By: /s/ John J. Healy, Jr.

John J. Healy, Jr., Director

Date: March 11, 2003 By: /s/ Gilbert M. Meyer

Gilbert M. Meyer, Director

Date: March 11, 2003 By: /s/ Charles D. Peebler, Jr.

Charles D. Peebler, Jr., Director

Date: March 11, 2003 By: /s/ Lance R. Primis

Lance R. Primis, Director

Date: March 11, 2003 By: /s/ Allan D. Schuster

Allan D. Schuster, Director

Date: March 11, 2003 By: /s/ Amy P. Williams

Amy P. Williams, Director

Certifications Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

CERTIFICATION

I, Bryce Blair, certify that:

1. I have reviewed this annual report on Form 10-K of AvalonBay Communities, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual 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-14 and 15d-14) for the registrant and have:

   a) Designed such disclosure controls and procedures 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 annual report is being prepared;

   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

   c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 11, 2003

/s/ Bryce Blair

Bryce Blair
Chairman of the Board, Chief Executive Officer and President

CERTIFICATION

I, Thomas J. Sargeant, certify that:

1. I have reviewed this annual report on Form 10-K of AvalonBay Communities, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual 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 annual 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-14 and 15d-14) for the registrant and have:

   a) Designed such disclosure controls and procedures 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 annual report is being prepared;

   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

   c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: March 11, 2003

/s/ Thomas J. Sargeant

Thomas J. Sargeant
Executive Vice President – Chief Financial Officer

Report of Independent Auditors

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

We have audited the accompanying consolidated balance sheets of AvalonBay Communities, Inc. (the "Company") as of December 31, 2002 and 2001, and the related consolidated statements of operations and other comprehensive income, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2002. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of AvalonBay Communities, Inc. at December 31, 2002 and 2001, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2002, in conformity with accounting principles generally accepted in the United States. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects, the information set forth therein.

As discussed in Note 1 to the consolidated financial statements, in 2002 the Company adopted Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." In addition, as discussed in Note 5 to the consolidated financial statements, in 2001 the Company changed its method of accounting for derivative instruments and hedging activities.

/s/ Ernst & Young LLP

McLean, Virginia
January 21, 2003

AVALONBAY COMMUNITIES, INC.

CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except per share data)

	12-31-02	12-31-01
ASSETS		
Real estate:		
Land, including land held for development	$ 929,397	$ 821,808
Buildings and improvements	3,999,826	3,432,330
Furniture, fixtures and equipment	127,643	112,378
	5,056,866	4,366,516
Less accumulated depreciation	(584,022)	(440,259)
Net operating real estate	4,472,844	3,926,257
Construction in progress (including land)	312,587	433,944
Real estate assets held for sale, net	—	30,642
Total real estate, net	4,785,431	4,390,843
Cash and cash equivalents	13,357	72,990
Cash in escrow	10,239	49,965
Resident security deposits	21,839	20,370
Investments in unconsolidated real estate entities	14,591	15,066
Deferred financing costs, net	20,424	20,357
Deferred development costs, net	31,461	26,038
Participating mortgage notes	21,483	21,483
Prepaid expenses and other assets	32,010	47,177
Total assets	$4,950,835	$4,664,289
LIABILITIES AND STOCKHOLDERS' EQUITY		
Unsecured notes	$1,985,342	$1,635,000
Variable rate unsecured credit facility	28,970	—
Mortgage notes payable	456,851	447,769
Dividends payable	51,553	49,007
Payables for construction	29,768	43,656
Accrued expenses and other liabilities	51,652	51,627
Accrued interest payable	42,954	38,841
Resident security deposits	31,762	28,641
Total liabilities	2,678,852	2,294,541
Minority interest of unitholders in consolidated partnerships	77,443	55,193
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $.01 par value; $25 liquidation preference; 50,000,000 shares authorized at both December 31, 2002 and 2001; 7,267,700 and 9,567,700 shares issued and outstanding at December 31, 2002 and December 31, 2001, respectively.	73	96
Common stock, $.01 par value; 140,000,000 shares authorized at both December 31, 2002 and 2001; 68,202,926 and 68,713,384 shares issued and outstanding at December 31, 2002 and December 31, 2001, respectively.	682	687
Additional paid-in capital	2,266,130	2,333,241
Deferred compensation	(7,855)	(7,489)
Dividends in excess of accumulated earnings	(51,850)	(3,497)
Accumulated other comprehensive loss	(12,640)	(8,483)
Total stockholders' equity	2,194,540	2,314,555
Total liabilities and stockholders' equity	$4,950,835	$4,664,289

See accompanying notes to Consolidated Financial Statements.

AVALONBAY COMMUNITIES, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
AND OTHER COMPREHENSIVE INCOME
(Dollars in thousands, except per share data)

	For the year ended		
	12-31-02	12-31-01	12-31-00
Revenue:			
Rental income	$630,502	$629,545	$564,613
Management fees	1,355	1,325	1,051
Other income	7,109	2,953	401
Total revenue	638,966	633,823	566,065
Expenses:			
Operating expenses, excluding property taxes	176,587	159,665	140,633
Property taxes	56,352	51,686	46,409
Interest expense	121,380	103,189	83,582
Depreciation expense	143,782	128,642	120,915
General and administrative expense	14,332	15,224	13,013
Impairment loss	6,800	—	—
Total expenses	519,233	458,406	404,552
Equity in income of unconsolidated entities	55	856	2,428
Interest income	3,978	6,823	4,764
Minority interest in consolidated partnerships	(2,570)	(597)	(1,908)
Income before gain on sale of communities	121,196	182,499	166,797
Gain on sale of communities	—	62,852	40,779
Income from continuing operations	121,196	245,351	207,576
Discontinued operations:			
Operating income	3,529	3,646	3,028
Gain on sale of communities	48,893	—	—
Total discontinued operations	52,422	3,646	3,028
Net income	173,618	248,997	210,604
Dividends attributable to preferred stock	(17,896)	(32,497)	(39,779)
Net income available to common stockholders	$155,722	$216,500	$170,825
Other comprehensive loss:			
Cumulative effect of change in accounting principle	—	(6,412)	—
Unrealized loss on cash flow hedges	(4,157)	(2,071)	—
Other comprehensive loss	(4,157)	(8,483)	—
Comprehensive income	$151,565	$208,017	$170,825
Earnings per common share — basic:			
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.50	$ 3.11	$ 2.53
Discontinued operations	0.76	0.08	0.05
Net income available to common stockholders	$ 2.26	$ 3.19	$ 2.58
Earnings per common share — diluted:			
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.49	$ 3.05	$ 2.49
Discontinued operations	0.74	0.07	0.04
Net income available to common stockholders	$ 2.23	$ 3.12	$ 2.53

See accompanying notes to Consolidated Financial Statements.

AVALONBAY COMMUNITIES, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(Dollars in thousands, except share data)

	Shares issued		Amount		
	Preferred stock	Common stock	Preferred stock	Common stock	Additional paid-in capital
Balance at December 31, 1999	18,322,700	65,758,009	$ 183	$ 658	$2,442,510
Net income	—	—	—	—	—
Dividends declared to common and preferred stockholders	—	—	—	—	—
Issuance of common stock	—	1,433,533	—	14	50,523
Amortization of deferred compensation	—	—	—	—	—
Balance at December 31, 2000	18,322,700	67,191,542	183	672	2,493,033
Cumulative effect of change in accounting principle	—	—	—	—	—
Net income	—	—	—	—	—
Unrealized loss on cash flow hedges	—	—	—	—	—
Dividends declared to common and preferred stockholders	—	—	—	—	—
Issuance of common stock	—	1,521,842	—	15	59,116
Redemption of preferred stock	(8,755,000)	—	(87)	—	(218,908)
Amortization of deferred compensation	—	—	—	—	—
Balance at December 31, 2001	9,567,700	68,713,384	96	687	2,333,241
Net income	—	—	—	—	—
Unrealized loss on cash flow hedges	—	—	—	—	—
Dividends declared to common and preferred stockholders	—	—	—	—	—
Issuance of common stock, net of withholdings	—	771,142	—	8	28,795
Repurchase of common stock, including repurchase costs of $39	—	(1,281,600)	—	(13)	(38,281)
Issuance of preferred stock, net of offering costs of $407	—	—	6	—	14,387
Redemption of preferred stock	(2,300,000)	—	(29)	—	(72,012)
Amortization of deferred compensation	—	—	—	—	—
Stockholders' equity, December 31, 2002	7,267,700	68,202,926	$ 73	$ 682	$2,266,130

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Deferred compensation	Dividends in excess of accumulated earnings	Accumulated other comprehensive loss	Stockholders' equity
Balance at December 31, 1999	$ (3,559)	$ (69,507)	$ —	$2,370,285
Net income	—	210,604	—	210,604
Dividends declared to common and preferred stockholders	—	(188,942)	—	(188,942)
Issuance of common stock	(3,408)	—	—	47,129
Amortization of deferred compensation	3,417	—	—	3,417
Balance at December 31, 2000	(3,550)	(47,845)	—	2,442,493
Cumulative effect of change in accounting principle	—	—	(6,412)	(6,412)
Net income	—	248,997	—	248,997
Unrealized loss on cash flow hedges	—	—	(2,071)	(2,071)
Dividends declared to common and preferred stockholders	—	(204,649)	—	(204,649)
Issuance of common stock	(7,545)	—	—	51,586
Redemption of preferred stock	—	—	—	(218,995)
Amortization of deferred compensation	3,606	—	—	3,606
Balance at December 31, 2001	(7,489)	(3,497)	(8,483)	2,314,555
Net income	—	173,618	—	173,618
Unrealized loss on cash flow hedges	—	—	(4,157)	(4,157)
Dividends declared to common and preferred stockholders	—	(209,996)	—	(209,996)
Issuance of common stock, net of withholdings	(4,463)	(508)	—	23,832
Repurchase of common stock, including repurchase costs of $39	—	(11,467)	—	(49,761)
Issuance of preferred stock, net of offering costs of $407	—	—	—	14,393
Redemption of preferred stock	—	—	—	(72,041)
Amortization of deferred compensation	4,097	—	—	4,097

Stockholders' equity, December 31, 2002	$(7,855)	$ (51,850)	$(12,640)	$2,194,540

See accompanying notes to Consolidated Financial Statements.

AVALONBAY COMMUNITIES, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	For the year ended		
	12-31-02	12-31-01	12-31-00
Cash flows from operating activities:			
Net income	$ 173,618	$ 248,997	$ 210,604
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation expense	143,782	128,642	120,915
Depreciation expense from discontinued operations	695	1,437	1,695
Amortization of deferred financing costs	3,913	3,716	2,924
Amortization of deferred compensation	4,097	3,606	3,417
Income allocated to minority interest in consolidated partnerships	2,570	597	1,908
Gain on sale of communities, net of impairment loss on planned dispositions	(42,093)	(62,852)	(40,779)
Decrease (increase) in cash in operating escrows	(104)	41	1,144
Decrease (increase) in resident security deposits, prepaid expenses and other assets	18,644	(8,503)	(15,438)
Increase in accrued expenses, other liabilities and accrued interest payable	2,987	4,925	15,693
Net cash provided by operating activities	308,109	320,606	302,083
Cash flows used in investing activities:			
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(426,830)	(353,351)	(171,985)
Acquisition of real estate assets	(106,300)	(129,300)	(252,400)
Capital expenditures — current real estate assets	(10,930)	(9,649)	(15,209)
Capital expenditures — non-real estate assets	(1,142)	(4,183)	(1,359)
Proceeds from sale of communities, net of selling costs	78,454	238,545	156,086
Increase (decrease) in payables for construction	(13,888)	23,656	1,123
Decrease (increase) in cash in section 1031 exchange escrows	39,830	(33,273)	(9,076)
Decrease (increase) in investments in unconsolidated real estate entities	475	(2,851)	34,665
Net cash used in investing activities	(440,331)	(270,406)	(258,155)
Cash flows from financing activities:			
Issuance of common stock	22,296	50,912	36,203
Repurchase of common stock	(49,761)	—	—
Issuance of preferred stock, net of related costs	14,393	—	—
Redemption of preferred stock and related costs	(72,041)	(218,995)	—
Dividends paid	(207,450)	(203,214)	(185,509)
Net borrowings (repayments) under unsecured credit facility	28,970	—	(178,600)
Issuance of mortgage notes payable	—	75,110	—
Repayments of mortgage notes payable	(24,818)	(22,265)	(35,123)
Proceeds from sale of unsecured notes, net of repayments	350,342	300,000	350,000
Payment of deferred financing costs	(3,980)	(8,808)	(4,428)
Redemption of units for cash by minority partners	(1,663)	(864)	—
Contributions from (distributions to) minority partners	16,301	(6,320)	23,142
Net cash provided by (used in) financing activities	72,589	(34,444)	5,685
Net increase (decrease) in cash and cash equivalents	(59,633)	15,756	49,613
Cash and cash equivalents, beginning of year	72,990	57,234	7,621
Cash and cash equivalents, end of year	$ 13,357	$ 72,990	$ 57,234
Cash paid during year for interest, net of amount capitalized	$ 108,903	$ 88,996	$ 72,712

See accompanying notes to Consolidated Financial Statements.

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

During the year ended December 31, 2002:

- The Company issued 102,756 units of limited partnership interest in DownREIT partnerships valued at $5,000 in connection with the formation of a DownREIT partnership and the acquisition by that partnership of land. See Note 1, "Organization and Significant Accounting Policies," of the Consolidated Financial Statements for a description of DownREIT partnerships.
- As described in Note 4, "Stockholders' Equity," of the Consolidated Financial Statements, 144,718 shares of common stock were issued, 34,876 shares were withheld to satisfy employees' tax withholding and other liabilities and 2,818 shares were forfeited, for a net value of $5,999.
- The Company assumed $33,900 in variable rate, tax-exempt debt related to the acquisition of one community.
- The Company recorded a liability and a corresponding charge to other comprehensive loss of $4,157 to adjust the Company's Hedged Derivatives (as defined in Note 5, "Derivative Instruments and Hedging Activities," of the Consolidated Financial Statements) to their fair value.
- Common and preferred dividends declared but not paid totaled $51,553.

During the year ended December 31, 2001:

- 762 units of limited partnership, valued at $36, were presented for redemption to the DownREIT partnership that issued such units and were acquired by the Company in exchange for an equal number of shares of the Company's common stock.
- The Company issued 619 units of limited partnership in DownREIT partnerships valued at $30 as consideration for acquisitions of apartment communities that were acquired pursuant to the terms of a forward purchase contract agreed to in 1997 with an unaffiliated party. In addition, the Company issued 256,940 units of limited partnership in a DownREIT partnership valued at $12,274 in connection with the formation of a DownREIT partnership and the acquisition by that partnership of land.
- 186,877 shares of common stock were issued at a value of $8,570 and 19,646 shares were forfeited at a value of $235.
- $67 of deferred stock units were converted into 1,803 shares of common stock.
- The Company recorded a liability and a corresponding charge to other comprehensive loss of $8,483 to adjust the Company's Hedged Derivatives to their fair value.
- Common and preferred dividends declared but not paid were $49,007.

During the year ended December 31, 2000:

- 1,520 units of limited partnership in DownREIT partnerships, valued at $60, were issued in connection with an acquisition for cash and units pursuant to a forward purchase contract agreed to in 1997 with an unaffiliated party.
- 304,602 units of limited partnership in DownREIT partnerships, valued at $10,926, were exchanged for an equal number of shares of the Company's common stock.
- 139,336 shares of common stock were issued at a value of $4,703 and 50,310 shares were forfeited at a value of $1,668.
- Real estate assets valued at $5,394 were contributed to a limited liability company in exchange for a 25% membership interest.
- Common and preferred dividends declared but not paid totaled $47,572.

AVALONBAY COMMUNITIES, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(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 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, as amended. The Company focuses on the ownership and operation of upscale apartment communities in high barrier-to-entry markets of the United States. These markets are located in the Northeast, Mid-Atlantic, Midwest, Pacific Northwest, and Northern and Southern California regions of the country.

At December 31, 2002, the Company owned or held a direct or indirect ownership interest in 137 operating apartment communities containing 40,179 apartment homes in eleven states and the District of Columbia, of which two communities containing 1,089 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 3,429 apartment homes when completed. The Company also owned a direct or indirect ownership interest in rights to develop an additional 38 communities that, if developed in the manner expected, will contain an estimated 9,950 apartment homes.

Principles of Consolidation

The Company is the surviving corporation from the merger (the "Merger") of Bay Apartment Communities, Inc. ("Bay") and Avalon Properties, Inc. ("Avalon") on June 4, 1998, in which Avalon shareholders received 0.7683 of a share of common stock of the Company for each share owned of Avalon common stock. The Merger was accounted for under the purchase method of accounting, with the historical financial statements for Avalon presented prior to the Merger. At that time, Avalon ceased to legally exist, and Bay as the surviving legal entity adopted the historical financial statements of Avalon. Consequently, Bay's assets were recorded in the historical financial statements of Avalon at an amount equal to Bay's debt outstanding at that time plus the value of capital stock retained by the Bay stockholders, which approximates fair value. In connection with the Merger, the Company changed its name from Bay Apartment Communities, Inc. to AvalonBay Communities, Inc.

The accompanying Consolidated Financial Statements include the accounts of the Company and its wholly-owned partnerships and certain joint venture partnerships in addition to subsidiary partnerships structured as DownREITs. All significant intercompany balances and transactions have been eliminated in consolidation.

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 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. Each DownREIT partnership has been structured so that it is unlikely the limited partners will be entitled to a distribution greater than the initial distribution provided for in the partnership agreement. The holders of units of limited partnership interest have the right to present each unit of limited partnership interest for redemption for cash equal to the fair market value of a share of the Company's common stock on the date of redemption. In lieu of a cash redemption of a limited partner's unit, the Company may elect to acquire any unit presented for redemption for one share of common stock.

The Company accounts for investments in unconsolidated entities in accordance with Accounting Principles Board ("APB") Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock," and Statement of Position ("SOP") 78-9, "Accounting for Investments in Real Estate Ventures." The Company uses the equity

method to account for investments in which it owns greater than 20% of the equity value or has significant and disproportionate influence over that entity. Investments in which the Company owns 20% or less of the equity value and does not have significant and disproportionate influence are accounted for using the cost method. If there is an event or change in circumstance that indicates a loss in the value of an investment, the Company's policy is to record the loss and reduce the value of the investment to its fair value. A loss in value would be indicated if the Company could not recover the carrying value of the investment or if the investee could not sustain an earnings capacity that would justify the carrying amount of the investment. The Company did not recognize an impairment loss on any of its investments in unconsolidated entities during the year ended December 31, 2002. However, during the year ended December 31, 2001, the Company recorded an impairment loss of $934 related to a technology investment in which the Company no longer owns an equity interest.

Revenue Recognition

Rental income related to leases is recognized on an accrual basis when due from residents in accordance with SEC Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements." 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 following reconciles total revenue in conformity with generally accepted accounting principles ("GAAP") to total revenue adjusted to state concessions on a cash basis for the years ended December 31, 2002, 2001 and 2000:

	For the year ended		
	12-31-02	**12-31-01**	**12-31-00**
Total revenue (GAAP basis)	$638,966	$633,823	$566,065
Concessions amortized	11,044	4,005	3,043
Concessions granted	(17,356)	(6,362)	(2,349)
Total revenue adjusted to state concessions on a cash basis	$632,654	$631,466	$566,759

Real Estate

Significant expenditures which improve or extend the life of an asset are capitalized. The operating real estate assets are stated at cost and consist of land, buildings and improvements, furniture, fixtures and equipment, and other costs incurred during their development, redevelopment and acquisition. Expenditures for maintenance and repairs are charged to operations 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. The Company generally expenses purchases of personal property made for replacement purposes.

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

In accordance with Statement of Financial Accounting Standards ("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. Future development of these communities is dependent upon various factors, including zoning and

regulatory approval, rental market conditions, construction costs and availability of capital. A charge to expense is included in operating expenses, excluding property taxes on the accompanying Consolidated Statements of Operations and Other Comprehensive Income to provide an allowance for potentially unrecoverable deferred development costs.

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.

Lease terms for apartment homes are generally one year or less. Rental income and operating costs incurred during the initial lease-up or post-redevelopment lease-up period are fully recognized as they accrue.

If there is an event or change in circumstance that indicates an impairment in the value of an operating community, the Company's policy is to assess any impairment in value by making a comparison of the current and projected operating cash flows of the community over its remaining useful life, on an undiscounted basis, to the carrying amount of the community. If such carrying amounts are in excess of the estimated projected operating cash flows of the community, the Company would recognize an impairment loss equivalent to an amount required to adjust the carrying amount to its estimated fair market value. The Company has not recognized an impairment loss in 2002, 2001 or 2000 on any of its operating communities. However, the Company recognized an impairment loss in 2002 related to land planned for disposition as of December 31, 2002. See Note 7, "Discontinued Operations – Real Estate Assets Held for Sale" of the Consolidated Financial Statements.

Income Taxes

The Company elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, for the year ended December 31, 1994 and has 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, the Company generally will not be subject to corporate level federal income tax on taxable income it distributes currently to its stockholders. Management believes that all such conditions for the avoidance of income taxes have been met for the periods presented. Accordingly, no provision for federal and state income taxes has been made. If the Company fails to qualify as a REIT in any taxable year, it will be subject to federal income taxes at regular corporate rates (including any applicable alternative minimum tax) and may not be able to qualify as a REIT for four subsequent taxable years. Even if the Company qualifies for taxation as a REIT, the Company may be subject to certain state and local taxes on its income and property, and to federal income and excise taxes on its undistributed taxable income. In addition, taxable income from non-REIT activities managed through taxable REIT subsidiaries is subject to federal, state and local income taxes.

The following reconciles net income available to common stockholders to taxable net income for the years ended December 31, 2002, 2001 and 2000:

	2002 Estimate	2001 Actual	2000 Actual
Net income available to common stockholders	$155,722	$216,500	$170,825
Dividends attributable to Preferred Stock, not deductible for tax	17,896	32,497	39,779
GAAP gain on sale of communities less than (in excess of) tax gain	5,164	(21,223)	(15,146)
Depreciation/Amortization timing differences on real estate	(5,893)	(4,899)	(826)
Tax compensation expense in excess of GAAP	(8,568)	(11,129)	(5,873)
Other adjustments	1,395	(124)	(1,157)
Taxable net income	$165,716	$211,622	$187,602

The following summarizes the tax components of the Company’s common and preferred dividends declared for the years ended December 31, 2002, 2001 and 2000:

	2002	2001	2000
Ordinary income	74%	80%	86%
20% capital gain	23%	14%	9%
Unrecaptured §1250 gain	3%	6%	5%

Deferred Financing Costs

Deferred financing costs include fees and costs incurred 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 written-off when debt is retired before the maturity date. Accumulated amortization of deferred financing costs was $15,765 and $11,916 at December 31, 2002 and 2001, respectively.

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. The majority of the Company’s cash, cash equivalents and cash in escrows is held at major commercial banks.

Interest Rate Contracts

The Company utilizes derivative financial instruments to manage interest rate risk and has designated these financial instruments as hedges under the guidance of SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” and SFAS No. 138, “Accounting for Certain Instruments and Certain Hedging Activities, an Amendment of Statement No. 133.” For fair value hedge transactions, changes in the fair value of the derivative instrument and changes in the fair value of the hedged item due to the risk being hedged are recognized in current period earnings. For cash flow hedge transactions, changes in the fair value of the derivative instrument are reported in other comprehensive income. For cash flow hedges where the changes in the fair value of the derivative exceeds the change in fair value of the hedged item, the ineffective portion is recognized in current period earnings. Derivatives which are not part of a hedge relationship are recorded at fair value through earnings. As of December 31, 2002, the Company has approximately $166,000 in variable rate tax-exempt debt subject to cash flow hedges. See Note 5, “Derivative Instruments and Hedging Activities,” of the Consolidated Financial Statements.

Comprehensive Income

Comprehensive income, which is defined as all changes in equity during each period except for those resulting from investments by or distributions to shareholders, is displayed in the accompanying Consolidated Statements of Stockholders' Equity. Accumulated other comprehensive loss reflects the changes in the fair value of effective cash flow hedges.

Earnings per Common Share

In accordance with the provisions of SFAS No. 128, "Earnings per Share," basic earnings per share is computed by dividing earnings available to common shareholders by the weighted average number of shares outstanding during the period. 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 year ended		
	12-31-02	12-31-01	12-31-00
Basic and Diluted shares outstanding			
Weighted average common shares — basic	68,772,139	67,842,752	66,309,707
Weighted average DownREIT units outstanding	988,747	682,134	861,755
Effect of dilutive securities	913,325	1,256,833	969,536
Weighted average common shares and DownREIT units — diluted	70,674,211	69,781,719	68,140,998
Calculation of Earnings per Share — Basic			
Net income available to common stockholders	$ 155,722	$ 216,500	$ 170,825
Weighted average common shares — basic	68,772,139	67,842,752	66,309,707
Earnings per common share — basic	$ 2.26	$ 3.19	$ 2.58
Calculation of Earnings per Share — Diluted			
Net income available to common stockholders	$ 155,722	$ 216,500	$ 170,825
Add: Minority interest of DownREIT unitholders in consolidated partnerships	1,601	1,559	1,759
Adjusted net income available to common stockholders	$ 157,323	$ 218,059	$ 172,584
Weighted average common shares and DownREIT units — diluted	70,674,211	69,781,719	68,140,998
Earnings per common share — diluted	$ 2.23	$ 3.12	$ 2.53

For each of the years presented, certain options to purchase shares of common stock were outstanding, but were not included in the computation of diluted earnings per share because the options' exercise prices were greater than the average market price of the common shares for the period. The number of options not included totaled 1,410,397, 18,269 and 7,500 in 2002, 2001 and 2000, respectively.

In 2002, 42,697 units of limited partnership ("DownREIT units") were presented for redemption and were purchased by the Company for $1,663. In addition, the Company issued 102,756 DownREIT units valued at $5,000 in connection with the acquisition of land. In 2001, 762 DownREIT units, valued at $36, were exchanged for an equal number of shares of the Company's common stock, and 22,076 DownREIT units were presented for redemption and purchased by the Company for $864. The Company also issued 257,559 DownREIT units valued at $12,304 as consideration for acquisitions of apartment communities and land. In 2000, 1,520 DownREIT units, valued at $60, were issued as partial consideration for the acquisition of an apartment community. In addition, 304,602 DownREIT units, valued at $10,926, were exchanged for an equal number of shares of the Company's common stock.

Stock-Based Compensation

During the years ended December 31, 2002, 2001 and 2000, the Company applied the intrinsic value method as provided in APB Opinion No. 25, "Accounting for Stock Issued to Employees," and related interpretations, in accounting for its employee stock options. No stock-based employee compensation cost is reflected in net income, as all options granted under those plans had an exercise price equal to the market value of the underlying common stock on the date of grant. See Note 10, "Stock-Based Compensation Plans," for information regarding the effect on net income and earnings per share if the Company had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," to stock-based employee compensation.

Business Interruption Insurance

During 2000, a fire occurred at one of the Company's development communities, which was under construction and unoccupied at the time. The Company had property damage and business interruption insurance which covered this event. Business interruption insurance proceeds of $5,800 and $2,500 are included in other income in the accompanying Consolidated Statements of Operations and Other Comprehensive Income for the years ended December 31, 2002 and 2001, respectively. This settlement was finalized in 2002.

Executive Separation Costs

In February 2001, the Company announced certain management changes including the departure of a senior executive who became entitled to severance benefits in accordance with the terms of his employment agreement with the Company. The Company recorded a charge of approximately $2,500 in the first quarter of 2001 related to the costs associated with such departure.

In December 2001, a senior executive of the Company retired from his management position. Upon retirement, the Company recognized compensation expense of approximately $784, relating to the accelerated vesting of restricted stock grants.

Recently Issued Accounting Standards

In May 2002, SFAS No. 145, "Rescission of FASB Statements No. 4, 44 and 64, Amendment of FASB Statement No. 13 and Technical Corrections" was issued. SFAS No. 145, among other items, rescinds SFAS No. 4, "Reporting Gains and Losses from Extinguishments of Debt," which provided that gains and losses from early debt retirements be treated as extraordinary items. Under SFAS No. 145, gains and losses from early debt retirements will only be treated as extraordinary items if they meet the criteria for extraordinary items under APB No. 30. This statement is effective for fiscal years beginning after May 15, 2002. The Company will adopt this pronouncement effective January 1, 2003, but does not expect it to have a material impact on its financial condition or results of operations.

In June 2002, SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" was issued. This statement addresses financial accounting and reporting for costs associated with exit or disposal activities and nullifies Emerging Issues Task Force Issue No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity." Under SFAS No. 146, a liability for costs associated with exit or disposal activities is only to be recognized when the liability is incurred and the definition of a liability under Concepts Statement No. 6 is met, rather than at the date of an entity's commitment to an exit or disposal plan. This statement is effective for exit or disposal activities that are initiated after December 31, 2002. The Company will adopt this pronouncement effective January 1, 2003, but does not expect it to have a material impact on its financial condition or results of operations.

In November 2002, the Financial Accounting Standards Board ("FASB") issued Interpretation No. ("FIN") 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Direct Guarantees of Indebtedness of Others." FIN 45 elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also clarifies that a guarantor is required to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. The Company will apply the initial recognition and initial measurement provisions of FIN 45 on a prospective basis for any guarantees issued or modified after December 31, 2002, but

does not expect the adoption of FIN 45 to have a material impact on its financial condition or results of operations.

In December 2002, the FASB issued SFAS No. 148, “Accounting for Stock-Based Compensation – Transition and Disclosure,” which amends SFAS No. 123, “Accounting for Stock-Based Compensation.” SFAS No. 148 provides alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS No. 148 amends the disclosure requirements of SFAS No. 123 on both an annual and interim basis to require more prominent and more frequent disclosures in financial statements about the effects of stock-based compensation. The transition guidance and annual disclosure provisions of SFAS No. 148 are effective for fiscal years ending after December 15, 2002 while the interim disclosure provisions are effective for interim periods beginning after December 15, 2002.

In January 2003, the FASB issued FIN 46, “Consolidation of Variable Interest Entities,” which changes the guidelines for consolidation of and disclosure related to unconsolidated entities, if those unconsolidated entities qualify as variable interest entities, as defined in FIN 46. The provisions of FIN 46 are to be applied effective immediately for variable interest entities created after January 31, 2003, and effective July 1, 2003 for variable interest entities created prior to February 1, 2003. If it is reasonably possible that an enterprise will consolidate or disclose information about a variable interest entity when FIN 46 becomes effective, the enterprise should make certain disclosures in all financial statements initially issued after January 31, 2003, regardless of the date on which the variable interest entity was created. The Company does not believe that it is reasonably possible that the adoption of FIN 46 will result in the consolidation of any previously unconsolidated entities. The adoption of FIN 46 may result in additional disclosure about a limited number of investments in variable interest entities, but such disclosure is not expected to be material.

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.

Discontinued Operations

On January 1, 2002, the Company adopted SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” which requires that the assets and liabilities and the results of operations of any communities which have been sold during 2002, or otherwise qualify as held for sale as of December 31, 2002, be presented as discontinued operations in the Company’s Consolidated Financial Statements in both current and prior periods presented. The community specific components of net income that are presented as discontinued operations include net operating income, depreciation and interest expense. 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. This change in presentation will not have any impact on the Company’s financial condition or results of operations. Real estate assets held for sale will continue to be measured at the lower of the carrying amount or the fair value less the cost to sell, and are presented separately in the accompanying Consolidated Balance Sheets. Subsequent to classification of a community as held for sale, no further depreciation is recorded on the assets.

Reclassifications

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

2. Interest Capitalized

Capitalized interest associated with communities under development or redevelopment totaled $29,937, $27,635 and $18,328 for the years ended December 31, 2002, 2001 and 2000, 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 December 31, 2002 and 2001 are summarized as follows:

	12-31-02	12-31-01
Fixed rate unsecured notes (1)	$1,985,342	$1,635,000
Fixed rate mortgage notes payable — conventional and tax-exempt (2)	311,981	322,495
Variable rate mortgage notes payable — tax-exempt	108,781	67,960
Total notes payable and unsecured notes	2,406,104	2,025,455
Variable rate secured short-term construction loan	36,089	57,314
Variable rate unsecured credit facility	28,970	—
Total mortgage notes payable, unsecured notes and unsecured credit facility	$2,471,163	$2,082,769

(1) Balance at December 31, 2002 includes $342 of debt premium received at issuance of unsecured notes.

(2) Includes approximately $166,000 of variable rate notes in both years effectively fixed through Hedged Derivatives, as described in Note 5, "Derivative Instruments and Hedging Activities," of the Consolidated Financial Statements.

During the year ended December 31, 2002, the Company assumed $33,900 in variable rate, tax-exempt debt related to a community acquisition and repaid $21,225 related to a short-term construction loan, in addition to normal monthly principal and interest payments. In the aggregate, mortgage notes payable, excluding the short-term construction loan, mature at various dates from May 2004 through February 2041 and are collateralized by certain apartment communities. As of December 31, 2002, the Company has guaranteed approximately $149,000 of mortgage notes payable held by 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 6.6% and 6.7% at December 31, 2002 and 2001, respectively. The weighted average interest rate of the Company's variable rate mortgage notes payable and its unsecured credit facility (as discussed below), including the effect of certain financing related fees, was 3.5% and 3.1% at December 31, 2002 and 2001, respectively.

During the year ended December 31, 2002, the Company issued $450,000 in additional unsecured notes. The Company repaid $100,000 of previously issued unsecured notes pursuant to their scheduled maturity, and no prepayment fees were incurred. The Company's unsecured notes contain a number of financial and other covenants with which the Company must comply, including, but not limited to, limits on the aggregate amount of total and secured indebtedness the Company may have on a consolidated basis and limits on the Company's required debt service payments.

Scheduled payments and maturities of mortgage notes payable and unsecured notes outstanding at December 31, 2002 are as follows:

Year	Secured notes payments	Secured notes maturities	Unsecured notes maturities	Interest rate of unsecured notes
2003	$ 4,104	$ 36,089	$ 50,000	6.250%
			100,000	6.500%
2004	4,055	24,106	125,000	6.580%
2005	4,341	—	100,000	6.625%
			50,000	6.500%
2006	4,647	—	150,000	6.800%
2007	4,976	35,980	110,000	6.875%
			150,000	5.000%
2008	5,327	—	50,000	6.625%
			150,000	8.250%
2009	5,704	10,400	150,000	7.500%
2010	5,293	29,388	200,000	7.500%
2011	5,664	—	300,000	6.625%
			50,000	6.625%
2012	5,401	12,095	250,000	6.125%
Thereafter	123,425	135,856	—	
	$172,937	$283,914	$1,985,000	

The Company has a $500,000 revolving variable rate unsecured credit facility with J.P. Morgan Chase and Fleet National Bank serving as co-agents for a syndicate of commercial banks, which had $28,970 and $0 outstanding and $79,999 and $85,420 in letters of credit on December 31, 2002 and 2001, respectively. Under the terms of the unsecured credit facility, if the Company elects to increase the facility up to $650,000, and one or more banks (from the syndicate or otherwise) voluntarily agree to provide the additional commitment, then the Company will be able to increase the facility up to $650,000, and no member of the syndicate of banks can prohibit such increase; such an increase in the facility will only be effective to the extent banks (from the syndicate or otherwise) choose to commit to lend additional funds. The Company pays participating banks, in the aggregate, an annual facility fee of $750 in equal quarterly installments. The unsecured 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 0.60% per annum (1.98% on December 31, 2002). Pricing could vary if there is a change in rating by either of the two leading national rating agencies; a change in rating of one level would impact the unsecured credit facility pricing by 0.05% to 0.15%. In addition, the unsecured 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 unsecured credit facility for up to $400,000. The Company is subject to certain customary covenants under the unsecured credit facility, including, but not limited to, maintaining certain maximum leverage ratios, a minimum fixed charges coverage ratio, minimum unencumbered assets and equity levels and restrictions on paying dividends in amounts that exceed 95% of the Company's Funds from Operations, as defined therein. The existing facility matures in May 2005 assuming exercise of a one-year renewal option by the Company.

4. Stockholders' Equity

As of both December 31, 2002 and 2001, the Company had authorized for issuance 140,000,000 and 50,000,000 shares of common and preferred stock, respectively. Dividends on all series of issued preferred stock are cumulative from the date of original issue and are payable quarterly in arrears on or before the 15th day of each month as stated in the table below. None of the series of preferred stock are redeemable prior to the date stated in the table below, but on or after the stated date, may be redeemed for cash at the option of the Company in whole or in part at a redemption price of $25.00 per share, plus all accrued and unpaid dividends, if any. In July 2002, the Company redeemed all 2,300,000 outstanding shares of its 8.50% Series C Cumulative Redeemable Preferred Stock at a price of $25.00 per share, plus $0.1417 in accrued and unpaid dividends, for an aggregate redemption price of $57,826, including accrued dividends of $326. The redemption price was funded in part by the sale on July 11, 2002 of 592,000 shares of Series I Cumulative Redeemable Preferred Stock through a private placement to an institutional investor for a net purchase price of $14,504. The dividend rate on such shares was initially equal to 3.36% per annum (three month LIBOR plus 1.5%) of the liquidation preference. As permitted under the terms of such preferred stock, the Company redeemed all of the Series I Cumulative Redeemable Preferred Stock on August 29, 2002 for an aggregate redemption price of $14,609 including accrued dividends of $68. The series of preferred stock outstanding have no stated maturity and are not subject to any sinking fund or mandatory redemptions. Preferred stock outstanding as of December 31, 2002 were as follows:

Series	Shares outstanding December 31, 2002	Payable quarterly	Annual rate	Liquidation preference	Non-redeemable prior to
D	3,267,700	March, June, September, December	8.00%	$ 25	December 15, 2002 — Currently Redeemable
H	4,000,000	March, June, September, December	8.70%	$ 25	October 15, 2008

During the year ended December 31, 2002, the Company (i) issued 664,118 shares of common stock in connection with stock options exercised, (ii) issued 144,718 common shares in connection with stock grants to employees of which 80% are restricted, (iii) had forfeitures of 2,818 shares of restricted stock grants to employees and (iv) withheld 34,876 shares to satisfy employees' tax withholding and other liabilities.

In addition, the Company announced in July 2002 that its Board of Directors had authorized a common stock repurchase program. Under this program, the Company may acquire shares of its common stock in open market or negotiated transactions up to an aggregate purchase price of $100,000. Actual purchases of stock will vary with market conditions. The size of the stock repurchase program was designed so that retained cash flow, as well as the proceeds from sales of existing apartment communities and a reduction in planned acquisitions, will provide the source of funding for the program, with the Company's unsecured credit facility providing temporary funding as needed. As of December 31, 2002, the Company had repurchased 1,281,600 shares of common stock at an aggregate cost of $49,722 through this program.

