UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended June 30, 2004

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 offices, including zip code)

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

(Former name, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past ninety (90) days.

Yes ý No ¨

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

Yes ý No ¨

APPLICABLE ONLY TO CORPORATE ISSUERS

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

71,951,226 shares of common stock, par value $0.01 per share, were outstanding as of July 30, 2004

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PART I — FINANCIAL INFORMATION

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

	6-30-04 (unaudited)	12-31-03
ASSETS		
Real estate:		
Land, including land held for development	$ 962,480	$ 903,906
Buildings and improvements	4,229,925	4,040,828
Furniture, fixtures and equipment	130,141	124,302
	5,322,546	5,069,036
Less accumulated depreciation	(775,893)	(684,021)
Net operating real estate	4,546,653	4,385,015
Construction in progress (including land)	248,516	253,158
Real estate assets held for sale, net	51,017	98,216
Total real estate, net	4,846,186	4,736,389
Cash and cash equivalents	2,501	7,165
Cash in escrow	12,268	11,825
Resident security deposits	24,359	20,891
Investments in unconsolidated real estate entities	25,379	19,735
Deferred financing costs, net	23,172	17,362
Deferred development costs	33,973	31,334
Participating mortgage note	—	21,483
Prepaid expenses and other assets	37,065	43,398
Total assets	$5,004,903	$4,909,582
LIABILITIES AND STOCKHOLDERS' EQUITY		
Unsecured notes	$1,859,436	$1,835,284
Variable rate unsecured credit facility	128,900	51,100
Mortgage notes payable	451,800	422,278
Dividends payable	52,491	51,831
Payables for construction	26,547	26,912
Accrued expenses and other liabilities	87,040	85,089
Accrued interest payable	37,040	38,883
Resident security deposits	36,238	31,880
Liabilities related to real estate assets held for sale	613	30,239
Total liabilities	2,680,105	2,573,496
Minority interest of unitholders in consolidated partnerships	23,669	24,752
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.01 par value; $25 liquidation preference; 50,000,000 shares authorized at both June 30, 2004 and December 31, 2003; 4,000,000 shares issued and outstanding at both June 30, 2004 and December 31, 2003, respectively	40	40
Common stock, $0.01 par value; 140,000,000 shares authorized at both June 30, 2004 and December 31, 2003; 71,879,228 and 70,937,526 shares issued and outstanding at June 30, 2004 and December 31, 2003, respectively	719	709
Additional paid-in capital	2,361,895	2,322,581
Deferred compensation	(11,233)	(5,808)
Dividends less than (in excess of) accumulated earnings	(43,015)	2,024
Accumulated other comprehensive loss	(7,277)	(8,212)
Total stockholders' equity	2,301,129	2,311,334
Total liabilities and stockholders' equity	$5,004,903	$4,909,582

See accompanying notes to Condensed Consolidated Financial Statements.

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

	For the three months ended		For the six months ended	
	6-30-04	6-30-03	6-30-04	6-30-03
Revenue:				
Rental and other income	$162,101	$149,101	$318,832	$296,840
Management, development and other fees	157	247	305	511
Total revenue	162,258	149,348	319,137	297,351
Expenses:				
Operating expenses, excluding property taxes	47,966	42,551	93,924	84,606
Property taxes	15,055	13,961	30,629	28,141
Interest expense	32,482	34,067	64,768	68,041
Depreciation expense	40,173	37,053	79,745	73,723
General and administrative expense	4,071	3,623	8,041	7,254
Total expenses	139,747	131,255	277,107	261,765
Equity in income of unconsolidated entities	276	677	463	1,205
Interest income	36	880	56	1,782
Venture partner interest in profit-sharing	(352)	(470)	(677)	(848)
Minority interest in consolidated partnerships	(420)	(234)	(275)	(454)
Income from continuing operations before cumulative effect of change in accounting principle	22,051	18,946	41,597	37,271
Discontinued operations:				
Income from discontinued operations	608	3,011	1,792	8,002
Gain on sale of communities	12,375	54,511	12,375	68,583
Total discontinued operations	12,983	57,522	14,167	76,585
Income before cumulative effect of change in accounting principle	35,034	76,468	55,764	113,856
Cumulative effect of change in accounting principle	—	—	4,547	—
Net income	35,034	76,468	60,311	113,856
Dividends attributable to preferred stock	(2,175)	(2,706)	(4,350)	(6,394)
Net income available to common stockholders	$ 32,859	$ 73,762	$ 55,961	$107,462
Other comprehensive income (loss):				
Unrealized gain (loss) on cash flow hedges	1,307	(258)	935	491
Comprehensive income	$ 34,166	$ 73,504	$ 56,896	$107,953
Dividends declared per common share	$ 0.70	$ 0.70	$ 1.40	$ 1.40
Earnings per common share — basic:				
Income from continuing operations (net of dividends attributable to preferred stock)	$ 0.28	$ 0.24	$ 0.59	$ 0.45
Discontinued operations	0.18	0.86	0.20	1.14
Net income available to common stockholders	$ 0.46	$ 1.10	$ 0.79	$ 1.59
Earnings per common share — diluted:				
Income from continuing operations (net of dividends attributable to preferred stock)	$ 0.28	$ 0.24	$ 0.60	$ 0.45
Discontinued operations	0.18	0.84	0.19	1.12
Net income available to common stockholders	$ 0.46	$ 1.08	$ 0.79	$ 1.57

See accompanying notes to Condensed Consolidated Financial Statements.

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

	For the six months ended	
	6-30-04	6-30-03
Cash flows from operating activities:		
Net income	$ 60,311	$ 113,856
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation expense	79,745	73,723
Depreciation expense from discontinued operations	125	2,738
Amortization of deferred financing costs and debt premium/discount	2,094	1,952
Amortization of deferred compensation	2,324	1,784
Income allocated to minority interest in consolidated partnerships including discontinued operations	275	843
Income allocated to venture partner interest in profit-sharing	677	848
Gain on sale of communities	(12,375)	(68,583)
Cumulative effect of change in accounting principle	(4,547)	—
Increase in cash in operating escrows	(1,338)	(709)
Decrease in resident security deposits, prepaid expenses and other assets	6,666	8,966
Increase (decrease) in accrued expenses, other liabilities and accrued interest payable	1,952	(5,737)
Net cash provided by operating activities	135,909	129,681
Cash flows from investing activities:		
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(173,918)	(196,654)
Acquisition of real estate assets	(24,065)	—
Capital expenditures — existing real estate assets	(6,127)	(5,365)
Capital expenditures — non-real estate assets	(366)	(84)
Proceeds from sale of communities and land, net of selling costs	40,909	202,845
Decrease in payables for construction	(365)	(2,247)
Decrease (increase) in cash in construction escrows	895	(19,255)
Decrease in investments in unconsolidated real estate entities	613	878
Net cash used in investing activities	(162,424)	(19,882)
Cash flows from financing activities:		
Issuance of common stock	28,598	10,621
Repurchase of common stock	—	(39,877)
Issuance of preferred stock, net of related costs	—	81,737
Redemption of preferred stock and related costs	—	(163,724)
Dividends paid	(104,033)	(101,296)
Net borrowings under unsecured credit facility	77,800	129,230
Issuance of mortgage notes payable	42,800	38,829
Repayments of mortgage notes payable	(37,000)	(2,140)
Issuance (repayment) of unsecured notes	25,000	(50,000)
Payment of deferred financing costs	(8,752)	(1,195)
Redemption of units for cash by minority partners	(163)	—
Distributions to DownREIT partnership unitholders	(741)	(1,237)
Distributions to joint venture and profit-sharing partners	(1,658)	(2,213)
Net cash provided by (used in) financing activities	21,851	(101,265)
Net increase (decrease) in cash and cash equivalents	(4,664)	8,534
Cash and cash equivalents, beginning of period	7,165	12,933
Cash and cash equivalents, end of period	$ 2,501	$ 21,467
Cash paid during period for interest, net of amount capitalized	$ 62,579	$ 65,879

See accompanying notes to Condensed Consolidated Financial Statements.

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

During the six months ended June 30, 2004:

- As described in Note 4, “Stockholders’ Equity,” 147,517 shares of common stock were issued in connection with stock grants, 35,215 shares were issued in connection with non-cash stock option exercises, 49,583 shares were withheld to satisfy employees’ tax withholding and other liabilities and 72 shares were forfeited, for a net value of $6,170.
- 49,391 units of limited partnership, valued at $1,852, were presented for redemption to the DownREIT partnerships 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 sold one community with a mortgage note payable of $18,755 that was assumed by the buyer as part of the total sales price.
- The Company assumed fixed rate debt of $13,322 in connection with the acquisition of two improved land parcels.
- The Company recorded a decrease to other liabilities and a corresponding gain to other comprehensive income of $935 to adjust the Company’s Hedged Derivatives (as defined in Note 5, “Derivative Instruments and Hedging Activities”) to their fair value.
- Common and preferred dividends declared but not paid totaled $52,491.

During the six months ended June 30, 2003:

- 102,727 shares of common stock were issued in connection with stock grants, 28,451 shares were withheld to satisfy employees’ tax withholding and other liabilities and 11,902 shares were forfeited, for a net value of $2,985.
- The Company sold one community with a mortgage note payable of $27,305 that was assumed by the buyer as part of the total sales price.
- 7,992 units of limited partnership in DownREIT partnerships valued at $295 were redeemed as partial repayment of outstanding tax loans.
- The Company recorded a reduction to other liabilities and a corresponding gain to other comprehensive income of $491 to adjust the Company’s Hedged Derivatives to their fair value.
- Common and preferred dividends declared but not paid totaled $49,453.

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

1. Organization and Significant Accounting Policies

Organization

AvalonBay Communities, Inc. (the "Company," which term, unless the context otherwise requires, refers to AvalonBay Communities, Inc. together with its 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 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 June 30, 2004, the Company owned or held a direct or indirect ownership interest in 133 operating apartment communities containing 38,527 apartment homes in ten states and the District of Columbia, of which one community containing 781 apartment homes was under reconstruction. In addition, the Company owned or held a direct or indirect ownership interest in 14 communities under construction that are expected to contain an aggregate of 4,149 apartment homes when completed. The Company also owned a direct or indirect ownership interest in rights to develop an additional 40 communities that, if developed in the manner expected, will contain an estimated 10,728 apartment homes.

During the three months ended June 30, 2004:

- The Company acquired one community, Avalon at Redondo Beach, located in Los Angeles, California. This garden-style community contains 105 apartment homes and was acquired for an acquisition price of $24,065.

- The Company sold two communities, Avalon Greenbriar, located in Seattle, Washington, and Avalon at Laguna Niguel, located in Orange County, California. These two communities, which contained a total of 597 apartment homes, were sold for an aggregate sales price of $61,100, including the transfer of $18,755 of variable rate, tax-exempt debt associated with one of the communities. In addition, variable rate, tax-exempt debt of $10,400 was repaid immediately prior to the sale of the other community. The sale of these communities resulted in a gain calculated in accordance with generally accepted accounting principles ("GAAP") of $12,375.
- The Company commenced development of three communities, Avalon at Juanita Village, located in Seattle, Washington, and Avalon Del Rey and Avalon Camarillo, both located in the Los Angeles, California area. These communities, when completed, are expected to contain an aggregate of 769 apartment homes for a total capitalized cost of approximately $158,200. Both Avalon at Juanita Village and Avalon Del Rey will be subject to joint venture ownership structures upon construction completion, as described in Note 6, "Investments in Unconsolidated Real Estate Entities."

The interim unaudited financial statements have been prepared in accordance with GAAP for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements required by GAAP have been condensed or omitted pursuant to such rules and regulations. These unaudited financial statements should be read in conjunction with the financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2003. The results of operations for the six months ended June 30, 2004 are not necessarily indicative of the operating results for the full year. Management believes the disclosures are adequate to ensure the information presented is not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods, have been included.

Principles of Consolidation

The Company assesses consolidation of variable interest entities under the guidance of FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51," as revised in December 2003. The Company accounts for joint venture partnerships and subsidiary partnerships structured as DownREITs that are not variable interest entities in accordance with Statement of Position ("SOP") 78-9, "Accounting for Investments in Real Estate Ventures." Under SOP 78-9, the Company consolidates joint venture and DownREIT partnerships when the Company controls the major operating and financial policies of the partnership through majority ownership or in its capacity as general partner. The accompanying Condensed Consolidated Financial Statements include the accounts of the Company and its wholly-owned partnerships, certain joint venture partnerships, subsidiary partnerships structured as DownREITs and one variable interest entity under FIN 46. 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 by the partnership of a limited partner's unit, the Company may elect to acquire any unit presented for redemption for one share of common stock or for such cash amount.

The Company accounts for investments in unconsolidated entities that are not variable interest entities in accordance with SOP 78-9 and Accounting Principles Board ("APB") Opinion No. 18, "The Equity Method of Accounting for Investments in Common Stock." 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.

Revenue Recognition

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

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 and exceeds $2.5. 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, or a portion of an asset, is delivered and is ready for its intended use, which is generally indicated by the issuance of a certificate of occupancy. 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 available for a new resident.

In accordance with SFAS No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projects," the Company capitalizes pre-development costs incurred in pursuit of new development opportunities for which the Company currently believes future development is probable ("Development Rights"). Future development of these Development Rights is dependent upon various factors, including zoning and regulatory approval, rental market conditions, construction costs and availability of capital. Pre-development costs incurred in the pursuit of Development Rights for which future development is not yet considered probable are expensed as incurred. In addition, if the status of a Development Right changes, deeming future development no longer probable, any capitalized pre-development costs are written-off with a charge to expense. Abandoned pursuit costs were $1,177 and $1,050 for the six months ended June 30, 2004 and 2003, respectively.

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 the carrying amount is 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.

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 $21,375 at June 30, 2004 and $19,266 at December 31, 2003.

Cash, Cash Equivalents and Cash in Escrow

Cash and cash equivalents include all cash and liquid investments with an original maturity of six 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 exceed 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 June 30, 2004, the Company had approximately $207,000 in variable rate debt subject to cash flow hedges. See Note 5, "Derivative Instruments and Hedging Activities."

Comprehensive Income

Comprehensive income, as reflected on the Condensed Consolidated Statements of Operations and Other Comprehensive Income, is defined as all changes in equity during each period except for those resulting from investments by or distributions to shareholders. Accumulated other comprehensive loss as reflected in Note 4, "Stockholders' Equity," reflects the 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 stockholders 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 three months ended		For the six months ended	
	6-30-04	6-30-03	6-30-04	6-30-03
Basic and diluted shares outstanding				
Weighted average common shares — basic	71,409,668	67,231,296	71,164,908	67,427,853
Weighted average DownREIT units outstanding	581,941	968,581	594,850	972,146
Effect of dilutive securities	1,045,875	703,268	1,031,712	607,505
Weighted average common shares — diluted	73,037,484	68,903,145	72,791,470	69,007,504
Calculation of Earnings per Share — basic				
Net income available to common stockholders	$ 32,859	$ 73,762	$ 55,961	$ 107,462
Weighted average common shares — basic	71,409,668	67,231,296	71,164,908	67,427,853
Earnings per common share — basic	$ 0.46	$ 1.10	$ 0.79	$ 1.59
Calculation of Earnings per Share — diluted				
Net income available to common stockholders	$ 32,859	$ 73,762	$ 55,961	$ 107,462
Add: Minority interest of DownREIT unitholders in consolidated partnerships, including discontinued operations	912	379	1,239	762
Adjusted net income available to common stockholders	$ 33,771	$ 74,141	$ 57,200	$ 108,224
Weighted average common shares — diluted	73,037,484	68,903,145	72,791,470	69,007,504
Earnings per common share — diluted	$ 0.46	$ 1.08	$ 0.79	$ 1.57

Certain employee options to purchase shares of common stock of 3,000 were outstanding during both the three and six months ended June 30, 2004 and 1,459,439 and 1,521,360 were outstanding during the three and six months ended June 30, 2003, respectively, 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 and therefore, are anti-dilutive.

Stock-Based Compensation

Effective January 1, 2003, the Company adopted the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," as amended by SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – an amendment of FASB Statement No. 123," prospectively to all employee awards granted, modified, or settled on or after January 1, 2003. Awards under the Company's stock option plans vest over periods ranging from one to three years. Therefore, the cost related to stock-based employee compensation for employee stock options included in the determination of net income for the three and six months ended June 30, 2004 and 2003, is less than that which would have been recognized if the fair value based method had been applied to all awards since the original effective date of SFAS No. 123.