Dividends per common share for the years ended December 31, 2002, 2001 and 2000 were $2.80, $2.56 and $2.24 per share, respectively. In 2002, dividends for preferred shares redeemed during the year were $0.92 per share and dividends for all non-redeemed preferred shares were $2.10 per share. In 2001, dividends for preferred shares redeemed during the year were $1.41 per share and dividends for all non-redeemed preferred shares were $2.10 per share. Dividends were $2.17 per preferred share in 2000.

5. Derivative Instruments and Hedging Activities

The Company has historically used interest rate swap and cap agreements (collectively, the "Hedged Derivatives") to reduce the impact of interest rate fluctuations on its variable rate tax-exempt bonds. The Company has not entered into any interest rate hedge agreements or treasury locks for its conventional unsecured debt and does not hold interest rate hedge agreements for trading or other speculative purposes. As of December 31, 2002, the effect of Hedged Derivatives is to fix approximately $166,000 of the Company's tax-exempt debt at a weighted average interest rate of 5.9% with an average maturity of 3.7 years. In addition, a Hedged Derivative exists to fix the interest rate on approximately $22,500 of the Company's unconsolidated variable rate debt as of December 31, 2002. These Hedged

Derivatives are accounted for in accordance with SFAS No. 133, which as amended, was adopted by the Company on January 1, 2001. SFAS No. 133 requires that every derivative instrument be recorded on the balance sheet as either an asset or liability measured at its fair value, with changes in fair value recognized currently in earnings unless specific hedge accounting criteria are met.

The Company has determined that its Hedged Derivatives qualify as effective cash-flow hedges under SFAS No. 133, resulting in the Company recording all changes in the fair value of the Hedged Derivatives in other comprehensive income. Amounts recorded in other comprehensive income will be reclassified into earnings in the period in which earnings are affected by the hedged cash flows. At January 1, 2001, in accordance with the transition provisions of SFAS No. 133, the Company recorded a cumulative effect adjustment of $6,412 to other comprehensive loss to recognize at fair value all of the derivatives that are designated as cash flow hedging instruments. During the years ended December 31, 2002 and 2001, the Company recorded additional unrealized losses to other comprehensive loss of $4,157 and $2,599, respectively, to adjust the Hedged Derivatives to their fair value. In addition, a Swap Agreement with a fair value of $528 was transferred in connection with the sale of a community during the first quarter of 2001. The estimated amount, included in accumulated other comprehensive loss as of December 31, 2002, expected to be reclassified into earnings within the next twelve months to offset the variability of cash flows during this period is not material.

The Company assesses, both at inception and on an on-going basis, the effectiveness of all hedges in offsetting cash flows of hedged items. Hedge ineffectiveness did not have a material impact on earnings and the Company does not anticipate that it will have a material effect in the future. The fair values of the obligations under the Hedged Derivatives are included in accrued expenses and other liabilities on the accompanying Consolidated Balance Sheets.

By using derivative financial instruments to hedge exposures to changes in interest rates, the Company exposes itself to credit risk and market risk. The credit risk is the risk of a counterparty not performing under the terms of the Hedged Derivatives. The counterparties to these Hedged Derivatives are major financial institutions which have an A+ or better credit rating by the Standard & Poor’s Ratings Group. The Company monitors the credit ratings of counterparties and the amount of the Company’s debt subject to Hedged Derivatives with any one party. Therefore, the Company believes the likelihood of realizing material losses from counterparty non-performance is remote. Market risk is the adverse effect of the value of financial instruments that results from a change in interest rates. The market risk associated with interest-rate contracts is managed by the establishment and monitoring of parameters that limit the types and degree of market risk that may be undertaken. These risks are managed by the Company’s Chief Financial Officer and Vice President of Finance.

6. Investments in Unconsolidated Entities

Investments in Unconsolidated Real Estate Entities

As of December 31, 2002, the Company had investments in the following unconsolidated real estate entities, which are accounted for under the equity method of accounting, except as described below:

- *Falkland Partners, LLC* was formed as a general partnership in July 1985 to own and operate Falkland Chase, a 450 apartment-home community located in Silver Spring, Maryland. In 1993, Avalon acquired a 50% ownership and economic interest in the partnership for an investment of $2,200. The Company, as successor by merger to Avalon in 1998, became the managing member of the limited liability company in 2000 after conversion from a general partnership. The Company has responsibility for the day-to-day operations of the Falkland Chase community and is the management agent subject to the terms of a management agreement. As of December 31, 2002, Falkland Chase has $24,695 of tax-exempt floating rate debt outstanding (1.0% as of December 31, 2002), which matures in December 2030.

- *Town Run Associates* was formed as a general partnership in November 1994 to develop, own and operate Avalon Run, a 426 apartment-home community located in Lawrenceville, New Jersey. Since formation of this venture, the Company has invested $1,803 and, following a preferred return on all

contributed equity (which was achieved in 2002), has a 40% ownership and cash flow interest with a 49% residual economic interest. The Company is responsible for the day-to-day operations of the Avalon Run community and is the management agent subject to the terms of a management agreement. The development of Avalon Run was funded entirely through equity contributions from Avalon as well as the other venture partner, and therefore Avalon Run is not subject to any outstanding debt as of December 31, 2002.

- *Town Grove, LLC* was formed as a limited liability corporation in December 1997 to develop, own and operate Avalon Grove, a 402 apartment-home community located in Stamford, Connecticut. Since formation of this venture, the Company has invested $14,653 and, following a preferred return on all contributed equity (which was achieved in 2002), has a 49% ownership and a 50% cash flow and residual economic interest. The Company is responsible for the day-to-day operations of the Avalon Grove community and is the management agent subject to the terms of a management agreement. The development of Avalon Grove was funded through contributions from the Company and the other venture partner, and therefore Avalon Grove is not subject to any outstanding debt as of December 31, 2002.

- *Avalon Terrace, LLC* — The Company acquired Avalon Bedford, a 388 apartment-home community located in Stamford, Connecticut in December 1998. In May 2000, the Company transferred Avalon Bedford to Avalon Terrace, LLC and subsequently admitted a joint venture partner, while retaining a 25% ownership interest in this limited liability company for an investment of $5,394 and a right to 50% of cash flow distributions after achievement of a threshold return (which was not achieved in 2002). The Company is responsible for the day-to-day operations of the Avalon Bedford community and is the management agent subject to the terms of a management agreement. As of December 31, 2002, Avalon Bedford has $22,500 in variable rate debt outstanding, which came due in November 2002, but was extended until November 2005. The interest rate on this debt is fixed through a Hedged Derivative as discussed in Note 5, “Derivative Instruments and Hedging Activities.”

- *Arna Valley View Limited Partnership* — In connection with the municipal approval process for the development of two consolidated communities, the Company agreed to participate in the formation of a limited partnership in February 1999 to develop, finance, own and operate Arna Valley View, a 101 apartment-home community located in Arlington, Virginia. This community has affordable rents for 100% of apartment homes related to the tax-exempt bond financing and tax credits used to finance construction of the community. A subsidiary of the Company is the general partner of the partnership with a 0.01% ownership interest. The Company is responsible for the day-to-day operations of the community, and is the management agent subject to the terms of a management agreement. As of December 31, 2002, Arna Valley View has $6,150 of variable rate tax-exempt bonds outstanding, which mature in June 2032. In addition, Arna Valley View has $4,134 of 4% fixed rate county bonds outstanding that mature in December 2030. Due to the Company’s limited ownership and investment in this venture, it is accounted for using the cost method.

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

	(Unaudited)	
	12-31-02	12-31-01
Assets:		
Real estate, net	$136,096	$136,679
Other assets	5,323	10,886
Total assets	$141,419	$147,565
Liabilities and partners' equity:		
Mortgage notes payable	$ 47,195	$ 47,195
Other liabilities	3,820	5,172
Partners' equity	90,404	95,198
Total liabilities and partners' equity	$141,419	$147,565

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

	For the year ended (unaudited)		
	12-31-02	12-31-01	12-31-00
Rental income	$27,678	$28,746	$22,653
Operating and other expenses	(9,604)	(9,098)	(6,295)
Interest expense, net	(2,125)	(2,402)	(1,209)
Depreciation expense	(4,988)	(4,253)	(3,287)
Net income	$10,961	$12,993	$11,862

The financial position and operating results in the preceding tables reflect reclassifications made to amounts in prior years' financial statements to conform with current year presentations. The Company also holds a 25% limited liability company membership interest in the limited liability company that owns Avalon on the Sound, which is presented on a consolidated basis in the financial statements in accordance with GAAP due to the Company's control over that entity.

Investments in Unconsolidated Non-Real Estate Entities

At December 31, 2002, the Company holds minority interest investments in five non-real estate entities, three of which are technology companies. Based on ownership and control criteria, the Company accounts for two of these investments using the equity method, with the remaining non-real estate investments accounted for at cost. During the years ended December 31, 2002, 2001 and 2000, the Company recorded losses of $3,166, $1,730 and $719, respectively, related to Realeum, Inc., one of the two investments accounted for under the equity method, bringing the carrying value of this investment to zero as of December 31, 2002. The aggregate carrying value of the Company's investment in unconsolidated non-real estate entities was $1,855 and $2,737 as of December 31, 2002 and 2001, respectively.

The following is a summary of the Company's equity in income of unconsolidated entities for the years presented:

	For the year ended		
	12-31-02	12-31-01	12-31-00
Town Grove, LLC	$ 1,391	$ 1,977	$1,977
Falkland Partners, LLC	1,058	924	577
Town Run Associates	481	606	555
Avalon Terrace, LLC	253	(3)	38
Realeum, Inc.	(3,166)	(1,730)	(719)
Other unconsolidated non-real estate entities	38	(918)	—
Total	$ 55	$ 856	$2,428

7. Discontinued Operations – Real Estate Assets Held for Sale

The Company has a policy of disposing of assets that are not consistent with its long-term investment criteria when market conditions are favorable. In connection with this strategy, the Company solicits competing bids from unrelated parties for individual assets, and considers the sales price and tax ramifications of each proposal. During the year ended December 31, 2002, the Company sold one community, as summarized below:

Community Name	Location	Period of sale	Apartment homes	Debt	Gross sales price	Net proceeds
Longwood	Brookline, MA	4Q02	277	$ —	$ 80,100	$ 78,454
Total of all 2002 asset sales			277	$ —	$ 80,100	$ 78,454
Total of all 2001 asset sales			2,551	$ 8,145	$241,130	$230,400
Total of all 2000 asset sales			1,932	$31,694	$160,085	$124,392

As of December 31, 2002, the Company did not have any communities that qualified as held for sale under the provisions of SFAS No. 144. However, as required under SFAS No. 144, the operations for the community sold in 2002 have been presented as discontinued operations. Accordingly, certain reclassifications have been made in prior years to reflect the results of operations for this community as discontinued operations, consistent with current year presentation. The following is a summary of income from discontinued operations for the years presented:

	For the year ended (unaudited)		
	12-31-02	12-31-01	12-31-00
Rental income	$ 6,707	$ 7,834	$ 7,330
Operating and other expenses	(2,481)	(2,737)	(2,580)
Interest expense, net	(2)	(14)	(27)
Depreciation expense	(695)	(1,437)	(1,695)
Gain on sale	48,893	—	—
Income from discontinued operations	$52,422	$ 3,646	$ 3,028

In addition, the accompanying Consolidated Balance Sheets include net real estate of $30,642, other assets (excluding net real estate) of $103 and liabilities of $820 as of December 31, 2001 relating to this community.

As of December 31, 2002, the Company has determined that two land parcels with an aggregate carrying value (prior to adjustment) of $26,739 would not likely proceed to development and are planned for disposition. Although these assets do not qualify as held for sale under the provisions of SFAS No. 144, the Company performed an analysis of the carrying value of these assets in connection with this change in anticipated use. As a result, the

Company recorded an impairment loss of $6,800 during the year ended December 31, 2002 to reflect these parcels at fair market value (based on their entitlement status as of December 31, 2002), less estimated selling costs. See Note 14, "Subsequent Events," of the Consolidated Financial Statements.

8. Commitments and Contingencies

Employment Agreements and Arrangements

As of December 31, 2002, the Company has employment agreements with six executive officers. The employment agreements provide for severance payments and generally also provide for accelerated vesting of stock options and restricted stock in the event of a termination of employment (except for a termination by the Company with cause or a voluntary termination by the employee). The current term of these agreements ends on dates that vary between December 2003 and December 2006. The employment agreements provide for one-year automatic renewals (two years in the case of the CEO) after the initial term unless an advance notice of non-renewal is provided by either party. Under five of the agreements, upon a notice of non-renewal by the Company, the officer may terminate his employment and receive a severance payment. Upon a change in control, the agreements provide for an automatic extension of up to three years from the date of the change in control. The employment agreements provide for base salary and incentive compensation in the form of cash awards, stock options and stock grants subject to the discretion of, and attainment of performance goals established by, the Compensation Committee of the Board of Directors.

During the fourth quarter of 1999, the Company adopted an Officer Severance Program (the "Program") for the benefit of those officers of the Company who do not have employment agreements. Under the Program, in the event an officer who is not otherwise covered by a severance arrangement is terminated (other than for cause) within two years of a change in control (as defined) of the Company, such officer will generally receive a cash lump sum payment equal to the sum of such officer's base salary and cash bonus, as well as accelerated vesting of stock options and restricted stock.

Legal Contingencies

The Company is subject to various 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, the estimated amount of the loss is expensed in the financial statements. While the resolution of these matters cannot be predicted with certainty, management 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.

9. 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 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 costs as of the beginning of the prior year. These communities are divided into geographic regions. For the year 2002, the Established Communities were communities that had stabilized occupancy and costs as of January 1, 2001. 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.

- *Development/Redevelopment Communities* consists of communities that are under construction and have not received a final certificate of occupancy, communities where substantial redevelopment is in progress or is planned to begin during the current year and communities under lease-up, that have not reached stabilized occupancy, as defined above, as of January 1, 2002.

The primary financial measure for Established and Other Stabilized Communities is Net Operating Income ("NOI"), which is calculated at the community level and represents total revenue less direct property operating expenses, including property taxes, and excludes property management and other indirect operating expenses, interest expense, depreciation expense, general and administrative expense and impairment losses. 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 table on the following page 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 the summary of significant accounting policies.

	Total revenue	NOI	% NOI change from prior year	Gross real estate
For the year ended December 31, 2002				
Segment Results				
Established				
Northeast	$151,565	$104,782	(8.5%)	$ 840,939
Mid-Atlantic	77,811	55,695	(3.6%)	423,229
Midwest	32,998	19,665	(5.2%)	251,590
Pacific Northwest	10,664	6,550	(12.2%)	96,738
Northern California	151,619	110,845	(17.5%)	1,340,846
Southern California	48,372	34,505	1.9%	340,656
Total Established	473,029	332,042	(9.9%)	3,293,998
Other Stabilized	95,009	66,992	n/a	823,242
Development / Redevelopment	70,928	39,156	n/a	1,143,623
Land Held for Future Development	n/a	n/a	n/a	78,688
Non-Allocated	n/a	n/a	n/a	29,902
Total AvalonBay	$638,966	$438,190	(3.8%)	$5,369,453
For the year ended December 31, 2001				
Segment Results				
Established				
Northeast	$113,564	$ 81,777	8.4%	$ 570,551
Mid-Atlantic	81,976	60,256	8.4%	438,010
Midwest	21,069	13,089	1.7%	145,025
Pacific Northwest	6,784	4,985	3.3%	60,426
Northern California	157,736	121,923	6.9%	1,216,489
Southern California	42,462	30,188	9.2%	294,625
Total Established	423,591	312,218	7.5%	2,725,126
Other Stabilized	153,463	108,689	n/a	988,295
Development / Redevelopment	56,769	34,532	n/a	991,667
Land Held for Future Development	n/a	n/a	n/a	66,608
Non-Allocated	n/a	n/a	n/a	28,764
Total AvalonBay	$633,823	$455,439	11.9%	$4,800,460
For the year ended December 31, 2000				
Segment Results				
Established				
Northeast	$ 84,764	$ 60,297	6.5%	$ 444,158
Mid-Atlantic	68,646	49,694	9.2%	392,758
Midwest	20,455	12,869	5.0%	144,550
Pacific Northwest	3,778	2,751	17.1%	34,382
Northern California	107,342	82,126	15.9%	938,630
Southern California	23,458	16,635	11.6%	158,165
Total Established	308,443	224,372	10.8%	2,112,643
Other Stabilized	198,444	141,270	n/a	1,441,767
Development / Redevelopment	59,178	41,492	n/a	882,043
Land Held for Future Development	n/a	n/a	n/a	33,161
Non-Allocated	n/a	n/a	n/a	24,296
Total AvalonBay	$566,065	$407,134	18.7%	$4,493,910

Operating expenses as reflected on the accompanying Consolidated Statements of Operations and Other Comprehensive Income include $32,163, $32,967 and $28,111 for the years ended December 31, 2002, 2001 and 2000, respectively, of property management and other indirect operating expenses that are not allocated to individual communities. These costs are not reflected in NOI as shown in the above tables. Gross real estate as shown above does not include communities held for sale of $30,642 as reflected on the accompanying Consolidated Balance Sheets as of December 31, 2001. Segment information for the periods ending December 31, 2001 and 2000 have been adjusted for the communities that were designated as held for sale or sold in 2002 as described in Note 7, "Discontinued Operations – Real Estate Assets Held for Sale," of the Consolidated Financial Statements.

10. Stock-Based Compensation Plans

The Company adopted the 1994 Stock Incentive Plan, as amended and restated on March 31, 2001 (the "1994 Plan"), for the purpose of encouraging and enabling the Company's officers, associates and directors to acquire a proprietary interest in the Company and as a means of aligning management and stockholder interests and as a retention incentive for key associates. Individuals who are eligible to participate in the 1994 Plan include officers, other associates, outside directors and other key persons of the Company and its subsidiaries who are responsible for or contribute to the management, growth or profitability of the Company and its subsidiaries. The 1994 Plan authorizes (i) the grant of stock options that qualify as incentive stock options under Section 422 of the Internal Revenue Code ("ISOs"), (ii) the grant of stock options that do not so qualify, (iii) grants of shares of restricted and unrestricted common stock, (iv) grants of deferred stock awards, (v) performance share awards entitling the recipient to acquire shares of common stock and (vi) dividend equivalent rights.

As of December 31, 2002, under the 1994 Plan a maximum of 1,415,862 shares of common stock were available for issuance. On each January 1, the maximum number available for issuance under the 1994 Plan is increased by between 0.48% and 1.00% of the total number of shares of common stock and DownREIT units actually outstanding on such date. On January 1, 2003, the maximum number available for issuance was increased by 664,115 to 2,079,977. Notwithstanding the foregoing, the maximum number of shares of stock for which ISOs may be issued under the 1994 Plan shall not exceed 2,500,000 and no awards shall be granted under the 1994 Plan after May 11, 2011. For purposes of this limitation, shares of common stock which are forfeited, canceled and reacquired by the Company, satisfied without the issuance of common stock or otherwise terminated (other than by exercise) shall be added back to the shares of common stock available for issuance under the 1994 Plan. Stock options with respect to no more than 300,000 shares of stock may be granted to any one individual participant during any one calendar year period. Options granted to officers and employees under the 1994 Plan vest over periods (and may be subject to accelerated vesting under certain circumstances) as determined by the Compensation Committee of the Board of Directors and must expire no later than ten years from the date of grant. Options granted to non-employee directors under the 1994 Plan are subject to accelerated vesting under certain limited circumstances, become exercisable on the first anniversary of the date of grant, and expire ten years from the date of grant. Restricted stock granted to officers and employees under the 1994 Plan vest over periods (and may be subject to accelerated vesting under certain circumstances) as determined by the Compensation Committee of the Board of Directors. Generally, the restricted stock grants that have been awarded to officers and employees vest over four years, with 20% vesting immediately on the grant date and the remaining 80% vesting equally over the next four years from the date of grant. Restricted stock granted to non-employee directors vests 20% on the date of issuance and 20% on each of the first four anniversaries of the date of issuance. Options to purchase 1,497,504, 2,780,757, and 3,123,713 shares of common stock were available for grant under the 1994 Plan at December 31, 2002, 2001 and 2000, respectively.

Before the Merger, Avalon had adopted its 1995 Equity Incentive Plan (the "Avalon 1995 Incentive Plan"). Under the Avalon 1995 Incentive Plan, a maximum number of 3,315,054 shares (or 2,546,956 shares as adjusted for the Merger) of common stock were issuable, plus any shares of common stock represented by awards under Avalon's 1993 Stock Option and Incentive Plan (the "Avalon 1993 Plan") that were forfeited, canceled, reacquired by Avalon, satisfied without the issuance of common stock or otherwise terminated (other than by exercise). Options

granted to officers, non-employee directors and associates under the Avalon 1995 Incentive Plan generally vested over a three-year term, expire ten years from the date of grant and are exercisable at the market price on the date of grant.

In connection with the Merger, the exercise prices and the number of options under the Avalon 1995 Incentive Plan and the Avalon 1993 Plan were adjusted to reflect the equivalent Bay shares and exercise prices based on the 0.7683 share conversion ratio used in the Merger. Officers, non-employee directors and associates with Avalon 1995 Incentive Plan or Avalon 1993 Plan options may exercise their adjusted number of options for the Company's common stock at the adjusted exercise price. As of June 4, 1998, the date of the Merger, options and other awards ceased to be granted under the Avalon 1993 Plan or the Avalon 1995 Incentive Plan. Accordingly, there were no options to purchase shares of common stock available for grant under the Avalon 1995 Incentive Plan or the Avalon 1993 Plan at December 31, 2002, 2001 or 2000.

Information with respect to stock options granted under the 1994 Plan, the Avalon 1995 Incentive Plan and the Avalon 1993 Plan is as follows:

	1994 Plan shares	Weighted average exercise price per share	Avalon 1995 and Avalon 1993 Plan shares	Weighted average exercise price per share
Options outstanding, December 31, 1999	2,033,274	$ 32.63	1,828,337	$ 34.63
Exercised	(172,376)	34.78	(327,582)	28.65
Granted	631,795	34.56	—	—
Forfeited	(66,736)	33.50	(16,410)	35.84
Options outstanding, December 31, 2000	2,425,957	$ 32.96	1,484,345	$ 35.94
Exercised	(367,652)	33.05	(487,312)	35.79
Granted	946,612	45.90	—	—
Forfeited	(111,639)	40.34	(4,836)	36.61
Options outstanding, December 31, 2001	2,893,278	$ 36.91	992,197	$ 36.03
Exercised	(281,206)	31.65	(350,157)	37.39
Granted	719,198	45.63	—	—
Forfeited	(165,263)	42.72	(1,534)	39.86
Options outstanding, December 31, 2002	3,166,007	$ 39.05	640,506	$ 35.27
Options exercisable:				
December 31, 2000	1,183,551	$ 32.05	1,313,219	$ 35.71
December 31, 2001	1,537,194	$ 33.58	976,830	$ 35.99
December 31, 2002	2,003,395	$ 35.95	640,506	$ 35.27

For options outstanding at December 31, 2002 under the 1994 Plan, 170,600 options had exercise prices ranging between $18.37 and $29.99 and a weighted average contractual life of 2.2 years, 1,473,010 options had exercise prices ranging between $30.00 and $39.99 and a weighted average contractual life of 6.2 years, and 1,522,397 options had exercise prices ranging between $40.00 and $49.90 and a weighted average contractual life of 8.6 years. Options outstanding at December 31, 2002 for the Avalon 1993 and Avalon 1995 Plans had exercise prices ranging from $26.68 to $39.70 and a weighted average contractual life of 4.1 years.

The Company applies the intrinsic value method as provided in APB Opinion No. 25 and related interpretations in accounting for its Plans. Accordingly, no compensation expense has been recognized for the stock option portion of the stock-based compensation plan.

The following table illustrates the effect on the Company's net income available to common stockholders and earnings per share if the Company had applied the fair value recognition provisions as prescribed under SFAS No. 123, "Accounting for Stock-Based Compensation," to the Plans (unaudited):

	For the year ended		
	12-31-02	12-31-01	12-31-00
Net income available to common stockholders, as reported	$155,722	$216,500	$170,825
Deduct: Total compensation expense determined under fair value based method, net of related tax effects	(2,904)	(3,576)	(2,767)
Pro forma net income available to common stockholders	$152,818	$212,924	$168,058
Earnings per share:			
Basic - as reported	$ 2.26	$ 3.19	$ 2.58
Basic - pro forma	$ 2.22	$ 3.14	$ 2.53
Diluted - as reported	$ 2.23	$ 3.12	$ 2.53
Diluted - pro forma	$ 2.18	$ 3.07	$ 2.49

The fair value of the options granted during 2002 is estimated at $4.52 per share on the date of grant using the Black-Scholes option pricing model with the following assumptions: dividend yield of 6.15%, volatility of 18.9%, risk-free interest rates of 4.81%, actual number of forfeitures, and an expected life of approximately 7 years. The fair value of the options granted during 2001 is estimated at $4.83 per share on the date of grant using the Black-Scholes option pricing model with the following assumptions: dividend yield of 5.58%, volatility of 16.47%, risk-free interest rates of 5.07%, actual number of forfeitures, and an expected life of approximately 3 years. The fair value of the options granted during 2000 is estimated at $3.76 per share on the date of grant using the Black-Scholes option pricing model with the following assumptions: dividend yield of 6.51%, volatility of 15.93%, risk-free interest rates of 6.61%, actual number of forfeitures, and an expected life of approximately 3 years.

In October 1996, the Company adopted the 1996 Non-Qualified Employee Stock Purchase Plan (as amended, the "ESPP"). Initially 1,000,000 shares of common stock were reserved for issuance under this plan. There are currently 702,342 shares remaining available for issuance under the plan. Full-time employees of the Company generally are eligible to participate in the ESPP if, as of the last day of the applicable election period, they have been employed by the Company for at least one month. All other employees of the Company are eligible to participate provided that as of the applicable election period they have been employed by the Company for twelve months. Under the ESPP, eligible employees are permitted to acquire shares of the Company's common stock through payroll deductions, subject to maximum purchase limitations. The ESPP provides for a series of "purchase periods." Prior to 2000, there were two purchase periods per year of six months each. Since 2000, there has been one purchase period per year. Beginning in 2003, the purchase period will be a period of seven months beginning each May 1 and ending each November 30. The purchase price for common stock purchased under the plan is 85% of the lesser of the fair market value of the Company's common stock on the first day of the applicable purchase period or the last day of the applicable purchase period. The offering dates, purchase dates and duration of purchase periods may be changed by the Board of Directors, if the change is announced prior to the beginning of the affected date or purchase period. The Company issued 29,345, 14,917 and 34,055 shares under the ESPP for 2002, 2001 and 2000, respectively.

11. Fair Value of Financial Instruments

Cash and cash equivalent balances are held with various financial institutions and may at times exceed the applicable Federal Deposit Insurance Corporation limit. 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 from the excess of cash and cash equivalent balances over insurance limits is remote.

The following estimated fair values of financial instruments were determined by management using available market information and established valuation methodologies, including discounted cash flows. Accordingly, the estimates presented are not necessarily indicative of the amounts the Company could realize on disposition of the financial instruments. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

- Cash equivalents, rents receivable, accounts payable and accrued expenses, and other liabilities are carried at their face amounts, which reasonably approximate their fair values.

- Bond indebtedness and notes payable with an aggregate carrying value of $2,442 and $2,083 had an estimated aggregate fair value of $2,639 and $2,191 at December 31, 2002 and 2001, respectively.

12. Related Party Arrangements

Purchase of Mortgage Loan

The Company's Chairman and CEO, and the Company's former Chairman and CEO, are partners of an entity that is the general partner of Arbor Commons Associates Limited Partnership ("Arbor Commons Associates"). Arbor Commons Associates owns Avalon Arbor, a 302 apartment home community in Shrewsbury, Massachusetts. Concurrently with its initial public offering in November 1993, Avalon purchased an existing participating mortgage loan made to Arbor Commons Associates that was originated by CIGNA Investments, Inc. The mortgage loan is secured by Arbor Commons Associates' interest in Avalon Arbor. This loan accrues interest at a fixed rate of 10.2% per annum, payable at 9.0% per annum. The balance of the note receivable at both December 31, 2002 and 2001 was $21,483. The balance of accrued interest on the note receivable as of December 31, 2002 and 2001, respectively, was $4,965 and $5,231, and is included in other assets on the accompanying Consolidated Balance Sheets. Related interest income of $3,091, $3,081 and $3,009 was recorded for the years ended December 31, 2002, 2001 and 2000, respectively. Under the terms of the loan, the Company (as successor to Avalon) receives (as contingent interest) 50% of the cash flow after the 10.2% accrual rate is paid and 50% of the residual profits upon the sale of the community.

Unconsolidated entities

The Company manages several unconsolidated real estate joint venture entities for which it receives management fee revenue. From these entities the Company received management fee revenue of $1,019, $1,011 and $691 in the years ended December 31, 2002, 2001 and 2000, respectively.

Indebtedness of Management

The Company has a recourse loan program under which the Company lends amounts to or on behalf of employees ("Stock Loans") equivalent to the estimated employees' tax withholding liabilities related to the vesting of restricted stock under the 1994 Stock Incentive Plan, as amended and restated on March 31, 2001. In accordance with the Sarbanes-Oxley Act of 2002, no loans to senior officers will be renewed and the Company intends to phase out the Stock Loan program for all other participants over a period of approximately one year. The principal balance outstanding under the Stock Loans to employees was $1,133 at both December 31, 2002 and 2001. The balance of accrued interest on the notes receivable was $45 and $100 as of December 31, 2002 and 2001, respectively. Interest income on the notes of $61, $62 and $76 was recorded for the years ended December 31, 2002, 2001 and 2000, respectively. Each Stock Loan is made for a one-year term, is a full personal recourse obligation of the borrower

and is secured by a pledge to the Company of the stock that vested and gave rise to the tax withholding liability for which the loan was made. In addition, dividends on the pledged stock are automatically remitted to the Company and applied toward repayment of the Stock Loan.

Consulting Agreement with Mr. Meyer

In March 2000, the Company and Gilbert M. Meyer announced that Mr. Meyer would retire as Executive Chairman of the Company in May 2000. Although Mr. Meyer ceased his day-to-day involvement with the Company as an executive officer, he continues to serve as a director. In addition, pursuant to a consulting agreement which terminates in May 2003, Mr. Meyer agreed to serve as a consultant to the Company for three years following his retirement for an annual fee of $1,395. In such capacity he responds to requests for assistance or information concerning business matters with which he became familiar while employed and he provides business advice and counsel to the Company with respect to business strategies and acquisitions, dispositions, development and redevelopment of multifamily rental properties.

Director Compensation

The Company's Stock Incentive Plan provides that directors of the Company who are also employees receive no additional compensation for their services as a director. Under the Stock Incentive Plan, on the fifth business day following each annual meeting of stockholders, each of the Company's non-employee directors automatically receives options to purchase 7,000 shares of common stock at the last reported sale price of the common stock on the NYSE on such date, and a restricted stock (or deferred stock award) grant of 2,500 shares of common stock. The Company recorded compensation expense relating to these deferred stock awards in the amount of $743, $624 and $525 in the years ended December 31, 2002, 2001 and 2000, respectively. Deferred compensation relating to these deferred stock awards was $757 and $688 on December 31, 2002 and 2001, respectively.

Investment in Realeum, Inc.

As an employee incentive and retention mechanism, the Company arranged for officers of the Company to hold direct or indirect economic interest in Realeum, Inc. Realeum, Inc. is a company involved in the development and deployment of a property management and leasing automation system, in which the Company invested $2,300 in January 2002. The Company currently utilizes this property management and leasing automation system and has paid $480, $80 and $0 to Realeum, Inc. under the terms of its licensing arrangements during the years ended December 31, 2002, 2001 and 2000, respectively.

13. Quarterly Financial Information (Unaudited)

The following summary represents the quarterly results of operations for the years ended December 31, 2002 and 2001:

	For the three months ended			
	3-31-02	6-30-02	9-30-02	12-31-02
Total revenue	$158,296	$158,966	$160,358	$161,346
Net income available to common stockholders	$ 35,690	$ 32,315	$ 24,685	$ 63,033
Net income per common share — basic	$ 0.52	$ 0.47	$ 0.36	$ 0.92
Net income per common share — diluted	$ 0.51	$ 0.46	$ 0.35	$ 0.91

	For the three months ended			
	3-31-01	6-30-01	9-30-01	12-31-01
Total revenue	$153,810	$160,368	$161,219	$158,426
Net income available to common stockholders	$ 41,654	$ 39,131	$ 79,229	$ 56,486
Net income per common share — basic	$ 0.62	$ 0.58	$ 1.16	$ 0.83
Net income per common share — diluted	$ 0.61	$ 0.57	$ 1.14	$ 0.81

14. Subsequent Events (Unaudited)

As of February 28, 2003, six communities previously held for operating purposes were classified as held for sale under SFAS No. 144. These communities had an aggregate net real estate carrying value of $129,032 and debt of $27,305 as of December 31, 2002. The Company is actively pursuing the disposition of these communities and expects to close during the first and second quarters of 2003.

For the period January 1, 2003 through February 28, 2003, the Company has repurchased an additional 761,000 shares of common stock at an aggregate cost of $27,659 through its common stock repurchase program.

On January 15, 2003, $50,000 in unsecured notes matured and were paid, including the balance of accrued interest.

On February 18, 2003, the Company gave notice of its intent to redeem all 3,267,700 outstanding shares of its 8.00% Series D Cumulative Redeemable Preferred Stock. The closing of this redemption is anticipated on March 20, 2003 at a price of $25.00 per share, plus $0.0167 in accrued and unpaid dividends, for an aggregate redemption price of $81,747, including accrued dividends of $55. This redemption will be funded by the sale of shares of Series J Cumulative Redeemable Preferred Stock through a private placement to an institutional investor. The dividend rate on such shares will initially be based on three month LIBOR plus 1.5%. The Series J Cumulative Redeemable Preferred Stock will be redeemable at any time at the Company’s option.

In February 2003, the Company won an appeal regarding the entitlement status of one of the two land parcels planned for disposition as of December 31, 2002. If the Company decides to continue with the planned disposition, this change in entitlement status may increase the potential value of the land and therefore decrease the previously estimated loss that would be recognized at the date of disposal. However, the Company is currently reevaluating the planned disposal of this parcel, which may result in 2003 in the partial recovery of the impairment loss recognized in 2002, if the Company decides to hold the land for development.