The following table illustrates the effect on net income available to common stockholders and earnings per share if the fair value based method had been applied to all outstanding and unvested awards in each period based on the fair market value as determined on the date of grant:

		For the three months ended		For the six months ended	
		6-30-04	6-30-03	6-30-04	6-30-03
Net income available to common stockholders, as reported		$ 32,859	$ 73,762	$ 55,961	$ 107,462
Add:	Actual compensation expense recorded under fair value based method, net of related tax effects	224	61	404	97
Deduct:	Total compensation expense determined under fair value based method, net of related tax effects	(561)	(568)	(908)	(1,232)
Pro forma net income available to common stockholders		$ 32,522	$ 73,255	$ 55,457	$ 106,327
Earnings per share:					
Basic — as reported		$ 0.46	$ 1.10	$ 0.79	$ 1.59
Basic — pro forma		$ 0.46	$ 1.09	$ 0.78	$ 1.58
Diluted — as reported		$ 0.46	$ 1.08	$ 0.79	$ 1.57
Diluted — pro forma		$ 0.46	$ 1.07	$ 0.78	$ 1.55

Variable Interest Entities under FIN 46

In December 2003, the Financial Accounting Standards Board ("FASB") issued the revised FIN 46, which changed 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 Company had previously adopted the provisions of FIN 46 for variable interest entities created after January 31, 2003. However, the adoption of FIN 46 for variable interest entities created on or before January 31, 2003 was required for periods ending after March 15, 2004. The Company has adopted the final provisions of FIN 46 as of January 1, 2004, resulting in the consolidation of one entity from which the Company holds a participating mortgage loan as described in Note 9, "Related Party Arrangements." The consolidation of this entity resulted in an increase to net real estate assets of approximately $33,000 and the elimination of the previously recorded mortgage note and accrued interest of approximately $27,300. In addition, the Company recognized a cumulative effect of change in accounting principle during the six months ended June 30, 2004 in the amount of $4,547, which increased earnings per common share – diluted by $0.06. The Company does not hold an equity interest in this entity, and therefore 100% of the entity's net income or loss is recognized by the Company as minority interest in consolidated partnerships on the Condensed Consolidated Statements of Operations and Other Comprehensive Income.

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 since January 1, 2002, or otherwise qualify as held for sale, be presented as discontinued operations in the Company's Condensed 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 expense, minority interest expense 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. A change in presentation for discontinued operations will not have any impact on the Company's financial condition or results of operations. 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 the accompanying Condensed Consolidated Balance Sheets. Subsequent to classification of a community as held for sale, no further depreciation is recorded on the assets.

Improved Land Acquisitions

During the three months ended June 30, 2004, the Company acquired two parcels of improved land in connection with two Development Rights for an aggregate purchase price of $21,800, which included the assumption of $13,322 in debt. The Company intends to manage the current improvements, which are occupied office buildings, until such time as all tenant obligations have been satisfied or eliminated through negotiation and construction of new apartment communities is ready to begin. As such, as provided under the guidance of SFAS No. 67, the revenue from incidental operations received from the current improvements in excess of any incremental costs are being recorded as a reduction of total capitalized costs and not as part of net income.

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.

Revised Financial Presentation for Preferred Stock Redemption

In July 2003, the Securities and Exchange Commission clarified Emerging Issues Task Force Topic D-42, "The Effect on the Calculation of Earnings per Share for the Redemption or Induced Conversion of Preferred Stock," which was applied retroactively. As such, the Company revised its historical results of operations for the three and six months ended June 30, 2003 to reflect additional dividends attributable to preferred stock of $280. This revision did not have any impact on earnings per common share – diluted during those periods.

Reclassifications

Certain reclassifications have been made to amounts in prior period's financial statements to conform with current period presentations.

2. Interest Capitalized

Capitalized interest associated with communities under development or redevelopment totaled $5,010 and $6,305 for the three months ended June 30, 2004 and 2003, respectively, and $10,078 and $12,511 for the six months ended June 30, 2004 and 2003, respectively.

3. Notes Payable, Unsecured Notes and Credit Facility

The Company's mortgage notes payable, unsecured notes and variable rate unsecured credit facility as of June 30, 2004 and December 31, 2003 are summarized as follows:

	6-30-04	12-31-03
Fixed rate unsecured notes (1)	$1,859,436	$1,835,284
Fixed rate mortgage notes payable — conventional and tax-exempt	233,989	334,028
Variable rate mortgage notes payable — conventional and tax-exempt (2)	181,500	80,879
Total notes payable and unsecured notes	2,274,925	2,250,191
Variable rate secured short-term debt	36,311	36,526
Variable rate unsecured credit facility	128,900	51,100
Total mortgage notes payable, unsecured notes and unsecured credit facility	$2,440,136	$2,337,817

(1) Balances at June 30, 2004 and December 31, 2003 include $564 of debt discount and $284 of debt premium, respectively, received at issuance of unsecured notes.

(2) Balance at December 31, 2003 includes $29,155 related to real estate assets held for sale.

During the six months ended June 30, 2004, the Company repaid $125,000 of previously issued unsecured notes, along with any unpaid interest, pursuant to their scheduled maturity, and no prepayment fees were incurred. In addition, the Company issued $150,000 in unsecured notes under its existing shelf registration statement at an interest rate of 5.375%. Interest on these newly issued notes is payable semi-annually on April 15 and October 15, and they mature on April 15, 2014. 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.

During the six months ended June 30, 2004, the Company repaid $24,251 in fixed rate mortgage debt secured by two current communities, along with any unpaid interest, repaid $10,400 in variable rate, tax-exempt debt related to the sale of a community and transferred $18,755 in variable rate, tax-exempt debt related to the sale of a community to the purchaser. In addition, the Company issued $42,800 in variable rate, conventional mortgage debt on two communities and assumed $13,322 in fixed rate debt in connection with the acquisition of two parcels of improved land. In the aggregate, mortgage notes payable mature at various dates from April 2005 through April 2043 and are secured by certain apartment communities. As of June 30, 2004, the Company has guaranteed approximately $112,000 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 6.9% at June 30, 2004 and 6.7% at December 31, 2003. 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 2.8% at June 30, 2004 and 3.5% at December 31, 2003.

As of June 30, 2004 and December 31, 2003, the Company had approximately $70,000 and $158,000, respectively, of variable rate, tax-exempt debt effectively fixed through Hedged Derivatives, as described in Note 5, "Derivative Instruments and Hedging Activities." In February 2004, the credit enhancements, including Hedged Derivatives in the form of interest rate swaps, on approximately $87,000 of this variable rate, tax-exempt debt expired according to their original terms and were not extended. New Hedged Derivatives in the form of interest rate protection agreements were put in place on the $87,000 of variable rate, tax-exempt debt, which serve to effectively limit the level to which interest rates can rise to a range of 6.7% to 9.0%. This $87,000 of variable rate, tax-exempt debt floats at an average coupon interest rate of 1.6% as of June 30, 2004. In addition, in May 2004, the Company entered into Hedged Derivatives in the form of interest rate protection agreements on the newly issued $42,800 in variable rate, conventional debt discussed above. This debt has a weighted average variable interest rate of 2.5% as of June 30, 2004, and the Hedged Derivatives serve to effectively limit the level to which interest rates can rise on this debt to 10.0%.

Scheduled payments and maturities of mortgage notes payable and unsecured notes outstanding at June 30, 2004 are as follows:

Year	Secured notes payments	Secured notes maturities	Unsecured notes maturities	Stated interest rate of unsecured notes
2004	$ 3,224	$ —	$ —	—
2005	6,164	36,311	100,000	6.625%
			50,000	6.500%
2006	6,584	—	150,000	6.800%
2007	7,030	—	110,000	6.875%
			150,000	5.000%
2008	7,476	4,368	50,000	6.625%
			150,000	8.250%
2009	6,874	36,033	150,000	7.500%
2010	5,999	29,388	200,000	7.500%
2011	6,360	7,204	300,000	6.625%
			50,000	6.625%
2012	5,948	12,095	250,000	6.125%
2013	6,140	—	—	—
Thereafter	151,186	113,416	150,000	5.375%
	$212,985	$238,815	$1,860,000	

The Company has a $500,000 revolving variable rate unsecured credit facility with JPMorgan Chase Bank and Wachovia Bank, N.A. serving as banks and syndication agents for a syndicate of commercial banks, which the Company refinanced in May 2004, concurrent with its original maturity date. The Company had $128,900 outstanding under the facility and $22,196 in letters of credit on June 30, 2004 and $51,100 outstanding and $19,901 in letters of credit on December 31, 2003. Under the terms of the new credit facility, which are substantially consistent with the terms of the old facility, if the Company elects to increase the facility by up to an additional $150,000, 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 approximately $750 in 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 0.55% per annum (1.92% on June 30, 2004). The spread over LIBOR can vary from LIBOR plus 0.50% to LIBOR plus 1.15% based upon the rating of the Company's long-term unsecured debt. 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 $250,000. The competitive bid option may result in lower pricing if market conditions allow. The Company had no balance outstanding under this competitive bid option at June 30, 2004. The Company is subject to (i) certain customary covenants under the unsecured credit facility, including, but not limited to, maintaining certain maximum leverage ratios, a minimum fixed charges coverage ratio and minimum unencumbered assets and equity levels and (ii) prohibitions on paying dividends in amounts that exceed 95% of the Company's Funds from Operations, as defined therein, except as may be required to maintain the Company's REIT status. The new facility matures in May 2008, assuming exercise of a one-year renewal option by the Company.

4. Stockholders' Equity

The following summarizes the changes in stockholders' equity for the six months ended June 30, 2004:

	Preferred stock	Common stock	Additional paid-in capital	Deferred compensation	Dividends less than (in excess of) accumulated earnings	Accumulated other comprehensive loss	Stockholders' equity
Balance at December 31, 2003	$ 40	$ 709	$2,322,581	$ (5,808)	$ 2,024	$ (8,212)	$2,311,334
Net income	—	—	—	—	60,311	—	60,311
Unrealized loss on cash flow hedges	—	—	—	—	—	935	935
Dividends declared to common and preferred stockholders	—	—	—	—	(104,693)	—	(104,693)
Issuance of common stock, net of withholdings	—	10	37,267	(5,702)	(657)	—	30,918
Issuance of stock options	—	—	2,047	(2,047)	—	—	—
Amortization of deferred compensation	—	—	—	2,324	—	—	2,324
Balance at June 30, 2004	$ 40	$ 719	$2,361,895	$ (11,233)	$ (43,015)	$ (7,277)	$2,301,129

During the six months ended June 30, 2004, the Company (i) issued 794,449 shares of common stock in connection with stock options exercised, (ii) issued 49,391 shares of common stock in exchange for the redemption of an equal number of DownREIT limited partnership units, (iii) issued 147,517 common shares in connection with stock grants to employees of which 80% are restricted, (iv) had forfeitures of 72 shares of restricted stock grants to employees and (v) withheld 49,583 shares to satisfy employees' tax withholding and other liabilities.

Dividends per common share for both the six months ended June 30, 2004 and 2003 were $1.40 per share. In the six months ended June 30, 2004, average dividends for all non-redeemed preferred shares during the period were $1.09 per share, and no preferred shares were redeemed. In the six months ended June 30, 2003, average dividends for preferred shares redeemed during the period were $0.31 per share and average dividends for all non-redeemed preferred shares were $1.09 per share. As announced in March 2004, the Company resumed its Dividend Reinvestment and Stock Purchase Plan (the "DRIP") effective with the Company's common stock dividend for the three months ended June 30, 2004.

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 June 30, 2004, the Hedged Derivatives fix approximately $70,000 of the Company's tax-exempt debt at a weighted average interest rate of 6.3% through interest rate swaps. In addition, as of June 30, 2004, the Company has Hedged Derivatives on $137,000 of its variable rate debt, which floats at a weighted average coupon interest rate of 1.9% and has been capped at a weighted average interest rate of 8.2% through interest rate caps. These Hedged Derivatives have maturity dates ranging from 2007 to 2010. In addition, one of the Company's unconsolidated real estate investments (see Note 6, "Investments in Unconsolidated Real Estate Entities") has $22,500 in variable rate debt outstanding as of June 30, 2004, which is subject to an interest rate swap. This debt is not recourse to or guaranteed by the Company. The 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. To adjust the Hedged Derivatives to their fair value, the Company recorded unrealized gains to other comprehensive income of $935 and $491 during the six months ended June 30, 2004 and 2003, respectively. The estimated amount, included in accumulated other comprehensive income as of June 30,

2004, 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 Condensed 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 Senior Vice President — Finance.

6. Investments in Unconsolidated Real Estate Entities

The Company accounts for investments in unconsolidated real estate entities that are not considered variable interest entities under FIN 46 in accordance with SOP 78-9 and APB Opinion No. 18. The Company applies the equity method of accounting to an investment in an entity if it owns greater than 20% of the equity value or has significant and disproportionate influence over that entity. At June 30, 2004 and December 31, 2003, the Company's investments in unconsolidated real estate entities accounted for under the equity method of accounting consisted of:

- a 49% general partnership interest in a partnership that owns the Avalon Run community;
- a 50% limited liability company membership interest in a limited liability company that owns the Avalon Grove community; and
- a 25% limited liability company membership interest (with a right to 50% of distributions after achievement of a threshold return) in a limited liability company that owns the Avalon Bedford community.

In addition, during the six months ended June 30, 2004, the Company entered into the following joint venture agreements:

- *Avalon Chrystie Place* – In February 2004, the Company entered into a joint venture agreement with an unrelated third-party for the development of Avalon Chrystie Place I, located in New York, New York. In connection with the general contractor services that the Company provides to CVP I, LLC, the entity that owns and is developing Avalon Chrystie Place I, the Company has provided a construction completion guarantee to the lender in order to fulfill their standard financing requirements related to the construction financing. The obligation of the Company under this guarantee will terminate following construction completion once all of the lender's standard completion requirements have been satisfied, which the Company expects to occur in the beginning of 2006. The Company holds a 20% equity interest in this joint venture entity (with a right to 50% of distributions after achievement of a threshold return), with the remaining 80% equity interest held by the third-party. The Company accounts for this investment under the equity method of accounting.

- *Avalon Del Rey* - In March 2004, the Company entered into an agreement with an unrelated third-party which provides that, after the Company completes construction of Avalon Del Rey, the community will be owned and operated by a joint venture between the Company and the third-party. Upon construction completion, the third-party venture partner will invest $49,000 and will be granted a 70% ownership interest in the venture, with the Company retaining a 30% equity interest. The Company will

consolidate this entity until the third-party venture partner contributes its investment to the venture at construction completion.

- *Avalon at Juanita Village* - In April 2004, the Company entered into an agreement to develop Avalon at Juanita Village through a wholly-owned taxable REIT subsidiary and, upon construction completion, contribute the community to a joint venture. Upon contribution of the community to the joint venture, the Company expects to be reimbursed for all costs incurred to develop the community. The third-party joint venture partner will receive a 100% equity interest in the joint venture and will manage the joint venture. The Company will receive a residual profits interest and will be engaged to manage the community for a property management fee. The Company will consolidate this community until it is contributed into the joint venture at construction completion.

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)	
	6-30-04	12-31-03
Assets:		
Real estate, net	$165,591	$119,339
Other assets	52,974	2,605
Total assets	$218,565	$121,944
Liabilities and partners' equity:		
Mortgage notes payable	$ 81,000	$ 22,500
Other liabilities	9,944	2,158
Partners' equity	127,621	97,286
Total liabilities and partners' equity	$218,565	$121,944

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

	For the three months ended (unaudited)		For the six months ended (unaudited)	
	6-30-04	6-30-03	6-30-04	6-30-03
Rental income	$ 5,343	$ 5,167	$ 10,450	$ 10,400
Operating and other expenses	(2,030)	(1,967)	(4,102)	(3,829)
Interest expense, net	(443)	(437)	(893)	(805)
Depreciation expense	(999)	(972)	(2,002)	(2,000)
Net income	$ 1,871	$ 1,791	$ 3,453	$ 3,766

The Company also holds a 25% limited liability company membership interest in the limited liability company that owns Avalon on the Sound. The Company, which originally owned 100% of the limited liability company, sold a 75% controlling interest in the limited liability company to a third-party in 2000. As part of the sale, the Company retained an option to repurchase the 75% interest. The Company believes it is unlikely that the repurchase option will be exercised. This repurchase option will terminate in December 2004. In accordance with SFAS No. 66, "Accounting for Sales of Real Estate," the sale of the 75% interest is not recognized due to the existence of the repurchase option, and therefore the Company accounts for Avalon on the Sound as a profit-sharing arrangement. As a result, the revenues and expenses, and assets and liabilities of Avalon on the Sound are included in the Company's Condensed Consolidated Financial Statements, with the 75% interest presented as part of accrued expenses and other liabilities on the Company's Condensed Consolidated Balance Sheets. The income allocated to the controlling partner is shown as venture partner interest in profit-sharing on the Company's Condensed Consolidated Statements of Operations and Other Comprehensive Income.