AVALONBAY COMMUNITIES, INC.
REAL ESTATE AND ACCUMULATED DEPRECIATION
December 31, 2002
(Dollars in thousands)

	Initial Cost			Total Cost						
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Current Communities										
Avalon at Center Place	$ —	$ 26,816	$ 502	$ —	$ 27,318	$ 27,318	$ 5,308	$ 22,010	$ —	1997
Avalon at Faxon Park	1,136	14,019	76	1,136	14,095	15,231	2,447	12,784	—	1998
Avalon at Lexington	2,124	12,599	624	2,124	13,223	15,347	3,766	11,581	13,784	1994
Avalon at Prudential Center	25,811	103,233	22,769	25,811	126,002	151,813	16,904	134,909	—	1968/98
Avalon Essex	5,230	15,483	824	5,230	16,307	21,537	1,624	19,913	—	2000
Avalon Estates	1,972	18,167	77	1,972	18,244	20,216	1,385	18,831	—	2001
Avalon Ledges	2,627	32,900	—	2,627	32,900	35,527	640	34,887	—	2002
Avalon Oaks	2,129	18,640	54	2,129	18,694	20,823	2,567	18,256	17,628	1999
Avalon Oaks West	3,303	13,316	—	3,303	13,316	16,619	479	16,140	—	2002
Avalon Orchards	2,975	17,860	—	2,975	17,860	20,835	495	20,340	—	2002
Avalon Summit	1,743	14,654	351	1,743	15,005	16,748	3,488	13,260	—	1996
Avalon West	943	9,881	97	943	9,978	10,921	2,198	8,723	8,461	1996
Avalon at Greyrock Place	13,819	55,846	8	13,819	55,854	69,673	1,156	68,517	—	2002
Avalon Corners	6,305	24,179	1,294	6,305	25,473	31,778	2,931	28,847	—	2000
Avalon Gates	4,414	31,305	381	4,414	31,686	36,100	6,164	29,936	—	1997
Avalon Glen	5,956	23,993	1,346	5,956	25,339	31,295	7,415	23,880	—	1991
Avalon Haven	1,264	11,762	724	1,264	12,486	13,750	1,153	12,597	—	2000
Avalon Lake	3,314	13,139	542	3,314	13,681	16,995	1,772	15,223	—	1999
Avalon New Canaan	8,874	23,176	—	8,874	23,176	32,050	338	31,712	—	2002
Avalon Springs	2,116	14,512	245	2,116	14,757	16,873	2,969	13,904	—	1996
Avalon Valley	2,277	22,424	1,358	2,277	23,782	26,059	3,067	22,992	—	1999
Avalon Walk I & II	9,102	48,796	1,146	9,102	49,942	59,044	14,246	44,798	11,748	1992/94
Avalon Commons	4,679	28,552	62	4,679	28,614	33,293	5,451	27,842	—	1997
Avalon Court	9,228	48,920	1,124	9,228	50,044	59,272	6,901	52,371	—	1997/2000
Avalon Towers	3,118	12,709	1,086	3,118	13,795	16,913	3,423	13,490	—	1995
Avalon at Edgewater	14,529	60,061	—	14,529	60,061	74,590	2,448	72,142	—	2002
Avalon at Florham Park	6,647	34,639	283	6,647	34,922	41,569	2,758	38,811	—	2001
Avalon Cove	8,760	82,356	837	8,760	83,193	91,953	16,720	75,233	—	1997
Avalon Crest	11,468	44,035	559	11,468	44,594	56,062	5,607	50,455	—	1998
The Tower at Avalon Cove	3,738	45,755	166	3,738	45,921	49,659	5,723	43,936	—	1999
Avalon at Freehold	4,116	30,191	—	4,116	30,191	34,307	1,107	33,200	—	2002
Avalon Run East	1,579	14,669	24	1,579	14,693	16,272	3,266	13,006	—	1996

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	Initial Cost			Total Cost						
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon Watch	5,585	22,394	1,618	5,585	24,012	29,597	7,489	22,108	—	1999
Avalon Riverview I	3,959	90,086	—	3,959	90,086	94,045	1,229	92,816	—	2002
Avalon Gardens	8,428	45,706	131	8,428	45,837	54,265	8,018	46,247	—	1998
Avalon Green	1,820	10,525	258	1,820	10,783	12,603	2,843	9,760	—	1995
Avalon on the Sound	717	89,501	1,396	717	90,897	91,614	4,632	86,982	36,089	2001
Avalon View	3,529	14,140	621	3,529	14,761	18,290	4,460	13,830	17,743	1993
Avalon Willow	6,207	39,852	941	6,207	40,793	47,000	4,533	42,467	—	2000
The Avalon	2,889	28,273	66	2,889	28,339	31,228	3,444	27,784	—	1999
Avalon at Fairway Hills I & II	8,612	34,463	1,780	8,612	36,243	44,855	8,936	35,919	11,500	1987/96
Avalon at Symphony Glen	1,594	6,384	1,194	1,594	7,578	9,172	2,409	6,763	9,780	1986
Avalon Landing	1,849	7,409	533	1,849	7,942	9,791	2,128	7,663	6,417	1995
4100 Massachusetts Avenue	6,848	27,614	1,566	6,848	29,180	36,028	8,257	27,771	—	1982
AutumnWoods	6,096	24,400	432	6,096	24,832	30,928	5,304	25,624	—	1996
Avalon at Arlington Square I	13,453	55,918	307	13,453	56,225	69,678	3,301	66,377	—	2001
Avalon at Arlington Square II	8,588	33,817	—	8,588	33,817	42,405	670	41,735	—	2002
Avalon at Ballston Vermont & Quincy Towers	9,340	37,360	469	9,340	37,829	47,169	7,649	39,520	—	1997
Avalon at Ballston — Washington Towers	7,291	29,177	891	7,291	30,068	37,359	8,846	28,513	—	1990
Avalon at Cameron Court	10,292	32,931	23	10,292	32,954	43,246	5,716	37,530	—	1998
Avalon at Decoverly	6,157	24,800	815	6,157	25,615	31,772	6,391	25,381	—	1995
Avalon at Dulles	2,302	9,212	650	2,302	9,862	12,164	2,993	9,171	12,360	1986
Avalon at Fair Lakes	4,334	19,127	15	4,334	19,142	23,476	3,408	20,068	—	1998
Avalon at Fox Mill	2,713	16,678	122	2,713	16,800	19,513	1,975	17,538	—	2000
Avalon at Providence Park	2,152	8,907	240	2,152	9,147	11,299	1,803	9,496	—	1997
Avalon Crescent	13,851	43,401	31	13,851	43,432	57,283	8,684	48,599	—	1996
Avalon Crossing	2,207	11,683	5	2,207	11,688	13,895	2,596	11,299	—	1996
Avalon Fields I & II	4,047	18,611	42	4,047	18,653	22,700	4,176	18,524	11,286	1998
Avalon Knoll	1,528	6,136	945	1,528	7,081	8,609	2,517	6,092	12,978	1985
200 Arlington Place	9,728	39,527	707	9,728	40,234	49,962	2,837	47,125	—	1987/2000
Avalon at Danada Farms	7,535	30,444	444	7,535	30,888	38,423	5,320	33,103	—	1997
Avalon at Stratford Green	4,326	17,569	54	4,326	17,623	21,949	3,051	18,898	—	1997
Avalon at West Grove	5,149	20,657	4,109	5,149	24,766	29,915	4,344	25,571	—	1967
Avalon at Devonshire	7,250	29,641	795	7,250	30,436	37,686	5,364	32,322	27,305	1988
Avalon at Edinburgh	3,541	14,758	260	3,541	15,018	18,559	2,483	16,076	—	1992

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	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon at Town Centre	3,450	14,449	315	3,450	14,764	18,214	2,610	15,604	—	1986
Avalon at Town Square	2,099	8,642	157	2,099	8,799	10,898	1,583	9,315	—	1986
Avalon at Woodbury	5,034	20,857	94	5,034	20,951	25,985	2,550	23,435	—	1999
Avalon at Bear Creek	6,786	27,035	616	6,786	27,651	34,437	4,430	30,007	—	1998
Avalon Bellevue	6,664	23,908	61	6,664	23,969	30,633	1,653	28,980	—	2001
Avalon Belltown	5,644	12,453	182	5,644	12,635	18,279	610	17,669	—	2001
Avalon Brandemoor	8,630	36,679	—	8,630	36,679	45,309	2,321	42,988	—	2001
Avalon Greenbriar	3,808	21,239	11,212	3,808	32,451	36,259	5,024	31,235	18,755	1987/88
Avalon HighGrove	7,569	32,035	16	7,569	32,051	39,620	2,409	37,211	—	2000
Avalon ParcSquare	3,789	15,093	113	3,789	15,206	18,995	1,387	17,608	—	2000
Avalon Redmond Place	4,558	17,504	3,980	4,558	21,484	26,042	3,877	22,165	—	1991/97
Avalon RockMeadow	4,777	19,671	9	4,777	19,680	24,457	1,816	22,641	—	2000
Avalon WildReed	4,253	18,676	27	4,253	18,703	22,956	1,659	21,297	—	2000
Avalon WildWood	6,268	26,597	—	6,268	26,597	32,865	1,662	31,203	—	2001
Avalon Wynhaven	11,412	41,142	—	11,412	41,142	52,554	2,674	49,880	—	2001
Avalon at Union Square	4,249	16,820	822	4,249	17,642	21,891	2,844	19,047	—	1973/96
Avalon at Willow Creek	6,581	26,583	1,094	6,581	27,677	34,258	4,480	29,778	—	1985/94
Avalon Dublin	5,276	19,642	1,824	5,276	21,466	26,742	3,446	23,296	—	1989/97
Avalon Fremont	15,016	60,681	1,473	15,016	62,154	77,170	10,102	67,068	—	1992/94
Avalon Pleasanton	11,610	46,552	2,360	11,610	48,912	60,522	7,990	52,532	—	1988/94
Waterford	11,324	45,717	2,025	11,324	47,742	59,066	7,948	51,118	33,100	1985/86
Avalon at Cedar Ridge	4,230	9,659	11,641	4,230	21,300	25,530	3,608	21,922	—	1975/97
Avalon at Diamond Heights	4,726	19,130	542	4,726	19,672	24,398	3,191	21,207	—	1972/94
Avalon at Nob Hill	5,403	21,567	530	5,403	22,097	27,500	3,518	23,982	19,457	1990/95
Avalon at Sunset Towers	3,561	21,321	3,289	3,561	24,610	28,171	4,375	23,796	—	1961/96
Avalon Foster City	7,852	31,445	3,555	7,852	35,000	42,852	5,389	37,463	—	1973/94
Avalon Pacifica	6,125	24,796	377	6,125	25,173	31,298	4,020	27,278	16,216	1971/95
Avalon Towers by the Bay	9,155	57,630	97	9,155	57,727	66,882	6,619	60,263	—	1999
Crowne Ridge	5,982	16,885	8,183	5,982	25,068	31,050	4,070	26,980	—	1973/96
Avalon at Blossom Hill	11,933	48,313	640	11,933	48,953	60,886	7,911	52,975	—	1995
Avalon at Cahill Park	4,760	47,354	—	4,760	47,354	52,114	723	51,391	—	2002
Avalon at Creekside	6,546	26,301	10,119	6,546	36,420	42,966	5,238	37,728	—	1962/97
Avalon at Foxchase I & II	11,340	45,532	1,950	11,340	47,482	58,822	7,718	51,104	26,400	1986/87

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	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total
Avalon at Parkside	7,406	29,823	624	7,406	30,447	37,853
Avalon at Pruneyard	3,414	15,469	12,967	3,414	28,436	31,850
Avalon at River Oaks	8,904	35,126	975	8,904	36,101	45,005
Avalon Campbell	11,830	47,828	351	11,830	48,179	60,009
Avalon Cupertino	9,099	39,926	73	9,099	39,999	49,098
Avalon Mountain View	9,755	39,393	1,364	9,755	40,757	50,512
Avalon on the Alameda	6,119	50,164	143	6,119	50,307	56,426
Avalon Rosewalk I & II	15,814	62,028	368	15,814	62,396	78,210
Avalon Silicon Valley	20,713	99,304	834	20,713	100,138	120,851
Avalon Sunnyvale	6,786	27,388	723	6,786	28,111	34,897
Avalon Towers on the Peninsula	9,560	56,021	—	9,560	56,021	65,581
CountryBrook	9,384	34,794	3,614	9,384	38,408	47,792
Fairway Glen	3,341	13,338	449	3,341	13,787	17,128
San Marino	6,607	26,673	785	6,607	27,458	34,065
Avalon at Media Center	22,483	28,104	24,921	22,483	53,025	75,508
Avalon at Warner Center	7,045	12,986	6,383	7,045	19,369	26,414
Avalon Westside Terrace	5,878	23,708	7,655	5,878	31,363	37,241
Avalon Woodland Hills	23,828	40,372	7,390	23,828	47,762	71,590
The Promenade	14,052	56,820	124	14,052	56,944	70,996
Amberway	10,285	7,249	3,866	10,285	11,115	21,400
Avalon Laguna Niguel	656	16,588	3,713	656	20,301	20,957
Avalon at Pacific Bay	4,871	19,745	7,325	4,871	27,070	31,941
Avalon at South Coast	4,709	16,063	3,824	4,709	19,887	24,596
Avalon Huntington Beach	6,663	21,647	8,882	6,663	30,529	37,192
Avalon Mission Viejo	2,517	9,257	1,393	2,517	10,650	13,167
Avalon Newport	1,975	3,814	4,323	1,975	8,137	10,112
Avalon Santa Margarita	4,607	16,911	2,117	4,607	19,028	23,635
Avalon at Cortez Hill	2,768	20,134	11,466	2,768	31,600	34,368
Avalon at Mission Bay	9,922	40,633	15,505	9,922	56,138	66,060
Avalon at Mission Ridge	2,710	10,924	7,991	2,710	18,915	21,625
Avalon at Penasquitos Hills	2,760	9,391	2,172	2,760	11,563	14,323
	$836,084	$3,763,217	$267,642	$836,084	$4,030,859	$4,866,943

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon at Parkside	4,857	32,996	—	1991/96
Avalon at Pruneyard	4,521	27,329	12,870	1966/97
Avalon at River Oaks	5,704	39,301	—	1990/96
Avalon Campbell	7,672	52,337	35,749	1995
Avalon Cupertino	6,645	42,453	—	1999
Avalon Mountain View	6,523	43,989	18,300	1986
Avalon on the Alameda	6,828	49,598	—	1999
Avalon Rosewalk I & II	9,434	68,776	—	1997
Avalon Silicon Valley	15,853	104,998	—	1997
Avalon Sunnyvale	4,483	30,414	—	1987/1995
Avalon Towers on the Peninsula	1,666	63,915	—	2002
CountryBrook	6,207	41,585	18,124	1985/96
Fairway Glen	2,256	14,872	9,580	1986
San Marino	4,401	29,664	—	1984/88
Avalon at Media Center	7,228	68,280	—	1969/97
Avalon at Warner Center	3,440	22,974	—	1979/98
Avalon Westside Terrace	4,961	32,280	—	1966/97
Avalon Woodland Hills	8,610	62,980	—	1989/97
The Promenade	1,041	69,955	33,670	1988/2002
Amberway	2,025	19,375	—	1983/98

Avalon Laguna Niguel	3,494	17,463	10,400	1988/98
Avalon at Pacific Bay	4,204	27,737	—	1971/97
Avalon at South Coast	3,334	21,262	—	1973/96
Avalon Huntington Beach	5,480	31,712	—	1972/97
Avalon Mission Viejo	1,741	11,426	7,151	1984/96
Avalon Newport	1,343	8,769	—	1956/96
Avalon Santa Margarita	3,147	20,488	—	1990/97
Avalon at Cortez Hill	4,470	29,898	—	1973/98
Avalon at Mission Bay	8,240	57,820	—	1969/97
Avalon at Mission Ridge	3,142	18,483	—	1960/97
Avalon at Penasquitos Hills	1,895	12,428	—	1982/97
	$568,022	$4,298,921	$456,851	

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	Initial Cost			Total Cost		
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total
Development Communities						
Avalon at Flanders Hill	2,981	32,874	—	2,981	32,874	35,855
Avalon at Gallery Place I	—	41,414	—	—	41,414	41,414
Avalon at Glen Cove South	—	16,777	—	—	16,777	16,777
Avalon at Grosvenor Station	—	40,146	—	—	40,146	40,146
Avalon at Mission Bay North	461	71,009	—	461	71,009	71,470
Avalon at Newton Highlands	—	27,629	—	—	27,629	27,629
Avalon at Rock Spring	264	36,523	—	264	36,523	36,787
Avalon at Steven’s Pond	—	23,230	—	—	23,230	23,230
Avalon Darien	—	13,537	—	—	13,537	13,537
Avalon Glendale	—	17,132	—	—	17,132	17,132
Avalon on Stamford Harbor	9,348	51,798	—	9,348	51,798	61,146
Avalon Traville Phase I	—	8,882	—	—	8,882	8,882
	$ 13,054	$ 380,951	$ —	$ 13,054	$ 380,951	$ 394,005
Land held for development	78,688	—	—	78,688	—	78,688
Corporate overhead	1,571	8,242	20,004	1,571	28,246	29,817
	$929,397	$4,152,410	$287,646	$929,397	$4,440,056	$5,369,453

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Development Communities				
Avalon at Flanders Hill	359	35,496	—	N/A
Avalon at Gallery Place I	—	41,414	—	N/A
Avalon at Glen Cove South	—	16,777	—	N/A
Avalon at Grosvenor Station	—	40,146	—	N/A
Avalon at Mission Bay North	46	71,424	—	N/A
Avalon at Newton Highlands	—	27,629	—	N/A
Avalon at Rock Spring	58	36,729	—	N/A
Avalon at Steven’s Pond	—	23,230	—	N/A
Avalon Darien	—	13,537	—	N/A
Avalon Glendale	—	17,132	—	N/A
Avalon on Stamford Harbor	721	60,425	—	N/A
Avalon Traville Phase I	—	8,882	—	N/A
	$ 1,184	$ 392,821	$ —	
Land held for development	—	78,688	—	
Corporate overhead	14,816	15,001	—	
	$584,022	$4,785,431	$456,851	

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

Building — 30 years
Improvements, upgrades and FF&E — not to exceed 7 years

The aggregate cost of total real estate for Federal income tax purposes was approximately $5,400,000 at December 31, 2002.

The changes in total real estate assets for the years ended December 31, 2002, 2001 and 2000 are as follows:

	Years ended December 31,		
	2002	2001	2000
Balance, beginning of period	$4,837,869	$4,535,969	$4,266,426
Acquisitions, Construction Costs and Improvements	575,879	496,908	393,359
Dispositions, including impairment loss on planned dispositions	(44,295)	(195,008)	(123,816)
Balance, end of period	$5,369,453	$4,837,869	$4,535,969

The changes in accumulated depreciation for the years ended December 31, 2002, 2001 and 2000, are as follows:

	Years ended December 31,		
	2002	2001	2000
Balance, beginning of period	$447,026	$336,010	$225,103
Depreciation, including discontinued operations	144,477	126,984	119,416
Dispositions	(7,481)	(15,968)	(8,509)
Balance, end of period	$584,022	$447,026	$336,010

EXHIBIT 3(ii)

AMENDED AND RESTATED BYLAWS

OF

AVALONBAY COMMUNITIES, INC.

February 13, 2003

AMENDED AND RESTATED BYLAWS
OF
AVALONBAY COMMUNITIES, INC.
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ARTICLE I

MEETINGS OF STOCKHOLDERS

1.01 PLACE. All meetings of the holders (the "Stockholders") of the issued and outstanding common stock and preferred stock of AvalonBay Communities, Inc. (the "Corporation") shall be held at the principal executive office of the Corporation or such other place within the United States as shall be set by the Board of Directors and stated in the notice of the meeting.

1.02 ANNUAL MEETINGS. An annual meeting of the Stockholders for the election of directors of the Corporation ("Directors") and the transaction of such other business as may be properly brought before the meeting shall be held on the second Wednesday of May of each year, or on such other date which is not more than fifteen (15) days prior to or after such second Wednesday of May, and at such time as shall be fixed by the Board of Directors. If the date fixed for the annual meeting shall be a legal holiday, such meeting shall be held on the next succeeding Business Day (as defined in Section 1.04(b)(7) below). Failure to hold an annual meeting shall not invalidate the Corporation's existence or affect any otherwise valid acts of the Corporation.

1.03 MATTERS TO BE CONSIDERED AT ANNUAL MEETING.

(a) A proposal of business to be considered by the Stockholders may be made at an annual meeting of Stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any Stockholder who was a Stockholder of record of a class of stock of the Corporation ("Stock") entitled to vote on the matter being proposed (A) at the time of giving of notice provided for in this Section 1.03, (B) as of the record date for the annual meeting in question and (C) at the time of such annual meeting, and who complied with the notice procedures set forth in this Section 1.03. For a proposal of business to be properly brought before an annual meeting by a Stockholder, the Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, such business must otherwise be a proper matter for action by the Stockholders and such Stockholder must be present in person or by proxy at the annual meeting.

To be timely, a Stockholder's notice shall set forth all information required under this Section 1.03 and be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than 120 days prior to the first anniversary of the date of mailing of the notice for the preceding year's annual meeting (the "Notice Anniversary Date"); provided, however, that in the event that the date of the mailing of the notice for the annual meeting is advanced or delayed by more than thirty (30) days from the Notice Anniversary Date, notice by the Stockholder to be timely must be so delivered not earlier than the 120th day prior to the date of mailing of the notice for such annual meeting and not later than the close of business on the later of the 90th day prior to the date of mailing of the notice for such annual meeting or the tenth (10th) day following the day on which public announcement of the date of mailing of the notice for such annual meeting is first made.

In no event shall the public announcement of a postponement or an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above.

For purposes of these Bylaws, (a) the "date of mailing of the notice" for an annual meeting shall mean the date of the formal notice of annual meeting that accompanies the distribution of the proxy statement for the solicitation of proxies for election of Directors and (b) "public announcement" shall mean disclosure in a (i) press release reported by the Dow Jones News Service, Associated Press or comparable news service, (ii) document publicly filed by the Corporation with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or (iii) letter or report sent to Stockholders of record of the Corporation entitled to vote at the meeting.

(b) A Stockholder's notice to the Secretary shall set forth as to each matter the Stockholder proposes to bring before the annual meeting, (i) a description of the proposal desired to be brought before the annual meeting, (ii) the reasons for proposing such business at the annual meeting and any material interest in such business of such Stockholder and any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the Stockholder or any Stockholder Associated Person therefrom and (iii) as to the Stockholder giving the notice and any Stockholder Associated Person, (x) the name and address of such Stockholder, as they appear on the Corporation's stock ledger and current name and address, if different, and of any such Stockholder Associated Person and (y) the class, series and number of all shares of Stock of the Corporation which are owned by such Stockholder and by any such Stockholder Associated Person, and the nominee holder for, and number of, shares owned beneficially but not of record by such Stockholder and by any such Stockholder Associated Person.

For purposes of these Bylaws, "Stockholder Associated Person" of any Stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such Stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such Stockholder, (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person, and (iv) any person acting in concert with the Stockholder or any other Stockholder Associated Person to support the proposal of or nomination by such Stockholder as of the date on which notice of such

proposal or nomination is given to the Secretary of the Corporation.

(c) Upon written request by the Secretary of the Corporation or the Board of Directors or a designated committee thereof, any Stockholder proposing business for consideration at a meeting of Stockholders shall provide, within ten (10) days after delivery of such request (or such longer period as may be specified in such request), in addition to any verification previously provided, written verification, satisfactory to the Secretary or the Board of Directors or any such committee thereof, in his, her or its sole discretion, of the accuracy of any information submitted by the Stockholder pursuant to this Section 1.03. If a Stockholder fails to provide such written verification within such period, the Secretary or the Board of Directors or any such committee thereof may treat the information as to which written

verification was requested as not having been provided in accordance with the procedures set forth in this Section 1.03.

(d) Only such business shall be conducted at an annual meeting of Stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.03. The Presiding Officer (as defined in Section 1.10 hereof) of the meeting shall have the power and duty to determine whether any business proposed to be brought before the meeting was proposed in accordance with the procedures set forth in this Section 1.03 and, if any business is not proposed in compliance with this Section 1.03, to declare that such defective proposal be disregarded and not be presented for action at the annual meeting.

(e) Notwithstanding the foregoing provisions of this Section 1.03, a Stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.03. Nothing in this Section 1.03 shall be deemed to affect any right of a Stockholder to request inclusion of a proposal in, nor the right of the Corporation to omit a proposal from, the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act.

(f) This Section 1.03 shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, Directors and committees of the Board of Directors, but in connection with such reports, no new business shall be acted upon at such annual meeting except in accordance with the provisions of this Section 1.03.

1.04 SPECIAL MEETINGS.

(a) The Chairman of the Board of Directors, the Chief Executive Officer, the President or the Board of Directors may call special meetings of the Stockholders. In addition, subject to subsection (b) of this Section 1.04, the Secretary of the Corporation shall call a special meeting of the Stockholders on the written request of Stockholders entitled to cast a majority of all the votes entitled to be cast at the meeting.

(b) (1) Any Stockholder of record seeking to have Stockholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the Stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at such meeting, shall be signed by one or more Stockholders of record as of the date of signature (or their agents duly authorized in writing), shall bear the date of signature of each such Stockholder (or such agent) and shall set forth all information relating to each such Stockholder that would be disclosed in solicitations of proxies for the election of Directors in an election contest (even if an election contest is not involved), or would otherwise be required, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act. Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten (10) days after the close of business on the date on which the resolution

fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within fifteen (15) days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date and make a public announcement of such Request Record Date, the Request Record Date shall be the close of business on the fifteenth (15th) day after the first date on which the Record Date Request Notice is received by the Secretary.

(2) In order for any Stockholder to request a special meeting,

one or more written requests for a special meeting signed by Stockholders of record (or their agents duly authorized in writing) as of the Request Record Date entitled to cast not less than a majority (the "Special Meeting Percentage") of all of the votes entitled to be cast at such meeting (the "Special Meeting Request") shall be delivered to the Secretary. In addition, the Special Meeting Request (i) shall set forth the purpose of the meeting and the matters proposed to be acted on at such meeting (which shall be limited to the matters set forth in the Record Date Request Notice received by the Secretary), (ii) shall bear the date of signature of each such Stockholder (or other agent) signing the Special Meeting Request, (iii) shall set forth the name and address, as they appear in the Corporation's stock ledger, of each Stockholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of Stock of the Corporation which are owned by each such Stockholder, and the nominee holder for, and number of, shares owned beneficially but not of record by each such Stockholder, (iv) shall be sent to the Secretary by registered mail, return receipt requested, and (v) shall be received by the Secretary within sixty (60) days after the Request Record Date. Any requesting Stockholder may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary.

(3) The Secretary shall inform the requesting Stockholders of the reasonably estimated cost of preparing and mailing the notice of meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting upon Stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 1.04(b), the Secretary receives payment of such reasonably estimated cost prior to the mailing of any notice of the meeting.

(4) Except as provided in the next sentence, any special meeting shall be held at such place, date and time as may be designated by the Chairman of the Board of Directors, the President, the Chief Executive Officer or the Board of Directors, whoever has called the meeting. In the case of any special meeting called by the Secretary upon the request of Stockholders (a "Stockholder Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder Requested Meeting shall be not more than ninety (90) days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Directors fails to designate, within fifteen (15) days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date and time for a Stockholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the ninetieth (90th) day after the Meeting Record Date or, if such ninetieth (90th) day is not a Business Day, on the first preceding Business Day; and provided further that in the event that the Board of Directors

fails to designate a place for a Stockholder Requested Meeting within fifteen (15) days after the Delivery Date, then such meeting shall be held at the principal executive offices of the Corporation. In fixing a date for any special meeting, the Chairman of the Board of Directors, the President, the Chief Executive Officer or the Board of Directors may consider such factors as he, she or it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within thirty (30) days after the Delivery Date, then the close of business on the thirtieth (30th) day after the Delivery Date shall be the Meeting Record Date.

(5) If at any time, as a result of written revocations of requests for the special meeting, the Stockholders of record (or their agents duly authorized in writing) as of the Request Record Date who have delivered and not revoked requests for a special meeting are not entitled to cast at least the Special Meeting Percentage, the Secretary may refrain from mailing the notice of the meeting or, if the notice of the meeting has been mailed, the Secretary may revoke the notice of the meeting at any time before the tenth (10th) day prior to the meeting if the Secretary has first sent to all other requesting Stockholders written notice of any revocation of a request for the special meeting and written notice of the Secretary's intention to revoke the notice of the meeting. Any request for a special meeting received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The Chairman of the Board of Directors, the President, the Chief Executive Officer or the Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported request shall be deemed to have been delivered to the Secretary until

the earlier of (i) five (5) Business Days after receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent at least a majority of the issued and outstanding shares of Stock that would be entitled to vote at such meeting. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any Stockholder shall not be entitled to contest the validity of any request, whether during or after such five (5) Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

1.05 NOTICE. Not fewer than ten (10) nor more than ninety (90) days before the date of every meeting of Stockholders, written notice of such meeting shall be given, in accordance

with Article VIII, to each Stockholder entitled to vote at the meeting or entitled to receive notice of the meeting by statute, stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by statute, the purpose or purposes for which the meeting is called.

1.06 SCOPE OF NOTICE. No business shall be transacted at a special meeting of Stockholders except such business that is specifically designated in the notice of the meeting. Subject to the provisions of Section 1.03, any business of the Corporation may be transacted at the annual meeting without being specifically designated in the notice, except such business as is required by statute to be stated in such notice.

1.07 QUORUM. At any meeting of Stockholders, the presence in person or by proxy of Stockholders entitled to cast a majority of all the votes entitled to be cast at the meeting shall constitute a quorum; but this Section 1.07 shall not affect any requirement under any statute or the charter of the Corporation, as amended from time to time (the "Charter"), for the vote necessary for the adoption of any measure. If, however, a quorum is not present at any meeting of Stockholders, the Presiding Officer shall have the power to adjourn the meeting from time to time without further notice other than announcement at the meeting to a date not more than 120 days after the original record date or with further notice to a date more than 120 days after the original record date. At any meeting called to resume an adjourned meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally notified. The Stockholders present at a meeting which has been duly called and convened and at which a quorum is present at the time counted may continue to transact business until adjournment, notwithstanding the withdrawal of enough Stockholders to leave less than a quorum.

1.08 VOTING. A majority of the votes cast at a meeting of Stockholders duly called and at which a quorum is present shall be sufficient to take or authorize action upon any matter which may properly come before the meeting, unless more than a majority of the votes cast is specifically required by statute, the Charter or these Bylaws. Unless otherwise provided by statute or the Charter, each outstanding share (a "Share") of Stock of the Corporation, regardless of class, shall be entitled to one vote upon each matter submitted to a vote at a meeting of Stockholders. Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or vote them against the proposal, other than elections to office, but, if the Stockholder fails to specify the number of shares such Stockholder is voting affirmatively, it shall be conclusively presumed that the Stockholder's approving vote is with respect to all votes said Stockholder is entitled to cast. Shares of its own Stock directly or indirectly owned by the Corporation shall not be voted at any meeting and shall not be counted in determining the total number of outstanding Shares entitled to vote at any given time, but Shares of its own voting Stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding Shares at any given time. Notwithstanding anything else contained in these Bylaws, the rights of any class of "Excess Stock" (as such term is defined in the Charter) and the rights of holders of any class of Excess Stock shall be limited to the rights with respect thereto provided in the Charter.

Notwithstanding the foregoing, the affirmative vote of holders of a majority of all of the Shares entitled to be cast in the election of Directors shall be

required to elect a Director.

1.09 PROXIES. A Stockholder may vote the Shares owned of record by him or her, either in person or by proxy executed by the Stockholder or by his or her duly authorized agent in any manner permitted by law. Such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

1.10 CONDUCT OF MEETINGS.

(a) The Chairman or, in the absence of the Chairman, the Chief Executive Officer or, in the absence of both the Chairman and the Chief Executive Officer, the President, or, in the absence of all of the foregoing officers, a presiding officer appointed by the Board of Directors, shall preside over meetings of the Stockholders. The Secretary of the Corporation, or, in the absence of the Secretary and Assistant Secretaries, the person appointed by the presiding officer (the "Presiding Officer") of the meeting shall act as secretary of such meeting. Unless otherwise approved by the Presiding Officer, attendance at a meeting of Stockholders is restricted to Stockholders of record, persons authorized in accordance with Section 1.09 to act by proxy, and officers of the Corporation.

(b) The order of business and all other matters of procedure at any meeting of Stockholders shall be determined by the Presiding Officer. The Presiding Officer may prescribe such rules, regulations and procedures and take such action as, in the discretion of such Presiding Officer, are appropriate for the proper conduct of the meeting, including, without limitation, (i) restricting admission to the time set for the commencement of the meeting; (ii) limiting attendance at the meeting to Stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the Presiding Officer may determine; (iii) limiting participation at the meeting on any matter to Stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and such other individuals as the Presiding Officer may determine; (iv) limiting the time allotted to questions or comments by participants; (v) maintaining order and security at the meeting; (vi) removing any Stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the Presiding Officer; and (vii) recessing or adjourning the meeting to a time, date and place announced at the meeting. A meeting of stockholders convened on the date for which it was called may be recessed or adjourned from time to time without further notice other than announcement at the meeting to a date not more than 120 days after the original record date or with further notice to a date more than 120 days after the original record date. Unless otherwise determined by the Presiding Officer, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

1.11 TABULATION OF VOTES. At any annual or special meeting of Stockholders, the Presiding Officer shall be authorized to appoint one or more persons as tellers for such meeting (the "Teller" or "Tellers"). The Teller may, but need not, be an officer or employee of the Corporation. The Teller shall be responsible for tabulating or causing to be tabulated shares voted at the meeting and reviewing or causing to be reviewed all proxies. In tabulating votes, the

Teller shall be entitled to rely in whole or in part on tabulations and analyses made by personnel of the Corporation, its counsel, its transfer agent, its registrar or such other organizations that are customarily employed to provide such services. The Teller may be authorized by the Presiding Officer to determine on a preliminary basis the legality and sufficiency of all votes cast and proxies delivered under the Corporation's Charter, Bylaws and applicable law. The Presiding Officer may review all preliminary determinations made by the Teller hereunder, and in doing so, the Presiding Officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any preliminary determinations made by the Teller. Each report of the Teller shall be in writing and signed by him or her or by a majority of them if there is more than one. The report of the majority shall be the report of the Tellers.

1.12 INFORMAL ACTION BY STOCKHOLDERS. Any action required or permitted to be taken at a meeting of Stockholders may be taken without a meeting if a consent in writing, setting forth such action, is signed by all the Stockholders entitled to vote on the matter and any other Stockholders entitled to notice of a meeting of Stockholders (but not to vote thereat) have waived in writing any rights which they may have to dissent from such action, and such consents and waivers are filed with the records of Stockholders meetings. Such consents and waivers may be signed by different Stockholders on separate counterparts.

1.13 VOTING BY BALLOT. Voting on any question or in any election may be viva voce unless the Presiding Officer shall order or any Stockholder shall

demand that voting be by ballot.

ARTICLE II

DIRECTORS

2.01 GENERAL POWERS. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors. All powers of the Corporation may be exercised by or under the authority of the Board of Directors, except as conferred on or reserved to the Stockholders by statute, the Charter or these Bylaws.

2.02 OUTSIDE ACTIVITIES. The Board of Directors and its members are required to spend only such time managing the business and affairs of the Corporation as is necessary to carry out their duties in accordance with Section 2-405.1 of the Maryland General Corporation Law, as amended from time to time (the "MGCL"). Except as set forth in the Charter or by separate agreement, arrangement or policy of the Corporation, the Board of Directors, each Director, and the agents, officers and employees of the Corporation or of the Board of Directors or of any Director may engage with or for others in business activities of the types conducted by the Corporation. Except as set forth in the Charter or by separate agreement, arrangement or policy of the Corporation, none of such individuals has an obligation to notify or present to the Corporation or each other any investment opportunity that may come to such person's attention even though such investment might be within the scope of the Corporation's purposes or various investment objectives. Any interest that a Director has in any investment opportunity presented to the Corporation must be disclosed by such Director to the Board of Directors (and, if voting thereon, to the Stockholders or to any committee of the Board of Directors) within ten (10) days

after the later of the date upon which such Director becomes aware of such interest or the date upon which such Director becomes aware that the Corporation is considering such investment opportunity. If such interest comes to the interested Director's attention after a vote to take such investment opportunity, the voting body shall be notified of such interest and shall reconsider such investment opportunity if not already consummated or implemented.

2.03 NUMBER, TENURE AND QUALIFICATION. The number of Directors of the Corporation shall be that number set forth in the Charter or such other number as may be designated from time to time by resolution of a majority of the entire Board of Directors; provided, however, that the number of Directors shall be not less than five (5) nor greater than fifteen (15) and further provided that the tenure of office of a Director shall not be affected by any decrease in the number of Directors. The minimum or maximum number of Directors provided in this Section 2.03 may be changed only by amendment to these Bylaws or by amendment to the Corporation's Charter, provided that any such amendment shall be both duly adopted by the affirmative vote of a majority of the outstanding shares entitled to vote and deemed advisable or approved by the Board of Directors. Each Director shall serve for the term set forth in the Charter and until his or her successor is elected and qualified.

2.04 NOMINATION OF DIRECTORS.

(a) Nominations of persons for election to the Board of Directors may be made at an annual meeting of Stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any Stockholder of the Corporation who was a Stockholder of record of a class of Stock entitled to vote in the election of Directors (A) at the time of giving of notice provided for in this Section 2.04, (B) as of the record date for the annual meeting in question and (C) at the time of such annual meeting, and who complied with the notice procedures set forth in this Section 2.04. Any Stockholder who seeks to make such a nomination must be present in person or by proxy at the annual meeting. Only persons nominated in accordance with the procedures set forth in this Section 2.04 shall be eligible for election as Directors at an annual meeting of Stockholders.

(b) For nominations to be properly brought before an annual meeting by a Stockholder pursuant to clause (iii) of paragraph (a) of this Section 2.04, the Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a Stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than 120 days prior to the Notice Anniversary Date; provided, however, that in the event that the date of the mailing of the notice for the annual meeting is advanced or delayed by more than thirty (30) days from the Notice Anniversary Date, notice by the Stockholder to be timely must be so delivered not earlier than the 120th day prior to the date of mailing of the notice for such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the date of mailing of the notice for such annual meeting or the tenth (10th) day

following the day on which public announcement of the date of mailing of the notice for such meeting is first made. In no event shall the public announcement of a postponement or adjournment of an annual meeting commence a new time period for the giving of a Stockholder's notice as described above.

(c) A Stockholder's notice of nomination shall set forth (i) as to each individual whom the Stockholder proposes to nominate for election or reelection as a Director, (A) the name, age, business address and residence address of such individual, (B) the principal occupation or employment of such individual for the past five (5) years, (C) the class, series and number of shares of Stock of the Corporation that are beneficially owned by such individual, (D) the date such shares of Stock were acquired and the investment intent of such acquisition, (E) such individual's written consent to be named in the proxy statement as a nominee and to serve as a Director if elected and (F) all other information relating to such individual that is required to be disclosed in solicitations of proxies for election of Directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder; (ii) as to the Stockholder giving the notice and any Stockholder Associated Person, the class, series and number of all shares of Stock of the Corporation which are owned by such Stockholder and by such Stockholder Associated Person, if any, and the nominee holder for, and number of, shares owned beneficially but not of record by such Stockholder and by any such Stockholder Associated Person; and (iii) as to the Stockholder giving the notice and any Stockholder Associated Person covered by clause (ii) of this Section 2.04(c), the name and address of such Stockholder, as they appear on the Corporation's stock ledger and current name and address, if different, and of such Stockholder Associated Person. At the request of the Board of Directors, any person nominated by or at the direction of the Board of Directors for election as a Director at an annual meeting shall furnish to the Secretary of the Corporation that information which would be required to be set forth in a Stockholder's notice of nomination of such nominee.

(d) Notwithstanding anything in this Section 2.04 to the contrary, in the event the Board of Directors increases the number of Directors to be elected at an annual meeting in accordance with Article II, Section 2.03 of these Bylaws, and there is no public announcement of such action at least 100 days prior to the Notice Anniversary Date, a Stockholder's notice required by this Section 2.04 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(e) Nominations of persons for election to the Board of Directors may be made at a special meeting of Stockholders at which Directors are to be elected (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that Directors shall be elected at such special meeting, by any Stockholder of the Corporation who is a Stockholder of record of a class of Stock entitled to vote in the election of Directors (A) at the time of giving of notice provided for in this Section 2.04, (B) as of the record date for the special meeting in question and (C) at the time of such special meeting, and who complied with the notice procedures set forth in this Section 2.04. Any Stockholder who seeks to make such a nomination must be present in person or by proxy at the special meeting. In the event the Corporation calls a special meeting of Stockholders for the purpose of electing one or more individuals to the Board of Directors, any such Stockholder may nominate an individual or individuals (as the case may be) for election as

a Director as specified in the Corporation's notice of meeting, if the Stockholder's notice required by paragraphs (b) and (c) of this Section 2.04 shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of a postponement or an adjournment of a special meeting commence a new time period for the giving of a Stockholder's notice as described above.

(f) Upon written request by the Secretary of the Corporation or the Board of Directors or a designated committee thereof, any Stockholder proposing a nominee for election as a Director at a meeting of Stockholders shall provide, within five (5) business days of delivery of such request (or

such other period as may be specified in such request), in addition to any verification previously provided, written verification, satisfactory to the Secretary or the Board of Directors or any such committee thereof, in his, her or its sole discretion, of the accuracy of any information submitted by the Stockholder pursuant to this Section 2.04. If a Stockholder fails to provide such written verification within such period, the Secretary or the Board of Directors or any such committee thereof may treat the information as to which written verification was requested as not having been provided in accordance with the procedures set forth in this Section 2.04.

(g) Only such individuals who are nominated in accordance with the procedures set forth in this Section 2.04 of these Bylaws shall be eligible for election as Directors. The Presiding Officer of the meeting shall have the power to determine whether a nomination was made in accordance with the procedures set forth in this Section 2.04 and, if any proposed nomination is not in compliance with this Section 2.04, to declare that such defective nomination be disregarded and not be presented for action at the meeting.

(h) Notwithstanding the foregoing provisions of this Section 2.04, a Stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.04. Nothing in this Section 2.04 shall be deemed to affect any right of a Stockholder to request inclusion of a proposal in, nor the right of the Corporation to omit a proposal from, the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act.

2.05 ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors may be held immediately after and at the same place as the annual meeting of Stockholders, or at such other time and place, either within or without the State of Maryland, as is selected by resolution of the Board of Directors, and no notice other than this Bylaw or such resolution shall be necessary. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Maryland, for the holding of regular meetings of the Board of Directors without other notice than such resolutions.

2.06 SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the Chairman, the Chief Executive Officer or a majority of the Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Maryland, as the place for holding any special meeting of the Board of Directors called by them.

2.07 NOTICE AND CALL OF MEETINGS. Notice of any special meeting of the Board of Directors to be provided herein shall be delivered personally, or by telephone, electronic mail, facsimile transmission, United States mail or courier to each Director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least one (1) Business Day prior to the meeting. Notice by United States mail shall be given at least five (5) days prior to the meeting and shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be given at least two (2) Business Days prior to the meeting and shall be deemed to be given when deposited with or delivered to a courier properly addressed. Telephone notice shall be deemed to be given when the Director or his or her agent is personally given such notice in a telephone call to which the Director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon receipt of the message at the electronic mail address given to the Corporation by the Director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the Director and receipt of a completed answer-back indicating receipt. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be specified in the notice, unless specifically required by statute, the Charter or these Bylaws.

2.08 QUORUM. A majority of the Board of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors; provided, however, that a quorum for the transaction of business with respect to any matter in which any Director (or affiliate of such Director) who is not an Independent Director (as defined in the Charter) has any interest shall consist of a majority of the Directors that includes a majority of the Independent Directors then in office. If less than a majority of the Board of Directors is present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. The Directors present at a meeting which has been duly called and convened may continue to transact business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

2.09 VOTING. The action of a majority of the Directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable statute, the Charter or these Bylaws; provided, however, that no act relating to any matter in which a Director (or affiliate of such Director) who is not an Independent Director has any interest shall be the act of the Board of Directors unless such act has been approved by a majority of the Board of Directors that includes a majority of the Independent Directors. If enough Directors have withdrawn from a meeting to leave less than a quorum but the meeting is not adjourned, the action of a majority of the Directors necessary to constitute a quorum at such meeting shall be the action of the Board of

Directors, unless the concurrence of a greater proportion is required for such action by applicable statutes, the Charter or the Bylaws.

2.10 CONDUCT OF MEETINGS. All meetings of the Board of Directors shall be called to order and presided over by the Chairman, or in the absence of the Chairman, by the Chief Executive Officer (if a member of the Board of Directors) or, in the absence of the Chairman and the Chief Executive Officer, by a member of the Board of Directors selected by the members present. The Secretary of the Corporation, or in the absence of the Secretary, any Assistant Secretary, shall act as secretary at all meetings of the Board of Directors, and in the absence of the Secretary and Assistant Secretaries, the presiding officer of the meeting shall designate any person to act as secretary of the meeting. Members of the Board of Directors shall be entitled to participate in meetings of the Board of Directors by conference telephone or similar communications equipment by means of which all Directors participating in the meeting can hear each other at the same time, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for all purposes of these Bylaws.

2.11 RESIGNATIONS. Any Director may resign from the Board of Directors or any committee thereof in the manner provided in the Charter.

2.12 REMOVAL OF DIRECTORS. Any Director may be removed in the manner provided in the Charter.

2.13 VACANCIES. Vacancies on the Board of Directors shall be filled in the manner provided in the Charter.

2.14 INFORMAL ACTION BY DIRECTORS. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a consent in writing to such action is signed by all of the Directors and such written consent is filed with the minutes of the Board of Directors. Consents may be signed by different Directors on separate counterparts.

2.15 COMPENSATION. An annual fee for services and payment for expenses of attendance at each meeting of the Board of Directors, or of any committee thereof, may be allowed to any Director by resolution of the Board of Directors.

2.16 LEAD INDEPENDENT DIRECTOR. From time to time the Independent Directors then serving on the Board of Directors may appoint from among them one member to serve as "Lead Independent Director," which position shall have such description as the Independent Directors shall in their discretion determine, but only to the extent not inconsistent with the Charter or these Bylaws.

ARTICLE III

COMMITTEES

3.01 NUMBER, TENURE AND QUALIFICATION. The Board of Directors may appoint from among its members certain committees as described below. The term of office of any committee member shall be as provided in the resolution of the Board of Directors designating such member but shall not exceed such member's term as Director. Any member of a committee may be removed at any time by resolution of the Board of Directors. A committee may not take or authorize any act as to any matter in which any Director (or affiliate of such Director) who is not an Independent Director has or is reasonably likely to have any interest unless a majority of the members of such committee shall be Independent Directors.

(a) Executive Committee. The Board of Directors may, by resolution adopted by a majority of the Directors, appoint an Executive Committee consisting of one or more Directors. The Board may designate one or more Directors as an alternate member of the Executive Committee, who may

replace any absent member at any meeting of the Executive Committee.

(b) Audit Committee. The Board of Directors shall, by resolution adopted by a majority of the Directors, appoint an Audit Committee consisting of three or more Directors whose membership on the Audit Committee shall satisfy the requirements set forth in the applicable rules, if any, of the New York Stock Exchange ("NYSE"), as amended from time to time. The Board may designate one or more Directors as an alternate member of the Audit Committee, who may replace any absent member at any meeting of the Audit Committee.

(c) Compensation Committee. The Board of Directors shall, by resolution adopted by a majority of the Directors, appoint a Compensation Committee consisting of two or more Directors whose membership on the Compensation Committee shall satisfy the requirements set forth in the applicable rules, if any, of the NYSE, as amended from time to time. The Board may designate one or more Directors as an alternate member of the Compensation Committee, who may replace any absent member at any meeting of the Compensation Committee.

(d) Other Committees. The Board of Directors may, by resolution adopted by a majority of the Directors, appoint such other standing or special committees, each consisting of one or more Directors, as it may from time to time deem advisable to perform such general or special duties as may from time to time be delegated to any such committee by the Board of Directors, subject to the limitations contained in the MGCL or imposed by the Charter or these Bylaws. The Board may designate one or more Directors as an alternate member of any committee designated pursuant to this Section 3.01(d), who may replace any absent member at any meeting of such committee.

3.02 DELEGATION OF POWER. The Board of Directors may, by resolution or adoption of a committee charter, delegate to these committees any of the powers of the Board of Directors, except those powers which the Board of Directors is specifically prohibited from delegating pursuant to Section 2-411 of the MGCL, and may prescribe rules governing the conduct and proceedings of these committees.

3.03 QUORUM AND VOTING. Subject to such terms as may appear in the delegation of authority to such committee (which may be contained in the charter for such committee), a majority of the members of any committee shall constitute a quorum for the transaction of business by such committee, and the act of a majority of the committee members present at a meeting shall constitute the act of the committee. Notwithstanding the foregoing, no act relating to any matter in which any Director (or affiliate of such Director) who is not an Independent Director has any interest shall be the act of any committee unless a majority of the Independent Directors on the committee vote for such act.

3.04 CONDUCT OF MEETINGS. Subject to such terms as may appear in the delegation of authority to such committee (which may be contained in the charter for such committee), the Board of Directors shall designate for each committee a chairman, and if such chairman is not present at a particular meeting, the committee shall select a presiding officer for such meeting. Subject in each case to any provisions to the contrary in any effective resolution of the Board of Directors relating to the appointment or authority of a committee of the Board of Directors (including any committee charter adopted by such resolution), each committee shall (i) adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings and (ii) meet at the call of the chairman of such committee or the Chairman of the Board of Directors. Members of any committee shall be entitled to participate in meetings of such committee by conference telephone or similar communications equipment by means of which all Directors participating in the meeting can hear each other at the same time, and participation in a meeting in accordance herewith shall constitute presence in person at such meeting for all purposes of these Bylaws. Each committee shall keep minutes of its meetings and report the results of any proceedings to the Board of Directors.

3.05 INFORMAL ACTION BY COMMITTEES. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a written consent to such action is signed by all members of the committee and such written consent is filed with the minutes of proceedings of such committee. Consents may be signed by different members on separate counterparts.

ARTICLE IV

OFFICERS

4.01 TITLES AND ELECTION. The Corporation shall have a Chairman of the Board, a Chief Executive Officer, a President, a Chief Operating Officer, a Chief Financial Officer, one or more Vice Presidents (including Vice Presidents of varying degrees, such as Executive, Regional or Senior Vice Presidents), a

Secretary, a Treasurer (who shall also be the Chief Financial Officer of the Corporation) and such Assistant Secretaries and Assistant Treasurers and such other officers as the Board of Directors, or any committee or officer appointed by the Board of Directors for such purpose, may from time to time elect. Notwithstanding the foregoing, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Secretary and the Treasurer shall be elected by a majority of the

Directors at the time in office. The officers of the Corporation elected by the Board of Directors shall be elected annually at the first meeting of the Board of Directors following each annual meeting of Stockholders. If the election of such officers shall not take place at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until the first meeting of the Board of Directors following the next annual meeting of Stockholders and until his successor is duly elected and qualified or until his death, resignation or removal in the manner hereinafter provided. Any two or more offices, except President and Vice President, may be held by the same person. Election or appointment of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent. No officer need be a Stockholder or a Director of the Corporation.

4.02 REMOVAL AND RESIGNATION. Any officer may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board of Directors, or, except in the case of an officer elected by the Board of Directors, by a committee or an officer upon whom such power of removal may be conferred by the Board of Directors. Any officer may resign at any time by giving written notice to the Corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.03 OUTSIDE ACTIVITIES. The officers and agents of the Corporation are required to spend only such time managing the business and affairs of the Corporation as is necessary to carry out their duties in accordance with applicable law and these Bylaws. Except as set forth in the Charter or by the terms of any separate agreement, arrangement or policy of the Corporation, the officers and agents of the Corporation may engage with or for others in business activities of the types conducted by the Corporation. Except as set forth in the Charter or by the terms of any separate agreement, arrangement or policy of the Corporation, the officers and agents of the Corporation (other than those serving who are also Directors) do not have an obligation to notify or present to the Corporation or each other any investment opportunity that may come to such person's attention even though such investment might be within the scope of the Corporation's purposes or various investment objectives. Any interest that an officer or an agent has in any investment opportunity presented to the Corporation must be disclosed by such officer or agent to the Board of Directors (and, if voting thereon, to the Stockholders or to any committee of the Board of Directors) within ten (10) days after the later of the date upon which such officer or agent becomes aware of such interest or that the Corporation is considering such investment opportunity. If such interest comes to the attention of the interested officer or agent after a vote to take such investment opportunity, the voting body shall reconsider such investment opportunity if not already consummated or implemented.

4.04 VACANCIES. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the term.

4.05 CHAIRMAN OF THE BOARD. The Chairman of the Board shall, if present, preside at all meetings of the Stockholders and the Board of Directors, and shall exercise and

perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

4.06 CHIEF EXECUTIVE OFFICER. Unless otherwise determined by the Board of Directors and subject to such supervisory powers, if any, as may be given by the Board of Directors to the Chairman, the Chief Executive Officer shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business of the Corporation and shall exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

4.07 PRESIDENT. The President shall exercise and perform such duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

4.08 VICE PRESIDENTS. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as may be from time to time assigned to them by the Board of Directors or prescribed by these Bylaws.

4.09 SECRETARY.

(a) The Secretary shall keep, or cause to be kept, a book of minutes in written form of the proceedings of the Board of Directors, committees of the Board of Directors, and Stockholders. Such minutes shall include all waivers of notice, consents to the holding of meetings, and approvals of the minutes of meetings executed pursuant to these Bylaws or the MGCL. The Secretary shall keep, or cause to be kept at the principal executive office or at the office of the Corporation's transfer agent or registrar, a record of its Stockholders, giving the names and addresses of all Stockholders and the number and class of shares held by each.

(b) The Secretary shall give, or cause to be given, notice of all meetings of the Stockholders and may give, or cause to be given, notice of all meetings of the Board of Directors required by these Bylaws or by law to be given, and shall keep the seal of the Corporation in safe custody, and shall have such other powers and perform such other duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

4.10 TREASURER AND CHIEF FINANCIAL OFFICER.

(a) The Treasurer and Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account in written form or any other form capable of being converted into written form.

(b) The Treasurer and Chief Financial Officer shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositaries as may be designated by the Board of Directors. He shall disburse all funds of the Corporation as may be

ordered by the Board of Directors, shall render to the Chairman, Chief Executive Officer, President and Directors, whenever any of them requests it, an account of all of his transactions as Treasurer and Chief Financial Officer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

4.11 ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The Board of Directors, or any committee or officer appointed by the Board of Directors for such purpose, may appoint one or more Assistant Secretaries or Assistant Treasurers. The Assistant Secretaries and Assistant Treasurers (i) shall have the power to perform and shall perform all the duties of the Secretary and the Treasurer, respectively, in such respective officer's absence and (ii) shall perform such duties as shall be assigned to them by the Secretary or Treasurer, respectively, or by the Chairman, Chief Executive Officer, President or the Board of Directors, or any such designated committee or officer.

4.12 SUBORDINATE OFFICERS. The Corporation shall have such subordinate officers as the Board of Directors, or any committee or officer appointed by the Board of Directors for such purpose, may from time to time elect. Each such officer shall hold office for such period and perform such duties as the Board of Directors, Chairman, Chief Executive Officer, President or any designated committee or officer may prescribe.

4.13 COMPENSATION. The salaries and other compensation and remuneration, of any kind, if any, of the officers shall be fixed from time to time by the Board of Directors or a committee thereof. No officer shall be prevented from receiving such compensation, if any, by reason of the fact that he is also a Director of the Corporation. The Board of Directors may authorize any committee or officer, upon whom the power of appointing assistant and subordinate officers may have been conferred, to fix the compensation and remuneration of such assistant and subordinate officers.

ARTICLE V

SHARES OF STOCK

5.01 FORM OF CERTIFICATES. Certificates for shares of stock of the Corporation shall be in such form and design as the Board of Directors shall

determine and shall be signed in the name of the Corporation by (i) the Chairman of the Board, the President or a Vice President and (ii) the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary. Each certificate shall contain the statements and information required by the MGCL. In the event that the Corporation issues shares of Stock without certificates, the Corporation shall provide to holders of such shares a written statement of the information required by the MGCL to be included on stock certificates.

5.02 TRANSFER OF SHARES. Shares of Stock may only be transferred in accordance with all restrictions on transfer set forth in the Charter. Before any transfer of Stock is entered upon the books of the Corporation, or any new certificate is issued therefor, the older

certificate, properly endorsed, shall be surrendered and canceled, except when a certificate has been lost, stolen or destroyed.

5.03 STOCK LEDGER. The Corporation shall maintain at its principal executive office or at the office of its counsel, accountants or transfer agent or at such other place designated by the Board of Directors an original or duplicate stock ledger containing the names and addresses of all the Stockholders and the number of shares of each class of Stock held by each Stockholder. The stock ledger shall be maintained pursuant to a system that the Corporation shall adopt allowing for the issuance, recordation and transfer of its Stock by electronic or other means that can be readily converted into written form for visual inspection and not involving any issuance of certificates. Such system shall include provisions for notice to acquirers of Stock (whether upon issuance or transfer of Stock) in accordance with Sections 2-210 and 2-211 of the MGCL, and Section 8-204 of the Commercial Law Article of the State of Maryland. The Corporation shall be entitled to treat the holder of record of any Share or Shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Share on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Maryland. Until a transfer is duly effected on the stock ledger, the Corporation shall not be affected by any notice of such transfer, either actual or constructive. Nothing herein shall impose upon the Corporation, the Board of Directors or officers or their agents and representatives a duty or limit their rights to inquire as to the actual ownership of Shares.

5.04 RECORDING TRANSFERS OF STOCK. If transferred in accordance with any restrictions on transfer contained in the Charter, these Bylaws or otherwise, Shares shall be recorded as transferred in the stock ledger upon provision to the Corporation or the transfer agent of the Corporation of an executed stock power duly guaranteed and any other documents reasonably requested by the Corporation, and the surrender of the certificate or certificates, if any, representing such Shares. Upon receipt of such documents, the Corporation shall issue the statements required by Sections 2-210 and 2-211 of the MGCL and Section 8-204 of the Commercial Law Article of the State of Maryland, issue as needed a new certificate or certificates (if the transferred Shares were certificated) to the persons entitled thereto, cancel any old certificates and record the transaction upon its books.

5.05 LOST CERTIFICATE. The Board of Directors may direct a new certificate to be issued in the place of any certificate theretofore issued by the Corporation alleged to have been stolen, lost or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of Stock to be stolen, lost or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such stolen, lost or destroyed certificate or his legal representative to advertise the same in such manner as it shall require and/or to give bond, with sufficient surety, to indemnify the Corporation against any loss or claim which may arise by reason of the issuance of a new certificate.

5.06 EMPLOYEE STOCK PURCHASE PLANS. The Board of Directors shall have the authority, in its discretion, to adopt one or more employee stock purchase plans or

agreements, containing such terms and conditions as the Board may prescribe, for the issue and sale of unissued shares of the Corporation, or of its issued shares acquired or to be acquired, to the employees of the Corporation or to the employees of its subsidiary corporations or to a trustee on their behalf, and for the payment of such shares in installments or at one time, and for such consideration as may be fixed by the Board or any committee thereof, and may provide for aiding any such employees in paying for such shares by compensation

for services rendered, promissory notes or otherwise. The Board of Directors, or any committee thereof, may carry out and administer any such plan or delegate part or all of the administration of any such plan to any other entity or person.

5.07 CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE.

(a) The Board of Directors may fix, in advance, a date as the record date for the purpose of determining Stockholders entitled to receive notice of, or to vote at, any meeting of Stockholders, or Stockholders entitled to receive payment of any dividend or the allotment of any rights, or in order to make a determination of Stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than ninety (90) days, and in case of a meeting of Stockholders not less than ten (10) days, prior to the date on which the meeting or particular action requiring such determination of Stockholders is to be held or taken.

(b) In lieu of fixing a record date, the stock transfer books may be closed by the Board of Directors in accordance with Section 2-511 of the MGCL for the purpose of determining Stockholders entitled to receive notice of or to vote at a meeting of Stockholders.

(c) Except as otherwise provided in these Bylaws, if no record date is fixed and the stock transfer books are not closed for the determination of Stockholders, (i) the record date for the determination of Stockholders entitled to receive notice of, or to vote at, a meeting of Stockholders shall be at the close of business on the day on which the notice of meeting is mailed or the thirtieth (30th) day before the meeting, whichever is the closer date to the meeting; and (ii) the record date for the determination of Stockholders entitled to receive payment of a dividend or an allotment of any rights shall be at the close of business on the day on which the resolution of the Board of Directors declaring the dividend or allotment of rights is adopted.

(d) When a determination of Stockholders entitled to vote at any meeting of Stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof, except where (i) the determination has been made through the closing of the stock transfer books and the stated period of closing has expired or (ii) the meeting is adjourned to a date more than 120 days after the record date fixed for the original meeting, in either of which case a new record date shall be determined as set forth herein.

ARTICLE VI

DIVIDENDS AND DISTRIBUTIONS

6.01 AUTHORIZATION. Dividends and other distributions upon the Stock may be authorized by the Board of Directors as set forth in the applicable provisions of the Charter and any applicable law, at any meeting, limited only to the extent of Section 2-311 of the MGCL. Dividends and other distributions upon the Stock may be paid in cash, property or Stock of the Corporation, subject to the provisions of law and of the Charter.

6.02 CONTINGENCIES. Before payment of any dividends or other distributions upon the Stock, there may be set aside (but there is no duty to set aside) out of any funds of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund to meet contingencies, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine to be in the best interests of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE VII

INDEMNIFICATION

7.01 INDEMNIFICATION TO THE EXTENT PERMITTED BY LAW. The Corporation shall indemnify, to the full extent authorized or permitted by Maryland statutory or decisional law or any other applicable law, any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact he, his testator or intestate is or was a Director or officer of the Corporation or any predecessor of the Corporation, or is or was serving at the request of the Corporation or any predecessor of the Corporation as a director or officer of, or in any other

capacity with respect to, any other corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise (an "Indemnified Person"), including the advancement of expenses under procedures provided under such law; provided, however, that no indemnification shall be provided for expenses relating to any willful or grossly negligent failure to make disclosures required by the next to last sentence of Sections 2.02 or 4.03 hereof as applied to Directors and officers respectively. The Corporation shall indemnify any Indemnified Person's spouse (whether by statute or at common law and without regard to the location of the governing jurisdiction) and children to the same extent and subject to the same limitations applicable to any Indemnified Person hereunder for claims arising out of the status of such person as a spouse or child of such Indemnified Person, including claims seeking damages from marital property (including community property) or property held by such Indemnified Person and such spouse or property transferred to such spouse or child, but such indemnity shall not otherwise extend to protect the spouse or child against liabilities caused by the spouse's or child's own acts. The provisions of this Section 7.01 shall constitute a contract with each Indemnified Person who serves at any time while these provisions are in effect and may be modified adversely only with the consent of affected Indemnified Persons and each such Indemnified Person shall be deemed to be serving as such in reliance on these provisions.

7.02 INDEMNIFICATION OF EMPLOYEES AND AGENTS OF THE CORPORATION. The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article VII with respect to the indemnification of and advancement of expenses to Directors and officers of the Corporation.

7.03 INSURANCE. The Corporation shall have the power to purchase and maintain insurance to protect itself and any Indemnified Person, employee or agent of the Corporation against any liability, whether or not the Corporation would have the power to indemnify him or her against such liability.

7.04 NON-EXCLUSIVE RIGHTS TO INDEMNITY; HEIRS AND PERSONAL REPRESENTATIVES. The rights to indemnification set forth in this Article VII are in addition to all rights which any Indemnified Person may be entitled as a matter of law or by contract, and shall inure to the benefit of the heirs and personal representatives of each Indemnified Person.

7.05 NO LIMITATION. In addition to any indemnification permitted by these Bylaws, the Board of Directors shall, in its sole discretion, have the power to grant such indemnification to such persons as it deems in the interest of the Corporation to the full extent permitted by law. This Article shall not limit the Corporation's power to indemnify against liabilities other than those arising from a person's serving the Corporation as a Director or officer.

7.06 AMENDMENT, REPEAL OR MODIFICATION. Any amendment, repeal or modification of any provision of this Article VII by the Stockholders or the Directors of the Corporation is effective on a prospective basis only and neither repeal nor modification of such provisions shall adversely affect any right or protection of a Director or officer of the Corporation under this Article VII existing at the time of such amendment, repeal or modification.

7.07 RIGHT OF CLAIMANT TO BRING SUIT. If a claim under Section 7.01 of this Article VII is not paid in full by the Corporation within ninety (90) days after a written claim has been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been tendered to the Corporation) that the claimant has not met the standards of conduct which make it permissible under the MGCL for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel, or its Stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the MGCL, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel, or its Stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

ARTICLE VIII

NOTICES

8.01 NOTICES. Unless otherwise provided in these Bylaws, whenever

notice is required to be given pursuant to these Bylaws, it shall be construed to mean either written notice personally delivered against written receipt, or notice in writing transmitted by mail, by depositing the same in a post office or letter box, in a post-paid sealed wrapper, addressed, if to the Corporation, to 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314 (or any subsequent address selected by the Board of Directors), attention Chief Executive Officer, or if to a Stockholder, Director or officer, at the address of such person as it appears on the records of the Corporation. In addition, whenever notice is required to be given to a Stockholder, such

requirement shall be satisfied when written notice is left at such Stockholder's residence or usual place of business or is delivered to such Stockholder by any other means permitted by Maryland law. Unless otherwise specified, notice sent by mail shall be deemed to be given at the time mailed.

8.02 SECRETARY TO GIVE NOTICE. All notices required by law or these Bylaws to be given by the Corporation shall be given by the Secretary or any other officer of the Corporation designated by the Chairman or the Chief Executive Officer. If the Secretary and Assistant Secretary are absent or refuse or neglect to act, the notice may be given by, or by any person directed to do so by, the Chairman or the Chief Executive Officer or, with respect to any meeting called pursuant to these Bylaws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

8.03 WAIVER OF NOTICE. Whenever any notice is required to be given pursuant to the Charter or these Bylaws or pursuant to applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein for which notice is given, shall be deemed equivalent to the giving of such notice. A written waiver of notice of a Stockholders meeting shall be filed with the records of such meeting. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE IX

MISCELLANEOUS

9.01 EXEMPTION FROM MARYLAND CONTROL SHARE ACQUISITION ACT. The provisions of the Maryland Control Share Acquisition Act (Sections 3-701 to 3-710 of the MGCL, as amended from time to time) shall not apply to any Share of Stock of the Corporation now or hereafter held by any current or future Stockholders. All shares of Stock currently outstanding or issued in the future are exempted from the Maryland Control Share Acquisition Act to the fullest extent permitted by Maryland law.

9.02 OFFICES OF THE CORPORATION. The principal executive office for the transaction of the business of the Corporation is hereby fixed and located at 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another. Branch and subordinated offices may at any time be established by the Board of Directors.

9.03 BOOKS AND RECORDS. The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its Stockholders and Board of Directors meetings and of its executive or other committees when exercising any of the powers or authority of the Board of Directors. The books and records of

the Corporation may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form but may be maintained in the form of a reproduction.

9.04 INSPECTION OF BYLAWS AND CORPORATE RECORDS. These Bylaws, the minutes of proceedings of the Stockholders, annual statements of affairs and any voting trust agreements on record shall be open to inspection upon written demand delivered to the Corporation by any Stockholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to such holder's interests as a Stockholder or as the holder of such voting trust certificate, in each case as set forth in the MGCL.

Other documents, such as the Corporation's books of account, stock ledger and Stockholder lists, may be made available for inspection by any Stockholder or holder of a voting trust certificate to the extent required by the MGCL.

9.05 CONTRACTS. The Board of Directors may authorize any officer(s) or agent(s) to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

9.06 CHECKS, DRAFTS, ETC. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officers or agents of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

9.07 LOANS.

(a) Such officers or agents of the Corporation as from time to time have been designated by the Board of Directors shall have authority (i) to effect loans, advances, or other forms of credit at any time or times for the Corporation, from such banks, trust companies, institutions, corporations, firms, or persons, in such amounts and subject to such terms and conditions, as the Board of Directors from time to time has designated; (ii) as security for the repayment of any loans, advances, or other forms of credit so authorized, to assign, transfer, endorse, and deliver, either originally or in addition or substitution, any or all personal property, real property, stocks, bonds, deposits, accounts, documents, bills, accounts receivable, and other commercial paper and evidences of debt or other securities, or any rights or interests at any time held by the Corporation; (iii) in connection with any loans, advances, or other forms of credit so authorized, to make, execute, and deliver one or more notes, mortgages, deeds of trust, financing statements, security agreements, acceptances, or written obligations of the Corporation, on such terms and with such provisions as to the security or sale or disposition of them as those officers or agents deem proper; and (iv) to sell to, or discount or rediscount with, the banks, trust companies, institutions, corporations, firms or persons making those loans, advances, or other forms of credit, any and all commercial paper, bills, accounts receivable, acceptances, and other instruments and evidences of debt at any time held by the Corporation, and, to that end, to endorse, transfer, and deliver the same.

(b) From time to time the Corporation shall certify to each bank, trust company, institution, corporation, firm or person so designated, the signatures of the officers or

agents so authorized. Each bank, trust company, institution, corporation, firm or person so designated is authorized to rely upon such certification until it has received written notice that the Board of Directors has revoked the authority of those officers or agents.

9.08 FISCAL YEAR. The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution, and, in the absence of such resolution, the fiscal year shall be the year ending December 31.

9.09 ANNUAL REPORT. Each fiscal year, the Board of Directors of the Corporation shall cause to be sent to the Stockholders an Annual Report in such form as may be deemed appropriate by the Board of Directors. The Annual Report shall include audited financial statements and shall be accompanied by the report thereon of an independent certified public accountant.

9.10 INTERIM REPORTS. The Corporation may send interim reports to the Stockholders having such form and content as the Board of Directors deems proper.

9.11 BYLAWS SEVERABLE. The provisions of these Bylaws are severable, and if any provision shall be held invalid or unenforceable, that invalidity or unenforceability shall attach only to that provision and shall not in any manner affect or render invalid or unenforceable any other provision of these Bylaws, and these Bylaws shall be carried out as if the invalid or unenforceable provision were not contained herein.

ARTICLE X

AMENDMENT OF BYLAWS

10.01 BY DIRECTORS. The Board of Directors shall have the power, at any annual or regular meeting, or at any special meeting if notice thereof is included in the notice of such special meeting, to alter or repeal any Bylaws of the Corporation and to make new Bylaws, except that the Board of Directors shall not alter or repeal (i) Section 2.03 to change the minimum or maximum number of

Directors without the vote of the Stockholders required therein, (ii) Section 7.01 without a vote of the Stockholders and the consent of any Indemnified Persons whose rights to indemnification, based on conduct prior to such amendment, would be adversely affected by such proposed alteration or repeal; (iii) this Section 10.01; or (iv) Section 10.02.

10.02 BY STOCKHOLDERS. With the approval of the Board of Directors, the Stockholders shall have the power, by affirmative vote of a majority of the outstanding shares of common stock of the Corporation, at any annual meeting (subject to the requirements of Section 1.03), or at any special meeting if notice thereof is included in the notice of such special meeting, to alter or repeal any Bylaws of the Corporation and to make new Bylaws, except that the Stockholders shall not alter or repeal Section 7.01 without the consent of any Indemnified Persons adversely affected by such proposed alteration or repeal, and except that a vote of two-thirds of the outstanding shares of common stock of the Corporation is required to amend Sections 1.03, 2.04 and 2.13.

The foregoing are certified as the Bylaws of the Corporation as in effect at the close of business on February 13, 2003.

/s/ Edward M. Schulman

Edward M. Schulman

EXHIBIT 4.3

AVALON PROPERTIES, INC.

AND

THE BANK OF NEW YORK

Second Supplemental Indenture

Dated as of December 16, 1997

Supplemental to Indenture dated as of

September 18, 1995

SECOND SUPPLEMENTAL INDENTURE

SECOND SUPPLEMENTAL INDENTURE, dated as of December 16, 1997, between Avalon Properties, Inc., a Maryland corporation (hereinafter called the "Company"), having its principal office at 15 River Road, Wilton, Connecticut 06897, and The Bank of New York, a banking association organized under the laws of the State of New York, as successor to Signet Trust Company (hereinafter called the "Trustee"), having a Corporate Trust Office at 101 Barclay Street, New York, New York 10286, as Trustee under the Indenture (as hereinafter defined).

RECITALS

The Company and Signet Trust Company, as trustee, have heretofore entered into an Indenture and First Supplemental Indenture, each dated as of September 18, 1995 (hereinafter called the "Indenture"), providing for the issuance by the Company from time to time of its senior debt securities evidencing its unsecured and unsubordinated indebtedness (the "Securities");

The Company desires to issue senior debt securities under the Indenture in the form of, and having the terms set forth in, Exhibit A to this Second Supplemental Indenture, the terms of which are incorporated herein and made a part hereof, and has duly authorized the execution and delivery of this Second Supplemental Indenture to modify the Indenture and provide certain additional provisions and definitions as hereinafter described.

NOW, THEREFORE, THIS SECOND SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises, the Company and the Trustee covenant and agree, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE

Section 1.01. Section 101 of the Indenture is amended as follows:

The following definitions supplement, and, to the extent inconsistent with, replace the definitions in Section 101 of the Indenture:

"<u>Person</u>" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"<u>Subsidiary</u>" means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests of which are owned, directly or indirectly, by such Person. For the purposes

of this definition, "voting equity securities" means equity securities having voting power for the election of directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

ARTICLE TWO

Section 2.01. All capitalized terms which are used herein and not otherwise defined herein are defined in the Indenture and are used herein with the same meanings as in the Indenture.

Section 2.02. This Second Supplemental Indenture shall be effective as of the date first above written and upon the execution and delivery hereof by each of the parties hereto.

Section 2.03. This Second Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 2.04. This Second Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Second Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

AVALON PROPERTIES, INC.

By: /s/ Thomas J. Sargeant   Dated: December 16, 1997

Name: Thomas J. Sargeant
Title: Chief Financial Officer and Treasurer

Attest: /s/ Miguel Azua

THE BANK OF NEW YORK, as Trustee

By: /s/ MaryBeth Lewicki   Dated: December 16, 1997

Name: MaryBeth Lewicki
Title: Assistant Vice President

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)
) ss:
COUNTY OF ALEXANDRIA)

On December 16, 1997, before me personally came Thomas J. Sargeant, to me known, who, being by me duly sworn, did depose and say that he is the Chief Financial Officer and Treasurer of AVALON PROPERTIES, INC., one of the parties described in and which executed the foregoing instrument, and that he signed his name thereto by authority of the Board of Directors.

[Notarial Seal]

/s/ Keebra N. Wright
- - --
Notary Public - Keebra N. Wright
Commission Expires: June 30, 2000

EXHIBIT A

[Form of Face of Note]

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE TRANSFERRED TO, OR REGISTERED OR EXCHANGED FOR SECURITIES REGISTERED IN THE NAME OF, ANY PERSON OTHER THAN THE DEPOSITORY OR A NOMINEE THEREOF AND NO SUCH TRANSFER MAY BE REGISTERED, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE OF DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ITS NOMINEE TO A SUCCESSOR DEPOSITORY OR ITS NOMINEE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY (AS DEFINED BELOW) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

AVALON PROPERTIES, INC.

6 7/8% NOTE DUE 2007

REGISTERED No.: R-001

PRINCIPAL AMOUNT $110,000,000

CUSIP No.: 053469 AC 6

AVALON PROPERTIES, INC., a corporation organized and existing under the laws of

the State of Maryland (hereinafter called the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & Co., or registered assigns, upon presentation, the principal sum of One Hundred Ten Million Dollars ($110,000,000) on December 15, 2007 at the office or agency of the Company referred to below, and to pay interest thereon from December 15, 1997, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually in arrears on June 15 and December 15 in each year, commencing June 15, 1998, at the rate of 6 7/8% per annum, until the entire principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for on any Interest Payment Date will, as provided for in the Indenture, be paid to the person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest which shall be the May 31 or November 30 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not more than 15 days and not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this Series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of the principal of, or Make-Whole Amount, if any, and interest on, the Securities will be made to The Depository Trust Company or its nominee in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of interest may be made by (i) check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) by wire transfer of funds to an account of the Person entitled thereto maintained within the United States. The Company is not required to maintain an office or agency for such payment in the City of New York.

Securities of this series may be redeemed at any time at the option of the Company, in whole or in part, upon notice of not more than 60 nor less than 30 days prior to the Redemption Date, at a redemption price equal to the sum of (i) the principal amount of the Securities being redeemed plus accrued interest thereon to the Redemption Date and (ii) the Make-Whole Amount, if any, with respect to such Securities.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS SECURITY SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH IN THIS PLACE.

Unless the Certificate of Authentication hereon has been executed by or on behalf of the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

AVALON PROPERTIES, INC.

Dated: December 16, 1997 By:

Name: Richard L. Michaux
Title: Chairman of the Board and
Chief Executive Officer

Attest:

By:

Name: Thomas J. Sargeant
Title: Secretary

[SEAL]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION:

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

THE BANK OF NEW YORK,
as Trustee

By: Dated: December 16, 1997

Authorized Officer

[Form of Reverse of Note]

AVALON PROPERTIES, INC.

6 7/8% NOTE DUE 2007

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of September 18, 1995, as supplemented by the First Supplemental Indenture, dated as of September 18, 1995, each between the Company and Signet Trust Company, and the Second Supplemental Indenture, dated as of December 16, 1997, (as so supplemented, herein called the "Indenture") between the Company and The Bank of New York, a banking association organized under the laws of the State of New York, as successor trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the first page hereof, limited in aggregate principal amount to $110,000,000.

"Make-Whole Amount" means, in connection with any optional redemption or accelerated payment of any Security, the excess, if any, of (i) the aggregate present value as of the date of such redemption or accelerated payment of each dollar of principal being redeemed or paid and the amount of interest (exclusive of interest accrued to the date of redemption or accelerated payment) that would have been payable in respect of such dollar if such redemption or accelerated payment had not been made, determined by discounting, on a semi-annual basis, such principal and interest at the Reinvestment Rate (determined on the third Business Day preceding the date such notice of redemption is given or declaration of acceleration is made) from the respective dates on which such principal and interest would have been payable if such redemption or accelerated payment had not been made, over (ii) the aggregate principal amount of the Securities being redeemed or paid.

"Reinvestment Rate" means .25% (twenty-five one hundredths of one percent) plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity, as of the payment date of the principal being redeemed or paid. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line

basis, rounding in each of such relevant periods to the nearest month. For purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Make-Whole Amount shall be used.

"Statistical Release" means the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded United States government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination under the Indenture, then such other reasonably comparable index which shall be designated by the Company.

The Indenture contains provisions for defeasance at any time of (a) the entire indebtedness of the Company on this Security and (b) certain restrictive covenants and the related defaults and Events of Default applicable to the Company, in each case, upon compliance by the Company with certain conditions set forth in the Indenture, which provisions apply to this Security.

If any Event of Default with respect to Securities of this series shall occur and be continuing, the principal of, and the Make-Whole Amount, if any, on, the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee, offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof (and premium or Make-Whole Amount, if any) or any interest on and any Additional Amounts in respect thereof on or after the respective due dates expressed herein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the

Securities of each series at the time Outstanding affected thereby. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, Make-Whole Amount, if any, on, and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any Place of Payment where the principal of, Make-Whole Amount, if any, on, and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of $1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as

requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Security, or because of any indebtedness evidenced thereby, shall be had against any promoter, as such or, against any past, present or future stockholder, officer or director, as such, of the Company or of any successor, either directly or through the Company

or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Security by the Holder thereof and as part of the consideration for the issue of the Securities of this series.

All terms used in this security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

THE INDENTURE AND THE SECURITIES, INCLUDING THIS SECURITY, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused "CUSIP" numbers to be printed on the Securities of this series as convenience to the Holders of such Securities. No representation is made as to the correctness or accuracy of such CUSIP numbers as printed on the Securities, and reliance may be placed only on the other identification numbers printed hereon.

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ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COMM -- as tenants in common
TEN ENT -- as tenants by the entireties
JT TEN -- as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT -- ________ Custodian ________
(Cust) (Minor)
Under Uniform Gifts to Minors Act
____
(State)

Additional abbreviations may also be used though not in the above list.

Social Security or taxpayer I.D. or other identifying number of assignee

- - --------------------------------

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

- --

- --
(name and address of assignee)

the within Note and all rights thereunder, hereby irrevocably constituting and appointing ______________________, attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: --------------------------------

EXHIBIT 4.4

AVALON PROPERTIES, INC.

AND

THE BANK OF NEW YORK

Third Supplemental Indenture

Dated as of January 22, 1998

Supplemental to Indenture dated as of

September 18, 1995

THIRD SUPPLEMENTAL INDENTURE

THIRD SUPPLEMENTAL INDENTURE, dated as of January 22, 1998, between Avalon Properties, Inc., a Maryland corporation (hereinafter called the "Company"), having its principal office at 15 River Road, Wilton, Connecticut 06897, and The Bank of New York, a New York banking corporation, as successor to Signet Trust Company (hereinafter called the "Trustee"), having a Corporate Trust Office at 101 Barclay Street, Floor 21 West, New York, New York 10286, as Trustee under the Indenture (as hereinafter defined).