7. Discontinued Operations – Real Estate Assets Sold or Held for Sale

During the six months ended June 30, 2004, the Company sold two communities, one located in Seattle, Washington and one located in Laguna Niguel, California. These two communities, which contained a total of 597 apartment homes, were sold for an aggregate sales price of $61,100, resulting in the transfer of debt of $18,755, net proceeds of $40,909 and a gain calculated in accordance with GAAP of $12,375. One of the communities sold had debt of $10,400 which was extinguished immediately prior to the sale. During the six months ended June 30, 2003, the Company sold seven communities, five comprising the entire Minneapolis, Minnesota portfolio, and two single asset sales, one in Los Angeles, California and one in Huntington Beach, California. These seven communities, which contained a total of 2,091 apartment homes, were sold for an aggregate sales price of $232,155, resulting in the transfer of debt of $27,305, net proceeds of $202,845 and a gain in accordance with GAAP of $68,583.

In addition, as of June 30, 2004, the Company had one community that qualified as held for sale under the provisions of SFAS No. 144. As required under SFAS No. 144, the operations for any communities sold from January 1, 2003 through June 30, 2004 and communities held for sale as of June 30, 2004 have been presented as discontinued operations in the accompanying Condensed Consolidated Financial Statements.

Accordingly, certain reclassifications have been made in prior years to reflect discontinued operations consistent with current period presentation. The following is a summary of income from discontinued operations for the periods presented:

	For the three months ended (unaudited)		For the six months ended (unaudited)	
	6-30-04	6-30-03	6-30-04	6-30-03
Rental income	$ 1,476	$ 8,990	$ 4,061	$ 21,211
Operating and other expenses	(816)	(4,076)	(1,931)	(8,914)
Interest expense, net	(52)	(578)	(213)	(1,168)
Minority interest expense	—	(193)	—	(389)
Depreciation expense	—	(1,132)	(125)	(2,738)
Income from discontinued operations	$ 608	$ 3,011	$ 1,792	$ 8,002

The Company's Condensed Consolidated Balance Sheets include other assets (excluding net real estate) of $356 and $1,428, other liabilities of $613 and $1,084 and mortgage notes payable of $0 and $29,155 as of June 30, 2004 and December 31, 2003, respectively, relating to real estate assets sold or held for sale. The estimated proceeds less anticipated costs to sell the real estate asset held for sale as of June 30, 2004 are greater than the carrying value as of June 30, 2004, and therefore no provision for possible loss was recorded.

8. Segment Reporting

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

- *Established Communities* (also known as Same Store Communities) are communities where a comparison of operating results from the prior year to the current year is meaningful, as these communities were owned and had stabilized occupancy and operating expenses as of the beginning of the prior year. For the year 2004, the Established Communities are communities that had stabilized occupancy and operating expenses as of January 1, 2003, are not conducting or planning to conduct substantial redevelopment activities and are not held for sale or planned for disposition within the current year. A community is considered to have stabilized occupancy at the earlier of (i) attainment of 95% physical occupancy or (ii) the one-year anniversary of completion of development or redevelopment.

- *Other Stabilized Communities* includes all other completed communities that have stabilized occupancy, as defined above. Other Stabilized Communities do not include communities that are conducting or planning to conduct substantial redevelopment activities within the current year.

- *Development/Redevelopment Communities* consists of communities that are under construction and have not received a final certificate of occupancy, communities where substantial redevelopment is in progress or is planned to begin during the current year and communities under lease-up, that had not reached stabilized occupancy, as defined above, as of January 1, 2004.

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

SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," requires that segment disclosures present the measure(s) used by the chief operating decision maker for purposes of assessing such segments' performance. The Company's chief operating decision maker is comprised of several members of its executive management team who use Net Operating Income ("NOI") as the primary financial measure for Established and Other Stabilized Communities. NOI is defined by the Company as total revenue less direct property operating expenses, including property taxes, and excludes corporate-level property management and other indirect operating expenses, interest income and expense, general and administrative expense, equity in income of unconsolidated entities, minority interest in consolidated partnerships, venture partner interest in profit-sharing, depreciation expense, cumulative effect of change in accounting principle, gain on sale of communities and income from discontinued operations. Although the Company considers NOI a useful measure of a community's or communities' operating performance, NOI should not be considered an alternative to net income or net cash flow from operating activities, as determined in accordance with GAAP.

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

The following table provides details of the Company's segment information as of the dates specified. The segments are classified based on the individual community's status as of the beginning of the given calendar year. Therefore, each year the composition of communities within each business segment is adjusted. Accordingly, the amounts between years are not directly comparable. The accounting policies applicable to the operating segments described above are the same as those described in Note 1, "Organization and Significant Accounting Policies."

	For the three months ended				For the six months ended			
	Total revenue	NOI (1)	% NOI change from prior year	Gross real estate (2)	Total revenue	NOI (1)	% NOI change from prior year	Gross real estate (2)
For the three and six months ended June 30, 2004								
Established								
Northeast	$ 37,167	$ 25,363	(0.8%)	$ 914,298	$ 73,394	$ 48,840	(3.0%)	$ 914,298
Mid-Atlantic	16,124	11,328	3.9%	353,821	31,888	22,390	3.0%	353,821
Midwest	2,682	1,547	1.7%	90,665	5,341	3,120	6.0%	90,665
Pacific Northwest	7,915	4,924	2.9%	346,730	15,776	9,901	0.7%	346,730
Northern California	33,234	23,218	(6.5%)	1,343,334	66,516	46,598	(8.1%)	1,343,334
Southern California	14,436	10,197	3.0%	415,537	28,894	20,446	1.6%	415,537
Total Established	111,558	76,577	(1.2%)	3,464,385	221,809	151,295	(2.8%)	3,464,385
Other Stabilized	28,703	18,651	n/a	1,030,262	56,644	37,065	n/a	1,030,262
Development / Redevelopment	21,856	13,116	n/a	953,213	40,369	23,313	n/a	953,213
Land Held for Future Development	n/a	n/a	n/a	102,418	n/a	n/a	n/a	102,418
Non-allocated (3)	141	141	n/a	20,784	315	315	n/a	20,784
Total	$ 162,258	$ 108,485	8.6%	$ 5,571,062	$ 319,137	$ 211,988	6.2%	$ 5,571,062
For the three and six months ended June 30, 2003								
Established								
Northeast	$ 38,391	$ 25,935	(7.0%)	$ 883,446	$ 76,390	$ 51,132	(9.9%)	$ 883,446
Mid-Atlantic	17,321	12,105	(4.8%)	388,026	34,410	24,113	(6.8%)	388,026
Midwest	4,013	2,248	(14.5%)	140,369	8,112	4,345	(17.4%)	140,369
Pacific Northwest	6,773	4,107	(15.8%)	297,297	13,656	8,498	(14.8%)	297,297
Northern California	35,215	25,134	(12.3%)	1,340,610	71,116	51,380	(12.7%)	1,340,610
Southern California	10,719	7,374	(2.9%)	304,230	21,484	15,033	(0.7%)	304,230
Total Established	112,432	76,903	(8.8%)	3,353,978	225,168	154,501	(10.1%)	3,353,978
Other Stabilized	19,300	12,847	n/a	713,002	38,259	25,410	n/a	713,002
Development / Redevelopment	17,539	10,065	n/a	945,641	33,467	19,289	n/a	945,641
Land Held for Future Development	n/a	n/a	n/a	135,949	n/a	n/a	n/a	135,949
Non-allocated (3)	77	77	n/a	20,154	457	457	n/a	20,154
Total	$ 149,348	$ 99,892	(1.4%)	$ 5,168,724	$ 297,351	$ 199,657	(2.5%)	$ 5,168,724

(1) Does not include corporate-level property management and other indirect operating expenses of $9,248 and $17,404 for the three and six months ended June 30, 2004, respectively, and $7,056 and $15,053 for the three and six months ended June 30, 2003, respectively.

(2) Does not include gross real estate assets held for sale of $51,800 and $221,515 as of June 30, 2004 and June 30, 2003, respectively.

(3) Revenue and NOI amounts represent third-party management, accounting and developer fees which are not allocated to a reportable segment.

Segment information for the periods ending June 30, 2004 and 2003 has been adjusted for the communities that were designated as held for sale as of June 30, 2004 or sold from January 1, 2003 through June 30, 2004 as described in Note 7, "Discontinued Operations – Real Estate Assets Sold or Held for Sale."

9. Related Party Arrangements

Purchase of Mortgage Loan

Concurrent with its initial public offering in November 1993, Avalon Properties, Inc. ("Avalon"), a predecessor entity, purchased an existing participating mortgage loan made to Arbor Commons Associates Limited Partnership ("Arbor Commons Associates"), which owns Avalon Arbor, a 302 apartment home community in Shrewsbury, Massachusetts. Prior to May 2004, the Company's Chairman and CEO held an equity interest in Arbor Commons Associates. In May 2004, the Company's Chairman and CEO fully disposed of his equity interests in Arbor Commons Associates. This mortgage loan accrues interest at a fixed rate of 10.2% per annum, payable at 9.0% per annum, matures in November 2005 and is secured by the interest in Avalon Arbor. 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. As of December 31, 2003, the Company reported a note receivable of $21,483 and accrued interest on the note of $5,834. Related interest income for the three and six months ended June 30, 2003 was $813 and $1,606, respectively. Beginning January 1, 2004, the Company consolidates the financial position and results of operations of Arbor Commons Associates under the requirements of FIN 46 as discussed in Note 1, "Organization and Significant Accounting Policies." As such, the note receivable, related accrued interest and interest income as of and for the six months ended June 30, 2004 have been eliminated in consolidation.

During the six months ended June 30, 2004, Arbor Commons Associates has been unable to make its mortgage note payment on several occasions, resulting in a default on the mortgage loan. The Company is currently negotiating to receive either payment in full of the note or a deed-in-lieu of foreclosure. The Company believes that the assets related to Arbor Commons Associates as reflected on the Condensed Consolidated Balances Sheets as of June 30, 2004 are fully realizable.

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 $181 and $351 in the three and six months ended June 30, 2004, respectively, and $228 and $465 in the three and six months ended June 30, 2003, respectively.

Director Compensation

The Company's 1994 Plan provides that directors of the Company who are also employees receive no additional compensation for their services as a director. In accordance with the Company's 1994 Plan, as then in effect, on the fifth business day following the Company's May 2003 Annual Meeting of Stockholders, each of the Company's non-employee directors automatically received 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 grant (or, in lieu thereof, a deferred stock award) of 2,500 shares of common stock. On May 14, 2003, the Company's Board of Directors approved an amendment to the 1994 Plan pursuant to which, in lieu of the stock and option awards described above, each non-employee director would receive, following the 2004 Annual Meeting of Stockholders and each annual meeting thereafter, (i) a number of shares of restricted stock (or deferred stock awards) having a value of $100 based on the last reported sale price of the common stock on the NYSE on the fifth business day following the prior year's annual meeting and (ii) $30 cash, payable in quarterly installments of $7.5. A non-employee director may elect to receive all or a portion of such cash payment in the form of a deferred stock award. The Company recorded compensation expense relating to the restricted stock grants, deferred stock awards and stock options in the amount of $226 and $456 in the three and six months ended June 30, 2004, respectively, and $207 and $367 in the three and six months ended June 30, 2003, respectively. Deferred compensation relating to these restricted stock grants, deferred stock awards and stock options was $903 and $722 on June 30, 2004 and December 31, 2003, 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 interests in the common stock of Realeum, Inc ("Realeum"). Realeum 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, but has a carrying value of $0 as of June 30, 2004. In April 2004, Realeum was merged into a third-party, and in connection with such merger, all shares of Realeum common stock (including those held directly or indirectly by officers of the Company) were cancelled without payment of consideration. The Company still utilizes the property management and leasing automation system and has paid $124 and $123 to Realeum under the terms of its licensing arrangements during the three months ended June 30, 2004 and 2003, respectively, and $268 and $223 for the six months ended June 30, 2004 and 2003, respectively.

10. Subsequent Events

Subsequent to June 30, 2004, one community previously held for operating purposes was classified as held for sale under SFAS No. 144. This community has a net real estate carrying value of $16,611 as of June 30, 2004. The Company is actively pursuing the disposition of this community and expects to close during the last six months of 2004. In addition, the Company is no longer pursuing the disposition of the one community that was held for sale as of June 30, 2004. Therefore, this community will be reclassified as held for operating purposes at its carrying amount prior to being classified as held for sale, adjusted for suspended depreciation, which is less than the current fair value.

In July 2004, the Company acquired Briarcliffe Lakeside Apartments, located in Chicago, Illinois. This garden-style community contains 204 apartment homes and was acquired for an acquisition price of $14,200, which includes the assumption of $8,155 of fixed rate mortgage debt.

Also in July 2004, the Company sold a parcel of land in connection with a Development Right in Washington, DC for a gross sales price of $7,374, resulting in a GAAP gain. In connection with this land sale, the Company sold to the same buyer certain transferable development rights acquired with the adjacent parcel of land on which a current operating community was developed, for a sales price of $2,553. The Company received net proceeds of approximately $9,648 as a result of this transaction.

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

We are a real estate investment trust, or REIT, incorporated in the state of Maryland and focused on the ownership and operation of apartment communities in high barrier-to-entry markets of the United States. As of July 30, 2004, we had 134 current operating communities, which are the primary contributors to our overall operating performance. The net operating income of these communities, which is one of the financial measures that we use to evaluate community performance, is affected by the demand and supply dynamics within our markets, our rental rates and occupancy levels, and our ability to control operating costs. Our overall operating performance is also impacted by the general availability and cost of capital and the performance of our newly developed and acquired apartment communities. We seek to create long-term shareholder value by accessing capital on cost effective terms, deploying that capital to develop, redevelop and acquire apartment communities in high barrier-to-entry markets, operating apartments and selling communities when they no longer meet our long-term investment strategy and when pricing is attractive.

This Form 10-Q, including the following discussion and analysis of our financial condition and results of operations, contains forward-looking statements that predict or indicate future events and trends that do not report historical matters. Actual results or developments could differ materially from those projected in such statements as a result of the risk factors set forth on page 47 of this report. The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Condensed Consolidated Financial Statements and notes included elsewhere in this report.

Business Description and Community Information Overview

We believe that 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 continue 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. Barriers-to-entry in our markets generally include a difficult and lengthy entitlement process with local jurisdictions and dense urban or suburban areas where zoned and entitled land is in limited supply. We regularly evaluate and monitor the allocation of our investments by the amount of invested capital and by product type within our individual markets, which are located in the Northeast, Mid-Atlantic, Midwest, Pacific Northwest, and Northern and Southern California regions of the United States. Our strategy is to more deeply penetrate these markets with a broad range of products and services, with an intense focus on our customer. A substantial majority of our current communities are upscale, which generally command among the highest rents in their markets. We also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services. We believe that, over an entire business cycle, lower housing affordability and the limited new supply of apartment homes in our markets will result in a higher propensity to rent and larger increases in cash flows relative to other markets.

However, we believe we are at the end of a period of the business cycle where rents have been resetting to lower levels, which resulted in a decline in cash flows in recent years. A number of our markets experienced economic contraction due to job losses in 2002 and 2003, particularly in the technology, telecom and financial services sectors. This resulted in a prolonged period of weak apartment market fundamentals as reflected in declining rental rates and demand. However, the rate of decline has been diminishing, and 2004 appears to be a year of transition where apartment fundamentals become balanced in our markets, creating a platform for future growth. In the first half of 2004, the economy has shown signs of recovery as evidenced by stronger job growth and declining unemployment claims. Continued improvement in the economic environment should result in the stabilization of apartment market fundamentals and an improved demand and supply balance during the remainder of the year. We are beginning to experience the initial signs of improving apartment market fundamentals as reflected in increasing economic occupancy, decreasing availability of apartment homes and relatively flat market rents. Our Established Community portfolio achieved sequential monthly revenue growth in each of the five

months ended June 30, 2004, providing further evidence of economic recovery. Occupancy is currently above 95%, which is generally a point at which we can regain pricing power. Therefore, we expect declines in rental revenue for these communities to be modest for the full year of 2004 as compared to 2003 and to significantly diminish from the declines experienced last year.

In response to transitioning apartment fundamentals, we are adjusting our business activity to position for the next expansionary cycle. We are continuing our disposition activity, although at a reduced level as compared to 2003, and are increasing our development and acquisition volume in anticipation of stronger apartment demand and in anticipation of locating communities where we will be able to use our redevelopment and operating expertise to generate high returns. However, the level of development and acquisition volume, or disposition activity, will be heavily influenced by capital and real estate market conditions, as well as apartment community demand.

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

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

- *Established Communities* (also known as Same Store Communities) are communities where a comparison of operating results from the prior year to the current year is meaningful, as these communities were owned and had stabilized occupancy and operating expenses as of the beginning of the prior year. We determine which of our communities fall into the Established Communities category as of January 1st of each year and maintain that classification throughout the year, unless a community is subsequently planned for disposition. For the year 2004, the Established Communities are communities that had stabilized occupancy and operating expenses as of January 1, 2003 and are not conducting or planning to conduct substantial redevelopment activities, as described below, and are not held for sale or planned for disposition 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* includes all other completed communities that have stabilized occupancy, as defined above. Other Stabilized Communities do not include communities that are conducting or planning to conduct substantial redevelopment activities within the current year.