RECITALS

The Company and Signet Trust Company, as trustee, have heretofore entered into an Indenture and First Supplemental Indenture, each dated as of September 18, 1995, and the Company and The Bank of New York, as successor trustee, have heretofore entered into a Second Supplemental Indenture, dated as of December 16, 1997 (hereinafter called the "Indenture"), providing for the issuance by the Company from time to time of its senior debt securities evidencing its unsecured and unsubordinated indebtedness (the "Securities");

The Company desires to issue senior debt securities under the Indenture in the form of, and having the terms set forth in, Exhibit A to this Third Supplemental Indenture, the terms of which are incorporated herein and made a part hereof, and has duly authorized the execution and delivery of this Third Supplemental Indenture to modify the Indenture as hereinafter described.

NOW, THEREFORE, THIS THIRD SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises, the Company and the Trustee covenant and agree, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE

Section 1.01. A series of the Registered Securities shall be substantially in the form of Exhibit A hereto.

ARTICLE TWO

Section 2.01. All capitalized terms which are used herein and not otherwise defined herein are defined in the Indenture and are used herein with the same meanings as in the Indenture.

Section 2.02. This Third Supplemental Indenture shall be effective as of the date first above written and upon the execution and delivery hereof by each of the parties hereto.

Section 2.03. This Third Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 2.04. This Third Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Third Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first above written.

AVALON PROPERTIES, INC.

By: /s/ Thomas J. Sargeant Dated: January 22, 1998

Name: Thomas J. Sargeant
Title: Chief Financial Officer and Treasurer

Attest:

THE BANK OF NEW YORK, as Trustee

By: /s/ MaryBeth Lewicki Dated: January 22, 1998

Name: MaryBeth Lewicki
Title: Assistant Vice President

ACKNOWLEDGMENT

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

On January 22, 1998, before me personally came Thomas J. Sargeant, to me known, who, being by me duly sworn, did depose and say that he is the Chief Financial Officer and Treasurer of AVALON PROPERTIES, INC., one of the parties described in and which executed the foregoing instrument, and that he signed his name thereto by authority of the Board of Directors.

[Notarial Seal]

/s/ Beth Meryl Deitz
- - ---------------------------------------
Notary Public
Commission Expires

[BETH MERYL DEITZ
NOTARY PUBLIC
MY COMMISSION EXPIRES APRIL 30, 1999]

EXHIBIT A

[Form of Face of Note]

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITORY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE TRANSFERRED TO, OR REGISTERED OR EXCHANGED FOR SECURITIES REGISTERED IN THE NAME OF, ANY PERSON OTHER THAN THE DEPOSITORY OR A NOMINEE THEREOF AND NO SUCH TRANSFER MAY BE REGISTERED, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE OF DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ITS NOMINEE TO A SUCCESSOR DEPOSITORY OR ITS NOMINEE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY (AS DEFINED BELOW) OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

AVALON PROPERTIES, INC.

6 5/8% NOTE DUE 2005

REGISTERED PRINCIPAL AMOUNT
No.: R-001 $100,000,000

CUSIP No.: 053469 AD 4

AVALON PROPERTIES, INC., a corporation organized and existing under the laws of

the State of Maryland (hereinafter called the "Company," which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to CEDE & Co., or registered assigns, upon presentation, the principal sum of One Hundred Million Dollars ($100,000,000) on January 15, 2005 at the office or agency of the Company referred to below, and to pay interest thereon from January 15, 1998, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually in arrears on January 15 and July 15 in each year, commencing July 15, 1998, at the rate of 6 5/8% per annum, until the entire principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for on any Interest Payment Date will, as provided for in the Indenture, be paid to the person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest which shall be the December 31 or June 30 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not more than 15 days and not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this Series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of the principal of, or Make-Whole Amount, if any, and interest on, the Securities will be made to The Depository Trust Company or its nominee in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of interest may be made by (i) check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) by wire transfer of funds to an account of the Person entitled thereto maintained within the United States. The Company is not required to maintain an office or agency for such payment in the City of New York.

Securities of this series may be redeemed at any time at the option of the Company, in whole or in part, upon notice of not more than 60 nor less than 30 days prior to the Redemption Date, at a redemption price equal to the sum of (i) the principal amount of the Securities being redeemed plus accrued interest thereon to the Redemption Date and (ii) the Make-Whole Amount, if any, with respect to such Securities.

REFERENCE IS HEREBY MADE TO THE FURTHER PROVISIONS OF THIS SECURITY SET FORTH ON THE REVERSE HEREOF, WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH IN THIS

PLACE.

Unless the Certificate of Authentication hereon has been executed by or on behalf of the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

AVALON PROPERTIES, INC.

Dated: January 22, 1998

By:

Name:
Title:

Attest:

By:

Name:
Title:

[SEAL]

TRUSTEE'S CERTIFICATE OF AUTHENTICATION:

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

THE BANK OF NEW YORK,
as Trustee

By: Dated: January 22, 1998

Authorized Officer

[Form of Reverse of Note]

AVALON PROPERTIES, INC.

6 5/8% NOTE DUE 2005

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of September 18, 1995, as supplemented by the First Supplemental Indenture, dated as of September 18, 1995, each between the Company and Signet Trust Company, and the Second Supplemental Indenture, dated as of December 16, 1997, and Third Supplemental Indenture, dated as of January 22, 1998 (as so supplemented, herein called the "Indenture"), each between the Company and The Bank of New York, a New York banking corporation, as successor trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the first page hereof, limited in aggregate principal amount to $100,000,000.

"Make-Whole Amount" means, in connection with any optional redemption or accelerated payment of any Security, the excess, if any, of (i) the aggregate present value as of the date of such redemption or accelerated payment of each dollar of principal being redeemed or paid and the amount of interest (exclusive of interest accrued to the date of redemption or accelerated payment) that would have been payable in respect of such dollar if such redemption or accelerated payment had not been made, determined by discounting, on a semi-annual basis, such principal and interest at the Reinvestment Rate (determined on the third Business Day preceding the date such notice of redemption is given or declaration of acceleration is made) from the respective dates on which such principal and interest would have been payable if such redemption or accelerated payment had not been made, over (ii) the aggregate principal amount of the Securities being redeemed or paid.

"Reinvestment Rate" means .25% (twenty-five one hundredths of one percent) plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity, as of the payment date of the principal being redeemed or paid. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such

maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Make-Whole Amount shall be used.

"Statistical Release" means the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded United States government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination under the Indenture, then such other reasonably comparable index which shall be designated by the Company.

The Indenture contains provisions for defeasance at any time of (a) the entire indebtedness of the Company on this Security and (b) certain restrictive covenants and the related defaults and Events of Default applicable to the Company, in each case, upon compliance by the Company with certain conditions set forth in the Indenture, which provisions apply to this Security.

If any Event of Default with respect to Securities of this series shall occur and be continuing, the principal of, and the Make-Whole Amount, if any, on, the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee, offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof (and premium or Make-Whole Amount, if any) or any interest on and any Additional Amounts in respect thereof on or after the respective due dates expressed herein.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders

of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in principal amount of the Securities of each series at the time Outstanding affected thereby. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, Make-Whole Amount, if any, on, and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any Place of Payment where the principal of, Make-Whole Amount, if any, on, and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of $1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice

to the contrary.

No recourse under or upon any obligation, covenant or agreement contained in the Indenture or in this Security, or because of any indebtedness evidenced thereby, shall be had against any promoter, as such or, against any past, present or future stockholder, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Security by the Holder thereof and as part of the consideration for the issue of the Securities of this series.

All terms used in this security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

THE INDENTURE AND THE SECURITIES, INCLUDING THIS SECURITY, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused "CUSIP" numbers to be printed on the Securities of this series as convenience to the Holders of such Securities. No representation is made as to the correctness or accuracy of such CUSIP numbers as printed on the Securities, and reliance may be placed only on the other identification numbers printed hereon.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this instrument, shall be construed as though they were written out in full according to applicable laws or regulations:

<TABLE>
<CAPTION>

<S>	<C>
TEN COMM -- as tenants in common	UNIF GIFT MIN ACT --
TEN ENT -- as tenants by the entireties	________ Custodian ________ (Cust) (Minor)
JT TEN -- as joint tenants with right of survivorship and not as tenants in common	Under Uniform Gifts to Minors Act --------------- (State)

</TABLE>

Additional abbreviations may also be used though not in the above list.

Social Security or taxpayer I.D. or other identifying number of assignee

- - ---

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

- - --

- - --
(name and address of assignee)

the within Note and all rights thereunder, hereby irrevocably constituting and appointing ---------------------------------------, attorney to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: ------------------------------

EXHIBIT 4.5

BAY APARTMENT COMMUNITIES, INC.

TO

STATE STREET BANK AND TRUST COMPANY

Trustee

Indenture

Dated as of January 16, 1998

Senior Debt Securities

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EXHIBIT A

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EXHIBIT B

FORMS OF CERTIFICATION... B-1

BAY APARTMENT COMMUNITIES, INC.

Reconciliation and tie between Trust Indenture Act of 1939 (the "Trust Indenture Act" or "TIA") and Indenture, dated as of January 16, 1998.

Trust Indenture Act Section	Indenture Section
Section 310(a)(1)	607
(a)(2)	607
(b)	607, 608
Section 312(c)	701
Section 313(a)	702
(c)	702
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(a)(1)(B)	513
(b)	508
Section 317(a)(1)	503
(a)(2)	504
Section 318(a)	111
(c)	111

- - ---------------

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

Attention should also be directed to TIA Section 318(c), which provides that the provisions of TIA Sections 310 to and including 317 of the Trust Indenture Act are a part of and govern every qualified indenture, whether or not physically contained therein.

INDENTURE, dated as of January 16, 1998, between BAY APARTMENT COMMUNITIES, INC., a corporation organized under the laws of the State of Maryland (hereinafter called the "Company"), having its principal office at 4340 Stevens Creek Boulevard, Suite 275, San Jose, California 95129, and STATE STREET BANK AND TRUST COMPANY, a trust company organized under the laws of The Commonwealth of Massachusetts, as Trustee hereunder (hereinafter called the "Trustee"), having a Corporate Trust Office at Two International Place, Boston, Massachusetts 02110.

RECITALS OF THE COMPANY

The Company deems it necessary to issue from time to time for its lawful purposes senior debt securities (hereinafter called the "Securities") evidencing its unsecured and senior indebtedness, and has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of the Securities, to be issued in one or more Series as provided in this Indenture.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act" or "TIA"), that are deemed to be incorporated into this Indenture and shall, to the extent applicable, be governed by such provisions.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE - DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

(2) all other terms used herein which are defined in the TIA, either directly or by reference therein, have the meanings assigned to them therein, and the terms "cash transactions" and "self-liquidating paper," as used in TIA Section 311, shall have the meanings assigned to them in the rules of the Commission adopted under the TIA;

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

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

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

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

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 611 hereof to act on behalf of the Trustee to authenticate Securities.

"Authorized Newspaper" means a newspaper, printed in the English language or in an official language of the country of publication, customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Whenever successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different Authorized Newspapers in the same city meeting the foregoing requirements and in each case on any Business Day.

"Bankruptcy Law" has the meaning specified in Section 501.

"Bearer Security" means any Security established pursuant to Section 201 which is payable to bearer.

"Board of Directors" means the board of directors of the Company or any

committee of that board duly authorized to act hereunder.

"Board Resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"Business Day," when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, means, unless otherwise specified with respect to any Securities issued pursuant to Section 301, any day, other than a

Saturday or Sunday, that is not a day on which banking institutions in that Place of Payment or particular location are authorized or required by law, regulation or executive order to close.

"Capital Stock" means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participations or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into or exchangeable for corporate stock), warrants or options to purchase any thereof.

"CEDEL" means Centrale de Livraison de Valeurs Mobilieres, S.A., or its successor.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or, if at any time after execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties on such date.

"Common Stock" means, with respect to any Person, all shares of capital stock issued by such Person other than Preferred Stock.

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

"Company Request" and "Company Order" mean, respectively, a written request or order signed in the name of the Company by its Chairman of the Board, the President or a Vice President, and by its Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee.

"Consolidated Net Assets" means as of any particular time the aggregate amount of assets (less applicable reserves and other properly deductible items) after deducting therefrom all current liabilities except for (a) notes and loans payable, (b) current maturities of long-term debt and (c) current maturities of obligations under capital leases, all as set forth on the most recent consolidated balance sheet of the Company and its consolidated Subsidiaries and computed in accordance with generally accepted accounting principles and practices as in effect on January 16, 1998.

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

"Corporate Trust Office" means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at Two International Place, Boston, Massachusetts 02110, Attention:
Corporate Trust Department.

"corporation" includes corporations, associations, companies and business trusts.

"coupon" means any interest coupon appertaining to a Bearer Security.

"Custodian" has the meaning specified in Section 501.

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

"Dollar" or "$" means a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

"ECU" means the European Currency Unit as defined and revised from time to time by the Council of the European Communities.

"Euroclear" means Morgan Guaranty Trust Company of New York, Brussels office, or its successor, as operator of the Euroclear System.

"European Communities" means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community.

"European Monetary System" means the European Monetary System established by the Resolution of December 5, 1978 of the Council of the European Communities.

"Event of Default" has the meaning specified in Article Five.

"Foreign Currency" means any currency, currency unit or composite currency, including, without limitation, the ECU issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

"GAAP" means, except as otherwise provided herein, generally accepted accounting principles, as in effect from time to time, as used in the United States applied on a consistent basis.

"Global Security" means a Security evidencing all or a part of a series of Securities issued to and registered in the name of the depository for such series, or its nominee, in accordance with Section 305, and bearing the legend prescribed in Section 203.

"Government Obligations" means securities which are (i) direct obligations of the United States of America or the government which issued the Foreign Currency in which the Securities of a particular series are payable, for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such government which issued the Foreign Currency in which the Securities of such series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and (iii) shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

"Guaranty" by any Person means any Obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness of any other Person (the "primary obligor") in any manner, whether directly or indirectly, and including, without limitation, every Obligation of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment of such Indebtedness, (ii) to purchase property, securities or services for the purpose of assuring the holder of such Indebtedness of the payment of such Indebtedness or (iii) to maintain working capital, equity capital or other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness; provided, however, that a Guaranty by any Person shall not include endorsements by such Person for collection or deposit, in either case in the ordinary course of business. The terms "Guaranteed," "Guaranteeing" and "Guarantor" shall have meanings correlative to the foregoing.

"Holder" means, in the case of a Registered Security, the Person in whose name a Security is registered in the Security Register and, in the case of a Bearer Security, the bearer thereof and, when used with respect to any coupon, shall mean the bearer thereof.

"Indebtedness" means, with respect to any Person, without duplication, (i) any Obligation of such Person relating to any indebtedness of such Person (A) for borrowed money (whether or not the recourse of the lender is to the whole of the assets, of such person or only to a portion thereof), (B) evidenced by notes, debentures or similar instruments (including purchase money obligations) given in connection with the acquisition of any property or assets (other than trade accounts payable for inventory or similar property acquired in the ordinary course of business), including securities, for the payment of which such Person is liable, directly or indirectly, or the payment of which is secured by a lien, charge or encumbrance on

property or assets of such Person, (C) for goods, materials or services purchased in the ordinary course of business (other than trade accounts payable arising in the ordinary course of business), (D) with respect to letters of credit or bankers acceptances issued for the account of such Person or performance, surety or similar bonds, (E) for the payment of money relating to a Capitalized Lease Obligation or (F) under interest rate swaps, caps or similar agreements and foreign exchange contracts, currency swaps or similar agreements; (ii) any liability of others of the kind described in the preceding clause (i), which such Person has Guaranteed or which is otherwise its legal liability; and (iii) any and all deferrals, renewals, extensions and refunding of, or amendments, modifications or supplements to, any liability of the kind described in any of the preceding clauses (i) or (ii).

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

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

"Interest," when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, shall mean interest payable after Maturity.

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

"Make-Whole Amount," when used with respect to any Security, means the amount, if any, in addition to principal (and accrued interest thereon, if any) which is required by a Security, under the terms and conditions specified therein or as otherwise specified as contemplated by Section 301, to be paid by the Company to the Holder thereof in connection with any optional redemption or accelerated payment of such Security.

"Maturity," when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, notice of redemption, notice of option to elect repayment or otherwise.

"Obligation" of any Person with respect to any specified Indebtedness means any obligation of such Person to pay principal, premium, interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to such Person, whether or not a claim for such post-petition interest is allowed in such Proceeding), penalties, reimbursement or indemnification amounts, fees, expenses or other amounts relating to such Indebtedness.

"Officers' Certificate" means a certificate signed by the Chairman of the Board of Directors, the President or a Vice President and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company or who may be an employee of or other counsel for the Company and who shall be satisfactory to the Trustee.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502.

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

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities, or portions thereof, for whose payment or redemption (including repayment at the option of the Holder) money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities and any coupons appertaining thereto; provided, however, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(iii) Securities, except to the extent provided in Sections 1402 and 1403, with respect to which the Company has effected defeasance and/or covenant defeasance as provided in Article Fourteen; and

(iv) Securities which have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company.

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders for quorum purposes, and for the purpose of making the calculations required by TIA Section 313, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination or calculation and that shall be deemed to be Outstanding for such purpose shall be equal to the amount of principal thereof that would be (or shall have been declared to be) due and payable, at the time of such determination, upon a declaration of acceleration of the maturity thereof pursuant to Section 502, (ii) the principal amount of any Security denominated in a Foreign Currency that may be counted in making such determination or calculation and that shall be deemed Outstanding for such purpose shall be equal to the Dollar equivalent, determined pursuant to Section 301 as of the date such Security is originally issued by the Company, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent as of such date of original issuance of the amount determined as provided in clause (i) above) of such Security, (iii) the principal amount of any Indexed Security that may be counted in making such determination or calculation and that shall be deemed outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided with respect to such Security pursuant to Section 301, and (iv) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities owned as provided in clause (iv) above which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor. In case of a dispute as to such right, the advice of counsel shall be full protection in respect of any decision made by the Trustee in accordance with such advice.

"Paying Agent" means any Person authorized by the Company to pay the principal of (and premium or Make-Whole Amount, if any) or interest on any Securities or coupons on behalf of the Company.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment," when used with respect to the Securities of or within any series, means the place or places where the principal of (and premium or Make-Whole Amount, if any) and interest on such Securities are payable as specified as contemplated by Sections 301 and 1002.

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security or a Security to which a mutilated, destroyed, lost or stolen coupon appertains shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security or the Security to which the mutilated, destroyed, lost or stolen coupon appertains.

"Preferred Stock" means, with respect to any Person, all capital stock issued by such Person that are entitled to a preference or priority over any other capital stock issued by such Person with respect to any distribution of such Person's assets, whether by dividend or upon any voluntary or involuntary liquidation, dissolution or winding up.

"Redemption Date," when used with respect to any Security to be redeemed, in whole or in part, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price," when used with respect to any Security to be redeemed, means the price specified in the related Officers' Certificate or supplemental indenture contemplated by and pursuant to Section 301, at which it is to be redeemed pursuant to this Indenture.

"Registered Security" shall mean any Security which is registered in the Security Register.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Registered Securities of or within any series means the date specified for that purpose as contemplated by Section 301, whether or not a Business Day.

"Repayment Date" means, when used with respect to any Security to be repaid at the option of the Holder, the date fixed for such repayment by or pursuant to this Indenture.

"Repayment Price" means, when used with respect to any Security to be repaid at the option of the Holder, the price at which it is to be repaid by or pursuant to this Indenture.

"Responsible Officer," when used with respect to the Trustee, means any senior vice president, vice president (whether or not designated by a number or a word or words added before or after the title "vice president"), assistant vice president, assistant secretary, trust officer or assistant trust officer working in its Corporate Trust Department, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and working in its Corporate Trust Department, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"Security" has the meaning stated in the first recital of this Indenture and, more particularly, means any Security or Securities authenticated and delivered under this Indenture; provided, however, that, if at any time there is more than one Person acting as Trustee under this Indenture, "Securities" with respect to the Indenture as to which such Person is Trustee shall have the meaning stated in the first recital of this Indenture and shall more particularly mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

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

"Significant Subsidiary" means any Subsidiary which is a "significant subsidiary" (as defined in Article I, Rule 1-02 of Regulation S-X, promulgated under the Securities Act of 1933) of the Company.

"Special Record Date" for the payment of any Defaulted Interest on the Registered Securities of or within any series means a date fixed by the Company pursuant to Section 307.

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security or a coupon representing such installment of interest as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests are owned, directly or indirectly, by such Person. For the purposes of this definition, "voting equity securities" means equity securities having voting power for the election of directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939, as amended and as in force at the date as of which this Indenture was executed, except as provided in Section 905.

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

"United States" means, unless otherwise specified with respect to any Securities pursuant to Section 301, the United States of America (including the states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"United States Person" means, unless otherwise specified with respect to any Securities pursuant to Section 301, an individual who is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or an estate or trust the income of which is subject to United States Federal income taxation regardless of its source.

"Yield to Maturity" means the yield to maturity, computed at the time of issuance of a Security (or, if applicable, at the most recent redetermination of interest on such Security) and as set forth in such Security in accordance with generally accepted United States bond yield computation principles.

SECTION 102. Compliance Certificates and Opinions. Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (including certificates delivered pursuant to Section 1008) shall include:

(1) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto;

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

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

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

SECTION 103. Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon an Opinion of Counsel, or a certificate or representations by counsel, unless such officer knows, or in the exercise of reasonable care should know, that the opinion, certificate or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such Opinion of Counsel or certificate or representations may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information as to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other

instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

SECTION 104. Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of the Outstanding Securities of all series or one or more series, as the case may be, may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing. If Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Fifteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee

and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company and any agent of the Trustee or the Company, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1506.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner which the Trustee deems sufficient.

(c) The ownership of Registered Securities shall be proved by the Security Register. As to any matter relating to beneficial ownership interests in any Global Security, the appropriate depository's records shall be dispositive for purposes of this Indenture.

(d) The ownership of Bearer Securities may be proved by the production of such Bearer Securities or by a certificate executed, as depository, by any trust company, bank, banker or other depository, wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such Person had on deposit with such depository, or exhibited to it, the Bearer Securities therein described; or such facts may be proved by the certificate or affidavit of the Person holding such Bearer Securities, if such certificate or affidavit is deemed by the Trustee to be satisfactory. The Trustee and the Company may assume that such ownership of any Bearer Security continues until (1) another certificate or affidavit bearing a later date issued in respect of the same Bearer Security is produced, or (2) such Bearer Security is produced to the Trustee by some other Person, or (3) such Bearer Security is surrendered in exchange for a Registered Security, or (4) such Bearer Security is no longer Outstanding. The ownership of Bearer Securities may also be proved in any other manner which the Trustee deems sufficient.

(e) If the Company shall solicit from the Holders of Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, in or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do

so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand,

authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

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

SECTION 105. Notices, etc., to Trustee and Company. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at State Street Bank and Trust Company, Two International Place, Boston MA 02110, Attention: Corporate Trust Department; or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this Indenture or at any other address previously furnished in writing to the Trustee by the Company, Attention: Chief Financial Officer, or

(3) either the Trustee or the Company, by the other party, shall be sufficient for every purpose hereunder if given by facsimile transmission, receipt confirmed by telephone followed by an original copy delivered by guaranteed overnight courier; if to the Trustee at facsimile number (617) 664-5371; and if to the Company at facsimile number (408) 554-9780.

SECTION 106. Notice to Holders: Waiver. Where this Indenture provides for notice of any event to Holders of Registered Securities by the Company or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each such Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice. In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such notice.

If by reason of the suspension of or irregularities in regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Registered Securities as shall be made with the approval of the Trustee shall constitute a sufficient notification to such Holders for every purpose hereunder.

Except as otherwise expressly provided herein or otherwise specified with respect to any Securities pursuant to Section 301, where this Indenture provides for notice to Holders of Bearer Securities of any event, such notice shall be sufficiently given if published in an Authorized Newspaper in The City of New York and in such other city or cities as may be specified in such Securities on a Business Day, such publication to be not later than the latest date, if any, and not earlier than the earliest date, if any, prescribed for the giving of such notice. Any such notice shall be deemed to have been given on the date of such publication or, if published more than once, on the date of the first such publication.

If by reason of the suspension of publication of any Authorized Newspaper or Authorized Newspapers or by reason of any other cause it shall be impracticable to publish any notice to Holders of Bearer Securities as provided above, then such notification to Holders of Bearer Securities as shall be given with the approval of the Trustee shall constitute sufficient notice to such Holders for every purpose hereunder. Neither the failure to give notice by publication to any particular Holder of Bearer Securities as provided above, nor any defect in any notice so published, shall affect the sufficiency of such

notice with respect to other Holders of Bearer Securities or the sufficiency of any notice to Holders of Registered Securities given as provided herein.

Any request, demand, authorization, direction, notice, consent or waiver required or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such

waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 107. Counterparts; Effect of Headings and Table of Contents. This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Indenture. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 108. Successors and Assigns. All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

SECTION 109. Severability Clause. In case any provision in this Indenture or in any Security or coupon shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 110. Benefits of Indenture. Nothing in this Indenture or in the Securities or coupons, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent, any Authenticating Agent and their successors hereunder and the Holders any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 111. Governing Law. This Indenture and the Securities and coupons shall be governed by and construed in accordance with the law of the State of New York. This Indenture is subject to the provisions of the TIA that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

SECTION 112. Legal Holidays. In any case where any Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity of any Security or the last date on which a Holder has the right to exchange a Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or any Security or coupon other than a provision in the Securities of any series which specifically states that such provision shall apply in lieu hereof), payment of interest or principal (and premium or Make-Whole Amount, if any) or exchange of such security need not be made at such Place of Payment on such date, but (except as otherwise provided in the supplemental indenture with respect to such Security) may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repayment Date or sinking fund payment date, or at the Stated Maturity or Maturity, or on such last day for exchange, provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity, as the case may be.

SECTION 113. Immunity of Stockholders, Directors, Officers and Agents of the Company. No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any Security, or because of any indebtedness evidenced thereby, shall be had against any past, present or future stockholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of the Securities by the Holders and as part of the consideration for the issue of the Securities.

SECTION 114. Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in this Indenture by any of the provisions of the Trust Indenture Act, such required provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

ARTICLE TWO - SECURITIES FORMS

SECTION 201. Forms of Securities. The Registered Securities, if any, of each series and the Bearer Securities, if any, of each series and related coupons shall be substantially in the form of Exhibit A hereto or in such other form as shall be established in one or more indentures supplemental hereto or approved from time to time by or pursuant to a Board Resolution in accordance with Section 301, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

Unless otherwise specified as contemplated by Section 301, Bearer Securities shall have interest coupons attached.

The definitive Securities and coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or mechanically reproduced on safety paper or may be produced in any other manner, all as determined by the officers executing such Securities or coupons, as evidenced by their execution of such Securities or coupons.

SECTION 202. Form of Trustee's Certificate of Authentication. Subject to Section 611, the Trustee's certificate of authentication shall be in substantially the following form:

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

[__________________________________],
as Trustee

Dated: ______________ By:____
Authorized Signatory

SECTION 203. Securities Issuable in Global Form. If Securities of or within a series are issuable in the form of one or more Global Securities, then, notwithstanding clause (8) of Section 301 and the provisions of Section 302, any such Global Security or Securities may provide that it or they shall represent the aggregate amount of all Outstanding Securities of such series (or such lesser amount as is permitted by the terms thereof) from time to time endorsed thereon and may also provide that the aggregate amount of Outstanding Securities of such series represented thereby may from time to time be increased or decreased to reflect exchanges. Any endorsement of any Global Security to reflect the amount, or any increase or decrease in the amount, or changes in the rights of Holders thereof, of Outstanding Securities represented thereby shall be made (or caused to be made) by the Trustee in such manner or by such Person or Persons as shall be specified therein or in the Company Order to be delivered to the Trustee pursuant to Section 303 or 304. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Global Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Company Order. If a Company Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Company with respect to endorsement or delivery or redelivery of a Global Security shall be in writing but need not comply with Section 102 and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 303 shall apply to any Security represented by a Global Security if such Security was never issued and sold by the Company and the Company delivers to the Trustee the Global Security together with written instructions (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 303.

Notwithstanding the provisions of Section 307, unless otherwise specified as contemplated by Section 301, payment of principal of and any premium or Make-Whole

Amount, if any, and interest on any Global Security in permanent global form shall be made to the registered Holder thereof.

Notwithstanding the provisions of Section 308 and except as provided in

the preceding paragraph, the Company, the Trustee and any agent of the Company and the Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a permanent Global Security (i) in the case of a permanent Global Security in registered form, the Holder of such permanent Global Security in registered form, or (ii) in the case of a permanent Global Security in bearer form, Euroclear or CEDEL.

Any Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

> "This Security is a Global Security within the meaning set forth in the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Security is exchangeable for Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or its nominee to a successor Depository or its nominee."

ARTICLE THREE - THE SECURITIES

SECTION 301. Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in one or more Board Resolutions or pursuant to authority granted by one or more Board Resolutions and, subject to Section 303, set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(1) The title of the Securities of the series (which shall distinguish the Securities of such series from all other series of Securities);

(2) Any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange

for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 906, 1107 or 1305) and the minimum authorized denominations with respect to the Securities of such series;

(3) The price (expressed as a percentage of the principal amount thereof) at which such Securities will be issued and, if other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof;

(4) The date or dates, or the method for determining such date or dates, on which the principal of such Securities will be payable;

(5) The rate or rates (which may be fixed or variable), or the method by which such rate or rates shall be determined, at which such Securities will bear interest, if any;

(6) The date or dates, or the method for determining such date or dates, from which any such interest will accrue, the dates on which any such interest will be payable, the record dates for such interest payment dates, or the method by which such dates shall be determined, the persons to whom such interest shall be payable, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(7) The Make-Whole Amount, if any, or method for determining the Make-Whole Amount, if any, payable with respect to such Securities, and the terms upon which such amount, if any, will be payable;

(8) The place or places where the principal of (and premium or Make-Whole Amount, if any) and interest, if any, on such Securities will be payable, where such Securities may be surrendered for registration of transfer or exchange and where notices or demands to or upon the Company in respect of such Securities and this Indenture may be served;

(9) The period or periods, if any, within which, the price or prices at which and the other terms and conditions upon which such Securities may, pursuant to any optional or mandatory redemption provisions, be redeemed, as a whole or in part, at the option of the Company;

(10) The obligation, if any, of the Company to redeem, repay or purchase such Securities pursuant to any sinking fund or analogous provision or at the option of a holder thereof, and the period or periods within which, the price or prices at which and the other terms and conditions upon which such Securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to such obligation;

(11) If other than Dollars, the currency or currencies in which such Securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, the manner of determining the equivalent thereof in Dollars for purposes of the definition of "Outstanding" in Section 101, and the terms and conditions relating thereto;

(12) Whether the amount of payments of principal of (and premium or Make-Whole Amount, if any, including any amount due upon redemption, if any) or interest, if any, on such Securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not be, based on the yield on or trading price of other securities, including United States Treasury securities or on a currency, currencies, currency unit or units, or composite currency or currencies) and the manner in which such amounts shall be determined;

(13) Whether the principal of (and premium or Make-Whole Amount, if any) or interest on the Securities of the series are to be payable, at the election of the Company or a Holder thereof, in a currency or currencies, currency unit or units or composite currency or currencies other than that in which such Securities are denominated or stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made, and the time and manner of, and identity of the exchange rate agent with responsibility for, determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are to be so payable;

(14) Provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified;

(15) Any deletions from, modifications of or additions to the Events of Default or covenants of the Company with respect to Securities of the series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(16) Whether and under what circumstances the Company will pay any additional amounts on such Securities in respect of any tax, assessment or governmental charge and, if so, whether the Company will have the option to redeem such Securities in lieu of making such payment;

(17) Whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without coupons) or both, any restrictions applicable to the offer, sale or delivery of Bearer Securities and the terms upon which Bearer Securities of the series may be exchanged for Registered Securities of the series

and vice versa (if permitted by applicable laws and regulations), whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global Security may, or shall be required to, exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may, or shall be required to, occur, if other than in the manner provided in the Indenture, and, if Registered Securities of the series are to be issuable as a Global Security, the identity of the depository for such series;

(18) The date as of which any Bearer Securities of the series and any temporary Global Security representing outstanding Securities of the series shall be dated if other than the date of original issuance of the first Security of the series to be issued;

(19) The Person to whom any interest on any Registered Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, the manner in which, or the Person to whom, any interest on any Bearer Security of the series shall be payable, if otherwise than upon

presentation and surrender of the coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary Global Security on an Interest Payment Date will be paid if other than in the manner provided herein; provided, however, in each case, that the manner of determining such Person or making such payment shall be acceptable to the Trustee (as not imposing on it any undue administrative burden or risk of liability);

(20) The applicability, if any, of the defeasance and covenant defeasance provisions of Article Fourteen hereof to the Securities of the series;

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

(22) Designation of the Trustee, if different from the Trustee under the Indenture, with respect to such series and the terms applicable to such Trustee (which shall be accepted by such Trustee by its execution and delivery of a supplemental indenture as provided therein); and

(23) Any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and the coupons appertaining to any Bearer Securities of such series shall be substantially identical except, in the case of Registered Securities, as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution (subject to Section 303) and set forth in such Officers' Certificate or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

If any of the terms of the Securities of any series are established by action taken pursuant to one or more Board Resolutions, a copy of an appropriate record of such action(s) shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the Securities of such series.

SECTION 302. Denominations. The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 301. With respect to Securities of any series denominated in Dollars, in the absence of any such provisions with respect to the Securities of any series, the Securities of such series, other than Global Securities (which may be of any denomination), shall be issuable in denominations of $1,000 and any integral multiple thereof.

SECTION 303. Execution, Authentication, Delivery and Dating. The Securities and any coupons appertaining thereto shall be executed on behalf of the Company by its Chairman of the Board, its President or one of its Vice Presidents, under its corporate seal reproduced thereon, and attested by its Secretary or one of its Assistant Secretaries. The signature of any of these officers on the Securities and coupons may be manual or facsimile signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Securities.

Securities or coupons bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities or coupons.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series, together with any coupon appertaining thereto, executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities (accompanied by a copy of the Board Resolution and the Officers' Certificate or supplemental indenture contemplated by Section 301), and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities; provided, however, that, in connection with its original issuance, no Bearer Security shall be mailed or otherwise delivered to any location in the United States; and

provided further that, unless otherwise specified with respect to any series of Securities pursuant to Section 301, a Bearer Security may be delivered in connection with its original issuance only if the Person entitled to receive such Bearer Security shall have furnished a certificate to Euroclear or CEDEL, as the case may be, in the form set forth in Exhibit B-1 to this Indenture or

such other certificate as may be specified by the Company with respect to any series of Securities pursuant to Section 301, dated no earlier than 15 days prior to the earlier of the date on which such Bearer Security is delivered and the date on which any temporary Security first becomes exchangeable for such Bearer Security in accordance with the terms of such temporary Security and this Indenture. If any Security shall be represented by a permanent global Bearer Security, then, for purposes of this Section and Section 304, the notation of a beneficial owner's interest therein upon original issuance of such Security or upon exchange of a portion of a temporary Global Security shall be deemed to be delivery in connection with its original issuance of such beneficial owner's interest in such permanent Global Security. Except as permitted by Section 306, the Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and canceled.

If all the Securities of any series are not to be issued at one time and if the Board Resolution or supplemental indenture establishing such series shall so permit, such Company Order may set forth procedures acceptable to the Trustee for the issuance of such Securities and determining the terms of particular Securities of such series, such as interest rate or formula, maturity date, date of issuance and date from which interest shall accrue. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to TIA Section 315(a) through 315(d)) shall be fully protected in relying upon,

(i) an Opinion of Counsel stating that

(a) the form or forms of such Securities and any coupons have been established in conformity with the provisions of this Indenture;

(b) the terms of such Securities and any coupons have been established in conformity with the provisions of this Indenture; and

(c) such Securities, together with any coupons appertaining thereto, when completed by appropriate insertions and executed and delivered by the Company to the Trustee for authentication in accordance with this Indenture, authenticated and delivered by the Trustee in accordance with this Indenture and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and legally binding obligations of the Company, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization and other similar laws of general applicability relating to or affecting the

enforcement of creditors' rights generally and to general equitable principles; and

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

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities (or to enter into the related supplemental indenture, if applicable) if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties, obligations or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding paragraph, if all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Officers' Certificate otherwise required pursuant to Section 301 or a Company Order, or an Opinion of Counsel or an Officers' Certificate otherwise required pursuant to the preceding paragraph at the time of issuance of each Security of such series, but such order, opinion and certificates, with appropriate modifications to cover such future issuances, shall be delivered at or before the time of issuance of the first Security of such series.

Each Registered Security shall be dated the date of its authentication and each Bearer Security shall be dated as of the date specified as contemplated by Section 301.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security or Security to which such coupon appertains a certificate of authentication substantially in the form provided for herein duly executed by the Trustee (subject to Section 611) by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and

delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Security (including a Global Security) shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309 together with a written statement (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Company, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

SECTION 304. Temporary Securities.

(a) Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form, or, if authorized, in bearer form with one or more coupons or without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities. In the case of Securities of any series, such temporary Securities may be in global form.

Except in the case of temporary Global Securities (which shall be exchanged as otherwise provided herein or as otherwise provided in or pursuant to a Board Resolution or supplemental indenture pursuant to Section 301), if temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any non-matured coupons appertaining thereto), the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations; provided, however, that no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security; and provided further that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 303. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

(b) Unless otherwise provided in or pursuant to a Board Resolution or supplemental indenture pursuant to Section 301, the following provisions of this Section 304(b) shall govern the exchange of temporary Securities other than through the facilities of The Depository Trust Company. If any such temporary Security is issued in global form, then such temporary Global Security shall, unless otherwise provided therein, be delivered to the London office of a depository or common depository upon and pursuant to written direction of the Company (the "Common Depository"), for the benefit of Euroclear and CEDEL, for credit to the respective accounts of the beneficial owners of such Securities (or to such other accounts as they may direct).