- *Lease-Up Communities* are communities where construction has been complete for less than one year and where physical occupancy has not reached 95%.

- *Redevelopment Communities* are communities where 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. Throughout this report, the term "redevelopment" is used to refer to the entire redevelopment cycle, including planning and procurement of architectural and engineering designs, budgeting and actual renovation work. The actual renovation work

is referred to as “reconstruction,” which is only one element of the redevelopment cycle.

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

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

A more detailed description of our reportable segments and other related operating information can be found in Note 8, “Segment Reporting,” of our Condensed Consolidated Financial Statements. Although each of these categories is important to our business, we generally evaluate overall operating, industry and market trends based on the operating results of our Established Communities, for which a detailed discussion can be found in “Results of Operations” as part of our discussion of overall operating results. We evaluate our current and future cash needs and future operating potential based on acquisition, disposition, development, redevelopment and financing activities within Other Stabilized, Redevelopment and Development Communities, for which detailed discussions can be found in “Liquidity and Capital Resources.”

On June 30, 2004, we owned or had an ownership interest in these categories as follows:

	Number of communities	Number of apartment homes
Current Communities		
Established Communities:		
Northeast	28	7,215
Mid-Atlantic	16	4,156
Midwest	3	887
Pacific Northwest	11	2,738
Northern California	28	8,491
Southern California	12	4,046
Total Established	98	27,533
Other Stabilized Communities:		
Northeast	20	5,732
Mid-Atlantic	4	2,064
Midwest	1	409
Pacific Northwest	—	—
Northern California	5	1,077
Southern California	3	728
Total Other Stabilized	33	10,010
Lease-Up Communities	1	203
Redevelopment Communities	1	781
Total Current Communities	133	38,527
Development Communities	14	4,149
Development Rights	40	10,728

In July 2004 we acquired one community containing 204 apartment homes. As of July 30, 2004 our 134 current communities consisted of 38,731 apartment homes. Of those communities, we owned:

- a fee simple, or absolute, ownership interest in 110 operating communities, four of which are on land subject to land leases expiring in January 2062, April 2095, May 2099 and 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 five partnerships structured as "DownREITs," as described more fully below, that own an aggregate of 16 communities;
- a membership interest in four limited liability companies that each hold a fee simple interest in an operating community, two of which are on land subject to land leases with one lease expiring in July 2029 and one lease expiring in November 2089; 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 twelve of the Development Communities, two of which will be subject to joint venture ownership structures upon construction completion, in addition to a membership interest in a limited liability company that owns one Development Community subject to a land lease and a general partnership interest in a partnership structured as a "DownREIT" that owns one Development Community.

In each of our six partnerships structured as DownREITs, either AvalonBay 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 a cash redemption by the partnership, we may elect to acquire any unit presented for redemption for one share of our common stock or for such cash amount. As of July 30, 2004, there were 573,360 DownREIT partnership units outstanding. The DownREIT partnerships are consolidated for financial reporting purposes.

We elected to be taxed as a REIT for federal income tax purposes for the year ended December 31, 1994 and we have not revoked that election. We were incorporated under the laws of the State of California in 1978, and we were reincorporated in the State of Maryland in July 1995. Our principal executive offices are located at 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia, 22314, and our telephone number at that location is (703) 329-6300. 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.

Recent Developments

Development Activities. During the three months ended June 30, 2004, we commenced development of three communities, Avalon at Juanita Village, located in Seattle, Washington, and Avalon Del Rey and Avalon Camarillo, both located in the Los Angeles, California area. These communities, when completed are expected to contain an aggregate of 769 apartment homes for a total capitalized cost of $158,200,000. Both Avalon at Juanita Village and Avalon Del Rey will be subject to joint venture ownership structures upon construction completion, as further described in "Liquidity and Capital Resources" located elsewhere in this report.

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

Acquisition Activities. During the three months ended June 30, 2004, we acquired one community, Avalon at Redondo Beach, located in Los Angeles, California. This garden-style community contains 105 apartment homes and was acquired for an acquisition price of $24,065,000.

Disposition Activities. During the three months ended June 30, 2004, we sold two communities, Avalon Greenbriar, located in Seattle, Washington, and Avalon at Laguna Niguel, located in Orange County, California. These two communities, which contained a total of 597 apartment homes, were sold for an aggregate sales price of $61,100,000, including the transfer of $18,755,000 of variable rate, tax-exempt debt, for net proceeds of $40,909,000. In addition, variable rate, tax-exempt debt of $10,400,000 was repaid immediately prior to the sale of one of these communities.

Critical Accounting Policies

The preparation of financial statements in conformity with generally accepted accounting principles ("GAAP") requires management to use judgment in the application of accounting policies, including making estimates and assumptions. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, or different estimates or assumptions would have been made, it is possible that different accounting policies would have been applied, resulting in different financial results or a different presentation of our financial statements. Below is a discussion of accounting policies that we consider critical, in that they may require complex judgment in their application or require estimates about matters which are inherently uncertain, and are critical to an understanding of our financial condition and operating results. As a REIT that owns, operates and develops apartment communities, our critical accounting policies relate to revenue recognition, cost capitalization, asset impairment evaluation and REIT status. A discussion of all of our accounting policies, including further discussion of the critical accounting policies described below, can be found in Note 1, "Organization and Significant Accounting Policies" of our Condensed Consolidated Financial Statements.

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. 104, "Revenue Recognition" and Statement of Financial Accounting Standards No. 13, "Accounting for Leases." 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. A discussion regarding the impact of cash concessions on rental revenue for Established Communities can be found in "Results of Operations."

Cost Capitalization

We capitalize costs during the development of assets (including interest and related loan fees, property taxes and other direct and indirect costs) beginning when active development commences until the asset, or a portion of the asset, is delivered and is ready for its intended use, which is generally indicated by the issuance of a certificate of occupancy. We capitalize costs during redevelopment of apartment homes (including interest and related loan fees, property taxes and other direct and indirect costs) beginning when an apartment home is taken out-of-service for redevelopment until the apartment home redevelopment is completed and the apartment home is available for a new resident.

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

We generally capitalize only non-recurring expenditures. We capitalize improvements and upgrades only if the item: (i) exceeds $15,000; (ii) extends the useful life of the asset; and (iii) 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: (i) carpet and appliance replacements; (ii) floor coverings; (iii) interior painting; and (iv) other redecorating costs. Because we expense carpet replacements, our expense levels and volatility are greatest in the third quarter of each year as this is when we experience our greatest amount of turnover. 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 replacements of personal property. For Established and Other Stabilized Communities, we recorded non-revenue generating capital expenditures of $160 per apartment home in the six months ended June 30, 2004 and $140 per apartment home in the six months ended June 30, 2003. The average maintenance costs charged to expense per apartment home, including carpet and appliance replacements, related to these communities was $667 in the six months ended June 30, 2004 and $605 in the six months ended June 30, 2003. We anticipate that capitalized costs and expensed maintenance costs per apartment home will gradually increase as the average age of our communities increases, and expensed maintenance costs will fluctuate with turnover.

Asset Impairment Evaluation

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. Real estate assets held for sale are measured at the lower of the carrying amount or the fair value less the cost to sell.

We account for our investments in technology companies in accordance with Accounting Principles Board ("APB") 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, we record the loss and reduce the value of the investment to its fair value. Due to the nature of these investments, an impairment in value can be difficult to determine.

REIT Status

A corporate REIT is a legal entity which holds real estate interests and must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its adjusted taxable income to stockholders. As a REIT, we generally will not be subject to corporate level federal income tax on taxable income we distribute currently to our stockholders. If we fail to qualify as a REIT in any taxable year, we 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.

Results of Operations

Our year-over-year operating performance is primarily affected by changes in net operating income of our current operating apartment communities due to market conditions, net operating income derived from acquisitions and development completions, the loss of net operating income related to disposed communities and capital market, disposition and financing activity. A comparison of our operating results for the three and six months ended June 30, 2004 and 2003 follows (dollars in thousands):

	For the three months ended				For the six months ended			
	6-30-04	6-30-03	$ Change	% Change	6-30-04	6-30-03	$ Change	% Change
Revenue:								
Rental and other income	$162,101	$149,101	$ 13,000	8.7%	$318,832	$296,840	$ 21,992	7.4%
Management, development and other fees	157	247	(90)	(36.4%)	305	511	(206)	(40.3%)
Total revenue	162,258	149,348	12,910	8.6%	319,137	297,351	21,786	7.3%
Expenses:								
Direct property operating expenses, excluding property taxes	38,718	35,495	3,223	9.1%	76,520	69,553	6,967	10.0%
Property taxes	15,055	13,961	1,094	7.8%	30,629	28,141	2,488	8.8%
Total community operating expenses	53,773	49,456	4,317	8.7%	107,149	97,694	9,455	9.7%
Net operating income	108,485	99,892	8,593	8.6%	211,988	199,657	12,331	6.2%
Corporate-level property management and other indirect operating expenses	9,248	7,056	2,192	31.1%	17,404	15,053	2,351	15.6%
Interest expense	32,482	34,067	(1,585)	(4.7%)	64,768	68,041	(3,273)	(4.8%)
Depreciation expense	40,173	37,053	3,120	8.4%	79,745	73,723	6,022	8.2%
General and administrative expense	4,071	3,623	448	12.4%	8,041	7,254	787	10.8%
Total other expenses	85,974	81,799	4,175	5.1%	169,958	164,071	5,887	3.6%
Equity in income of unconsolidated entities	276	677	(401)	(59.2%)	463	1,205	(742)	(61.6%)
Interest income	36	880	(844)	(95.9%)	56	1,782	(1,726)	(96.9%)
Venture partner interest in profit-sharing	(352)	(470)	118	(25.1%)	(677)	(848)	171	(20.2%)
Minority interest in consolidated partnerships	(420)	(234)	(186)	79.5%	(275)	(454)	179	(39.4%)
Income from continuing operations before cumulative effect of change in accounting principle	22,051	18,946	3,105	16.4%	41,597	37,271	4,326	11.6%
Discontinued operations:								
Income from discontinued operations	608	3,011	(2,403)	(79.8%)	1,792	8,002	(6,210)	(77.6%)
Gain on sale of communities	12,375	54,511	(42,136)	(77.3%)	12,375	68,583	(56,208)	(82.0%)
Total discontinued operations	12,983	57,522	(44,539)	(77.4%)	14,167	76,585	(62,418)	(81.5%)
Income before cumulative effect of change in accounting principle	35,034	76,468	(41,434)	(54.2%)	55,764	113,856	(58,092)	(51.0%)
Cumulative effect of change in accounting principle	—	—	—	—	4,547	—	4,547	100.0%
Net income	35,034	76,468	(41,434)	(54.2%)	60,311	113,856	(53,545)	(47.0%)
Dividends attributable to preferred stock	(2,175)	(2,706)	531	(19.6%)	(4,350)	(6,394)	2,044	(32.0%)
Net income available to common stockholders	$ 32,859	$ 73,762	$(40,903)	(55.5%)	$ 55,961	$107,462	$(51,501)	(47.9%)

Net income available to common stockholders decreased $40,903,000, or 55.5%, to $32,859,000 for the three months ended June 30, 2004 and decreased by $51,501,000 or 47.9% to $55,961,000 for the six months ended June 30, 2004 compared to the same periods in the preceding year. These decreases are primarily attributable to lower gains on sale of communities recognized in 2004 as compared to 2003, due to reduced disposition activity.

Net operating income ("NOI") is defined by us as total revenue less direct property operating expenses, including property taxes, and excludes corporate-level property management and other indirect operating expenses, interest income and expense, general and administrative expense, equity in income of unconsolidated entities, minority interest in consolidated partnerships, venture partner interest in profit-sharing, depreciation expense, gain on sale of communities, cumulative effect of change in accounting principle and income from discontinued operations. We believe that NOI is an important and appropriate supplemental measure to net income of the operating performance of our communities because it helps both investors and management to understand the core operations of a community or communities prior to the allocation of any corporate-level or financing-related costs. This is more reflective of the operating performance of a community, and allows for an easier comparison of the operating performance of

individual assets or groups of assets. In addition, because prospective buyers of real estate have different overhead structures, with varying marginal impact to overhead by acquiring real estate, NOI is considered by many in the real estate industry to be a useful measure for determining the value of a real estate asset or group of assets. NOI does not represent cash generated from operating activities in accordance with GAAP. Therefore, NOI should not be considered an alternative to net income as an indication of our performance. NOI should also not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity, nor is NOI necessarily indicative of cash available to fund cash needs. A calculation of NOI for the three and six months ending June 30, 2004 and 2003, along with a reconciliation to net income, is provided in the preceding table.

The NOI increases of $8,593,000 and $12,331,000 for the three and six months ended June 30, 2004, respectively, as compared to the prior year periods consists of changes in the following categories:

	2004 NOI Increase (Decrease)	
	For the three months ended 6-30-04	For the six months ended 6-30-04
Established Communities	$ (921,000)	$ (4,385,000)
Other Stabilized Communities	3,969,000	8,885,000
Development and Redevelopment Communities	5,481,000	7,973,000
Non-allocated	64,000	(142,000)
Total	$ 8,593,000	$ 12,331,000

The NOI decreases in Established Communities were largely due to the effects of the weakened economy in many of our markets. The continued impact of historical job losses in many of our markets, in addition to strong single-family home sales, have aggravated a weak demand environment, causing market rental rates to decline. However, we have experienced stronger job growth and declining unemployment claims in our markets during the six months ended June 30, 2004, suggesting the beginning of an economic recovery. Although the recent acceleration of job growth will help stabilize apartment fundamentals during the year, we expect modest year over year declines in our Established Communities NOI for 2004. We have reached 95% occupancy, a point at which we generally regain pricing power, and we are therefore beginning to test revenue growth through modest rental rate increases and/or reduction in concessions. This, combined with aggressively managing operating expenses, should allow us to mitigate declines in NOI.

Rental and other income increased in the three and six months ended June 30, 2004 as compared to the prior year periods due to rental income generated from newly developed communities and increased occupancy, partially offset by declines in effective rental rates.

Overall Portfolio – The weighted average number of occupied apartment homes increased to 35,400 apartment homes for the six months ended June 30, 2004 as compared to 32,559 apartment homes for the six months ended June 30, 2003. This change is primarily the result of increased homes available from newly developed communities and an increase in the overall occupancy rate, partially offset by communities sold in 2003 and 2004. The weighted average monthly revenue per occupied apartment home decreased to $1,498 in the six months ended June 30, 2004 as compared to $1,518 in the six months ended June 30, 2003, primarily due to the high concessionary environment being experienced in certain of our markets.

Established Communities – Rental revenue decreased $852,000, or 0.8%, in the three months ended June 30, 2004 as compared to the same period of 2003. Rental revenue decreased $3,302,000, or 1.5%, in the six months ended June 30, 2004 as compared to the same period of 2003. These decreases are due to declining effective rental rates, partially offset by an increase in economic occupancy during both the three and six months ended June 30, 2004. For the six months ended June 30, 2004, the weighted average monthly revenue per occupied apartment home decreased 2.4% to $1,418 compared to $1,453 for the six months ended June 30, 2003, partially due to increased concessions granted throughout 2003 and into 2004. The average economic

occupancy increased from 93.7% in the six months ended June 30, 2003 to 94.6% in the six months ended June 30, 2004. Economic occupancy takes into account the fact that apartment homes of different sizes and locations within a community have different economic impacts on a community's gross revenue. Economic occupancy is defined as gross potential revenue less vacancy loss, as a percentage of gross potential revenue. Gross potential revenue is determined by valuing occupied homes at leased rates and vacant homes at market rents. Although, we expect rental income for Established Communities to continue to reflect year over year declines throughout most of 2004 as compared to 2003, we expect that the declines will moderate throughout the year.

Although rental revenue from the Established Community portfolio as a whole decreased in the six months ended June 30, 2004 as compared to the same period of 2003, we had increases in Established Communities' rental revenue in four of our six regions. The largest increase was in the Mid-Atlantic with an increase in rental revenue of 2.9% between periods, reflecting a significant increase in economic occupancy due to modest job growth and flat average rental rates. In addition, in Southern California, we were able to increase average rental rates by 1.1%, while maintaining an economic occupancy of 95.3%, resulting in an increase in rental revenue of 1.3% between periods. The Midwest and Pacific Northwest experienced increases in rental revenue of 0.8% and 0.5%, respectively, during the six months ended June 30, 2004 as compared to the same period of 2003, reflecting increased economic occupancy partially offset by declining average rental rates.

However, our rental income from Established Communities was impacted by continued declines in average rental rates in certain Northern California and Northeast markets. Northern California, which accounted for approximately 30.0% of Established Community rental revenue during the six months ended June 30, 2004, experienced a decline in rental revenue of 5.1% in the six months ended June 30, 2004 as compared to the same period in 2003, partially related to the continued impact of historical job losses in the technology sector. Although economic occupancy in Northern California increased to 95.5% in the six months ended June 30, 2004, average rental rates dropped 5.4% to $1,367 from $1,445 during 2003. We expect rental revenue to decline slightly in Northern California during the remainder of the year as the region continues to stabilize.

The Northeast region accounted for approximately 33.1% of Established Community rental revenue during the six months ended June 30, 2004 and experienced a decline in rental revenue of 1.6% in the six months ended June 30, 2004 as compared to the same period of 2003, primarily due to the continued impact of historical job losses in the financial services sector. Although economic occupancy increased to 93.3% during the six months ended June 30, 2004, average rental rates dropped 2.1% to $1,815 from $1,854 in 2003. The Northeast region appears to be stabilizing, and we expect rental revenue declines to diminish during the remainder of 2004.

In accordance with GAAP, cash concessions are amortized as an offset to rental revenue over the approximate lease term, which is generally one year. However, we consider rental revenue with concessions stated on a cash basis to be a supplemental measure to rental revenue in conformity with GAAP in helping investors to evaluate the impact of both current and historical concessions on GAAP based rental revenue and to more readily enable comparisons to revenue as reported by other companies. In addition, rental revenue with concessions stated on a cash basis allows an investor to understand the historical trend in cash concessions, which is an indicator of current rental market conditions.

The following table reconciles total rental revenue in conformity with GAAP to total rental revenue adjusted to state concessions on a cash basis for our Established Communities for the three and six months ended June 30, 2004 and 2003 (dollars in thousands).

	For the three months ended		For the six months ended	
	6-30-04	6-30-03	6-30-04	6-30-03
Rental revenue (GAAP basis)	$111,489	$112,341	$221,683	$224,985
Concessions amortized	4,110	2,958	7,949	5,638
Concessions granted	(4,445)	(3,201)	(7,902)	(5,820)
Rental revenue adjusted to state concessions on a cash basis	$111,154	$112,098	$221,730	$224,803
Year-over-year % change — GAAP revenue	(0.8%)	n/a	(1.5%)	n/a
Year-over-year % change — cash concession based revenue	(0.8%)	n/a	(1.4%)	n/a

Concessions granted per move-in for Established Communities averaged $1,101 during the three months ended June 30, 2004, an increase of 39.7% from $788 in the three months ended June 30, 2003. This increase was primarily due to weak demand/supply fundamentals in many of our markets. This high concessionary environment will likely continue throughout the year.

Direct property operating expenses, excluding property taxes increased in the three and six months ended June 30, 2004 due to the addition of recently developed and redeveloped apartment homes, coupled with increased expenses due to salary increases and leasing bonuses, as well as increased make-ready costs associated with increasing occupancy.

For Established Communities, direct property operating expenses, excluding property taxes, increased $429,000, or 1.7%, for the three months ended June 30, 2004 and $1,215,000, or 2.5%, for the six months ended June 30, 2004 as compared to the same periods of 2003 due to increased salaries and leasing bonuses, as well as increased make-ready costs associated with increasing occupancy. We expect expense growth to continue to moderate in 2004 as we experience declines in the historical high levels of property insurance costs and bad debt expenses with changes in the insurance markets and the overall economy.

Property taxes increased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 due to overall higher assessments and the addition of newly developed and redeveloped apartment homes, partially offset by a property tax refund.

For Established Communities, property taxes decreased by $352,000 and $115,000 in the three and six months ended June 30, 2004, respectively, as compared to the same periods of 2003, due to the successful resolution of a tax appeal for a community in the Northeast of $661,000, partially offset by overall higher assessments throughout all regions. We expect property taxes to increase throughout 2004 as local jurisdictions look for additional revenue sources to offset budget deficits. We manage property tax increases internally, as well as engage third-party consultants, and appeal increases when appropriate.

Corporate-level property management and other indirect operating expenses increased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 as a result of construction litigation relating to a community that has completed development, litigation and settlement costs associated with Proposition 65 signage requirements at our California communities, increased compensation costs, and increased abandoned pursuit costs. Abandoned pursuit costs increased $127,000 from $1,050,000 in the six months ended June 30, 2003 to $1,177,000 in the six months ended June 30, 2004. Abandoned pursuit costs can be volatile, and the increases reflected during the six months ended June 30, 2004 compared to the same period of the prior year may not be experienced in future periods. We expect corporate-level property management and other

indirect operating expenses to increase during the year due to the costs of managing a potential discretionary investment management fund and increased legal costs relating to several ongoing lawsuits.

Interest expense decreased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 primarily due to the repayment of certain unsecured notes and overall lower interest rates on both short-term and long-term borrowings, partially offset by higher average outstanding balances on our unsecured credit facility.

Depreciation expense increased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 primarily due to the completion of development and redevelopment activities.

General and administrative expense ("G&A") increased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 as a result of higher compensation expense and additional corporate governance costs, including costs relating to compliance with Sarbanes-Oxley. We expect G&A to continue to reflect year over year increases in 2004 due to increased corporate governance and compensation costs, partially offset by a decrease in our directors and officers ("D&O") insurance resulting from our March 2004 renewal at a lower premium.

Equity in income of unconsolidated entities decreased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 primarily due to the loss of income from a community accounted for under the equity method in which we held a 50% interest, but which we sold in late 2003.

Interest income decreased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 due to lower average cash balances invested and lower interest rates. In addition, effective January 1, 2004, we consolidated an entity in which we hold a participating mortgage note due to the implementation of FASB Interpretation No. 46 ("FIN 46"), "Consolidation of Variable Interest Entities, and Interpretation of ARB No. 51," as revised in December 2003. Therefore, interest income that we recognized during the three and six months ended June 30, 2003 is not reflected during the three and six months ended June 30, 2004 as such amounts were eliminated in consolidation (See Note 1, "Organization and Significant Accounting Policies," of the Condensed Consolidated Financial Statements.)

Income from discontinued operations represents the net income generated by communities held for sale as of June 30, 2004 and communities sold during the period from January 1, 2003 through June 30, 2004. The decreases in the three and six months ended June 30, 2004 as compared to the same periods of 2003 are due to the sale of eleven communities in 2003 and two communities in 2004.

Gain on sale of communities decreased in the three and six months ended June 30, 2004 as compared to the same periods of 2003 due to the reduced disposition activity in 2004 as compared to the prior year. The amount of gains realized depends 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. We expect to sell fewer assets in 2004 as compared to 2003, which will result in less aggregate gains on assets sold.

Cumulative effect of change in accounting principle during the six months ended June 30, 2004 is a result of the implementation of FIN 46, discussed above, and represents the difference between the net assets consolidated under FIN 46 and the previously recorded net assets.

Dividends attributable to preferred stock decreased during the three and six months ended June 30, 2004 as compared to the same periods of 2003 primarily as a result of two preferred stock redemptions during the six months ended June 30, 2003. In addition, in response to the Securities and Exchange Commission clarification of Emerging Issues Task Force ("EITF") Topic D-42, "The Effect on the Calculation of Earnings per Share for the Redemption or Induced Conversion of Preferred Stock," we have revised the presentation of our operating results for the three and six months ended June 30, 2003 to include the initial offering costs of $280,000 as additional dividends.

Funds from Operations attributable to common stockholders ("FFO") is considered by management an appropriate supplemental measure of our operating and financial performance because, by excluding gains or losses related to dispositions of property and excluding real estate depreciation, which can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates, FFO can help one compare the operating performance of a real estate company between periods or as compared to different companies. We believe that in order to understand our operating results, FFO should be examined with net income as presented in the Condensed 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, adjusted for:

- gains or losses on sales of property;
- extraordinary gains or losses (as defined by GAAP);
- cumulative effect of a change in accounting principle;
- depreciation of real estate assets; and
- adjustments for unconsolidated partnerships and joint ventures.

FFO does not represent net income in accordance with GAAP, and therefore it should not be considered an alternative to net income, which remains the primary measure, as an indication of our performance. In addition, FFO as calculated by other REITs may not be comparable to our calculation of FFO. The following is a reconciliation of net income to FFO (dollars in thousands, except per share data):

	For the three months ended		For the six months ended	
	6-30-04	6-30-03	6-30-04	6-30-03
Funds from Operations				
Net income	$ 35,034	$ 76,468	$ 60,311	$ 113,856
Dividends attributable to preferred stock	(2,175)	(2,706)	(4,350)	(6,394)
Depreciation — real estate assets, including discontinued operations and joint venture adjustments	39,054	37,523	77,551	75,069
Minority interest expense, including discontinued operations	912	379	1,239	762
Cumulative effect of change in accounting principle	—	—	(4,547)	—
Gain on sale of communities	(12,375)	(54,511)	(12,375)	(68,583)
Funds from operations attributable to common stockholders	$ 60,450	$ 57,153	$ 117,829	$ 114,710
Weighted average common shares outstanding — diluted	73,037,484	68,903,145	72,791,470	69,007,504
EPS per common share — diluted	$ 0.46	$ 1.08	$ 0.79	$ 1.57
FFO per common share — diluted	$ 0.83	$ 0.83	$ 1.62	$ 1.66

FFO also does not represent cash generated from operating activities in accordance with GAAP, and therefore should not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity. Additionally, it is not necessarily indicative of cash available to fund cash needs. A presentation of GAAP based cash flow metrics is as follows (dollars in thousands) and a discussion of "Liquidity and Capital Resources" can be found below.

	For the three months ended		For the six months ended	
	6-30-04	6-30-03	6-30-04	6-30-03
GAAP based Cash Flow Metrics				
Net cash provided by operating activities	$ 85,192	$ 74,647	$ 135,909	$ 129,681
Net cash provided by (used in) investing activities	$(107,417)	$ 25,289	$(162,424)	$ (19,882)
Net cash provided by (used in) financing activities	$ 24,380	$(126,321)	$ 21,851	$(101,265)

Liquidity and Capital Resources

The primary source of liquidity is our cash flows from operations. Operating cash flows have historically been determined by: (i) the number of apartment homes currently owned, (ii) rental rates, (iii) occupancy levels and (iv) operating expenses with respect to apartment homes. The timing, 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, such as changes in interest rates or the availability of cost-effective capital, affect our plans for development, redevelopment, acquisition and disposition activity.

We regularly review our liquidity needs, the adequacy of cash flow from operations, 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;
- preferred stock dividends and DownREIT partnership unit distributions;
- the minimum dividend payments required to maintain our REIT qualification under the Internal Revenue Code of 1986;
- development and redevelopment activity in which we are currently engaged; and
- opportunities for the acquisition of improved property.

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 our variable rate unsecured credit facility.

Cash and cash equivalents totaled $2,501,000 at June 30, 2004, a decrease of $4,664,000 from $7,165,000 on December 31, 2003. The following discussion relates to changes in cash due to operating, investing and financing activities, which are presented in our Condensed Consolidated Statements of Cash Flows included elsewhere in this report.

Operating Activities – Net cash provided by operating activities increased to $135,909,000 for the six months ended June 30, 2004 from $129,681,000 for the six months ended June 30, 2003, primarily due to additional NOI from recently acquired and developed communities, partially offset by the loss of NOI from the thirteen communities sold in 2003 and 2004, as discussed earlier in this report.

Investing Activities – Net cash used in investing activities of $162,424,000 in the six months ended June 30, 2004 related to investments in assets through development, redevelopment and acquisition of apartment communities. During the six months ended June 30, 2004, we invested $204,476,000 in the purchase and development of real estate and capital expenditures:

- We began the development of five new communities. These communities, if developed as expected, will contain a total of 1,171 apartment homes, and the total capitalized cost, including land acquisition costs, is projected to be approximately $216,200,000. We completed the development of two communities containing a total of 515 apartment homes for a total capitalized cost, including land acquisition cost, of $96,000,000.

- We completed the redevelopment of one community containing 308 apartment homes for a total capitalized cost of $44,000,000, of which $35,700,000 was incurred prior to redevelopment.

- We acquired one community containing 105 apartment homes for a total investment of $24,065,000.

- We had capital expenditures relating to current communities' real estate assets of $6,127,000 and non-real estate capital expenditures of $366,000.

Financing Activities – Net cash provided by financing activities totaled $21,851,000 for the six months ended June 30, 2004, primarily due to an increase in borrowings under our unsecured credit facility, issuance of common stock for option exercises and issuance of unsecured notes, partially offset by dividends paid and certain debt repayments. See Note 3, "Notes Payable, Unsecured Notes and Credit Facility," of our Condensed Consolidated Financial Statements, for additional information.

Variable Rate Unsecured Credit Facility

We have a $500,000,000 revolving variable rate unsecured credit facility with JPMorgan Chase Bank and Wachovia Bank, N.A. serving as banks and syndication agents for a syndicate of commercial banks, which we refinanced in May 2004, concurrent with its original maturity date. Under the terms of the new credit facility, which are substantially consistent with the terms of the old facility, if we elect to increase the facility by up to an additional $150,000,000, 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 approximately $750,000 in 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 0.55% per annum (2.00% on July 30, 2004). The spread over LIBOR can vary from LIBOR plus 0.50% to LIBOR plus 1.15% based upon the rating of our long-term unsecured debt. In addition, a competitive bid option is available for borrowings of up to $250,000,000. 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. We had $150,000,000 outstanding under this competitive bid option at July 30, 2004 priced at LIBOR plus 0.29%, or 1.67%. We are subject to (i) certain customary covenants under the unsecured credit facility, including, but not limited to, maintaining certain maximum leverage ratios, a minimum fixed charges coverage ratio and minimum unencumbered assets and equity levels, and (ii) prohibitions on paying dividends in amounts that exceed 95% of our FFO, except as may be required to maintain our REIT status. The new facility matures in May 2008, assuming our exercise of a one-year renewal option. At July 30, 2004, $190,400,000 was outstanding, $22,181,000 was used to provide letters of credit and $287,419,000 was available for borrowing under the unsecured credit facility.

Future Financing and Capital Needs – Debt Maturities

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. If we do not have funds on hand sufficient to repay our indebtedness as it becomes due, it will be necessary for us to refinance the debt. This refinancing may be accomplished by uncollateralized private or public debt offerings, additional debt financing that is collateralized by mortgages on individual communities or groups of communities, draws on our unsecured credit facility or by additional equity offerings. 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.

During 2004, we have had the following debt activity:

- We repaid $125,000,000 in previously issued unsecured notes, along with any unpaid interest, pursuant to their scheduled maturity, and no prepayment fees were incurred. In addition, we issued $150,000,000 in unsecured notes under our existing shelf registration statement at an annual interest rate of 5.375%. Interest on these notes is payable semi-annually on April 15 and October 15, and they mature in April 2014.

- We repaid $24,251,000 in fixed rate mortgage debt secured by two current communities, along with any unpaid interest, repaid $10,400,000 in variable rate, tax-exempt debt related to the sale of a community and transferred $18,755,000 in variable rate, tax-exempt debt related to the sale of a community to the purchaser.

- We issued $42,800,000 in variable rate, conventional debt on two communities, including interest rate protection agreements that serve to effectively limit the level to which interest rates can rise to a rate of 10.0%

- We assumed $13,322,000 in fixed rate debt in connection with the acquisition of two parcels of improved land related to two Development Rights.

- We replaced the credit enhancements, including interest rate swaps, on approximately $87,000,000 of our variable rate, tax-exempt debt when such credit enhancements expired. We put in place interest rate protection agreements that serve to effectively limit the level to which interest rates can rise to a range of 6.7% to 9.0%.

- We renegotiated the terms of a fixed rate, tax-exempt bond on one community in the amount of $9,780,000 to decrease the annual interest rate from 7.0% to 4.9%.