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary Global Security (the "Exchange Date"), the Company shall deliver to the Trustee definitive Securities, in aggregate principal

amount equal to the principal amount of such temporary Global Security, executed by the Company. On or after the Exchange Date, such temporary Global Security shall be surrendered by the Common Depository to the Trustee, as the Company's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Securities without charge, and the Trustee shall authenticate and deliver, in exchange for each portion of such temporary Global Security, an equal aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary Global Security to be exchanged. The definitive Securities to be delivered in exchange for any such temporary Global Security shall be in bearer form, registered form, permanent global bearer form or permanent global registered form, or any combination thereof, as specified as contemplated by Section 301, and, if any combination thereof is so specified, as requested by the beneficial owner thereof (as directed by or pursuant to information provided by the Common Depository); provided, however, that, unless otherwise specified in such temporary Global Security, upon such presentation by the Common Depository, such temporary Global Security shall be accompanied by a certificate dated the Exchange Date or a subsequent date and signed by Euroclear as to the portion of such temporary Global Security held for its account then to be exchanged and a

certificate dated the Exchange Date or a subsequent date and signed by CEDEL as to the portion of such temporary Global Security held for its account then to be exchanged, each in the form set forth in Exhibit A-2 to this Indenture or in such other form as may be established pursuant to Section 301; and provided further that definitive Bearer Securities shall be delivered in exchange for a portion of a temporary Global Security only in compliance with the requirements of Section 303.

Unless otherwise specified in such temporary Global Security, the interest of a beneficial owner of Securities of a series in a temporary Global Security shall be exchanged for definitive Securities of the same series and of like tenor following the Exchange Date when the account holder instructs Euroclear or CEDEL, as the case may be, to request such exchange on his behalf and delivers to Euroclear or CEDEL, as the case may be, a certificate in the form set forth in Exhibit B-1 to this Indenture (or in such other form as may be established pursuant to Section 301), dated no earlier than 15 days prior to the Exchange Date, copies of which certificate shall be available from the offices of Euroclear and CEDEL, the Trustee, any Authenticating Agent appointed for such series of Securities and each Paying Agent. Unless otherwise specified in such temporary Global Security, any such exchange shall be made free of charge to the beneficial owners of such temporary Global Security, except that a Person receiving definitive Securities must bear the cost of insurance, postage, transportation and the like unless such Person takes delivery of such definitive Securities in person at the offices of Euroclear or CEDEL. Definitive Securities in bearer form to be delivered in exchange for any portion of a temporary Global Security shall be delivered only to an address located outside the United States.

Until exchanged in full as hereinabove provided, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and of like tenor authenticated and delivered hereunder, except that, unless

otherwise specified as contemplated by Section 301, interest payable on a temporary Global Security on an Interest Payment Date for Securities of such series occurring prior to the applicable Exchange Date shall be payable to Euroclear and CEDEL on such Interest Payment Date upon delivery by Euroclear and CEDEL to the Trustee of a certificate or certificates in the form set forth in Exhibit B-2 to this Indenture (or in such other forms as may be established pursuant to Section 301), for credit without further interest on or after such Interest Payment Date to the respective accounts of Persons who are the beneficial owners of such temporary Global Security on such Interest Payment Date and who have each delivered to Euroclear or CEDEL, as the case may be, a certificate dated no earlier than 15 days prior to the Interest Payment Date occurring prior to such Exchange Date in the form set forth as Exhibit B-1 to this Indenture (or in such other forms as may be established pursuant to Section 301). Notwithstanding anything to the contrary herein contained, the certifications made pursuant to this paragraph shall satisfy the certification requirements of the preceding two paragraphs of this Section 304(b) and of the third paragraph of Section 303 of this Indenture and the interests of the Persons who are the beneficial owners of the temporary Global Security with respect to which such certification was made will be exchanged for definitive Securities of the same series and of like tenor on the Exchange Date or the date of certification if such date occurs after the Exchange Date, without further act or deed by such beneficial owners. Except as otherwise provided in this paragraph, no payments of principal or interest owing with respect to a beneficial interest in a temporary Global Security will be made unless and until such interest in such temporary Global Security shall have been exchanged for an interest in a definitive Security. Any interest so received by Euroclear and CEDEL and not paid as herein provided shall be returned to the Trustee prior to the expiration of two years after such Interest Payment Date in order to be repaid to the Company.

SECTION 305. Registration, Registration of Transfer and Exchange. The Company shall cause to be kept at the Corporate Trust Office of the Trustee or in any office or agency of the Company in a Place of Payment a register for each series of Securities (the registers maintained in such office or in any such office or agency of the Company in a Place of Payment being herein sometimes referred to collectively as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Registered Securities and of transfers of Registered Securities. The Security Register shall be in written form or any other form capable of being converted into written form within a reasonable time. The Trustee, at its Corporate Trust Office, is hereby initially appointed "Security Registrar" for the purpose of registering Registered Securities and transfers of Registered Securities on such Security Register as herein provided. In the event that the Trustee shall cease to be Security Registrar, it shall have the right to examine, and be provided a copy of, the Security Register at all reasonable times.

Subject to the provisions of this Section 305, upon surrender for registration of transfer of any Registered Security of any series at any office or agency of the Company in a Place of Payment for that series, the Company

shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered

Securities of the same series, of any authorized denominations and of a like aggregate principal amount, bearing a number not contemporaneously outstanding, and containing identical terms and provisions.

Subject to the provisions of this Section 305, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series, of any authorized denomination or denominations and of a like aggregate principal amount, containing identical terms and provisions, upon surrender of the Registered Securities to be exchanged at any such office or agency. Whenever any such Registered Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive. Unless otherwise specified with respect to any series of Securities as contemplated by Section 301, Bearer Securities may not be issued in exchange for Registered Securities.

If (but only if) permitted by the applicable Board Resolution and (subject to Section 303) set forth in the applicable Officers' Certificate, or in any indenture supplemental hereto, delivered as contemplated by Section 301, at the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons and all matured coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, any such permitted exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Company in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided in Section 1002, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in a permitted exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date for payment, as the case may be, and interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in

accordance with the provisions of this Indenture. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 301, any permanent Global Security shall be exchangeable only as provided in this paragraph. If the depository for any permanent Global Security is The Depository Trust Company ("DTC"), then, unless the terms of such Global Security expressly permit such Global Security to be exchanged in whole or in part for definitive Securities, a Global Security may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee of DTC to DTC, or to a successor to DTC for such Global Security selected or approved by the Company or to a nominee of such successor to DTC. If at any time DTC notifies the Company that it is unwilling or unable to continue as depository for the applicable Global Security or Securities or if at any time DTC ceases to be a clearing agency registered under the Securities Exchange Act of 1934 if so required by applicable law or regulation, the Company shall appoint a successor depository with respect to such Global Security or Securities. If (x) a successor depository for such Global Security or Securities is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such unwillingness, inability or ineligibility, (y) an Event of Default has occurred and is continuing and the beneficial owners representing a majority in principal amount of the applicable series of Securities represented by such Global Security or Securities advise DTC to cease acting as depository for such Global Security or Securities or (z) the Company, in its sole discretion, determines at any time that all Outstanding Securities (but not less than all)

of any series issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities, then the Company shall execute, and the Trustee shall authenticate and deliver definitive Securities of like series, rank, tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Security or Securities. If any beneficial owner of an interest in a permanent global Security is otherwise entitled to exchange such interest for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 301 and provided that any applicable notice provided in the permanent Global Security shall have been given, then without unnecessary delay but in any event not later than the earliest date on which such interest may be so exchanged, the Company shall execute, and the Trustee shall authenticate and deliver definitive Securities in aggregate principal amount equal to the principal amount of such beneficial owner's interest in such permanent Global Security. On or after the earliest date on which such interests may be so exchanged, such permanent Global Security shall be surrendered for exchange by DTC or such other depository as shall be specified in the Company Order with respect thereto to the Trustee, as the Company's agent for such purpose; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities to be redeemed and ending on the relevant Redemption Date if the Security for which exchange is requested may be among those selected for redemption; and provided further that no Bearer Security delivered in exchange for a portion of a permanent Global Security shall be mailed or

otherwise delivered to any location in the United States. If a Registered Security is issued in exchange for any portion of a permanent Global Security after the close of business at the office or agency where such exchange occurs on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such permanent Global Security is payable in accordance with the provisions of this Indenture.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 906, 1107 or 1305 not involving any transfer.

The Company or the Trustee, as applicable, shall not be required (i) to issue, register the transfer of or exchange any Security if such Security may be among those selected for redemption during a period beginning at the opening of business 15 days before selection of the Securities to be redeemed under Section 1103 and ending at the close of business on (A) if such Securities are issuable only as Registered Securities, the day of the mailing of the relevant notice of redemption and (B) if such Securities are issuable as Bearer Securities, the day of the first publication of the relevant notice of redemption or, if such Securities are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption in whole or in part, except, in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and like tenor, provided that such Registered Security shall be simultaneously surrendered for redemption, or (iv) to issue, register the transfer of or

exchange any Security which has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

SECTION 306. Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security or a Security with a mutilated coupon appertaining to it is surrendered to the Trustee or the Company, together with, in proper cases, such

security or indemnity as may be required by the Company or the Trustee to save each of them or any agent of either of them harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to the surrendered Security.

If there shall be delivered to the Company and to the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security or coupon, and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security or coupon has been acquired by a bona fide purchaser, the Company shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security or in exchange for the Security to which a destroyed, lost or stolen coupon appertains (with all appurtenant coupons not destroyed, lost or stolen), a new Security of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains.

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Security or coupon has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon appertains, pay such Security or coupon; provided, however, that payment of principal of (and premium or Make-Whole Amount, if any), and any interest on, Bearer Securities shall, except as otherwise provided in Section 1002, be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301, any interest on Bearer Securities shall be payable only upon presentation and surrender of the coupons appertaining thereto.

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

Every new Security of any series with its coupons, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen coupon appertains, shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security and its coupons, if any, or the destroyed, lost or stolen coupon shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series and their coupons, if any, duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons.

SECTION 307. Payment of Interest; Interest Rights Preserved. Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 301, interest on any Registered Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Company maintained for such purpose pursuant to Section 1002; provided, however, that each installment of interest on any Registered Security may at the Company's option be paid by (i) mailing a check for such interest, payable to or upon the written order of the Person entitled thereto pursuant to Section 308, to the address of such Person as it appears on the Security Register or (ii) transfer to an account maintained by the payee located inside the United States.

Unless otherwise provided as contemplated by Section 301 with respect to the Securities of any series, payment of interest may be made, in the case of a Bearer Security, by transfer to an account maintained by the payee with a bank located outside the United States.

Unless otherwise provided as contemplated by Section 301, every permanent global Security will provide that interest, if any, payable on any Interest Payment Date will be paid to DTC, Euroclear and/or CEDEL, as the case may be, with respect to that portion of such permanent global Security held for its account by Cede & Co. or the Common Depository, as the case may be, for the purpose of permitting such party to credit the interest received by it in respect of such permanent global Security to the accounts of the beneficial owners thereof.

In case a Bearer Security of any series is surrendered in exchange for a

Registered Security of such series after the close of business (at an office or agency in a Place of Payment for such series) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date and interest will not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 301, any interest on any Registered Security of any series that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Registered Security of such series and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Company shall deposit with the Trustee an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Registered Securities of such series at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Company, cause a similar notice to be published at least once in an Authorized Newspaper in each Place of Payment, but such publications shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and

before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such proposed date of payment and Defaulted Interest will not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

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

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

SECTION 308. Persons Deemed Owners. Prior to due presentment of a Registered Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium or Make-Whole Amount, if any), and (subject to Sections 305 and 307) interest on, such Registered Security and for all other purposes whatsoever, whether or not such Registered Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. All such payments so made to any such Person, or upon such Person's order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for money payable upon any such Security.

Title to any Bearer Security and any coupons appertaining thereto shall pass by delivery. The Company, the Trustee and any agent of the Company or the Trustee may treat the Holder of any Bearer Security and the Holder of any coupon as the absolute owner of such Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

No holder of any beneficial interest in any Global Security held on its behalf by a depository shall have any rights under this Indenture with respect to such Global Security and such depository (which is the Holder of such security) shall be treated by the Company, the Trustee, and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee, any Paying Agent or the

Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

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

SECTION 309. Cancellation. All Securities and coupons surrendered for payment, redemption, repayment at the option of the Holder, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and coupons and Securities and coupons surrendered directly to the Trustee for any such purpose shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. If the Company shall so acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. Cancelled Securities and coupons held by the Trustee shall be destroyed by the Trustee and the Trustee shall deliver a certificate of such destruction to the Company, unless the Trustee is otherwise directed by a Company Order.

SECTION 310. Computation of Interest. Except as otherwise specified as contemplated by Section 301 with respect to Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

ARTICLE FOUR - SATISFACTION AND DISCHARGE

SECTION 401. Satisfaction and Discharge of Indenture. This Indenture shall upon Company Request cease to be of further effect with respect to any series of Securities specified in such Company Request (except as to any surviving rights of registration of transfer or

exchange of Securities of such series herein expressly provided for), and the Trustee, upon receipt of a Company Order, and at the expense of the Company,

shall execute instruments in form and substance satisfactory to the Trustee and the Company acknowledging satisfaction and discharge of this Indenture as to such series when

(1) either

(A) all Securities of such series theretofore authenticated and delivered and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender has been waived as provided in Section 1106, and (iv) Securities and coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

(B) all Securities of such series and, in the case of (i) or (ii) below, any coupons appertaining thereto not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

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

(iii) if redeemable at the option of the Company, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable, sufficient to pay and discharge the entire indebtedness on such Securities and such coupons not theretofore delivered to the Trustee for cancellation, for principal (and premium or Make-Whole Amount, if any) and interest to the date

of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

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

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee and any predecessor Trustee under Section 606, the obligations of the Company to any Authenticating Agent under Section 611 and, if money shall have been deposited with and held by the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 402 and the last paragraph of Section 1003 shall survive.

SECTION 402. Application of Trust Funds. Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium or Make-Whole Amount, if any), and any interest for whose payment such money has been deposited with or received by the Trustee, but such money need not be segregated from other funds except to the extent required by law.

ARTICLE FIVE - REMEDIES

SECTION 501. Events of Default. "Event of Default," wherever used herein with respect to any particular series of Securities, means any one of the following events (whatever the reason for such Event of Default and whether or

not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest on any Security of that series or of any coupon appertaining thereto, when such interest or coupon becomes due and payable, and continuance of such default for a period of 30 days; or

(2) default in the payment of the principal of (or premium or Make-Whole Amount, if any, on) any Security of that series when it becomes due and payable at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of any Security of that series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture with respect to any Security of that series (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(5) default under any bond, debenture, note, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company (or by any Subsidiary, the repayment of which the Company has guaranteed or for which the Company is directly responsible or liable as obligor or guarantor), having an aggregate principal amount outstanding of at least $25,000,000, whether such indebtedness now exists or shall hereafter be created, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 10 days after there shall have been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 10% in principal amount of the Outstanding Securities of that series a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(6) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors; or

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any Significant Subsidiary in an involuntary case,

(B) appoints a Custodian of the Company or any Significant Subsidiary or for all or substantially all of either of its property, or

(C) orders the liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 90 days; or

(8) any other Event of Default provided with respect to Securities of that series.

As used in this Section 501, the term "Bankruptcy Law" means title 11, U.S. Code or any similar Federal or state law for the relief of debtors and the term

"Custodian" means any receiver, trustee, assignee, liquidator or other similar official under any Bankruptcy Law.

SECTION 502. Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if Securities of that Series are Original Issue Discount Securities or Indexed Securities, such portion of the principal as may be specified in the terms thereof) of all the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal or specified portion thereof shall become immediately due and payable.

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

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay in the currency, currency unit or composite currency in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series):

(A) all overdue installments of interest on all Outstanding Securities of that series and any related coupons,

(B) the principal of (and premium or Make-Whole Amount, if any, on) any Outstanding Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates borne by or provided for in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of that series, other than the nonpayment of the principal of (or premium or Make-Whole Amount, if any) or interest on Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

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

SECTION 503. Collection of Indebtedness and Suits for Enforcement by Trustee. The Company covenants that if:

(1) default is made in the payment of any installment of interest on any Security of any series and any related coupon when such interest becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium or Make-Whole Amount, if any, on) any Security of any series at its Maturity,

then the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities of such series and coupons, the whole amount then due and payable on such Securities and coupons for principal (and premium or Make-Whole Amount, if any) and interest, with interest upon any overdue principal (and premium or Make-Whole Amount, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any

overdue installments of interest at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a

judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities of such series, wherever situated.

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

SECTION 504. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal, premium or Make-Whole Amount, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

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

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) in any such judicial proceeding is hereby authorized by each Holder of Securities of

such series and coupons to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and any predecessor Trustee, their agents and counsel, and any other amounts due the Trustee or any predecessor Trustee under Section 606.

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

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Securities, and it shall not be necessary to make any Holders of the Securities parties to any such proceedings.

SECTION 505. Trustee May Enforce Claims Without Possession of Securities or Coupons. All rights of action and claims under this Indenture or any of the Securities or coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities and coupons in respect of which such judgment has been recovered.

SECTION 506. Application of Money Collected. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium or Make-Whole Amount, if any) or interest, upon presentation of the Securities or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any

predecessor Trustee under Section 606;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and coupons for principal (and premium or Make-Whole Amount, if any) and interest, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and coupons for principal (and premium or Make-Whole Amount, if any) and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company.

SECTION 507. Limitation on Suits. No Holder of any Security of any series or any related coupon shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

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

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

(3) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

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

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

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

SECTION 508. Unconditional Right of Holders to Receive Principal, Premium or Make-Whole Amount, if any, and Interest. Notwithstanding any other provision in this Indenture, the Holder of any Security or coupon shall have the right which is absolute and unconditional to receive payment of the principal of (and premium or Make-Whole Amount, if any) and (subject to Sections 305 and 307) interest on such Security or payment of such coupon on the respective due dates expressed in such Security or coupon (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 509. Restoration of Rights and Remedies. If the Trustee or any Holder of a Security or coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, the Company, the Trustee and the Holders of Securities and coupons shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 510. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities or coupons is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 511. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security or coupon to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein.

Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities or coupons, as the case may be.

SECTION 512. Control by Holders of Securities. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture,

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) the Trustee need not take any action which might involve it in personal liability or be unduly prejudicial to the Holders of Securities of such series not joining therein.

Nothing in this Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction by Holders.

SECTION 513. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series and any related coupons waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of (or premium or Make-Whole Amount, if any) or interest on any Security of such series or any related coupons, or

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

(3) in respect of a covenant or provision hereof for the benefit or protection of the Trustee, without its express written consent.

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

SECTION 514. Waiver of Usury, Stay or Extension Laws. The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 515. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the

Outstanding Securities of any series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium or Make-Whole Amount, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

ARTICLE SIX - THE TRUSTEE

SECTION 601. Notice of Defaults. Within 90 days after the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit in the manner and to the extent provided in TIA Section 313(c), notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium or Make-Whole Amount, if any) or interest on any Security of such series, or in the payment of any sinking or purchase fund installment with respect to the Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of the Securities and coupons of such series; and provided further that in the case of any default or breach of the character specified in Section 501(4) with respect to the Securities and coupons of such series, no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to the Securities of such series.

SECTION 602. Certain Rights of Trustee. Subject to the provisions of TIA Section 315(a) through 315(d):

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

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order (other than delivery of any Security, together with any coupons appertaining thereto, to the Trustee for authentication and delivery pursuant to Section 303 which shall be sufficiently evidenced as provided therein) and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or

omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

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

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

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document, unless requested in writing so to do by the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities of any series; provided that, if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to proceeding; the reasonable expenses of every such examination shall be paid by the Holders or, if paid by the Trustee, shall be repaid by the Holders upon demand. The Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, relevant to the facts or matters that are the subject of its inquiry, personally or by agent or attorney;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any

misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(9) any permissive right or power available to the Trustee under this Indenture or any supplement hereto shall not be construed to be a mandatory duty or obligation;

(10) the Trustee shall not be charged with knowledge of any matter (including any default, other than as described in Section 501(1), (2) or (3)) unless and except to the extent actually known to a Responsible Officer of the Trustee or to the extent written notice thereof is received by the Trustee at the Corporate Trust Office; and

(11) the Trustee shall have no liability for the selection of any Independent Investment Banker; and shall have no liability for any inaccuracy in the books and records of, or for any actions or omissions of, DTC, Euroclear or CEDEL or any depository acting on behalf of any of them.

The Trustee shall not be required to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Except during the continuance of an Event of Default, the Trustee undertakes to perform only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

SECTION 603. Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, and in any coupons shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Securities or the proceeds thereof.

SECTION 604. May Hold Securities. The Trustee, any Paying Agent, Security Registrar, Authenticating Agent or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons and, subject to TIA Sections 310(b) and 311, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, Authenticating Agent or such other agent.

SECTION 605. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee

shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

SECTION 606. Compensation and Reimbursement. The Company agrees:

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

(2) except as otherwise expressly provided herein, to reimburse each of the Trustee and any predecessor Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the reasonable expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify each of the Trustee and any predecessor Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or

trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(7) or Section 501(8), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium or Make-Whole Amount, if any) or interest on particular Securities or any coupons.

The provisions of this Section shall survive the termination of this Indenture.

SECTION 607. Corporate Trustee Required; Eligibility; Conflicting Interests. There shall at all times be a Trustee hereunder which shall be eligible to act as Trustee under TIA Section 310(a)(1) and shall have at all times a combined capital and surplus of at least $50,000,000. If the Trustee publishes reports of condition at least annually, pursuant to law or the requirements of Federal, state, territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of

condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article. Neither the Company nor any Person directly or indirectly controlling, controlled by, or under common control with the Company shall serve as Trustee.

SECTION 608. Resignation and Removal; Appointment of Successor.

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

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

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 607 and shall fail to resign after written request therefor by the Company or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company by or pursuant to a Board Resolution may remove the Trustee and appoint a successor Trustee with respect to all Securities, or (ii) subject to TIA Section 315(e), any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

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

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

SECTION 609. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 606.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver

an indenture supplemental hereto, pursuant to Article Nine hereof, wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section 609, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 610. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities or coupons shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities or coupons so authenticated with the same effect as if such successor Trustee had itself authenticated such

Securities or coupons. In case any Securities or coupons shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Securities or coupons, in either its own name or that of its predecessor Trustee, with the full force and effect which this Indenture provides for the certificate of authentication of the Trustee.

SECTION 611. Appointment of Authenticating Agent. At any time when any of the Securities remain Outstanding, the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption or repayment thereof, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the Trustee, a copy of which instrument shall be promptly furnished to the Company. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a bank or trust company or corporation organized and doing business and in good standing under the laws of the United States of America or of any state or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or state authorities. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

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

An Authenticating Agent for any series of Securities may at any time resign by giving written notice of resignation to the Trustee for such series and to the Company. The Trustee for any series of Securities may at any time terminate the agency of an Authenticating Agent by

giving written notice of termination to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee for such series may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve in the manner set forth in Section 106. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent herein. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation including reimbursement of its reasonable expenses for its services under this Section.

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

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

[_____________________________________]
as Trustee

Dated: ____________ By:___________________________________
as Authenticating Agent

Dated: ____________ By:___________________________________
Authorized Signatory

SECTION 612. Certain Duties and Responsibilities of the Trustee.

(a) With respect to the Securities of any series, except during the continuance of an Event of Default with respect to the Securities of such series:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture, but shall not be under any duty to verify the contents or accuracy thereof.

(b) In case an Event of Default with respect to the Securities of any series has occurred and is continuing, the Trustee shall, with respect to Securities of such series, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 612.

(e) The Trustee shall not be liable for interest on any money or assets held by it except to the extent the Trustee may agree in writing with the Company. Assets held in trust by the Trustee need not be segregated from other assets except to the extent required by law.

ARTICLE SEVEN - HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

SECTION 701. Disclosure of Names and Addresses of Holders. Every Holder of Securities or coupons, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any Authenticating Agent nor any Paying Agent nor any Security Registrar shall be held accountable by reason of the disclosure of any information as to the names and addresses of the Holders of Securities in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 702. Reports by Trustee. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required by TIA Section 313 at the times and in the manner provided by the TIA, which shall initially be not less than every twelve months commencing on January ___, 1998. A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which any Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when any Securities are listed on any stock exchange.

SECTION 703. Reports by Company. The Company will:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with

the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to the Holders of Securities, within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in TIA Section 313(c), such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

SECTION 704. Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee:

(a) semiannually, not later than 15 days after the Regular Record Date for interest for each series of Securities, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Registered Securities of such series as of such Regular Record Date, or if there is no Regular Record Date for interest for such series of Securities, semiannually, upon such dates as are set forth in the Board Resolution or indenture supplemental hereto authorizing such series, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

provided, however, that, so long as the Trustee is the Security Registrar, no such list shall be required to be furnished.

ARTICLE EIGHT - CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

SECTION 801. Consolidations and Mergers of Company and Sales, Leases and

Conveyances Permitted Subject to Certain Conditions. The Company may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other corporation, provided that in any such case, (1) either the Company shall be the continuing corporation, or the successor corporation shall be a corporation organized and existing under the laws of the United States or a State thereof and such successor corporation shall expressly assume the due and punctual payment of the principal of (and premium or Make-Whole Amount, if any) and any interest on all of the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company by supplemental indenture, complying with Article Nine hereof, satisfactory to the Trustee, executed and delivered to the Trustee by such corporation and (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company or any Subsidiary as a result thereof as having been incurred by the Company or such Subsidiary at the time of such

transaction, no Event of Default, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 802. Rights and Duties of Successor Corporation. In case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by the successor corporation, such successor corporation shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and the predecessor corporation, except in the event of a lease, shall be relieved of any further obligation under this Indenture and the Securities. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor corporation, instead of the Company, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

SECTION 803. Officers' Certificate and Opinion of Counsel. Any consolidation, merger, sale, lease or conveyance permitted under Section 801 is also subject to the condition that the Trustee receive an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, sale, lease or conveyance, and the assumption by any successor corporation, complies with the provisions of this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE NINE - SUPPLEMENTAL INDENTURES

SECTION 901. Supplemental Indentures Without Consent of Holders. Without the consent of any Holders of Securities or coupons, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company contained herein and in the Securities; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such Events of Default are to be for the benefit of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of such series); provided, however, that in respect of any such additional Events of Default such supplemental indenture may provide

for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the Holders of a majority in aggregate principal amount of that or those series of Securities to which such additional Events of Default apply to waive such default; or

(4) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or premium or Make-Whole Amount, if any, or interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, provided that any such action shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(5) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

(6) to secure the Securities; or

(7) to establish the form or terms of Securities of any series and any related coupons as permitted or contemplated by Sections 201 and 301; or

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

(9) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, provided such provisions shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(10) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Sections 401, 1402 and 1403; provided that any such action shall not adversely affect the interests of the Holders of Securities of such series and any related coupons or any other series of Securities in any material respect.

SECTION 902. Supplemental Indentures with Consent of Holders. With the consent of the Holders of not less than a majority in principal amount of all Outstanding Securities affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities and any related coupons under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of (or premium or Make-Whole Amount, if any, on) or any installment of principal of or interest on, any Security; or reduce the principal amount thereof or the rate or amount of interest thereon, or any premium or Make-Whole Amount payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 502 or the amount thereof provable in bankruptcy pursuant to Section 504, or adversely affect any right of repayment at the option of the Holder of any Security, or change any Place of Payment where, or the currency or currencies, currency unit or units or composite currency or currencies in which, any Security or any premium or Make-Whole Amount or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment at the option of the Holder, on or after the Redemption Date or the Repayment Date, as the case may be), or

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

(3) modify any of the provisions of this Section, Section 513 or Section 1009, except to increase the required percentage to effect such action or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section 902 and Section 1009, or the deletion of this proviso, in accordance with the requirements of Sections 609(b) and 901(11).

It shall not be necessary for any Act of Holders under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

SECTION 903. Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 904. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder and of any coupon appertaining thereto shall be bound thereby.

SECTION 905. Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 906. Reference in Securities to Supplemental Indentures. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall, if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE TEN - COVENANTS

SECTION 1001. Payment of Principal, Premium or Make-Whole Amount, if any; and Interest. The Company covenants and agrees for the benefit of the Holders of each series of Securities that it will duly and punctually pay the principal of (and premium or Make-Whole Amount, if any) and interest on the Securities of that series in accordance with the terms of such series of Securities, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 301 with respect to any series of Securities, any interest due on Bearer Securities on or before Maturity shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. Unless otherwise specified with respect to Securities of any series pursuant to Section 301, at the option of the Company (upon written notice to the Trustee), all payments of principal may be paid by check to the registered Holder of the Registered Security or other person entitled thereto against surrender of such Security.

SECTION 1002. Maintenance of Office or Agency. If Securities of a series are issuable only as Registered Securities, the Company shall maintain in each Place of Payment for any series of Securities an office or agency where

Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Company will maintain: (A) in the Borough of Manhattan, The City of New York, an office or agency where any Registered Securities of that series may be presented or surrendered for payment, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange, where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment in the circumstances described in the following paragraph (and not otherwise); (B) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment; provided, however, that if the Securities of that series are listed on any stock exchange located outside the United States and such stock exchange shall so require,

the Company will maintain a Paying Agent for the Securities of that series in any required city located outside the United States, as the case may be, so long as the Securities of that series are listed on such exchange; and (C) subject to any laws or regulations applicable thereto, in a Place of Payment for that series located outside the United States an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of each such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment at the offices specified in the Security, in London, England, and the Company hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands, and the Company hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 301, no payment of principal, premium or Make-Whole Amount or interest on Bearer Securities shall be made at any office or agency of the Company in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, that, if the Securities of a series are payable in Dollars, payment of principal of and any premium or Make-Whole Amount and interest on any Bearer Security shall be made at the office of the Company's Paying Agent in the Borough of Manhattan, The City of New York, if (but only if) payment in Dollars of the full amount of such principal, premium or Make-Whole Amount, or interest, as the case may be, at all offices or agencies outside the United States maintained for the purpose by the Company in accordance with this Indenture, is illegal or effectively precluded by exchange controls or other similar restrictions.

The Company may from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all of such purposes, and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless otherwise specified with respect to any Securities pursuant to Section 301 with respect to a series of Securities, the Company hereby designates as a Place of Payment for each series of Securities, each of (i) the office or agency of the Company in the Borough of Manhattan, The City of New York, and (ii) the Corporate Trust Office of the Trustee (as Paying Agent); and the Company hereby initially appoints the Trustee at its Corporate Trust Office as Paying Agent in such city; and the Company hereby initially appoints as its agent to

receive all such presentations, surrenders, notices and demands each of the Trustee, at its Corporate Trust Office, and State Street Bank and Trust Company, N.A. at its offices at 61 Broadway, New York, NY 10005.

Unless otherwise specified with respect to any Securities pursuant to Section 301, if and so long as the Securities of any series (i) are denominated in a Foreign Currency or (ii) may be payable in a Foreign Currency, or so long as it is required under any other provision of the Indenture, then the Company

will maintain with respect to each such series of Securities, or as so required, at least one exchange rate agent (of which it shall give written notice to the Trustee).

SECTION 1003. Money for Securities Payments to Be Held in Trust. If the Company shall at any time act as its own Paying Agent with respect to any series of any Securities and any related coupons, it will, on or before each due date of the principal of (and premium or Make-Whole Amount, if any), or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (and premium or Make-Whole Amount, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities and any related coupons, it will, on or before each due date of the principal of (and premium or Make-Whole Amount, if any), or interest on any Securities of that series, deposit with a Paying Agent a sum (in the currency or currencies, currency unit or units or composite currency or currencies described in the preceding paragraph) sufficient to pay the principal (and premium or Make-Whole Amount, if any) or interest so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or Make-Whole Amount, if any, or interest and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of (and premium or Make-Whole Amount, if any) or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities) in the making of any such payment of principal (and

premium or Make-Whole Amount, if any) or interest on the Securities of that series; and

(3) at any time during the continuance of any such default upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Except as otherwise provided in the Securities of any series, and subject to applicable laws, any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium or Make-Whole Amount, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium or Make-Whole Amount, if any) or interest has become due and payable shall be paid to the Company upon Company Request or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment of such principal of (and premium or Make-Whole Amount, if any) or interest on any Security, without interest thereon, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 1004. Existence. Subject to Article Eight, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, all material rights (by articles of

incorporation, by-laws and statute) and material franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

SECTION 1005. Maintenance of Properties. The Company will cause all of its material properties used or useful in the conduct of its business or the business of any Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals,

replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that the Company and its Subsidiaries shall not be prevented from selling or otherwise disposing of their properties for value in the ordinary course of business.

SECTION 1006. Insurance. The Company will cause each of its and its Subsidiaries' insurable properties to be insured against loss or damage in an amount deemed reasonable by the Board of Directors with insurers of recognized responsibility.

SECTION 1007. Payment of Taxes and Other Claims. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon it or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Company or any Subsidiary; provided, however, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

SECTION 1008. Statement as to Compliance. The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Company's compliance with all conditions and covenants under this Indenture and, in the event of any noncompliance, specifying such noncompliance and the nature and status thereof. For purposes of this Section 1008, such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

SECTION 1009. Waiver of Certain Covenants. The Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1004 to 1008, inclusive, if before or after the time for such compliance the Holders of at least a majority in principal amount of all outstanding Securities of such series, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE ELEVEN - REDEMPTION OF SECURITIES

SECTION 1101. Applicability of Article. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and

(except as otherwise specified as contemplated by Section 301 for Securities of any series) in accordance with this Article.

SECTION 1102. Election to Redeem; Notice to Trustee. The election of the Company to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company of less than all of the Securities of any series, the Company shall, at least 45 days prior to the giving of the notice of redemption in Section 1104 (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 1103. Selection by Trustee of Securities to Be Redeemed. If less than all the Securities of any series issued on the same day with the same terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series issued on such date with the same terms

not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series.

The Trustee shall promptly notify the Company and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

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

SECTION 1104. Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 106, not less than 30 days nor more than 60 days prior to the Redemption Date, unless a shorter period is specified by the terms of such series established pursuant to Section 301, to each Holder of Securities to be redeemed, but failure to give such notice in the manner herein provided to the Holder of any Security designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other such Security or portion thereof.

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

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price, accrued interest to the Redemption Date payable as provided in Section 1106, if any,

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

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

(5) that on the Redemption Date the Redemption Price and accrued interest to the Redemption Date payable as provided in Section 1106, if any, will become due and payable upon each such Security, or the portion thereof, to be redeemed and, if applicable, that interest thereon shall cease to accrue on and after said date,

(6) the Place or Places of Payment where such Securities, together in the case of Bearer Securities with all coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and accrued interest, if any,

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

(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all coupons maturing subsequent to the date fixed for redemption or the amount of any such missing coupon or coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Company, the Trustee for such series and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer

Securities may be exchanged for Registered Securities not subject to redemption on this Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Company, on which such exchanges may be made, and

(10) the CUSIP number of such Security, if any.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

SECTION 1105. Deposit of Redemption Price. On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, which it may not do in the case of a sinking fund payment under Article Twelve, segregate and hold in trust as provided in Section 1003) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay on the Redemption Date the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof which are to be redeemed on that date.

SECTION 1106. Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1002) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of coupons for such interest; and provided further that installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1002) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium or Make-Whole Amount, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Security.

SECTION 1107. Securities Redeemed in Part. Any Registered Security which is to be redeemed only in part (pursuant to the provisions of this Article or of Article Twelve) shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge a new Security or Securities of the same series, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Global Security is so surrendered, the Company shall execute and the Trustee shall authenticate and deliver to the depository, without service charge, a new Global Security in a denomination equal to and in exchange for the unredeemed portion of the principal of the Global Security so surrendered.

ARTICLE TWELVE - SINKING FUNDS

SECTION 1201. Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 301 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of such Securities of any series is herein referred to as an "optional sinking fund payment." If provided for by the terms of any Securities of any series, the cash amount of any mandatory sinking fund payment

may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

SECTION 1202. Satisfaction of Sinking Fund Payments with Securities. The Company may, in satisfaction of all or any part of any mandatory sinking fund payment with respect to the Securities of a series, (1) deliver Outstanding Securities of such series (other than any previously called for redemption) together in the case of any Bearer Securities of such series with all unmatured coupons appertaining thereto and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, as provided for by the terms of such Securities, or which have otherwise been acquired by the Company; provided that such Securities so delivered or applied as a credit have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the applicable Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 1203. Redemption of Securities for Sinking Fund. Not less than 60 days prior to each sinking fund payment date for Securities of any series, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 1202, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so delivered and credited. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1106 and 1107.

ARTICLE THIRTEEN - REPAYMENT AT THE OPTION OF HOLDERS

SECTION 1301. Applicability of Article. Repayment of Securities of any series before their Stated Maturity at the option of Holders thereof shall be made in accordance with

the terms of such Securities, if any, and (except as otherwise specified by the terms of such series established pursuant to Section 301) in accordance with this Article.

SECTION 1302. Repayment of Securities. Securities of any series subject to repayment in whole or in part at the option of the Holders thereof will, unless otherwise provided in the terms of such Securities, be repaid at a price equal to the principal amount thereof, together with interest, if any, thereon accrued to the Repayment Date specified in or pursuant to the terms of such Securities. The Company covenants that on or prior to the Repayment Date it will deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (or, if so provided by the terms of the Securities of any series, a percentage of the principal) of, and (except if the Repayment Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof, as the case may be, to be repaid on such

date.

SECTION 1303. Exercise of Option. Securities of any series subject to repayment at the option of the Holders thereof will contain an "Option to Elect Repayment" form on the reverse of such Securities. In order for any Security to be repaid at the option of the Holder, the Trustee must receive at the Place of Payment therefor specified in the terms of such Security (or at such other place or places of which the Company shall from time to time notify the Holders of such Securities) not earlier than 60 days nor later than 30 days prior to the Repayment Date (1) the Security so providing for such repayment together with the "Option to Elect Repayment" form on the reverse thereof duly completed by the Holder (or by the Holder's attorney duly authorized in writing) or (2) a telegram, telex, facsimile transmission or a letter from a member of a national securities exchange, or the National Association of Securities Dealers, Inc. ("NASD"), or a commercial bank or trust company in the United States setting forth the name of the Holder of the Security, the principal amount of the Security, the principal amount of the Security to be repaid, the CUSIP number, if any, or a description of the tenor and terms of the Security, a statement that the option to elect repayment is being exercised thereby and a guarantee that the Security to be repaid, together with the duly completed form entitled "Option to Elect Repayment" on the reverse of the Security, will be received by the Trustee not later than the fifth Business Day after the date of such telegram, telex, facsimile transmission or letter; provided, however, that such telegram, telex, facsimile transmission or letter shall only be effective if such Security and form duly completed are received by the Trustee by such fifth Business Day. If less than the entire principal amount of such Security is to be repaid in accordance with the terms of such Security, the principal amount of such Security to be repaid, in increments of the minimum denomination for Securities of such series, and the denomination or denominations of the Security or Securities to be issued to the Holder for the portion of the principal amount of such Security surrendered that is not to be repaid, must be specified. The principal amount of any Security providing for repayment at the option of the Holder thereof may not be repaid in part

if, following such repayment, the unpaid principal amount of such Security would be less than the minimum authorized denomination of Securities of the series of which such Security to be repaid is a part. Except as otherwise may be provided by the terms of any Security providing for repayment at the option of the Holder thereof, exercise of the repayment option by the Holder shall be irrevocable unless waived by the Company.