The following table details debt maturities for the next five years, excluding our unsecured credit facility, for debt outstanding at June 30, 2004 (dollars in thousands):

Community	All-In interest rate (1)	Principal maturity date	Balance outstanding		Scheduled maturities					
			12-31-03	6-30-04	2004	2005	2006	2007	2008	Thereafter
Tax-exempt bonds										
Fixed rate										
CountryBrook	6.30%	Mar-2012	$ 17,628	$ 17,412	$ 312	$ 562	$ 599	$ 638	$ 679	$ 14,622
Avalon at Symphony Glen	7.00%	Jul-2024	9,780	9,780	—	—	—	—	—	9,780
Avalon View	7.55%	Aug-2024	17,345	17,140	220	455	485	518	555	14,907
Avalon at Lexington	6.56%	Feb-2025	13,477	13,316	165	347	368	391	415	11,630
Avalon at Nob Hill	5.80%	Jun-2025	19,149	19,014 (2)	196	355	380	408	437	17,238
Avalon Campbell	6.48%	Jun-2025	35,065	34,766 (2)	434	786	843	904	969	30,830
Avalon Pacifica	6.48%	Jun-2025	15,906	15,770 (2)	196	356	382	410	440	13,986
Avalon Knoll	6.95%	Jun-2026	12,748	12,628	126	263	282	302	324	11,331
Avalon Landing	6.85%	Jun-2026	6,301	6,240	63	132	142	152	162	5,589
Avalon Fields	7.55%	May-2027	11,106	11,011	98	207	222	239	256	9,989
Avalon West	7.73%	Dec-2036	8,396	8,362	36	75	80	85	91	7,995
Avalon Oaks	7.45%	Jul-2041	17,530	17,479	53	112	120	128	138	16,928
Avalon Oaks West	7.48%	Apr-2043	17,336	17,288	48	103	110	117	125	16,785
			201,767	200,206	1,947	3,753	4,013	4,292	4,591	181,610
Variable rate (4)										
Avalon at Laguna Niguel (5)	—	Mar-2009	10,400	—	—	—	—	—	—	—
The Promenade	2.94%	Oct-2010	33,185	32,929	266	562	605	652	701	30,143
Waterford	1.59%	Jul-2014	33,100	33,100 (3)	—	—	—	—	—	33,100
Avalon at Mountain View	1.59%	Feb-2017	18,300	18,300 (3)	—	—	—	—	—	18,300
Avalon at Foxchase I	1.59%	Nov-2017	16,800	16,800 (3)	—	—	—	—	—	16,800
Avalon at Foxchase II	1.59%	Nov-2017	9,600	9,600 (3)	—	—	—	—	—	9,600
Fairway Glen	1.59%	Nov-2017	9,580	9,580 (3)	—	—	—	—	—	9,580
Avalon at Mission Viejo	2.36%	Jun-2025	7,039	6,989 (6)	71	129	139	149	160	6,341
Avalon Greenbriar (5)	—	May-2026	18,755	—	—	—	—	—	—	—
Avalon at Fairway Hills I	2.03%	Jun-2026	11,500	11,500	—	—	—	—	—	11,500
			168,259	138,798	337	691	744	801	861	135,364
Conventional loans (7)										
Fixed rate										
$125 Million unsecured notes	6.733%	Feb-2004	125,000	—	—	—	—	—	—	—
$100 Million unsecured notes	6.750%	Jan-2005	100,000	100,000	—	100,000	—	—	—	—
$50 Million unsecured notes	6.500%	Jan-2005	50,000	50,000	—	50,000	—	—	—	—
$150 Million unsecured notes	6.926%	Jul-2006	150,000	150,000	—	—	150,000	—	—	—
$150 Million unsecured notes	5.178%	Aug-2007	150,000	150,000	—	—	—	150,000	—	—
$110 Million unsecured notes	7.128%	Dec-2007	110,000	110,000	—	—	—	110,000	—	—
$50 Million unsecured notes	6.625%	Jan-2008	50,000	50,000	—	—	—	—	50,000	—
$150 Million unsecured notes	8.374%	Jul-2008	150,000	150,000	—	—	—	—	150,000	—
$150 Million unsecured notes	7.634%	Aug-2009	150,000	150,000	—	—	—	—	—	150,000
$200 Million unsecured notes	7.665%	Dec-2010	200,000	200,000	—	—	—	—	—	200,000
$300 Million unsecured notes	6.792%	Sep-2011	300,000	300,000	—	—	—	—	—	300,000
$50 Million unsecured notes	6.314%	Sep-2011	50,000	50,000	—	—	—	—	—	50,000
$250 Million unsecured notes	6.261%	Nov-2012	250,000	250,000	—	—	—	—	—	250,000
$150 Million unsecured notes	5.501%	Apr-2014	—	150,000	—	—	—	—	—	150,000
Avalon at Pruneyard	7.250%	May-2004	12,870	—	—	—	—	—	—	—
Avalon Walk II	8.930%	Aug-2004	11,437	—	—	—	—	—	—	—
Wheaton Development Right	6.990%	Oct-2008	—	4,693	38	71	77	82	4,425	—
Twinbrook Development Right	7.250%	Oct-2011	—	8,624	88	158	171	183	196	7,828
Avalon Orchards	7.650%	Jul-2033	20,574	20,466	114	237	254	272	292	19,297
			1,879,881	1,893,783	240	150,466	150,502	260,537	204,913	1,127,125
Variable rate (4)										
Avalon on the Sound (8)	2.69%	Apr-2005	36,526	36,311	—	36,311	—	—	—	—
Avalon Ledges	2.53%	May-2009	—	19,954 (6)	327	586	619	654	691	17,077
Avalon at Flanders Hill	2.53%	May-2009	—	22,748 (6)	373	668	706	746	788	19,467
			36,526	79,013	700	37,565	1,325	1,400	1,479	36,544
Total indebtedness — excluding unsecured credit facility			$2,286,433	$2,311,800	$3,224	$192,475	$156,584	$267,030	$211,844	$1,480,643

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

(2) Financed by variable rate, tax-exempt debt, but interest rate is effectively fixed at June 30, 2004 at the rate indicated through a swap agreement.

(3) Financed by variable rate, tax-exempt debt, that was effectively fixed through a swap agreement at December 31, 2003 and was reported as fixed rate debt at that time. The debt was restructured in February 2004 such that the interest rate was capped through an interest rate protection agreement and is currently included as variable rate debt for financial reporting purposes.

(4) Variable rates are given as of June 30, 2004.

(5) Included in liabilities related to real estate assets held for sale on our Condensed Consolidated Balance Sheets as of December 31, 2003 included elsewhere in this report.

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

(7) Balances outstanding do not include $564 of debt discount and $284 of debt premium as of June 30, 2004 and December 31, 2003, respectively, reflected in unsecured notes on our Condensed Consolidated Balance Sheets included elsewhere in this report.

(8) Variable rate construction loan was refinanced in March 2004, extending the maturity date to April 2005.

Future Financing and Capital Needs – Portfolio and Other Activity

As of June 30, 2004, we had fourteen new communities under construction, for which a total estimated cost of $232,500,000 remained to be invested. In addition, we had one community under reconstruction, for which a total estimated cost of $3,444,000 remained to be invested. Substantially all of the capital expenditures necessary to complete the communities currently under construction and reconstruction, as well as development costs related to pursuing Development Rights, will be funded from:

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

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 pre-development costs that were capitalized and/or forego reconstruction activity. In such instances, we will not realize the increased revenues and earnings that we expected from such Development Rights.

We sell assets that do not meet our long-term investment criteria or when capital and real estate markets allow us to realize a portion of the value created over the past business cycle and redeploy the proceeds from those sales to develop and redevelop communities. In response to real estate and capital markets conditions, including strong institutional demand for product in our markets, we plan to sell communities during 2004, although at reduced levels as compared to past disposition activity. However, we cannot assure you that assets can continue to 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 for a gain is to increase net income, but reduce future total revenues, total expenses, NOI and FFO. As of July 30, 2004, we have one community classified as held for sale under GAAP. We are actively pursuing the disposition of this community and expect to close on this disposition in 2004. However, we cannot assure you that this community will be sold as planned.

We are engaging in discussions with a limited number of institutional investors regarding the possible formation of a discretionary fund that would acquire and operate apartment communities. This fund would serve, for a period of three years from the date of its final closing or until a significant portion of its committed capital is invested, as the exclusive vehicle through which we would acquire apartment communities, subject to certain exceptions including, among others, significant individual asset and portfolio acquisitions, properties acquired in tax-deferred transactions and acquisitions that are inadvisable or inappropriate for the fund, if any. The fund would not restrict our development activities, which would not be a part of the fund, and would terminate after a term of eight years (subject to two one-year extensions). We may also acquire certain assets and transfer our interests in those assets to the fund upon its formation. As of July 30, 2004, we have acquired two communities which we intend to transfer to the fund upon its formation. We intend to actively pursue the formation of the fund, but there can be no assurance as to when or if such a fund will be formed or, if formed, what its size, terms or investment performance will be. We have preliminarily targeted that the fund would have approximately $715,000,000 available for investment (consisting of approximately $250,000,000 of fund equity, of which we would commit approximately 20% of the total, and approximately $465,000,000 of debt financing).

We have also recently increased our use of joint ventures, pursuant to which certain developments will be held upon completion through partnership vehicles. We generally employ joint ventures primarily to mitigate asset concentration or market risk and secondarily as a source of liquidity. Each joint venture or partnership agreement has been and will continue to be individually negotiated, and our ability to operate and/or dispose of a community in our sole discretion may be limited to varying degrees depending on the

terms of the joint venture or partnership agreement. However, we cannot assure you that we will enter into joint ventures in the future, or that, if we do, we will achieve our objectives.

During 2004, we have engaged in the following joint venture activity:

- We entered into a joint venture agreement with an unrelated third-party for the development of Avalon Chrystie Place I, located in New York, New York. We hold a 20% equity interest in this joint venture entity (with a right to 50% of distributions after achievement of a threshold return), with the remaining 80% equity interest held by the third-party.

- We entered into an agreement with an unrelated third-party which provides that, after we complete construction of Avalon Del Rey, the community will be owned and operated by a joint venture between us and the third-party. Upon construction completion, the third-party venture partner will invest $49,000,000 and will be granted a 70% ownership interest in the venture, while we retain a 30% equity interest.

- We entered into an agreement to develop Avalon at Juanita Village through a wholly-owned taxable REIT subsidiary and, upon construction completion, contribute the community to a joint venture. Upon contribution of the community to the joint venture, we expect to be reimbursed for all costs incurred to develop the community. The third-party joint venture partner will receive a 100% equity interest in the joint venture and will manage the joint venture. We will receive a residual profits interest and will be engaged to manage the community for a property management fee.

Off Balance Sheet Arrangements

We own interests in unconsolidated real estate entities, with ownership interests up to 50%. Two of these unconsolidated real estate entities, Avalon Terrace, LLC and CVP I, LLC, have debt outstanding as of June 30, 2004. Avalon Terrace LLC has $22,500,000 of variable rate debt which matures in 2005 and is payable by the unconsolidated real estate entity with operating cash flow from the underlying real estate. CVP I, LLC has a $58,500,000 construction loan which matures in February 2007 and is payable by the unconsolidated real estate entity. We have not guaranteed the debt on Avalon Terrace LLC, nor do we have any obligation to fund this debt should the unconsolidated real estate entity be unable to do so. However, in connection with the general contractor services that we provide to CVP I, LLC, the entity that owns and is developing Avalon Chrystie Place I, we have provided a construction completion guarantee to the lender in order to fulfill their standard financing requirements related to the construction financing. Our obligations under this guarantee will terminate following construction completion once all of the lender's standard completion requirements have been satisfied. We currently expect this to occur in the beginning of 2006. There are no lines of credit, side agreements, financial guarantees or any other derivative financial instruments related to or between us and our unconsolidated real estate entities. In evaluating our capital structure and overall leverage, management takes into consideration our proportionate share of this unconsolidated debt. For more information regarding the operations of our unconsolidated entities see Note 6, "Investments in Unconsolidated Real Estate Entities," of our Condensed Consolidated Financial Statements.

Contractual Obligations

We currently have contractual obligations consisting primarily of long-term debt obligations and lease obligations for certain land parcels and office space. There have not been any material changes outside the ordinary course of business to our contractual obligations during the six months ended June 30, 2004.

Development Communities

As of July 30, 2004, we had fourteen Development Communities under construction. We expect these Development Communities, when completed, to add a total of 4,149 apartment homes to our portfolio for a total capitalized cost, including land acquisition costs, of approximately $790,100,000. 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 report.

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 capitalized cost (1) ($ millions)	Construction start	Initial occupancy (2)	Estimated completion	Estimated stabilization (3)
1.	Avalon at Grosvenor Station (4) *North Bethesda, MD*	497	$80.4	Q1 2002	Q3 2003	Q4 2004	Q2 2005
2.	Avalon at Glen Cove South *Glen Cove, NY*	256	65.5	Q3 2002	Q1 2004	Q3 2004	Q1 2005
3.	Avalon at Traville (5) *North Potomac, MD*	520	71.5	Q4 2002	Q3 2003	Q1 2005	Q3 2005
4.	Avalon Run East II *Lawrenceville, NJ*	312	49.3	Q2 2003	Q2 2004	Q1 2005	Q3 2005
5.	Avalon at Crane Brook *Danvers & Peabody, MA*	387	56.2	Q3 2003	Q2 2004	Q2 2005	Q4 2005
6.	Avalon Milford I *Milford, CT*	246	32.5	Q3 2003	Q2 2004	Q1 2005	Q3 2005
7.	Avalon Chrystie Place I (6) *New York, NY*	361	149.9	Q4 2003	Q3 2005	Q4 2005	Q2 2006
8.	Avalon at The Pinehills I *Plymouth, MA*	101	19.9	Q4 2003	Q3 2004	Q1 2005	Q3 2005
9.	Avalon Pines I *Coram, NY*	298	48.7	Q4 2003	Q1 2005	Q3 2005	Q1 2006
10.	Avalon Orange *Orange, CT*	168	22.4	Q1 2004	Q2 2005	Q3 2005	Q1 2006
11.	Avalon Danbury *Danbury, CT*	234	35.6	Q1 2004	Q2 2005	Q4 2005	Q2 2006
12.	Avalon Del Rey (7) *Los Angeles, CA*	309	70.0	Q2 2004	Q2 2005	Q4 2005	Q2 2006
13.	Avalon at Juanita Village (8) *Kirkland, WA*	211	45.5	Q2 2004	Q3 2005	Q4 2005	Q2 2006
14.	Avalon Camarillo *Camarillo, CA*	249	42.7	Q2 2004	Q3 2005	Q1 2006	Q3 2006
	Total	4,149	$790.1				

(1) Total capitalized cost includes all capitalized costs projected to be or actually incurred to develop the respective Development Community, determined in accordance with GAAP, including land acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees. Total capitalized cost for communities identified as having joint venture ownership, either during construction or upon construction completion, represents the total projected joint venture contribution amount.

(2) Future initial occupancy dates are estimates.

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

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

(5) This is a two-phase community for which construction of the second phase commenced in the second quarter of 2003.

(6) This community is being financed under a joint venture structure with third-party financing, in which the community is owned by a limited liability company managed by one of our wholly-owned subsidiaries. The total capitalized 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 community facility. Our portion of the total capitalized cost of this joint venture is projected to be $30.0 million including community-based tax-exempt debt.

(7) The community is currently owned by one of our wholly-owned subsidiaries, will be financed, in part or in whole, by a construction loan, and is subject to a joint venture agreement that allows for a joint venture partner to be admitted upon construction completion.

(8) The community is being developed by one of our wholly-owned, taxable REIT subsidiaries, and is subject to a venture agreement that provides for the transfer of 100% of the ownership interests to the joint venture upon its completion.

Redevelopment Communities

As of July 30, 2004, we had one community under redevelopment. We expect the total capitalized cost to complete this community, including the cost of acquisition, capital expenditures subsequent to acquisition and redevelopment, to be approximately $160,000,000, of which approximately $26,100,000 is the additional capital invested or expected to be invested during redevelopment and $133,900,000 was incurred prior 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 schedule 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 report.

The following presents a summary of this Redevelopment Community:

	Number of apartment homes	Total cost ($ millions)		Reconstruction start	Estimated Reconstruction completion	Estimated restabilized operations (2)
		Pre-redevelopment cost	Total capitalized cost (1)			
1. Avalon at Prudential Center *Boston, MA*	781	$ 133.9	$ 160.0	Q4 2000	Q2 2006	Q4 2006

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

Development Rights

As of July 30, 2004, we are considering the development of 40 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 eleven 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 10,728 apartment homes to our portfolio. Substantially all of these apartment homes will offer features like those offered by the communities we currently own. At June 30, 2004, there were cumulative capitalized costs (including legal fees, design fees and related overhead costs, but excluding land costs) of $33,973,000 relating to Development Rights. In addition, land costs related to the pursuit of Development Rights (consisting of original land and additional carrying costs) of $102,418,000 are reflected as land held for development on the accompanying Condensed Consolidated Balance Sheets as of June 30, 2004.

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. Pre-development costs incurred in the pursuit of Development Rights for which future development is not yet considered probable are expensed as incurred. In addition, if the status of a Development Right changes, deeming future development no longer probable, any capitalized pre-development costs are written-off with a charge to expense.

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 capitalized cost assumed in the financial projections in the following table.

The following presents a summary of the 40 Development Rights we are currently pursuing:

	Location		Estimated number of homes	Total capitalized cost ($ millions) (1)
1.	Lyndhurst, NJ	(2)	347	$ 76
2.	Newton, MA		236	60
3.	Bedford, MA	(2)	139	21
4.	San Francisco, CA		313	113
5.	Los Angeles, CA	(2)	123	36
6.	Glen Cove, NY	(2)	111	31
7.	Long Island City, NY Phase II and III		613	162
8.	New Rochelle, NY Phase II and III		588	144
9.	Hingham, MA		236	44
10.	Quincy, MA	(2)	148	24
11.	Plymouth, MA Phase II		69	13
12.	Rockville, MD Phase II		196	28
13.	Bellevue, WA		368	71
14.	Norwalk, CT		312	63
15.	New York, NY Phase II and III	(2)	308	134
16.	Shrewsbury, MA		300	44
17.	Danvers, MA		428	80
18.	Stratford, CT		146	23
19.	Wilton, CT		100	24
20.	Coram, NY Phase II	(2)	152	26
21.	Dublin, CA Phase I		304	72
22.	Encino, CA		137	46
23.	Greenburgh, NY Phase II		766	120
24.	Sharon, MA		190	31
25.	West Haven, CT		170	23
26.	Lexington, MA		387	76
27.	Andover, MA		115	21
28.	Cohasset, MA		200	38
29.	Dublin, CA Phase II		200	47
30.	Dublin, CA Phase III		205	49
31.	Yaphank, NY		270	41
32.	Seattle, WA	(2)	194	50
33.	Oyster Bay, NY		273	69
34.	College Park, MD		320	44
35.	Irvine, CA		290	63
36.	Camarillo, CA		376	55
37.	Gaithersburg, MD		254	41
38.	Milford, CT	(2)	284	41
39.	Rockville, MD	(2) (3)	240	46
40.	Wheaton, MD	(2) (3)	320	56
	Total		10,728	$ 2,246

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

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

(3) Represents improved land encumbered with debt. The improved land consists of occupied office buildings. NOI from incidental operations from the current improvements will be recorded as a reduction in cost basis as described in the Notes to the Condensed Consolidated Financial Statements included elsewhere in this report.

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 competition and 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 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 those changes with certainty. Construction costs have been increasing, particularly for materials, such as steel, concrete and lumber, and, for some of our Development Communities and Development Rights, the total construction costs may be higher than the original budget. We do not expect that these price increases will materially affect our current Development Communities. However, these increases may materially affect Development Rights where construction has not yet begun. Total capitalized 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.

Insurance and Risk of Uninsured Losses

We carry commercial general liability insurance and property insurance with respect to all of our communities. These policies, and other insurance policies we carry, have policy specifications, insured limits and deductibles that we consider commercially reasonable. There are, however, certain types of losses (such as losses arising from acts of war) that are not insured, in full or in part, because they are either uninsurable or the cost of insurance makes it, in management's view, economically impractical. 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 financial condition and results of operations.

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 the Hayward fault. We cannot assure you that an earthquake would not cause damage or losses greater than insured levels. In June 2003, 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 $75,000,000 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 policy aggregate of $3,000,000, 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, 2004 and the insurance coverage provided for in these renewal policies did not materially change from the preceding year. Including the costs we estimate that we may incur as a result of deductibles, we expect the cost related to these insurance categories for the policy period from August 1, 2004 to July 31, 2005 to remain flat as compared to the prior period.

Our property insurance policy was scheduled to renew on February 1, 2005; however, in an effort to capitalize on declining insurance rates we elected to cancel the prior policy and rewrite the policy effective June 1, 2004 with a new expiration date of December 1, 2005. Based on this renewal, we have seen a decline in insurance premiums for property coverage, which combined with the cost we may incur as a result of deductibles, will result in declining overall insurance costs as compared to prior periods.

Just as with office buildings, transportation systems and government buildings, there have been 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. Additionally, we have purchased insurance for certain terrorist acts, not covered under TRIA, such as domestic-based terrorism. This insurance, often referred to as "non-certified" terrorism insurance, is subject to deductibles, limits and exclusions. Our general liability policy provides TRIA coverage (subject to deductibles and insured limits) for liability to third parties that result from terrorist acts at our communities.

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 present. 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. We cannot assure that we will have coverage under our existing policies for property damage or liability to third parties arising as a result of exposure to mold or a claim of exposure to mold at one of our communities.

In March 2004, we renewed our D&O insurance. In the past year, we have noted an increase in competition from new carriers entering the market and expanded capital capacity of existing carriers, resulting in a partial reversal of the significant premium increases experienced in recent years. Our premium for this insurance decreased as compared to the prior coverage period at renewal.

Inflation and Deflation

Substantially all of our apartment leases are for a term of one year or less. In an inflationary environment, this may allow us to realize increased rents upon renewal of existing leases or the beginning of new leases. Short-term leases generally minimize our risk from the adverse effects of inflation, although these leases generally permit residents to leave at the end of the lease term and therefore expose us to the effect of a decline in market rents. In a deflationary rent environment, we may be exposed to declining rents more quickly under these shorter-term leases.

Forward-Looking Statements

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

- our potential development, redevelopment, acquisition or disposition of communities;
- the timing and cost of completion of apartment communities under construction, reconstruction, development or redevelopment;
- the timing of lease-up, occupancy and stabilization of apartment communities;
- the pursuit of land on which we are considering future development;
- the anticipated operating performance of our communities;
- cost, yield and earnings estimates;
- our declaration or payment of distributions;
- our policies regarding investments, indebtedness, acquisitions, dispositions, financings and other matters;
- our qualification as a REIT under the Internal Revenue Code;
- the real estate markets in Northern and Southern California and markets in selected states in the Mid-Atlantic, Northeast, Midwest and Pacific Northwest regions of the United States and in general;
- the availability of debt and equity financing;
- interest rates;
- general economic conditions; and
- trends affecting our financial condition or results of operations.

We cannot assure the future results or outcome of the matters described in these statements; rather, these statements merely reflect our current expectations of the approximate outcomes of the matters discussed. You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to differ materially from the anticipated future results, performance or achievements expressed or implied by these forward-looking statements. 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 a decrease in our expected rental revenues;
- occupancy rates and market rents may be adversely affected by competition and local economic and market conditions which are beyond our control;
- financing may not be available on favorable terms or at all, and our cash flow from operations and access to cost effective capital may be insufficient for the development of our pipeline which could limit our pursuit of opportunities;
- our cash 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; and
- we may be unsuccessful in managing changes in our portfolio composition.

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.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes to our exposures to market risk since December 31, 2003.

Item 4. Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

The Company carried out an evaluation under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of June 30, 2004. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms. We continue to review and document our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.

(b) Changes in internal controls over financial reporting.

None.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

As reported most recently in our Form 10-Q for the quarter ended March 31, 2004, we are currently involved in litigation with York Hunter Construction, Inc. and National Union Fire Insurance Company. A non-jury trial ended in April 2004 and on May 20, 2004, the court issued a ruling, finding that (i) York Hunter breached the Construction Management Agreement between it and the Company in failing to complete the project and abandoning the construction site and is therefore liable to the Company for consequential damages, and (ii) National Union, having failed to exercise its various rights to perform and complete, is liable to the Company for consequential damages. The court requested that each party prepare proposed findings of fact and conclusions of law regarding damages. Such pleading was filed on behalf of the Company on July 16, 2004. There can be no assurance as to whether the court's ruling will be appealed by York Hunter or National Union, and the Company at this time can give no assurances as to the amount of damages it may be awarded by the court.

Also as reported in our Form 10-Q for the quarter ended March 31, 2004, on June 6, 2003, a purported California class action lawsuit, *Julie E. Ko v. AvalonBay Communities, Inc. and Does 1 through 100*, was filed against the Company in California's Los Angeles County Superior Court. The suit purports to be brought on behalf of all of the Company's former California residents who, during the four-year period prior to the filing of the suit, paid a security deposit to the Company for the rental of residential property in California and had a portion of the deposit withheld by the Company in excess of the damages actually sustained by the Company. The plaintiff seeks compensatory and statutory damages in unspecified amounts as well as injunctive relief, restitution, and an award of attorneys' fees, expenses and costs of suit. The complaint seeking class certification was

amended in March 2004 and the Company responded to the amended complaint on May 3, 2004. Due to the uncertainty of many critical factual and legal issues, including the viability of the case as a class action, it is not possible to determine or predict the outcome.

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

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities

During the three months ended June 30, 2004, AvalonBay issued 762 shares of common stock in exchange for 762 units of limited partnership held by certain limited partners of Bay Countrybrook, L.P. The shares were issued in reliance on an exemption from registration under Section 4(2) of the Securities Act of 1933. AvalonBay is relying on the exemption based on factual representations received from the limited partners who received these shares.

Item 3. Defaults Upon Senior Securities

None.

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

The Company held its 2004 Annual Meeting of Stockholders on May 5, 2004. Stockholders were asked to vote on the re-election of the following persons as directors of the Company: Bryce Blair, Bruce A. Choate, John J. Healy, Jr., Gilbert M. Meyer, Charles D. Peebler, Jr., Lance R. Primis, Allan D. Schuster and Amy P. Williams. Each individual standing for election as a director of the Company had been elected in 2003 to serve until the 2004 Annual Meeting of Stockholders and until their respective successors were duly elected and qualified. The results of the voting were as follows:

61,308,626 votes were cast for and 746,796 votes were withheld from the election of Mr. Blair.

60,032,861 votes were cast for and 2,022,561 votes were withheld from the election of Mr. Choate.

61,759,821 votes were cast for and 295,601 votes were withheld from the election of Mr. Healy.

61,743,543 votes were cast for and 311,879 votes were withheld from the election of Mr. Meyer.

25,422,314 votes were cast for and 36,633,108 votes were withheld from the election of Mr. Peebler.

61,590,261 votes were cast for and 465,161 votes were withheld from the election of Mr. Primis.

60,857,941 votes were cast for and 1,197,481 votes were withheld from the election of Mr. Schuster.

60,854,216 votes were cast for and 1,201,206 votes were withheld from the election of Ms. Williams.

Election as a director requires the affirmative vote of a majority of outstanding shares as of the close of business on the record date established for the Annual Meeting. In the case of the 2004 Annual Meeting of Stockholders, a majority of outstanding shares as of the close of business on the record date was 35,670,385. Accordingly, the following individuals were re-elected to serve as directors of the Company until the 2005 Annual

Meeting of Stockholders and until their respective successors are duly elected and qualify: Bryce Blair, Bruce A. Choate, John J. Healy, Jr., Gilbert M. Meyer, Lance R. Primis, Allan D. Schuster and Amy P. Williams. In addition, because there were only eight nominees for eight board positions, Mr. Peebler ran unopposed and he continues to serve as a director.

Stockholders were also asked to vote on a stockholder proposal relating to shareholder rights plans. The following stockholder proposal was proposed and defeated at the meeting:

> "RESOLVED: Shareholders request that our Directors increase shareholder voting rights and submit the adoption, maintenance or extension of any poison pill to a shareholder vote as a separate ballot item as soon as may be practical. Also once this proposal is adopted, any dilution or removal of this proposal is requested to be submitted to a shareholder vote at the earliest possible shareholder election. Directors have the flexibility of discretion accordingly in scheduling the earliest shareholder vote and in responding to shareholder votes."

Approval of the stockholder proposal required the affirmative vote of a majority of the votes cast on the proposal. Of the votes cast on this proposal, 46,118,234 were cast against, 10,844,855 were cast for, and 113,960 abstained. Accordingly, the stockholder proposal failed.

Item 5. Other Information

None.

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

Exhibit No.		Description
3(i).1	—	Articles of Amendment and Restatement of Articles of Incorporation of AvalonBay Communities (the "Company"), dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-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 Form 8-K of the Company filed on 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(ii).1	—	Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on February 13, 2003. (Incorporated by reference to Exhibit 3(ii) to Form 10-K of the Company filed March 11, 2003.)
4.1	—	Indenture of Avalon Properties, Inc. (hereinafter referred to as "Avalon Properties") dated as of September 18, 1995. (Incorporated by reference to Form 8-K of Avalon Properties dated September 18, 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. (Incorporated by reference to Exhibit 4.3 to Form 10-K of the Company filed March 11, 2003.)

4.4	—	Third Supplemental Indenture of Avalon Properties dated as of January 22, 1998. (Incorporated by reference to Exhibit 4.4 to Form 10-K of the Company filed March 11, 2003.)
4.5	—	Indenture, dated as of January 16, 1998, between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.5 to Form 10-K of the Company filed on March 11, 2003.)
4.6	—	First Supplemental Indenture, dated as of January 20, 1998, between the Company and the Trustee. (Incorporated by reference to Exhibit 4.6 to Form 10-K of the Company filed on March 11, 2003.)
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 Form 8-K of the Company filed on 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 on July 11, 2000.)
4.9	—	Dividend Reinvestment and Stock Purchase Plan of the Company filed on 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	—	Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on March 26, 2004. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(3) of the Securities Act of 1933 on March 26, 2004).
10.1	—	Amended and Restated Revolving Loan Agreement, dated as of May 24, 2004, among AvalonBay Communities, Inc., as Borrower, JPMorgan Chase Bank and Wachovia Bank, N.A., each as a Bank and Syndication Agent, Fleet National Bank, as a Bank, Swing Lender and Issuing Bank, Morgan Stanley Bank, Wells Fargo Bank, N.A., and Deutsche Bank Trust Company Americas, 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. (Filed herewith.)
12.1	—	Statements re: Computation of Ratios. (Filed herewith.)
31.1	—	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer.) (Filed herewith.)
31.2	—	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer.) (Filed herewith.)
32	—	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer and Chief Financial Officer). (Furnished herewith.)

(b) Reports on Form 8-K

On April 21, 2004, the Company filed a Report on Form 8-K to report, under Item 5 of such form, the commencement and pricing of a public offering of an aggregate of $150,000,000 principal amount of its 5.375% Medium Term Notes Due 2014.

SIGNATURES

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

AVALONBAY COMMUNITIES, INC.

Date: August 6, 2004

/s/ Bryce Blair
Bryce Blair
Chief Executive Officer and President

Date: August 6, 2004

/s/ Thomas J. Sargeant
Thomas J. Sargeant
Chief Financial Officer

Exhibit 10.1

AMENDED AND RESTATED
REVOLVING LOAN AGREEMENT

dated as of May 24, 2004

among

AVALONBAY COMMUNITIES, INC.,
as Borrower,

JPMORGAN CHASE BANK and
WACHOVIA BANK, NATIONAL ASSOCIATION,
as a Bank and Syndication Agent,

FLEET NATIONAL BANK,
as a Bank, Swing Lender and Issuing Bank

MORGAN STANLEY BANK,
WELLS FARGO BANK, NATIONAL ASSOCIATION
and DEUTSCHE BANK TRUST COMPANY AMERICAS,
as a Bank and Documentation Agent,

THE OTHER BANKS SIGNATORY HERETO,
each as a Bank,

J.P. MORGAN SECURITIES INC.,
as Sole Bookrunner and Lead Arranger,

and

FLEET NATIONAL BANK,
as Administrative Agent

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AMENDED AND RESTATED REVOLVING LOAN AGREEMENT dated as of May 24, 2004 (this "***Agreement***") among AVALONBAY COMMUNITIES, INC., a corporation organized and existing under the laws of the State of Maryland ("***Borrower***"); JPMORGAN CHASE BANK ("***JPMC***"), FLEET NATIONAL BANK or any successor thereto (in its individual capacity and not as Administrative Agent, "***Fleet***") and the other lenders signatory hereto, as Banks; MORGAN STANLEY BANK, WELLS FARGO BANK, NATIONAL ASSOCIATION and DEUTSCHE BANK TRUST COMPANY AMERICAS, as Documentation Agent; and FLEET NATIONAL BANK, as administrative agent for the Banks (in such capacity, together with its successors in such capacity, "***Administrative Agent***"; JPMC, Fleet, the other lenders signatory hereto, such other lenders who from time to time become Banks pursuant to Section 2.19, 3.07 or 12.05 and, if applicable, any of the foregoing lenders' Designated Lender, each a "***Bank***" and collectively, the "***Banks***").

Borrower, JPMC, Fleet, certain of the Banks and the Administrative Agent entered into that certain Revolving Loan Agreement, dated as of May 24, 2001 (the "***2001 Credit Agreement***") and now desire to amend and restate the 2001 Credit Agreement in its entirety in accordance with the terms and provisions contained herein. Accordingly, in consideration of the premises and the mutual agreements, covenants and conditions hereinafter set forth, Borrower, Administrative Agent and each of the Banks agree as follows:

ARTICLE I

DEFINITIONS; ETC.

Section 1.01 Definitions. As used in this Agreement the following terms have the following meanings:

"***Absolute Bid Rate***" has the meaning specified in Section 2.02(c)(2).

"***Absolute Bid Rate Loan***" means a Bid Rate Loan bearing interest at the Absolute Bid Rate.

"***Absolute Rate Auction***" means a solicitation of Bid Rate Quotes setting forth Absolute Bid Rates pursuant to Section 2.02.

"***Acceptance Letter***" has the meaning specified in Section 2.19.

"***Accordion Amount***" means, at any time, $150,000,000.

"***Acquisition***" means the acquisition by Borrower, directly or indirectly, of an interest in multi-family real estate.