SECTION 1304. When Securities Presented for Repayment Become Due and Payable. If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article and as provided by or pursuant to the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall be paid by the Company on the Repayment Date therein specified, and on and after such Repayment Date (unless the Company shall default in the payment of such Securities on such Repayment Date) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be repaid, except to the extent provided below, shall be void. Upon surrender of any such Security for repayment in accordance with such provisions, together with all coupons, if any, appertaining thereto maturing after the Repayment Date, the principal amount of such Security so to be repaid shall be paid by the Company, together with accrued interest, if any, to the Repayment Date; provided, however, that coupons whose Stated Maturity is on or prior to the Repayment Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1002) and, unless otherwise specified pursuant to Section 301, only upon presentation and surrender of such coupons; and provided further that, in the case of Registered Securities, installments of interest, if any, whose Stated Maturity is on or prior to the Repayment Date shall be payable (but without interest thereon, unless the Company shall default in the payment thereof) to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for repayment shall not be accompanied by all appurtenant coupons maturing after the Repayment Date, such Security may be paid after deducting from the amount payable therefor as provided in Section 1302 an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Company and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made as provided in the preceding sentence, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1002) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If the principal amount of any Security surrendered for repayment shall not be so repaid upon surrender thereof, such principal amount (together with interest, if any, thereon accrued to such Repayment Date) shall, until paid, bear interest from the Repayment Date at the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) set forth in such Security.

SECTION 1305. Securities Repaid in Part. Upon surrender of any Registered Security which is to be repaid in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge and at the expense of the \Company, a new Registered Security or Securities of the same series, of any authorized denomination specified by the Holder, in an aggregate principal amount equal to and in exchange for the portion of the principal of such Security so surrendered which is not to be repaid.

ARTICLE FOURTEEN - DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1401. Applicability of Article: Company's Option to Effect Defeasance or Covenant Defeasance. If, pursuant to Section 301, provision is made for either or both of (a) defeasance of the Securities of or within a series under Section 1402 or (b) covenant defeasance of the Securities of or within a series under Section 1403, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article (with such modifications thereto as may be specified pursuant to Section 301 with respect to any Securities), shall be applicable to such Securities and any coupons appertaining thereto, and the Company may at its option by Board Resolution, at any time, with respect to such Securities and any coupons appertaining thereto, elect to have Section 1402 (if applicable) or Section 1403 (if applicable) be applied to such Outstanding Securities and any coupons appertaining thereto upon compliance with the conditions set forth below in this Article.

SECTION 1402. Defeasance and Discharge. Upon the Company's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Company shall be deemed to have been discharged from its obligations with respect to such Outstanding Securities and any coupons appertaining thereto on the date the conditions set forth in Section 1404 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities and any coupons appertaining thereto, which shall thereafter be deemed to be "Outstanding" only for the purposes of Section 1405 and the other Sections of this Indenture referred to in clauses (A) and (B) below, and to have satisfied all of its other obligations under such Securities and any coupons appertaining thereto and this Indenture insofar as such Securities and any coupons appertaining thereto are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of such Outstanding Securities

and any coupons appertaining thereto to receive, solely from the trust fund described in Section 1404 and as more fully set forth in such Section, payments in respect of the principal of (and premium or Make-Whole Amount, if any) and interest, if any, on such Securities and any coupons appertaining thereto when such payments are due, (B) the Company's obligations with respect to such Securities under Sections 305, 306, 1002 and 1003, and the Company's obligations under Section 606 hereof (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (D) this Article. Subject to compliance with this Article Fourteen, the Company may exercise its option under this Section notwithstanding the prior exercise of its option under Section 1403 with respect to such Securities and any coupons appertaining thereto.

SECTION 1403. Covenant Defeasance. Upon the Company's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Company shall be released from its obligations under Sections 1004 to 1009, inclusive, and, if specified pursuant to Section 301, its obligations under any other covenant contained herein or in any indenture supplemental hereto, with respect to such Outstanding Securities and any coupons appertaining thereto on and after the date the conditions set forth in Section 1404 are satisfied (hereinafter, "covenant defeasance"), and such Securities and any coupons appertaining thereto shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with Sections 1004 to 1009, inclusive, or such other covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Securities and any coupons appertaining thereto, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in

any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 501(4) or 501(8) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities and any coupons appertaining thereto shall be unaffected thereby.

SECTION 1404. Conditions to Defeasance or Covenant Defeasance. The following shall be the conditions to application of Section 1402 or Section 1403 to any Outstanding Securities of or within a series and any coupons appertaining thereto:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 607 who shall agree to comply with the provisions of this Article Fourteen applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities and any coupons appertaining thereto, (1) an amount in such currency, currencies or currency unit in which such Securities and any coupons appertaining thereto are then specified as payable at Stated Maturity, or (2)

Government Obligations applicable to such Securities and coupons appertaining thereto (determined on the basis of the currency, currencies or currency unit in which such Securities and coupons appertaining thereto are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment of principal of (and premium or Make-Whole Amount, if any) and interest, if any, on such Securities and any coupons appertaining thereto, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium or Make-Whole Amount, if any) and interest, if any, on such Outstanding Securities and any coupons appertaining thereto on the Stated Maturity of such principal or installment of principal or interest and (ii) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities and any coupons appertaining thereto on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities and any coupons appertaining thereto.

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

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities and any coupons appertaining thereto shall have occurred and be continuing on the date of such deposit or, insofar as Sections 501(6) and 501(7) are concerned, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(d) In the case of an election under Section 1402, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of such Outstanding Securities and any coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.

(e) In the case of an election under Section 1403, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Securities and any coupons appertaining thereto will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be

subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(f) The Company shall have delivered to the Trustee an Officers'

Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 1402 or the covenant defeasance under Section 1403 (as the case may be) have been complied with and an Opinion of Counsel to the effect that either (i) as a result of a deposit pursuant to subsection (a) above and the related exercise of the Company's option under Section 1402 or Section 1403 (as the case may be), registration is not required under the Investment Company Act of 1940, as amended, by the Company, with respect to the trust funds representing such deposit or by the Trustee for such trust funds or (ii) all necessary registrations under said Act have been effected.

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

(h) The payment of amounts payable to the Trustee pursuant to this Indenture shall be paid or provided for to the reasonable satisfaction of the Trustee.

SECTION 1405. Deposited Money and Government Obligations to Be Held in Trust; Other Miscellaneous Provisions. Subject to the provisions of the last paragraph of Section 1003, all money and Government Obligations (or other property as may be provided pursuant to Section 301) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 1405, the "Trustee") pursuant to Section 1404 in respect of any Outstanding Securities of any series and any coupons appertaining thereto shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and any coupons appertaining thereto and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities and any coupons appertaining thereto of all sums due and to become due thereon in respect of principal (and premium or Make-Whole Amount, if any) and interest, but such money need not be segregated from other funds except to the extent required by law.

Unless otherwise specified with respect to any Security pursuant to Section 301, if, after a deposit referred to in Section 1404(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 301 or the terms of such Security to receive payment in a currency or currency unit other than that in which the deposit pursuant to Section 1404(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the currency or currency unit in which the deposit pursuant to Section 1404(a) has been made, the indebtedness represented by such Security and any coupons appertaining thereto shall be deemed to have been, and will be, fully discharged

and satisfied through the payment of the principal of (and premium or Make-Whole Amount, if any), and interest, if any, on such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the currency or currency unit in which such Security becomes payable as a result of such election or Conversion Event based on the applicable market exchange rate for such currency or currency unit in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such currency or currency unit in effect (as nearly as feasible) at the time of the Conversion Event.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 1404 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities and any coupons appertaining thereto.

Anything in this Article to the contrary notwithstanding, subject to Section 606, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in Section 1404 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Article.

ARTICLE FIFTEEN - MEETINGS OF HOLDERS OF SECURITIES

SECTION 1501. Purposes for Which Meetings May Be Called. A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such

series.

SECTION 1502. Call, Notice and Place of Meetings. (a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1501, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 20 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 25% in principal amount of the Outstanding Securities of any series shall

have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1501, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 20 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

SECTION 1503. Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 1504. Quorum; Action. The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than a specified percentage in principal amount of the Outstanding Securities of a series, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at the reconvening of any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days; at the reconvening of any meeting adjourned or further adjourned for lack of a quorum, the persons entitled to vote 25% in aggregate principal amount of the then Outstanding Securities shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1502(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened.

Except as limited by the proviso to Section 902, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities represented at such meeting; provided, however, that, except as limited by the proviso to Section 902, any resolution with respect to any request,

demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the related coupons, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 1504, if any action is to be taken at a meeting of Holders of Securities of any series with

respect to any request, demand, authorization, direction, notice, consent, waiver or other action that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all Outstanding Securities affected thereby, or of the Holders of such series and one or more additional series:

(i) there shall be no minimum quorum requirement for such meeting; and

(ii) the principal amount of the Outstanding Securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under this Indenture.

SECTION 1505. Determination of Voting Rights; Conduct and Adjournment of Meetings. (a) Notwithstanding any provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of a series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the Person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) The Trustee shall, by an instrument in writing appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders of Securities as provided in Section 1502(b), in which case the Company or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting each Holder of a Security of such series or proxy shall be entitled to one vote for each $1,000 principal amount of the Outstanding Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 1502 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 1506. Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any Series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the fact, setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1502 and, if applicable, Section 1504. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SIGNATURES AND SEALS

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be

duly executed all as of the day and year first above written.

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer
Name: Gilbert M. Meyer
Title: President

Attest: /s/ Jeffrey B. Van Horn
____
Title: Chief Financial Officer

STATE STREET BANK AND TRUST COMPANY,
as Trustee

By: /s/ Robert J. Dunn
Name: Robert J. Dunn
Title: Vice President

Attest: /s/ Paul G. Grenier
____
Title: Vice President

ACKNOWLEDGMENT

STATE OF CALIFORNIA
) ss:
COUNTY OF SANTA CLARA

On the 15th day of January, 1998, before me personally came Gilbert M. Meyer, to me known, who, being by me duly sworn, did depose and say that he is the President of BAY APARTMENT COMMUNITIES, INC., one of the parties described in and which executed the foregoing instrument, and that he signed his name thereto by authority of the Board of Directors.

[Notarial Seal]

/s/ Anna Maria Kintzer
____
Notary Public
Commission Expires 1/18/98

STATE OF MASSACHUSETTS
) ss:
COUNTY OF SUFFOLK

On the 16th day of January, 1998, before me personally came Robert J. Dunn, to me known, who, being by me duly sworn, did depose and say that he is a Vice President of STATE STREET BANK AND TRUST COMPANY, one of the parties described in and which executed the foregoing instrument, and that he signed his name thereto by authority of the Board of Directors.

[Notarial Seal]

/s/ Eugenia B. Bettencourt
____
Notary Public
Commission Expires 8/18/00

EXHIBIT A

FORM OF REDEEMABLE OR NON-REDEEMABLE SENIOR SECURITY

[Face of Security]

[If the Holder of this Security (as indicated below) is The Depository Trust Company ("DTC") or a nominee of DTC, this Security is a Global Security and the following two legends apply:

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE

DEPOSITORY TRUST COMPANY ("DTC"), 55 WATER STREET, NEW YORK, NEW YORK TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND SUCH SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO., OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC, ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL, SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL THIS SECURITY IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE THEREOF OR BY A NOMINEE THEREOF TO DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ANY SUCH NOMINEE TO A SUCCESSOR OF DTC OR A NOMINEE OF SUCH SUCCESSOR.]

[If this Security is an Original Issue Discount Security, insert -- FOR PURPOSES OF SECTION 1273 and 1275 OF THE UNITED STATES INTERNAL REVENUE CODE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS SECURITY IS ___% OF ITS PRINCIPAL AMOUNT, THE ISSUE DATE IS _______, 19__ [AND] THE YIELD TO MATURITY IS ___%. [THE METHOD USED TO DETERMINE THE AMOUNT OF ORIGINAL ISSUE DISCOUNT APPLICABLE TO THE SHORT ACCRUAL PERIOD OF _______, 19__ TO _________, 19__, IS ___% OF THE PRINCIPAL AMOUNT OF THIS SECURITY.]

BAY APARTMENT COMMUNITIES, INC.
[Designation of Series]

No. _______ $_______

BAY APARTMENT COMMUNITIES, INC., a Maryland corporation (herein referred to as the "Company," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received, hereby promises to pay to ______________________________ or registered assigns the principal sum of _______ Dollars on _____________________ (the "Stated Maturity Date") [or insert date fixed for

earlier redemption (the "Redemption Date," and together with the Stated Maturity Date with respect to principal repayable on such date, the "Maturity Date.")]

[If the Security is to bear interest prior to Maturity, insert -- and to pay interest thereon from ______________ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on __________ and _________ in each year (each, an "Interest Payment Date"), commencing __________, at the rate of __% per annum, until the principal hereof is paid or duly provided for. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Holder in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the ________ or ______ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date [at the office or agency of the Company maintained for such purpose; provided, however, that such interest may be paid, at the Company's option, by mailing a check to such Holder at its registered address or by transfer of funds to an account maintained by such Holder within the United States]. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date, and may be paid to the Holder in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year of twelve 30-day months.]

[If the Security is not to bear interest prior to Maturity, insert -- The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at the [Stated] Maturity Date and in such case the overdue principal of this Security shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such default in payment to the date payment of such principal has been made or duly provided for. Interest on any overdue principal shall be payable on demand. Any such interest on any overdue principal that is not so paid on demand shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), which shall accrue from the date of such demand for payment to the date payment of such interest has been made or duly provided for, and such interest shall also be payable on demand.]

The principal of this Security payable on the Stated Maturity Date [or the principal of, premium or Make-Whole Amount, if any, and, if the Redemption Date is not an Interest Payment Date, interest on this Security payable on the

Redemption Date] will be paid against presentation of this Security at the office or agency of the Company maintained for that

purpose in __________________, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

Interest payable on this Security on any Interest Payment Date and on the [Stated] Maturity Date [or Redemption Date, as the case may be,] will include interest accrued from and including the next preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including ____________, if no interest has been paid on this Security) to but excluding such Interest Payment Date or the [Stated] Maturity Date [or Redemption Date, as the case may be.] If any Interest Payment Date or the [Stated] Maturity Date or [Redemption Date] falls on a day that is not a Business Day, as defined below, principal, premium or Make-Whole Amount, if any, and/or interest payable with respect to such Interest Payment Date or [Stated] Maturity Date [or Redemption Date, as the case may be,] will be paid on the next succeeding Business Day with the same force and effect as if it were paid on the date such payment was due, and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or [Stated] Maturity Date [or Redemption Date, as the case may be.] "Business Day" means any day, other than a Saturday or Sunday, on which banks in __________________ are not required or authorized by law or executive order to close.

[If this Security is a Global Security, insert -- All payments of principal, premium or Make-Whole Amount, if any, and interest in respect of this Security will be made by the Company in immediately available funds.]

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the Certificate of Authentication hereon has been executed by the Trustee by manual signature of one of its authorized signatories, this Security shall not be entitled to any benefit under the Indenture, or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its facsimile corporate seal.

Dated:________________ BAY APARTMENT COMMUNITIES, INC.

By:_________________________________

Attest:

____
Secretary

[Reverse of Security]

BAY APARTMENT COMMUNITIES, INC.

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of _____________, 199_ (herein called the "Indenture") between the Company and _________________, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture with respect to the series of which this Security is a part), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the duly authorized series of Securities designated on the face hereof (collectively, the "Securities"), [if applicable, insert -- and the aggregate principal amount of the Securities to be issued under such series is limited to $______ (except for Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of other Securities).] All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If an Event of Default, as defined in the Indenture, shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

[If applicable, insert -- The Securities may not be redeemed prior to the Stated Maturity Date.]

[If applicable, insert -- The Securities are subject to redemption [(1) (If applicable, insert -- on _________ in any year commencing with the year ____ and ending with the year ____ through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] [If applicable, insert -- at any time [on or after ___________], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount):

If redeemed on or before _______, __% and if redeemed during the 12-month period beginning _______ of the years indicated at the Redemption Prices indicated below.

Year	Redemption Price	Year	Redemption Price

and thereafter at a Redemption Price equal to __% of the principal amount, together in the case of any such redemption [If applicable, insert -- (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date; provided, however, that installments of interest on this Security whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert -- The Securities are subject to redemption (1) on _______ in any year commencing with the year ____ and ending with the year ____ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [on or after _______], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning ________ of the years indicated,

Year	Redemption Price for Redemption Through Operation of the Sinking Fund	Redemption Price for Redemption Otherwise Than Through Operation of the Sinking Fund

and thereafter at a Redemption Price equal to ____% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date; provided, however, that installments of interest on this Security whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holder of this Security, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert -- Notwithstanding the foregoing, the Company may not, prior to _______, redeem any Securities as contemplated by [Clause (2) of] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than __% per annum.]

[If applicable, insert -- The sinking fund for the Securities provides for the redemption on _______ in each year, beginning with the year ____ and ending with the year ____, of [not less than] $_______] [("mandatory sinking fund") and not more than $_______] aggregate principal amount of the Securities. [The Securities acquired or redeemed by the Company otherwise than through [mandatory] sinking fund payments may be credited against subsequent

[mandatory] sinking fund payments otherwise required to be made in the [describe order] order in which they become due.]]

Notice of redemption will be given by mail to Holders of Securities, not less than 30 nor more than 60 days prior to the Redemption Date, all as provided in the Indenture.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of all Securities issued

under the Indenture at the time Outstanding and affected thereby. The Indenture also contains provisions permitting the Holders of not less than a majority of the aggregate principal amount of the Outstanding Securities, on behalf of the Holders of all such Securities, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority of the aggregate principal amount, in certain instances, of the Outstanding Securities of any series to waive, on behalf of all of the Holders of Securities of such series, certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and other Securities issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium or Make-Whole Amount, if any) and interest on this Security at the times, places and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein [and herein] set forth, the transfer of this Security is registrable in the Security Register of the Company upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of (and premium or Make-Whole Amount, if any) and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein [and herein] set forth, this Security is exchangeable for a like aggregate principal amount of Securities of different authorized denominations but otherwise having the same terms and conditions, as requested by the Holder hereof surrendering the same.

The Securities of this series are issuable only in registered form [without coupons] in denominations of $_______ and any integral multiple thereof.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith,

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or premium or Make-Whole Amount, if any, or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any past, present or future stockholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

The Indenture and the Securities shall be governed by and construed in accordance with the laws of [the State of New York] applicable to agreements made and to be performed entirely in such State.

EXHIBIT B

FORMS OF CERTIFICATION

EXHIBIT B-1

FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED TO RECEIVE BEARER SECURITY OR TO OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, as of the date hereof, and except as set forth below, the above-captioned Securities held by you for our account (i) are owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) are owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in United States Treasury Regulations Section 2.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent, that you may advise Bay Apartment Communities, Inc. or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) are owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, in addition, if the owner is a United States or foreign financial institution described in clause (iii) above (whether or not also described in clause (i) or (ii)), this is to further certify that such financial institution has not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We undertake to advise you promptly by tested telex on or prior to the date on which you intend to submit your certification relating to the above-captioned Securities held by you for our account in accordance with your Operating Procedures if any applicable statement herein is not correct on such date, and in the absence of any such notification it may be assumed that this certification applies as of such date.

This certificate excepts and does not relate to [U.S.$] of such interest in the above-captioned Securities in respect of which we are not able to certify and as to which we understand an exchange for an interest in a permanent Global Security or an exchange for and delivery of definitive Securities (or, if relevant, collection of any interest) cannot be made until we do so certify.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: ________, ____
[To be dated no earlier than the 15th day prior to (i) the Exchange Date or (ii) the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Name of Person Making Certification]

____
(Authorized Signature)
Name:
Title:

EXHIBIT B-2

FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR AND CEDEL S.A. IN CONNECTION WITH THE EXCHANGE OF A PORTION OF A TEMPORARY GLOBAL SECURITY OR TO OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, based solely on written certifications that we

have received in writing, by tested telex or by electronic transmission from each of the persons appearing in our records as persons entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially in the form attached hereto, as of the date hereof, [U.S.$] principal amount of the above-captioned Securities (i) is owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in U.S. Treasury Regulations Section 1.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such financial institution has agreed, on its own behalf or through its agent, that we may advise Bay Apartment Communities, Inc. or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, to the further effect, that financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "Possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We further certify that (i) we are not making available herewith for exchange (or, if relevant, collection of any interest) any portion of the temporary Global Security representing the above-captioned Securities excepted in the above-referenced certificates of Member

Organizations and (ii) as of the date hereof we have not received any notification from any of our Member Organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part submitted herewith for exchange (or, if relevant, collection of any interest) are no longer true and cannot be relied upon as of the date hereof.

We understand that this certification is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _______ ____
[To be dated no earlier than the Exchange Date or the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Morgan Guaranty Trust Company of New York, Brussels Office,] as Operator of the Euroclear System [CEDEL S.A.]

By:____

EXHIBIT 4.6

BAY APARTMENT COMMUNITIES, INC.

Issuer

to

STATE STREET BANK AND TRUST COMPANY

Trustee

First Supplemental Indenture

Dated as of January 20, 1998

$50,000,000
of
6.250% Senior Notes due 2003

$50,000,000
of
6.500% Senior Notes due 2005

$50,000,000
of
6.625% Senior Notes due 2008

FIRST SUPPLEMENTAL INDENTURE, dated as of January 20, 1998 (the "Supplemental Indenture"), between BAY APARTMENT COMMUNITIES, INC., a corporation duly organized and existing under the laws of the State of Maryland (herein called the "Company"), and STATE STREET BANK AND TRUST COMPANY, a trust company organized and existing under the laws of The Commonwealth of Massachusetts, as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has heretofore delivered to the Trustee an Indenture dated as of January 16, 1998 (the "Senior Indenture"), a form of which has been filed with the Securities and Exchange Commission under the Securities Act of 1933, as amended, as an exhibit to the Company's Registration Statement on Form S-3, as amended (File No. 333-41511), providing for the issuance from time to time of Senior Debt Securities of the Company (the "Securities").

Section 301 of the Senior Indenture provides for various matters with respect to any series of Securities issued under the Senior Indenture to be established in an indenture supplemental to the Senior Indenture.

Section 901(7) of the Senior Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Senior Indenture to establish the form or terms of Securities of any series as provided by Sections 201 and 301 of the Senior Indenture.

The Board of Directors of the Company has duly adopted resolutions authorizing the Company to execute and deliver this Supplemental Indenture.

All the conditions and requirements necessary to make this Supplemental Indenture, when duly executed and delivered, a valid and binding agreement in accordance with its terms and for the purposes herein expressed, have been performed and fulfilled.

NOW, THEREFORE, THIS SUPPLEMENTAL INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of each of the series of Securities provided for herein by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes or for either thereof, as follows:

ARTICLE ONE - RELATION TO SENIOR INDENTURE; DEFINITIONS.

SECTION 1.1. Relation to Senior Indenture. This Supplemental Indenture constitutes an integral part of the Senior Indenture.

SECTION 1.2. Definitions. For all purposes of this Supplemental Indenture, except as otherwise expressly provided for or unless the context otherwise requires:

(1) Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Senior Indenture;

(2) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Supplemental Indenture; and

(3) In the event that any of the following definitions differs from its respective definition set forth in the Senior Indenture, the definition set forth herein shall control.

"Acquired Indebtedness" means Indebtedness of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Indebtedness incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

"Annual Service Charge" for any period means the maximum amount which is payable during such period for interest on, and original issue discount of, Indebtedness of the Company and its Subsidiaries and the amount of dividends which are payable during such period in respect of any Disqualified Stock.

"Business Day" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in the City of New York or in the City of Chicago are authorized or required by law, regulation or executive order to close.

"Capital Stock" means, with respect to any Person, any capital stock (including preferred stock), shares, interests, participations or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into or exchangeable for corporate stock), warrants or options to purchase any thereof.

"Consolidated Income Available for Debt Service" for any period means Earnings from Operations of the Company and its Subsidiaries, plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (i) interest on Indebtedness of the Company and its Subsidiaries, (ii) provision for taxes of the Company and its Subsidiaries based on income, (iii) amortization of debt discount and other deferred financing costs, (iv) provisions for gains and losses on properties and property depreciation and amortization, (v) the effect of any noncash charge resulting from a change in accounting principles in determining Earnings from Operations for such period and (vi) amortization of deferred charges.

"Corporate Trust Office" means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at Two International Place, Boston, Massachusetts 02110 and, for purposes of the Place of Payment provisions of Sections 305 and 1002 of the Senior Indenture, is located at the office of State Street Bank and Trust Company, N.A., 61 Broadway, New York, New York 10005.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which by the terms of such Capital Stock (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than Capital Stock which is redeemable solely in exchange for common stock), (ii) is convertible into or exchangeable or exercisable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof, in whole or in part (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock), in each case on or prior to the Stated Maturity of the Notes.

"Earnings from Operations" for any period means net earnings excluding gains and losses on sales of investments, extraordinary items, and property valuation losses, net as reflected in the financial statements of the Company and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Encumbrance" means any mortgage, lien, charge, pledge or security interest of any kind.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder by the Commission.

"GAAP" means generally accepted accounting principles as used in the United States applied on a consistent basis as in effect from time to time; provided that solely for purposes of any calculation required by the financial covenants contained herein, "GAAP" shall mean generally accepted accounting principles as used in the United States on the date hereof, applied on a consistent basis.

"Indebtedness" of the Company or any Subsidiary means, without duplication, any indebtedness of the Company or any Subsidiary, whether or not contingent, in respect of (i) borrowed money or evidenced by bonds, notes, debentures or similar instruments, (ii) indebtedness for borrowed money secured by any Encumbrance existing on property owned by the Company or any Subsidiary, (iii) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued (other than letters of credit issued to provide credit enhancement or support with respect to other indebtedness of the Company or any Subsidiary otherwise reflected as Indebtedness hereunder) or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such

balance that constitutes an accrued expense or trade payable, or all conditional sale obligations or obligations under any title retention agreement, (iv) the principal amount of all obligations of the Company or any Subsidiary with respect to redemption, repayment or other repurchase of any Disqualified Stock, (v) any lease of property by the Company or any Subsidiary as lessee which is reflected on the Company's consolidated balance sheet as a capitalized lease in accordance with GAAP, or (vi) interest rate swaps, caps or similar agreements and foreign exchange contracts, currency swaps or similar agreements, to the extent, in the case of items of indebtedness under (i) through (iii) above, that any such items (other than letters of credit) would appear as a liability on the Company's consolidated balance sheet in accordance with GAAP, and also includes, to the extent not otherwise included, any obligation by the Company or any Subsidiary to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Indebtedness of another Person (other than the Company or any Subsidiary) (it being understood that Indebtedness shall be deemed to be incurred by the Company or any Subsidiary whenever the Company or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof).

"Make-Whole Amount" means, in connection with any optional redemption or accelerated payment of any 2003 Note, 2005 Note or 2008 Note, as the case may be, the excess, if any, of (i) the aggregate present value as of the date of such redemption or accelerated payment of each dollar of principal being redeemed or paid and the amount of interest (exclusive of interest accrued to the date of redemption or accelerated payment) that would have been payable in respect of such dollar if such redemption or accelerated payment had not been made, determined by discounting, on a semi-annual basis, such principal and interest at the Reinvestment Rate (determined on the third Business Day preceding the date such notice of Redemption is given or declaration of acceleration is made) from the respective dates on which such principal and interest would have been payable if such redemption or accelerated payment had not been made, over (ii) the aggregate principal amount of the Notes being redeemed or paid.

"Notes" has the meaning specified in Section 2.1 hereof.

"Reinvestment Rate" means .25% (twenty-five one hundredths of one percent) plus the arithmetic mean of the yields under the respective headings "This Week" and "Last Week" published in the Statistical Release under the caption "Treasury Constant Maturities" for the maturity (rounded to the nearest month) corresponding to the remaining life to maturity, as of the payment date of the principal being redeemed or paid. If no maturity exactly corresponds to such maturity, yields for the two published maturities most closely corresponding to such maturity shall be calculated pursuant to the immediately preceding sentence and the Reinvestment Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding in each of such relevant periods to the nearest month. For such purposes of calculating the Reinvestment Rate, the most recent Statistical Release published prior to the date of determination of the Make-Whole Amount shall be used.

"Statistical Release" means the statistical release designated "H.15(519)" or any successor publication which is published weekly by the Federal Reserve System and which establishes yields on actively traded United States government securities adjusted to constant maturities or, if such statistical release is not published at the time of any determination of the Make-Whole Amount, then such other reasonably comparable index which shall be designated by the Company.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests are owned, directly or indirectly, by such Person. For the purposes of this definition, "voting equity securities" means equity securities having voting power for the election of directors, whether at all times or only so long as no senior class of security has such voting power by reason of any contingency.

"Total Assets" as of any date means the sum of (i) the Undepreciated Real Estate Assets and (ii) all other assets of the Company and its Subsidiaries determined in accordance with GAAP (but excluding accounts receivable and intangibles).

"Total Unencumbered Assets" means the sum of (i) those Undepreciated Real Estate Assets not subject to an Encumbrance for borrowed money and (ii) all other assets of the Company and its Subsidiaries not subject to an Encumbrance for borrowed money, determined in accordance with GAAP (but excluding accounts receivable and intangibles).

"2003 Notes" has the meaning specified in Section 2.1 hereof.

"2005 Notes" has the meaning specified in Section 2.1 hereof.

"2008 Notes" has the meaning specified in Section 2.1 hereof.

"Undepreciated Real Estate Assets" as of any date means the cost (original cost plus capital improvements) of real estate assets of the Company and its Subsidiaries on such date, before depreciation and amortization, determined on a consolidated basis in accordance with GAAP.

"Unsecured Indebtedness" means Indebtedness which is not secured by any Encumbrance upon any of the properties of the Company or any Subsidiary.

ARTICLE TWO - THE SERIES OF NOTES.

The following provisions of this Article Two are made pursuant to Section 301 of the Senior Indenture in order to establish and set forth the terms of the series of Securities described in Section 2.1.

SECTION 2.1. Title of the Securities. There shall be a series of Securities designated the "6.250% Senior Notes due 2003" (the "2003 Notes"), a series of Securities designated the "6.500% Senior Notes due 2005" (the "2005 Notes") and a series of Securities designated the "6.625% Senior Notes due 2008" (the "2008 Notes" and, together with the 2003 Notes and the 2005 Notes, the "Notes").

SECTION 2.2. Limitation on Aggregate Principal Amount.

(1) The aggregate principal amount of the 2003 Notes shall be limited to $50,000,000, and, except as provided in this Section and in Section 306 of the Senior Indenture, the Company shall not execute and the Trustee shall not authenticate or deliver 2003 Notes in excess of such aggregate principal amount.

(2) The aggregate principal amount of the 2005 Notes shall be limited to $50,000,000, and, except as provided in this Section and in Section 306 of the Senior Indenture, the Company shall not execute and the Trustee shall not authenticate or deliver 2005 Notes in excess of such aggregate principal amount.

(3) The aggregate principal amount of the 2008 Notes shall be limited to $50,000,000, and, except as provided in this Section and in Section 306 of the Senior Indenture, the Company shall not execute and the Trustee shall not authenticate or deliver 2008 Notes in excess of such aggregate principal amount.

Nothing contained in this Section 2.2 or elsewhere in this Supplemental Indenture, or in the Notes, is intended to or shall limit execution by the Company or authentication or delivery by the Trustee of Notes under the circumstances contemplated by Sections 303, 304, 305, 306, 906, 1107 and 1305 of the Senior Indenture.

SECTION 2.3. Interest and Interest Rates; Maturity Date of Notes. The 2003 Notes will bear interest at a rate of 6.250% per annum, the 2005 Notes will bear interest at a rate of 6.500% per annum and the 2008 Notes will bear interest at a rate of 6.625% per annum, in each case, from January 15, 1998 or from the immediately preceding Interest Payment Date to which interest has been paid or duly provided for, payable semi-annually in arrears on January 15 and July 15 of each year, commencing July 15, 1998 (each, an "Interest Payment Date"), to the Person in whose name such Note is registered at the close of business on December 31 or June 30 (whether or not a Business Day), as the case may be, next

preceding such Interest Payment Date (each, a "Regular Record Date"). Interest

will be computed on the basis of a 360-day year comprised of twelve 30-day months. The interest so payable on any Note which is not punctually paid or duly provided for on any Interest Payment Date shall forthwith cease to be payable to the Person in whose name such Note is registered on the relevant Regular Record Date, and such defaulted interest shall instead be payable to the Person in whose name such Note is registered on the Special Record Date or other specified date determined in accordance with the Senior Indenture.

If any Interest Payment Date or Maturity falls on a day that is not a Business Day, the required payment shall be made on the next Business Day as if it were made on the date such payment was due and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Maturity, as the case may be.

The 2003 Notes will mature on January 15, 2003, the 2005 Notes will mature on January 15, 2005 and the 2008 Notes will mature on January 15, 2008.

SECTION 2.4. Limitations on Incurrence of Indebtedness.

(1) The Company will not, and will not permit any Subsidiary to, incur any Indebtedness if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the proceeds thereof, the aggregate principal amount of all outstanding Indebtedness of the Company and its Subsidiaries on a consolidated basis determined in accordance with GAAP is greater than 60% of the sum of (without duplication) (i) the Total Assets of the Company and its Subsidiaries as of the end of the calendar quarter covered in the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the Commission (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Indebtedness and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Indebtedness), by the Company or any Subsidiary since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Indebtedness.

(2) In addition to the limitation set forth in subsection (1) of this Section 2.4, the Company will not, and will not permit any Subsidiary to, incur any Indebtedness if the ratio of Consolidated Income Available for Debt Service to the Annual Service Charge for the four consecutive fiscal quarters most recently ended prior to the date on which such additional Indebtedness is to be incurred shall have been less than 1.5:1, on a pro forma basis after giving effect thereto and to the application of the proceeds therefrom, and calculated on the assumption that (i) such Indebtedness and any other Indebtedness incurred by the Company and its Subsidiaries since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Indebtedness, had occurred at the beginning

of such period; (ii) the repayment or retirement of any other Indebtedness by the Company and its Subsidiaries since the first day of such four-quarter period had been repaid or retired at the beginning of such period (except that, in making such computation, the amount of Indebtedness under any revolving credit facility shall be computed based upon the average daily balance of such Indebtedness during such period); (iii) in the case of Acquired Indebtedness or Indebtedness incurred in connection with any acquisition since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition being included in such pro forma calculation; and (iv) in the case of any acquisition or disposition by the Company or its Subsidiaries of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Indebtedness had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such pro forma calculation.

(3) In addition to the limitations set forth in subsections (1) and (2) of this Section 2.4, the Company will not, and will not permit any Subsidiary to, incur any Indebtedness secured by any Encumbrance upon any of the property of the Company or any Subsidiary if, immediately after giving effect to the incurrence of such additional Indebtedness and the application of the proceeds thereof, the aggregate principal amount of all outstanding Indebtedness of the Company and its Subsidiaries on a consolidated basis which is secured by any Encumbrance on property of the Company or any Subsidiary is greater than 40% of the sum of (without duplication) (i) the Total Assets of the Company and its Subsidiaries as of the end of the calendar quarter covered in the Company's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the Commission (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Indebtedness and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Indebtedness), by

the Company or any Subsidiary since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Indebtedness.

(4) The Company and its Subsidiaries may not at any time own Total Unencumbered Assets equal to less than 150% of the aggregate outstanding principal amount of the Unsecured Indebtedness of the Company and its Subsidiaries on a consolidated basis.

(5) For purposes of this Section 2.4, Indebtedness shall be deemed to be "incurred" by the Company or a Subsidiary whenever the Company or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

SECTION 2.5. Redemption. The Notes may be redeemed at any time at the option of the Company, in whole or in part, at a redemption price equal to the sum of (i) the

principal amount of the Notes being redeemed plus accrued interest thereon to the Redemption Date and (ii) the Make-Whole Amount, if any, with respect to such Notes (the "Redemption Price").

SECTION 2.6. Places of Payment. The Places of Payment where the Notes may be presented or surrendered for payment, where the Notes may be surrendered for registration of transfer or exchange and where notices and demands to and upon the Company in respect of the Notes and the Senior Indenture may be served shall be in (i) the Borough of Manhattan, The City of New York, New York, and the office or agency for such purpose shall initially be located at the office of State Street Bank and Trust Company, 61 Broadway, New York, New York 10005, and (ii) the City of Boston, Massachusetts and the office or agency for such purpose shall initially be located at the Corporate Trust Office.

SECTION 2.7. Method of Payment. Payment of the principal of and interest on the Notes will be made at the office or agency of the Company maintained for that purpose in the Borough of Manhattan, The City of New York (which shall initially be an office or agency of the Trustee), in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company, payments of principal and interest on the Notes (other than payments of principal and interest due at Maturity) may be made (i) by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or (ii) by wire transfer to an account maintained by the Person entitled thereto located within the United States.

SECTION 2.8. Currency. Principal and interest on the Notes shall be payable in U.S. dollars.

SECTION 2.9. Registered Securities; Global Form. The Notes shall be issuable and transferable in fully registered form as Registered Securities, without coupons. The 2003 Notes, the 2005 Notes and the 2008 Notes each shall be issued in the form of one or more permanent Global Securities. The depository for the Notes shall be The Depository Trust Company ("DTC"). The Notes shall not be issuable in definitive form except as provided in Section 305 of the Senior Indenture.

SECTION 2.10. Form of Notes. The 2003 Notes shall be substantially in the form attached hereto as Exhibit A. The 2005 Notes shall be substantially in the form attached hereto as Exhibit B. The 2008 Notes shall be substantially in the form attached hereto as Exhibit C.

SECTION 2.11. Registrar and Paying Agent. The Trustee shall initially serve as Registrar and Paying Agent for the Notes.

SECTION 2.12. Defeasance. The provisions of Sections 1402 and 1403 of the Senior Indenture, together with the other provisions of Article Fourteen of the Senior Indenture, shall be applicable to the Notes. The provisions of Section 1403 of the Senior Indenture shall apply to the covenants set forth in Sections 2.4 and 2.15 of this Supplemental Indenture and to those covenants specified in Section 1403 of the Senior Indenture.

SECTION 2.13. Events of Default. The provisions of clause (5) of Section 501 of the Senior Indenture as applicable with respect to the Notes shall be deemed to be amended and restated in their entirety to read as follows:

(5) default under any bond, debenture, note, mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by the Company (or by any Subsidiary, the repayment of which the Company has guaranteed or for which the Company is directly responsible or liable as obligor or guarantor), having an aggregate principal amount outstanding of at least $10,000,000, whether such

indebtedness now exists or shall hereafter be created, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 10 days after there shall have been given written notice, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 10% in principal amount of the Outstanding Securities of that series a written notice specifying such default and requiring the Company to cause such indebtedness to be discharged or cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; provided, however, that such a default on indebtedness which constitutes tax-exempt financing having an aggregate principal amount outstanding not exceeding $25,000,000 that results solely from a failure of an entity providing credit support for such indebtedness to honor a demand for payment on a letter of credit shall not constitute an Event of Default.

SECTION 2.14. Acceleration of Maturity; Rescission and Annulment. The provisions of the first paragraph of Section 502 of the Senior Indenture as applicable with respect to the Notes shall be deemed to be amended and restated in their entirety to read as follows:

If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount (or, if Securities of that series are Original Issue Discount Securities or Indexed Securities, such portion of the principal as may be specified in the terms thereof) of, and the Make-Whole Amount, if any, on, all the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders), and upon any such declaration such principal or specified portion thereof shall

become immediately due and payable. If an Event of Default with respect to the Securities of any series set forth in Section 501(6) of the Senior Indenture occurs and is continuing, then in every such case all the Securities of that series shall become immediately due and payable, without notice to the Company, at the principal amount thereof (or, if any Securities are Original Issue Discount Securities or Indexed Securities, such portion of the principal as may be specified in the terms thereof) plus accrued interest to the date the Securities of that series are paid, plus the Make-Whole Amount, if any, on the Securities of that series.

SECTION 2.15. Provision of Financial Information. Whether or not the Company is subject to Section 13 or 15(d) of the Exchange Act, the Company will, to the extent permitted under the Exchange Act, file with the Commission the annual reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to such Section 13 or 15(d) if the Company were so subject, such documents to be filed with the Commission on or prior to the respective dates (the "Required Filing Dates") by which the Company would have been required so to file such documents if the Company were so subject.

The Company will also in any event (x) within 15 days of each Required Filing Date (i) if the Company is not then subject to Section 13 or 15(d) of the Exchange Act, transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders, copies of the annual reports, quarterly reports and other documents which the Company would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Company were subject to such Sections and (ii) file with the Trustee copies of annual reports, quarterly reports and other documents which the Company is required to file with the Commission or would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Company were subject to such Sections and (y) supply, promptly upon written request and payment of the reasonable cost of duplication and delivery, copies of such documents to any prospective Holder.

The Trustee shall not be required to examine any of the reports and other documents filed therewith pursuant to the provisions of this Section 2.15 or Section 7.03 of the Senior Indenture in order to determine whether the Company is in compliance with the provisions of Section 2.4 of this Supplemental Indenture.

SECTION 2.16. Waiver of Certain Covenants. Notwithstanding the provisions of Section 1009 of the Senior Indenture, the Company may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1004 to 1008, inclusive, of the Senior Indenture, with Sections 2.4 and 2.15 of this Supplemental Indenture and with any other term, provision or condition with respect to the Notes (except any such term, provision or condition which could not be amended without the consent of all Holders of the Notes or such series thereof, as applicable), if before or after the time for such compliance the Holders of at least a majority in principal amount of all outstanding Notes, by Act of such Holders, either waive such compliance in such instance or generally

waive compliance with such

covenant or condition. Except to the extent so expressly waived, and until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

ARTICLE THREE - MISCELLANEOUS PROVISIONS.

SECTION 3.1. Ratification of Senior Indenture. Except as expressly modified or amended hereby, the Senior Indenture continues in full force and effect and is in all respects confirmed and preserved.

SECTION 3.2. Governing Law. This Supplemental Indenture and the Notes shall be governed by and construed in accordance with the laws of the State of New York. This Supplemental Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, and shall, to the extent applicable, be governed by such provisions.

SECTION 3.3. Counterparts. This Supplemental Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first written above.

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Name: Gilbert M. Meyer
Title: Chairman of the Board, President and Chief Executive Officer

STATE STREET BANK AND TRUST COMPANY,
as Trustee

By: /s/ Robert J. Dunn

Name: Robert J. Dunn
Title: Vice President

EXHIBIT 10.5

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 10th day of January, 2003 (the "Effective Date") by and between Bryce Blair ("Executive") and AvalonBay Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and the Company have previously entered into an employment agreement dated as of March 9, 1998 (as amended, the "Prior Agreement"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the Effective Date indicated above, to replace the Prior Agreement.

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

1. Term. The Company hereby agrees to employ Executive, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on November 30, 2006 (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional two year periods measured from December 1, 2006 (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other at least 180 days prior to, but not more than 270 days prior to, the expiration of the Original Term or any Renewal Term. Notwithstanding the foregoing, upon a Change in Control, the Employment Period shall be extended automatically to three years from the date of such Change in Control (but only if such date is later than the then current expiration date). (The period of Executive's employment hereunder within the Original Term and any Renewal Terms is herein referred to as the "Employment Period.")

2. Employment Duties.

(a) During the Employment Period, Executive shall serve as the Chief Executive Officer and President of the Company. In this capacity, Executive shall have such duties, authorities and responsibilities commensurate with the duties, authorities and responsibilities of persons in similar capacities in similarly sized companies, and such other duties and responsibilities as the Board of Directors of the Company (the "Board") shall designate that are consistent with Executive's position as Chief Executive Officer and President of the Company. Executive shall report exclusively to the Board. In addition to Chief Executive Officer and President, Executive currently serves as Chairman of the Board. The appointment by the Board of Directors, from among the independent directors, of a "lead director" with certain defined duties or oversight responsibilities that are of a type that may traditionally be performed by a "chairman of the board" and that overlap with current duties or oversight responsibilities of Executive in his role as Chairman of the Board, shall not be a violation of this Agreement provided the role of such lead director is consistent with the proviso in Section 7(b)(4)(ix) (definition of "Constructive Termination without Cause").

(b) Executive agrees to his employment as described in this Section 2 and agrees to devote substantially all of his working time and efforts to the performance of his duties under this Agreement; provided that nothing in this Section 2(b) shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board as an officer or director of, or advisor to, any other entity or organization that is not a customer or material service provider to the Company or a Competing Enterprise, as defined in Section 8, so long as such participation does not interfere with the performance of Executive's duties hereunder, whether or not such entity or organization is engaged in religious, charitable or other community or non-profit activities, (ii) investing in any entity or organization which is not a customer or material service provider to the Company or a Competing Enterprise, so long as such investment does not interfere with the performance of Executive's duties hereunder, or (iii) delivering lectures or fulfilling speaking engagements so long as such lectures or engagements do not interfere with the performance of Executive's duties hereunder. The Company consents to Executive's status as a "former partner" with a current financial interest in certain projects of Trammell Crow Residential ("TCR"), and such activity shall not be treated as a Competing Enterprise.

(c) In performing his duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in Alexandria, Virginia (or, if such headquarters office shall move, to a headquarters office of the Company that is within 50 miles of Alexandria, Virginia). The Company acknowledges that Executive's principal residence is currently in Massachusetts, and it shall not be a violation of this agreement for Executive to maintain a principal residence in Massachusetts and to utilize

on a regular basis the Company's current Quincy, Massachusetts office (or a successor Massachusetts office within 50 miles of Quincy, Massachusetts or other office facilities provided by the Company in or near Quincy, Massachusetts). The Company agrees to reimburse Executive for travel to and from the Alexandria office from Massachusetts and for reasonable related lodging, including, at the Company's option, at a nearby community owned by the Company.

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

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

(a) Base Salary. During the Employment Period, the Executive shall receive an annual rate of base salary ("Base Salary") in an amount not less than $543,490. Executive's Base Salary will be reviewed by the Company annually and may be adjusted upward (but not downward) at such time. Base Salary shall be payable in accordance with the Company's normal business practices, but in no event less frequently than monthly.

(b) Bonuses. Commencing at the close of each fiscal year during the Employment Period, the Company shall review the performance of the Company and of Executive during the prior fiscal year, and the Company may provide Executive with additional compensation in the form of a cash bonus ("Cash Bonus") and in the form of long term equity incentives such as stock options and restricted stock grants ("LT Equity Bonus") if the Board, or any compensation committee thereof, in its discretion, determines that the performance of the Company and Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. Any Cash Bonuses hereunder shall be paid as a lump sum not later than 75 days after the end of the Company's preceding fiscal year.

(c) Medical and Disability Insurance/Physical. During the Employment Period, the Company shall provide (i) to Executive and Executive's immediate family a comprehensive policy of health insurance in accordance with the Company's general practice applicable to officers (including payment of all or a portion of the premiums due thereon) and (ii) to Executive a disability policy in accordance with the Company's general practice applicable to officers (including payment of all or a portion of the premiums due thereon) (the "Base Disability Policy") and a supplemental disability policy (the "Supplemental Policy") providing for coverage mutually reasonably acceptable to the Company and Executive. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company (but not including any related travel expense), by the physician or medical group of Executive's choosing.

(d) Split Dollar Life Insurance. Subject to Section 12(b), during the Employment Period, the Company shall keep in force and pay the premiums on the split-dollar life insurance policy referenced in the Split Dollar Insurance Agreement between the Company (or Avalon Properties, Inc., a predecessor) and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. Executive agrees to submit to such medical examinations as may be required in order to maintain such policy of insurance.

(e) Vacations. Executive shall be entitled to reasonable paid vacations during the Employment Period in accordance with the then regular procedures of the Company governing officers.

(f) Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office in each of the Alexandria, Virginia and Quincy, Massachusetts offices (or in successor offices or office facilities as permitted hereunder) commensurate with his title and duties.

(g) Annual Allowance. The Company will provide the Executive with an annual allowance of up to $10,000 per year (the "Allowance"). The Executive may draw on the Allowance for expenses incurred in his discretion for items such as country club membership, financial counseling or tax preparation. Payment of the Allowance shall be subject to substantiation of expenses in accordance with the Company's policies in effect from time to time for executive officers of the Company. Unused portions of the Allowance shall be forfeited (i.e., not carried over from year to year or paid out in cash). For purposes of this Section 3(g), a new year shall be deemed to commence on each January 1. Payments under this annual allowance will not be grossed up to reflect any income taxes that may be due thereon. Executive shall be entitled to a full Allowance for 2002.

(h) Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period in accordance with the Company's current practices but in no event less than Executive's current monthly car allowance.

(i) Other Benefits. During the Employment Period, the Company shall provide to Executive such other benefits, excluding severance benefits, but including the right to participate in such retirement or pension plans, as are made generally available to officers of the Company from time to time. Executive shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service prior to the Effective Date with Avalon Properties, Inc. and its affiliates ("Avalon"), and Trammell Crow Residential ("TCR") under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon or TCR, provided that no such crediting of service results in duplication of benefits.

(j) Total Compensation. The Company acknowledges that the Executive's Cash Bonus and LT Equity Bonus awarded to the Executive by the Board or Compensation Committee of the Board in its discretion from time to time, are a material part of total compensation for the Executive. The Company will endeavor to provide Executive with a reasonable bonus program (which program will provide for a reasonable Cash Bonus and/or reasonable LT Equity Bonus on an annual basis to compensate Executive for the achievement by the Company and/or Executive of reasonable goals and objectives) such that the Executive's total compensation, in light of the Company's performance and his performance and service as CEO and President and Chairman of the Board, is reasonable under the circumstances and reasonable relative to the Cash Bonuses and LT Equity Bonuses awarded other officers of the Company. The Company shall not be in breach of this provision unless it can be demonstrated that the Company acted in bad faith in determining whether to award (or the size of an award of) a Cash Bonus or LT Equity Bonus, which determination of bad faith shall specifically be made with reference to the target awards set for other officers and the actual awards paid other officers.

4. Expenses/Indemnification.

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

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

5. Employer's Authority/Policies.

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

(b) Ethics Policies. Executive agrees to comply with and be bound by the Ethics Policies of the Company, as reflected in the attachment at Annex A hereto and made a part hereof. Executive agrees to comply with and be bound by the Company's insider trading policies and procedures that are generally applicable to employees and/or senior officers.

(c) SEC Certifications. Executive's duties shall include taking such actions as are necessary so that Executive is in a position to give, and does give, all certifications that a Chief Executive Officer, under federal law or regulations, is required to give with the submission by the Company of reports or other filings to the Securities and Exchange Commission ("SEC filings"), provided, however, that Executive shall not have violated this Agreement if Executive is not in a position to give or does not give any such certification because (i) Executive determines that he cannot make such certification truthfully or with sufficient certainty due to the existence of conditions or information, or the inability to confirm such conditions or information, and (ii) the existence of such conditions or information or the inability to confirm such conditions or information, or the failure to have properly reported in an SEC filing in a timely and appropriate fashion such conditions or information,

was in each case not due to the gross negligence or willful misconduct of Executive while serving in his capacity as Chief Executive Officer.

6. Records/Nondisclosure/Company Policies.

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

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

7. Termination; Severance and Related Matters.

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

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

(1) Cause. "Cause" shall mean:

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

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

(iii) a breach by Executive of his fiduciary duties under Maryland law as an officer; or material breach by Executive of any rule, regulation, policy or procedure, the Company (including, without limitation, as described in Section 5 hereof);

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

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

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

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

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

(C) The Board has given a Notice of Termination to Executive within 20 days after such Board meeting.

The Company may suspend Executive with pay at any time during the period commencing with the giving of notice to Executive under clause (A) above

until final Notice of Termination is given under clause (C) above. Upon the giving of notice as provided in clause (C) above, no further payments shall be due Executive except as provided in Section 7(c)(vi).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

last completed fiscal year of the Company prior to the Change in Control;

(vi) (a) the relocation of the Company's Alexandria, Virginia headquarters to a new location more than 50 miles away from Alexandria, Virginia or the failure to locate Executive's own office at the Alexandria office or at a successor office which is not more than 50 miles away from Alexandria, Virginia or (b) the relocation of the Company's Quincy, Massachusetts offices to a new location more than 50 miles away from Quincy, Massachusetts unless other office facilities, which need not be a formal office of the Company, in or near the Quincy, Massachusetts area are made available by the Company for Executive's use;

(vii) any voluntary termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company if such Complete Change in Control occurs during the Employment Period;

(viii) the failure of the Board to take action as may be necessary to re-elect Executive to the Board, provided, however, that it will not be a Constructive Termination Without Cause if Executive shall fail to be re-elected by the stockholders, or if the Board's failure to take action is in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause; or

(ix) the failure of the Board of Directors, following each annual meeting of stockholders, to re-appoint Executive as Chairman of the Board or to maintain such appointment, provided, however, that it shall not be a Constructive Termination without Cause if the Board fails to appoint Executive as Chairman of the Board (or removes such title) and instead appoints a non-executive Chairman of the Board if

(a) there is a law, rule or regulation, or a listing requirement of the New York Stock Exchange, that provides that the Chairman and CEO shall not be the same person, or

(b) the Board, in its good faith judgment following a shareholder vote, or in its good faith judgment in light of then evolving and well-publicized standards of good corporate governance, determines that it is in the best interest of the Company that Executive not serve as Chairman and that a non-executive Chairman be appointed,

provided further, however, that in such event,

(x) the non-executive Chairman shall not serve in a full time or executive capacity, and

(y) Executive shall continue to report directly and exclusively to the full Board and not to the non-executive Chairman, and (without limiting the Board's or any Board committee's right to meet or confer with any individual officer and to take actions as are customary for a Board of Directors and consistent with its fiduciary duties) all other officers shall continue to report directly or indirectly to Executive.

In addition, under no circumstances will a Constructive Termination without Cause be deemed to occur solely on account of the appointment by the Board of Directors, and public announcement thereof, of a "lead independent director" so long as the same limitations as apply immediately above in the case of a non-executive Chairman apply to such lead independent director.

Notwithstanding the foregoing, a Constructive Termination Without Cause shall not be treated as having occurred unless Executive has given a final Notice of Termination delivered after expiration of the Company's cure period. Executive or the Company may, at any time after the expiration of the Company's cure period and either prior to or up until three months after giving a final Notice of Termination, commence an arbitration proceeding to determine the question of whether, taking into account the actions complained of and any efforts made by the Company to cure such actions, a termination by Executive of his employment should be treated as a Constructive Termination Without

Cause for purposes of this Agreement. If the Executive or the Company commences such a proceeding prior to delivery by Executive of a final Notice of Termination, the commencement of such a proceeding shall be without prejudice to either party and Executive's and the Company's rights and obligations under this Agreement shall continue unaffected unless and until the arbitrator has determined such question in the affirmative, or, if earlier, the date on which Executive or the Company has delivered a Notice of Termination in accordance with the provisions of this Agreement.

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

(6) Covered Compensation. "Covered Compensation," for any calendar year, shall mean an amount equal to the sum of (i) Executive's Base Salary for the calendar year, (ii) the cash bonus actually earned by Executive with respect to such calendar year, and (iii) the value of all stock and other equity-based compensation awards made to Executive during such calendar year. In the event that the Company has or hereafter makes any special, mid-year or other non-routine grant of equity outside of the Company's recurring annual equity compensation programs, the value of any such mid-year, special, or additional equity based compensation shall not be included in clause (iii) of the preceding sentence and therefore shall not be included in the calculation of

Covered Compensation or Covered Average Compensation, and the value of such equity shall have no impact on any cash payments made under Section 7(c) of the Agreement.

Covered Compensation shall be calculated according to the following rules:

(A) In valuing awards for purposes of clause (iii) above, all such awards shall be treated as if fully vested when granted, stock grants shall be valued by reference to the fair market value on the date of grant of the Company's common stock, par value $.01 per share and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors. Reference is made to Section 7(c)(vii) for further clarification regarding this matter.

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

(C) If (i) any cash bonus paid with respect to the current or immediately preceding calendar year was paid within three months of Executive's Date of Termination, (ii) such cash bonus is lower than the last cash bonus paid more than three months from the Date of Termination, and (iii) it is determined that the Board acted in bad faith in setting such cash bonus (which determination of bad faith shall specifically be made with reference to the target cash bonuses set for other officers and the actual cash bonuses paid other officers), then in such event any such cash bonus paid within three months of the Date of Termination shall be disregarded and the last cash bonus paid more than three months from the Date of Termination shall be substituted for each cash bonus so disregarded.

(D) In determining the amount of stock and other equity-based compensation awards made during a calendar year during the averaging period, rules similar to those set forth in subparagraphs (B) and (C) of this Section 7(b)(6) shall be followed.

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

(c) Rights Upon Termination.

(i) Payment of Benefits Earned Through Date of Termination. Upon any termination of Executive's employment during the Employment Period, Executive, or his estate, shall in all events be paid (I) all accrued but unpaid Base Salary and (II) (except in the case of a termination by the Company for Cause or a voluntary termination by Executive which is not due to a Constructive Termination Without Cause, in either of which cases this clause (II) shall not apply) a pro rata portion of the Executive's Cash

Bonus and LT Equity Bonus. For purposes of fulfilling the requirements of clause (II) of the prior sentence, the following shall apply:

(a) In all events, any stock options issued will be issued prior to Executive's Date of Termination so that such stock options are employee stock options. Such stock options shall have an exercise price equal to the closing price of the Company's stock on the date of grant of such options, and such options shall expire one year after the date of grant.

(b) The Company and Executive shall work in good faith to determine an appropriate Cash Bonus and LT Equity Bonus for the year in which the Date of Termination occurs. Such determination shall be based in good faith on an evaluation of Executive's and the Company's performance. If the Company and Executive cannot agree on appropriate amounts, then:

(A) The Company may defer the determination of the Cash Bonus and the restricted stock portion of the LT Equity Bonus until such bonuses in respect of such year are determined for other officers, and at such time the amounts to be used for determining Executive's pro rata bonuses shall be a percentage of his target Cash Bonus and a percentage of his target number of restricted shares with such percentages being equal to the average of the percentages that apply to the Cash Bonus and restricted shares, respectively, of other officers ranked Senior Vice President or higher; and

(B) The Company may grant to Executive a number of stock options based on the assumption that the percentage of the target number of options Executive would have received in respect of the year in which the Date of Termination occurs would equal the average of the percentage realization applied to options granted with respect to the prior three calendar years.

(c) Once the determination in the preceding paragraph is made, the pro rata portion of such amounts shall equal such amounts multiplied by a fraction, the numerator of which is the number of days from January 1 to the Date of Termination in the year of termination and the denominator of which is 365.

Executive shall also retain all such rights with respect to vested equity-based awards as are provided under the circumstances under the applicable grant or award agreement, and shall be entitled to all other benefits which are provided under the circumstances in accordance with the provisions of the Company's generally applicable employee benefit plans, practices and policies, other than severance plans.

(ii) Death. In the event of Executive's death during the Employment Period, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), take whatever action is necessary to cause all of Executive's unvested equity-based awards to become fully vested as of the date of death and, in the case of equity-based awards which have an exercise schedule, to become fully exercisable and continue to be exercisable for a period of (a) two years following death (or such greater exercise period as may be provided in the applicable award agreement for awards that are vested and exercisable at the time of death) or (b) if less, the end of the original term of the options.

(iii) Disability. In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i) and subject to Executive first entering into a separation agreement, including a general release of all claims, in a form reasonably acceptable to the Company ("Separation Agreement"), pay to Executive, in one lump sum, no later than the later of the effective date of said Separation Agreement or 31 days following the Date of Termination, an amount equal to two times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination and subject to Executive entering into a Separation Agreement:

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

(B) Subject to Section 12(b), continue to pay, or reimburse Executive, for all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; provided, that the Company's obligations under this Section 7(c)(iii)(B) are contingent on Executive's timely payment of the premiums then due or thereafter payable on the term portion of said split-dollar insurance policy; and

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

(D) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination then, until that date that is 24 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the monthly premiums for such disability policy, less (ii) such amount as may be paid, prior to the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by Company prior to the Date of Termination.

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

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

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

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

(D) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination then, until that date that is 24 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the monthly premiums for such disability policy, less (ii) such amount as may be paid, prior to the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by Company prior to the Date of Termination; and

(E) Subject to Section 12(b), continue to pay, or reimburse Executive for, all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; provided, that the Company's obligations under this Section 7(c)(iv)(E) are contingent on Executive's timely payment of the premiums then due or thereafter payable on the term portion of said split-dollar insurance policy.

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

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

(B) Subject to Section 12(b), continue to pay, or reimburse Executive, for so long as such payments are due, all premiums then due or payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d); provided, that the Company's obligations under this Section 7(c)(v)(B) are contingent on Executive's timely payment of the premiums then due or thereafter payable on the term portion of said split-dollar insurance policy.; and

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

(D) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination then, until that date that is 36 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the premium for such disability policy, less (ii) such amount as may be paid, prior to the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by Company prior to the Date of Termination.

(vi) Termination for Cause; Voluntary Resignation. In the event Executive's employment terminates during the Employment Period other than in connection with a termination meeting the conditions of subparagraphs (ii), (iii), (iv) or (v) of this Section 7(c), Executive shall receive the amounts set forth in Section 7(c)(i) in full satisfaction of all of his entitlements from the Company. All equity-based awards not vested as of the Date of Termination shall

terminate (unless otherwise provided in the applicable award agreement) and Executive shall have no further entitlements with respect thereto.

(vii) Clarification Regarding Treatment of Options and Restricted Stock. The stock option and restricted stock agreements (the "Equity Award Agreements") that Executive has or may receive may contain language regarding the effect of a termination of Executive's employment under certain circumstances.

(A) Notwithstanding such language in the Equity Award Agreements, for so long as this Agreement is in effect, the Company will be obligated, if the terms of this Agreement are more favorable in this regard than the terms of the Equity Award Agreements, to take the actions required under Sections 7(c)(ii), 7(c)(iii)(C), 7(c)(iv)(C) and 7(c)(v)(C) hereof upon the happening of the circumstances described therein. Those sections provide that in certain situations the Company will cause the Executive to become vested as of the Date of Termination in all or certain equity-based awards, and that such equity-based awards will thereafter be subject to the provisions of the applicable Equity Award Agreement as it applies to vested awards upon a termination. For purposes of clarification, although an option grant may vest in accordance with these above-referenced Sections, such option will thereafter be exercisable only for so long as the related option agreement provides, except that the Compensation Committee of the Board of Directors may, in its sole discretion, elect to extend the expiration date of such option. For example, in general Executive's option agreements granted prior to the date hereof provide that (in the absence of an extension by the Compensation Committee) upon a termination of employment for any reason other than death, disability, retirement or cause, any vested options will only be exercisable for three months from the date of termination or, if earlier, the expiration date of the option.

(B) Notwithstanding the definition of "Cause" which may appear in the Equity Award Agreements, for so long as this Agreement is in effect (X) any "for Cause" termination must be in compliance with the terms of this Agreement, including the definition of "Cause" set forth herein, and (Y) only in the event of a "for Cause" termination that meets both the definition in this Agreement and the definition in the Equity Award Agreement will the disposition of options and restricted stock under such Equity Award Agreement be treated in the manner described in such Equity Award Agreement in the case of a termination "for Cause."

(C) For purposes of Section 7(b)(6)(A), the value of any option may be determined by the Compensation Committee of the Board at any time after its grant date by setting such value at the value determined by a nationally recognized accounting firm or employee benefits compensation firm, selected by such Committee, that calculates such value in accordance with a Black-Scholes formula or variations thereof using such parameters and procedures (including, without limitation, parameters and procedures used to measure the historical volatility of the Company's common stock as of the relevant grant date) as the Compensation Committee and/or such firm deems reasonably appropriate. In all events, if the parameters used for valuing any option for purposes of Section 7(b)(6)(A) are the same as the parameters used for valuing any other options for purposes of disclosure or inclusion in the Company's financial statements or financial statement footnotes, then such parameters shall be deemed reasonable.

(D) During the Employment Period any stock options issued to Executive shall provide that if Executive's employment is terminated in any manner which gives rise to an obligation under this Agreement (or any successor Agreement or other severance arrangement) to cause the acceleration of vesting of stock options, then in such event such stock options shall not expire until one year after the Date of Termination (or, if earlier, the expiration of their original term). The Company represents that the stock options awarded to Executive in February 2002 have a provision to the same effect. This covenant of the Company shall not apply to any stock options issued prior to 2002 or to any stock options issued after the expiration of the Employment Period.

(d) Additional Benefits.

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

employment tax, but after accrual or payment of the Excise Tax attributable to the Partial Gross-Up Payment, is equal to the Excise Tax on the Severance Payments.

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

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

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

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

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

(D) permit the Company to participate in any proceedings relating to such claim; provided, however that the Company shall bear and pay

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

(iv) If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), Executive becomes entitled to receive any refund with respect to such claim, Executive shall (subject to the Company's complying with the requirements of Section 7(d)(iii)) promptly pay to the Company so much of such refund (together with any interest paid or credited thereon after taxes applicable thereto) (the "Refund") as is equal to (A) if the Company advanced or paid the entire amount required to be so advanced or paid pursuant to Section 7(d)(iii) hereof (the "Required Section 7(d) Advance"), the aggregate amount advanced or paid by the Company pursuant to this Section 7(d) less the portion of such amount advanced to Executive to reimburse him for related legal and accounting costs, or (B) if the Company advanced or paid less than the Required Section 7(d) Advance, so much of the aggregate amount so advanced or paid by the Company pursuant to this Section 7(d) as is equal to the difference, if any, between (C) the amount refunded to Executive with respect to such claim and (D) the sum of the portion of the Required Section 7(d) Advance that was paid by Executive and not paid or advanced by the Company plus Executive's related legal and accounting fees, as applicable. If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), a determination is made that Executive shall not be entitled to any refund with respect to such claim and the Company does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount

of such advance shall offset, to the extent thereof, the amount of Partial Gross-Up Payment required to be paid.

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

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

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

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

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

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

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

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

(c) Specific Enforcement. Executive and the Company agree that the

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

9. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed sufficient when given by hand or by nationally recognized overnight courier or by Express, registered or certified mail, postage prepaid, return receipt requested, and addressed, if to the Company at 2900 Eisenhower Avenue, Suite 300, Alexandria, VA 22303, Attention: Chief Financial Officer (with a second copy, sent by the same means and to the same address, Attention: General Counsel), and if to Executive at the address set forth in the Company's records (or to such other address as may be provided by notice).

10. Miscellaneous. This Agreement, together with Annex A and Annex B and the Split Dollar Insurance Agreement and any Equity Award Agreements now or hereafter in effect, constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have not further force or effect. This Agreement may not be assigned by Executive without the prior written consent of the Company, and may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that

the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Headings herein are for convenience of reference only and shall not define, limit or interpret the contents hereof.

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

12. Severability.

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

(b) Split-Dollar Insurance Policy. If at any time, including as a result of the Sarbanes-Oxley Act of 2002, the Company is not permitted to make premium payments pursuant to the split-dollar insurance policy arrangement contemplated in any provision of this Agreement, then such provision (but only insofar as it pertains to the split-dollar insurance policy) shall be

ineffective and unenforceable, provided, however, that if the Company provides to any other officer a program or arrangement that is intended to be a replacement or substitute for the split-dollar insurance policy arrangements in effect at the beginning of 2002 (a "Substitute Arrangement"), then the Substitute Arrangement shall also be provided to Executive and references herein to a split-dollar insurance policy (including requirements to maintain such policy following termination of employment under certain circumstances) shall be read as references to the Substitute Arrangement.

13. Resolution of Disputes.

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

(b) Attorneys Fees.

(i) Reimbursement After Executive Prevails. Except as otherwise provided in this paragraph, each party shall pay the cost of his or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of Executive in such proceeding, all of his reasonable attorneys fees and

expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to Executive by the Company within five days of the entry of the award. Any award of reasonable attorneys' fees shall take into account any offer of the Company, such that an award of attorneys' fees to the Executive may be limited or eliminated to the extent that the final decision in favor of the Executive does not represent a material increase in value over the offer that was made by the Company during the course of such proceeding. However, any elimination or limitation on attorneys' fees shall only apply to those attorneys' fees incurred after the offer by the Company.

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

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

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

of Section 8(a) shall in no event apply if Executive's employment terminates for any reason after the expiration of the Employment Period (for clarification, this means that if Executive's employment terminates on or prior to the expiration of the Original Term or any later Renewal Term then the one year post-termination non-compete set forth in Section 8(a) will apply if the termination is for one of the reasons set forth in Section 8(a)).

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

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

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

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

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

AVALONBAY COMMUNITIES, INC.

By: /s/ Charlene Rothkopf

Name: Charlene Rothkopf
Title: Senior Vice President - Human Resources

By: /s/ Edward M. Schulman

Name: Edward M. Schulman
Title: Vice President - General Counsel

EXECUTIVE

/s/ Bryce Blair

Bryce Blair

Acknowledgment:

/s/ Lance R. Primis
- -----------------------------------
Lance R. Primis,
Chairman of Compensation Committee
of the Board of Directors

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EXHIBIT 12.1

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

<TABLE>
<CAPTION>

<S>	Year Ended December 31, 2002 <C>	Year Ended December 31, 2001 <C>	Year Ended December 31, 2000 <C>	Year Ended December 31, 1999 <C>	Year Ended December 31, 1998 <C>
Income before gain on sale of communities and extraordinary item	$121,196	$182,499	$166,797	$122,127	$ 95,636
(Plus) Minority interest in consolidated partnerships	2,570	597	1,908	1,975	1,770
(Less) Nonrecurring items:					
Non-recurring items	--	--	--	16,782	--
Impairment loss	6,800	--	--	--	--
Earnings before fixed charges	$130,566	$183,096	$168,705	$140,884	$ 97,406
(Plus) Fixed charges:					
Portion of rents representative of the interest factor	$ 527	$ 472	$ 461	$ 526	$ 293
Interest expense	121,380	103,189	83,582	74,689	54,642
Interest capitalized	29,937	27,635	18,328	21,888	14,724
Preferred dividend	17,896	32,497	39,779	39,779	28,132
Total fixed charges (1)	$169,740	$163,793	$142,150	$136,882	$ 97,791
(Less):					
Interest capitalized	29,937	27,635	18,328	21,888	14,724
Preferred dividend	17,896	32,497	39,779	39,779	28,132
Earnings (2)	$252,473	$286,757	$252,748	$216,099	$152,341
Ratio (2 divided by 1)	1.49	1.75	1.78	1.58	1.56

</TABLE>

EXHIBIT 12.1 (CONTINUED)

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO FIXED CHARGES

<TABLE>
<CAPTION>

	Year Ended December 31, 2002	Year Ended December 31, 2001	Year Ended December 31, 2000	Year Ended December 31, 1999	Year Ended December 31, 1998
<S>	<C>	<C>	<C>	<C>	<C>
Income before gain on sale of communities and extraordinary item	$121,196	$182,499	$166,797	$122,127	$ 95,636
(Plus) Minority interest in consolidated partnerships	2,570	597	1,908	1,975	1,770
(Less) Nonrecurring items:					
Non-recurring items	--	--	--	16,782	--
Impairment loss	6,800	--	--	--	--
Earnings before fixed charges	$130,566	$183,096	$168,705	$140,884	$ 97,406
(Plus) Fixed charges:					
Portion of rents representative of the interest factor	$ 527	$ 472	$ 461	$ 526	$ 293
Interest expense	121,380	103,189	83,582	74,689	54,642
Interest capitalized	29,937	27,635	18,328	21,888	14,724
Total fixed charges (1)	$151,844	$131,296	$102,371	$ 97,103	$ 69,659
(Less):					
Interest capitalized	29,937	27,635	18,328	21,888	14,724
Earnings (2)	$252,473	$286,757	$252,748	$216,099	$152,341
Ratio (2 divided by 1)	1.66	2.18	2.47	2.23	2.19

</TABLE>

Exhibit 21.1

SUBSIDIARY LIST (BY JURISDICTION)

CALIFORNIA

230 Bay Place, L.P.
Bay Rincon, L.P.
Foxchase Drive San Jose Partners II, L.P.
San Francisco Bay Partners II, Ltd.
San Francisco Bay Partners III, L.P.
Toyon Road San Jose Partners, L.P.

CONNECTICUT

Bronxville West, LLC
Smithtown Galleria Associates Limited Partnership
Town Close Associates Limited Partnership
Town Grove, LLC

DELAWARE

AVB Class A Holdings LLC
AVB Realeum Employee LLC
Avalon Ballston II, L.P.
Avalon DownREIT V, L.P.
Avalon Grosvenor, L.P.
Avalon Park Tower, LLC
Avalon Riverview I, LLC
Avalon Riverview II, LLC
Avalon Riverview III, LLC
Avalon Terrace LLC
Avalon Upper Falls Limited Partnership
Avalon Upper Falls, LLC
AvalonBay Redevelopment LLC
Bay Countrybrook L.P.
Bay Pacific Northwest, L.P.
Chrystie Venture Partners, LLC
Falkland Partners, LLC
Glen Cove Development LLC

DISTRICT OF COLUMBIA

4100 Massachusetts Avenue Associates, L.P.

MARYLAND

AVB Service Provider, Inc.
AVB Trillium Holdings, Inc.
Avalon 4100 Massachusetts Avenue, Inc.
Avalon BFG, Inc.
Avalon Ballston II, Inc.
Avalon Chase Glen, Inc.
Avalon Chase Grove, Inc.
Avalon Chase Heritage, Inc.
Avalon Chestnut Hill, Inc.
Avalon Cohasset, Inc.
Avalon Collateral, Inc.
Avalon Commons, Inc.
Avalon Decoverly, Inc.
Avalon Development Services, Inc.
Avalon DownREIT V, Inc.
Avalon Fairway Hills I Associates
Avalon Fairway Hills II Associates
Avalon Fairway II, Inc.
Avalon Grosvenor LLC
Avalon Mills, Inc.
Avalon Oaks West, Inc.
Avalon Oaks, Inc.
Avalon Promenade, Inc.
Avalon Rock Spring Associates, LLC
Avalon Town Green II, Inc.
Avalon Town Meadows, Inc.
Avalon Town View, Inc.
Avalon University Station I, LLC
Avalon Upper Falls Limited Dividend Corporation
Avalon Village North, Inc.
Avalon Village South, Inc.
Avalon Wilson Blvd, Inc.

Avalon at Great Meadow, Inc.
Avalon at St. Clare, Inc.
AvalonBay Arna Valley, Inc.
AvalonBay Cable I, Inc.
AvalonBay Communities, Inc.
AvalonBay Construction Services, Inc.
AvalonBay Grosvenor, Inc.
AvalonBay Ledges, Inc.
AvalonBay NYC Development, Inc.
AvalonBay Orchards, Inc.
AvalonBay Parking, Inc.
AvalonBay Services I, Inc.
AvalonBay Services II, Inc.
AvalonBay Traville, LLC
Bay Asset Group, Inc.
Bay Development Partners, Inc.
Bay GP, Inc.
Bay Waterford, Inc.
JP Construction in Milford, Inc.
Lexington Ridge-Avalon, Inc.
Traville Senior Living, LLC

MASSACHUSETTS

AvalonBay BFG Limited Partnership

MINNESOTA

AvalonBay Devonshire L.L.C.
AvalonBay Edinburgh L.L.C.

NEW JERSEY

Town Cove II Jersey City Urban Renewal, Inc.
Town Cove Jersey City Urban Renewal, Inc.
Town Run Associates

VIRGINIA

Arna Valley View Limited Partnership
Avalon Decoverly Associates Limited Partnership

Exhibit 23.1

Consent of Ernst & Young LLP, Independent Auditors

We consent to the incorporation by reference in the Registration Statements on Form S-8 No. 333-16837, on Form S-8 No. 333-56089, on Form S-3 No. 333-87063, on Form S-3 No. 333-15407, on Form S-3 No. 333-62855, and on Form S-3 No. 333-87219 of AvalonBay Communities, Inc. and in the related Prospectuses of our report dated January 21, 2003, with respect to the consolidated financial statements and schedule of AvalonBay Communities, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2002.

/s/ Ernst & Young LLP

McLean, Virginia
March 11, 2003

Exhibit 99.1

CERTIFICATION OF PERIODIC REPORT

I, Bryce Blair, Chief Executive Officer and President of AvalonBay Communities, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to my knowledge:

(1) the Annual Report on Form 10-K of the Company for the year ended December 31, 2002 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 11, 2003

/s/ Bryce Blair

Bryce Blair
Chairman of the Board,
Chief Executive Officer and
President

Exhibit 99.2

CERTIFICATION OF PERIODIC REPORT

I, Thomas J. Sargeant, Executive Vice President - Chief Financial Officer of AvalonBay Communities, Inc. (the "Company"), certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350, that, to my knowledge:

(1) the Annual Report on Form 10-K of the Company for the year ended December 31, 2002 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 11, 2003

/s/ Thomas J. Sargeant

Thomas J. Sargeant
Executive Vice President -
Chief Financial Officer