"***Additional Costs***" has the meaning specified in Section 3.01.

"***Administrative Agent***" has the meaning specified in the preamble.

"***Administrative Agent's Office***" means Administrative Agent's address located at 777 Main Street, Hartford, Connecticut 06115, or such other address in the United States as Administrative Agent may designate by written notice to Borrower and the Banks.

"***Affiliate***" means, with respect to any Person (the "first Person"), any other Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the first Person; or (2) 10% or more of the beneficial interest in which is directly or indirectly owned or held by the first Person. The term "control" means the possession, directly or indirectly, of the power, alone, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"***Agreement***" has the meaning specified in the preamble.

"***Applicable Lending Office***" means, for each Bank and for its LIBOR Loan, Bid Rate Loan(s) or Base Rate Loan, as applicable, the lending office of such Bank (or of an Affiliate of such Bank) designated as such on its signature page hereof or in the applicable Assignment and Acceptance, or such other office of such Bank (or of an Affiliate of such Bank) as such Bank may from time to time specify to Administrative Agent and Borrower as the office by which its LIBOR Loan, Bid Rate Loan(s) or Base Rate Loan (and, in the case of the Swing Lender, its Swing Loan), as applicable, is to be made and maintained.

"***Applicable Margin***" means, with respect to Base Rate Loans and LIBOR Loans (and for purposes of determining the Banks' L/C Fee Rate under Section 2.16(f)), the respective rates per annum determined at any time, based on the range into which Borrower's Credit Rating then falls, in accordance with the following table (any change in Borrower's Credit Rating causing it to move to a different range on the table shall effect an immediate change in the Applicable Margin):

Range of Borrower's Credit Rating (S&P/Moody's or other agency equivalent)	Applicable Margin for Base Rate Loans (% per annum)	Applicable Margin for LIBOR Loans (% per annum)
Below BBB- or unrated/ Below Baa3 or unrated	0.25	1.15
BBB-/Baa3	0.00	0.95
BBB/Baa2	0.00	0.75
BBB+/Baa1	0.00	0.55
A- or higher/A3 or higher	0.00	0.50

"***Assignee***" has the meaning specified in Section 12.05.

"***Assignment and Acceptance***" means an Assignment and Acceptance, substantially in the form of **EXHIBIT E**, pursuant to which a Bank assigns and an Assignee assumes rights and obligations in accordance with Section 12.05.

"***Authorization Letter***" means a letter agreement executed by Borrower in the form of **EXHIBIT A**.

"***Available Total Loan Commitment***" has the meaning specified in Section 2.01(b).

"***Bank***" and "***Banks***" have the respective meanings specified in the preamble; provided, however, that the term "Bank" shall exclude each Designated Lender when used in reference to a Ratable Loan, the Loan Commitments or terms relating to the Ratable Loans and the Loan Commitments.

"***Bank Parties***" means Administrative Agent, Issuing Bank, Swing Lender and the Banks.

"***Banking Day***" means (1) any day on which commercial banks are not authorized or required to close in New York City and (2) whenever such day relates to a LIBOR Loan, a LIBOR Bid Rate Loan, an Interest Period with respect to a LIBOR Loan or a LIBOR Bid Rate Loan, or notice with respect to a LIBOR Loan or a LIBOR Bid Rate Loan or a LIBOR Auction, a day on which dealings in Dollar deposits are also carried out in the London interbank market and banks are open for business in London.

"***Base Rate***" means, for any day, the higher of (1) the Federal Funds Rate for such day plus .50%, or (2) the Prime Rate for such day.

"***Base Rate Loan***" means all or any portion (as the context requires) of a Bank's Ratable Loan which shall accrue interest at a rate determined in relation to the Base Rate.

"***Bid Borrowing Limit***" means the lesser of $250,000,000 or fifty percent (50%) of the Total Loan Commitment.

"***Bid Rate Loan***" has the meaning specified in Section 2.01(c).

"***Bid Rate Loan Note***" has the meaning specified in Section 2.08.

"***Bid Rate Quote***" means an offer by a Bank to make a Bid Rate Loan in accordance with Section 2.02.

"***Bid Rate Quote Request***" has the meaning specified in Section 2.02(a).

"***Borrower***" has the meaning specified in the preamble.

"***Borrower's Accountants***" means Ernst & Young, or such other accounting firm(s) selected by Borrower and reasonably acceptable to the Super-Majority Banks.

"***Borrower's Credit Rating***" means the rating assigned from time to time to Borrower's unsecured and unsubordinated long-term indebtedness by, respectively, S&P, Moody's and/or one or more other nationally-recognized rating agencies reasonably approved by Administrative Agent. If such a rating is assigned by only one (1) such rating agency, it must be either S&P or Moody's. If such a rating is assigned by two (2) such rating agencies, at least one (1) must be S&P or Moody's, and "Borrower's Credit Rating" shall be the lower of said ratings, except if the aforesaid ratings are greater than one (1) rating level apart, in which case "Borrower's Credit Rating" shall be the average of said ratings. If such a rating is obtained from more than two (2) such rating agencies, "Borrower's Credit Rating" shall be the higher of the lowest two (2) ratings, if at least one (1) of such two (2) is either S&P or Moody's; if neither of the two (2) lowest ratings is from S&P or Moody's, then "Borrower's Credit Rating" shall be the lower of the ratings from S&P and

Moody's. Unless such indebtedness of Borrower is rated by either S&P or Moody's, "Borrower's Credit Rating" shall be considered unrated for purposes of this Agreement.

"***Borrower's Principals***" means the officers and directors of Borrower at any applicable time.

"***Borrower's Share of UJV Combined Outstanding Indebtedness***" means the sum of the indebtedness of each of the UJVs contributing to UJV Combined Outstanding Indebtedness multiplied by Borrower's respective beneficial fractional interests in each such UJV.

"***Capitalization Value***" means, as of the end of any calendar quarter, the sum of (1) Combined EBITDA (less all leasing commissions and management and development fees, net of any expenses applicable thereto, contributing to Combined EBITDA) for such quarter annualized (i.e., multiplied by four (4)), capitalized at a rate of 8.0% per annum (i.e., divided by 8.0%), (2) such leasing commissions and management and development fees for such quarter, annualized, (i.e., multiplied by four (4)), capitalized at a rate of 25% per annum (i.e., divided by 25%), (3) Cash and Cash Equivalents of Borrower and its Consolidated Businesses, as of the end of such quarter, as reflected in Borrower's Consolidated Financial Statements and (4) the lesser of (a) the aggregate book value (on a cost basis) of the properties of Borrower and its Consolidated Businesses under development plus Borrower's beneficial interest in the book value (on a cost basis) of the properties of the UJVs under development or (b) 20% of the sum of the amounts determined pursuant to clauses (1), (2) and (3) of this definition.

"***Capital Lease***" means any lease which has been or should be capitalized on the books of the lessee in accordance with GAAP.

"***Cash and Cash Equivalents***" means (1) cash, (2) direct obligations of the United States Government, including, without limitation, treasury bills, notes and bonds, (3) interest-bearing or discounted obligations of federal agencies and government-sponsored entities or pools of such instruments offered by Approved Banks and dealers, including, without limitation, Federal Home Loan Mortgage Corporation participation sale certificates, Government National Mortgage Association modified pass through certificates, Federal National Mortgage Association bonds and notes, and Federal Farm Credit System securities, (4) time deposits, domestic and eurodollar certificates of deposit, bankers' acceptances, commercial paper rated at least A-1 by S&P and P-1 by Moody's and/or guaranteed by an Aa rating by Moody's, an AA rating by S&P or better rated credit, floating rate notes, other money market instruments and letters of credit each issued by Approved Banks, (5) obligations of domestic corporations, including, without limitation, commercial paper, bonds, debentures and loan participations, each of which is rated at least AA by S&P and/or Aa2 by Moody's and/or guaranteed by an Aa rating by Moody's, an AA rating by S&P or better rated credit, (6) obligations issued by states and local governments or their agencies, rated at least MIG-1 by Moody's and /or SP-1 by S&P and /or guaranteed by an irrevocable letter of credit of an Approved Bank, (7) repurchase agreements with major banks and primary government security dealers fully secured by the United States Government or agency collateral equal to or exceeding the principal amount on a daily basis and held in safekeeping and (8) real estate loan pool participations, guaranteed by an AA rating given by S&P or an Aa2 rating given by Moody's or better rated credit. For purposes of this definition, "Approved Bank" means a financial institution which has (x) (A) a minimum net worth of $500,000,000 and/or (B) total assets of at least $10,000,000,000 and (y) a minimum long-term debt rating of A+ by S&P or A1 by Moody's.

"***Closing Date***" means the date this Agreement has been executed by all parties.

"***Code***" means the Internal Revenue Code of 1986, including the rules and regulations promulgated thereunder.

"***Combined Debt Service***" means, for any period of time, (1) Borrower's share of total debt service (including principal) paid or payable by Borrower and its Consolidated Businesses during such period (other than debt service on construction loans until completion of the relevant construction and other capitalized interest) plus a deemed annual capital expense charge of $150 per apartment unit owned by Borrower or its Consolidated Businesses plus (2) Borrower's beneficial interest in (a) total debt service (including principal) paid or payable by the UJVs during such period (other than debt service on construction loans until completion of the relevant construction and other capitalized interest) plus (b) a deemed annual capital expense charge of $150 per apartment unit owned by the UJVs plus (3) preferred dividends and distributions paid or payable by Borrower and its Consolidated Businesses during such period.

"***Combined EBITDA***" means, for any period of time, the sum, without duplication, of (1) Borrower's share of revenues less operating expenses, general and administrative expenses and property taxes before Interest Expense, income taxes, gains or losses on the sale of real estate and/or marketable securities, depreciation and amortization and extraordinary items for Borrower and its Consolidated Businesses, and adjusted, if material, for non-cash revenue attributable to straight lining of rents and (2) Borrower's beneficial interest in revenues less operating expenses, general and administrative expenses and property taxes before Interest Expense, income taxes, gains or losses on the sale of real estate and/or marketable securities, depreciation and amortization and extraordinary items (after eliminating appropriate intercompany amounts) applicable to each of the UJVs, and adjusted, if material, for non-cash revenue attributable to straight lining of rents, in all cases as reflected in Borrower's Consolidated Financial Statements.

"***Consolidated Business***" means, individually, each Affiliate of Borrower who is or should be included in Borrower's Consolidated Financial Statements in accordance with GAAP.

"***Consolidated Financial Statements***" means, with respect to any Person, the consolidated balance sheet and related consolidated statement of operations, accumulated deficiency in assets and cash flows, and footnotes thereto, of such Person, prepared in accordance with GAAP.

"***Consolidated Outstanding Indebtedness***" means, as of any time, Borrower's share of all indebtedness and liability for borrowed money, secured or unsecured, of Borrower and its Consolidated Businesses, including mortgage and other notes payable but excluding any indebtedness which is margin indebtedness on cash and cash equivalent securities, all as reflected in Borrower's Consolidated Financial Statements.

"***Consolidated Tangible Net Worth***" means, at any date, Borrower's share of the consolidated stockholders' equity of Borrower and its Consolidated Businesses less their consolidated Intangible Assets, all determined as of such date. For purposes of this definition, "***Intangible Assets***" means with respect to any such intangible assets, the amount (to the extent reflected in determining such consolidated stockholders' equity) of (1) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of assets of a going concern business made within twelve (12)

months after the acquisition of such business) subsequent to September 30, 1994 in the book value of any asset (other than real property assets) owned by Borrower or a Consolidated Business and (2) all debt discount and expense, deferred charges, goodwill, patents, trademarks, service marks, trade names, anticipated future benefit of tax loss carry-forwards, copyrights, organization or developmental expenses and other intangible assets (in each case, not adjusted for depreciation).

"***Construction-in-Process***" means a property on which construction of improvements (excluding non-revenue generating capital expenditures and excluding costs incurred prior to construction, all as set forth in related quarterly financial statements or supplemental financial information attached thereto) has commenced and is proceeding to completion in the ordinary course but has not yet been completed (as such completion shall be evidenced by a temporary or permanent certificate of occupancy permitting use of such property by the general public). Any such property shall be treated as Construction-in-Process until the earlier of (i) 12 months from the date of completion (as evidenced by a certificate of occupancy permitting use of such property by the general public) or (ii) such property achieves the occupancy requirements set forth in clause (2) of the definition of Unencumbered Wholly-Owned Assets.

"***Contingent Obligations***" means, without duplication, Borrower's share of (1) any contingent obligations of Borrower or its Consolidated Businesses required to be shown on the balance sheet of Borrower and its Consolidated Businesses in accordance with GAAP and (2) any obligation required to be disclosed in the footnotes to Borrower's Consolidated Financial Statements, guaranteeing partially or in whole any non-Recourse Debt, lease, dividend or other obligation, exclusive of contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets) and guarantees of non-monetary obligations (other than guarantees of completion) which have not yet been called on or quantified, of Borrower or any of its Consolidated Businesses or of any other Person. The amount of any Contingent Obligation described in clause (2) shall be deemed to be (a) with respect to a guaranty of interest or interest and principal, or operating income guaranty, the net present value (using the Base Rate as a discount rate) of the sum of all payments required to be made thereunder (which in the case of an operating income guaranty shall be deemed to be equal to the debt service for the note secured thereby), through (i) in the case of an interest or interest and principal guaranty, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder) or (ii) in the case of an operating income guaranty, the date through which such guaranty will remain in effect and (b) with respect to all guarantees not covered by the preceding clause (a), an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming Borrower and/or one or more of its Consolidated Businesses is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent Borrower's Consolidated Financial Statements required to be delivered pursuant to this Agreement. Notwithstanding anything contained herein to the contrary, guarantees of completion shall not be deemed to be Contingent Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to any such claim. Subject to the preceding sentence, (1) in the case of a joint and several guaranty given by Borrower or one of its Consolidated Businesses and another Person (but only to the extent such guaranty is recourse, directly or indirectly to Borrower), the amount of the guaranty shall be deemed to be 100% thereof unless and only to the extent that such other Person has delivered Cash

and Cash Equivalents to secure all or any part of such Person's guaranteed obligations and (2) in the case of joint and several guarantees given by a Person in which Borrower owns an interest (which guarantees are non-recourse to Borrower), to the extent the guarantees, in the aggregate, exceed 10% of Capitalization Value, the amount in excess of 10% shall be deemed to be a Contingent Obligation of Borrower. Notwithstanding anything contained herein to the contrary, "***Contingent Obligations***" shall be deemed not to include guarantees of unadvanced funds under any indebtedness of Borrower or its Consolidated Businesses or of construction loans to the extent the same have not been drawn. All matters constituting "Contingent Obligations" shall be calculated without duplication.

"***Continue***", "***Continuation***" and "***Continued***" refer to the continuation pursuant to Section 2.12 of a LIBOR Loan as a LIBOR Loan from one Interest Period to the next Interest Period.

"***Convert***", "***Conversion***" and "***Converted***" refer to a conversion pursuant to Section 2.12 of a Base Rate Loan into a LIBOR Loan or a LIBOR Loan into a Base Rate Loan, each of which may be accompanied by the transfer by a Bank (at its sole discretion) of all or a portion of its Ratable Loan from one Applicable Lending Office to another.

"***Debt***" means (1) indebtedness or liability for borrowed money, or for the deferred purchase price of property or services (including trade obligations); (2) obligations as lessee under Capital Leases; (3) current liabilities in respect of unfunded vested benefits under any Plan; (4) obligations under letters of credit issued for the account of any Person; (5) all obligations arising under bankers' or trade acceptance facilities; (6) all guarantees, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase any of the items included in this definition, to provide funds for payment, to supply funds to invest in any Person, or otherwise to assure a creditor against loss; (7) all obligations secured by any Lien on property owned by the Person whose Debt is being measured, whether or not the obligations have been assumed; and (8) all obligations under any agreement providing for contingent participation or other hedging mechanisms with respect to interest payable on any of the items described above in this definition..

"***Declining Bank***" has the meaning specified in Section 2.19.

"***Default***" means any event which with the giving of notice or lapse of time, or both, would become an Event of Default.

"***Default Rate***" means a rate per annum equal to: (1) with respect to Base Rate Loans and Swing Loans, a variable rate 3% above the rate of interest then in effect thereon; and (2) with respect to LIBOR Loans and Bid Rate Loans, a fixed rate 3% above the rate(s) of interest in effect thereon (including the Applicable Margin or the LIBOR Bid Margin, as the case may be) at the time of Default until the end of the then current Interest Period therefor and, thereafter, a variable rate 3% above the rate of interest for a Base Rate Loan.

"***Designated Lender***" means a special purpose corporation that (i) shall have become a party to this Agreement pursuant to Section 12.16 and (ii) is not otherwise a Bank.

"***Designating Lender***" has the meaning specified in Section 12.16.

"***Designation Agreement***" means an agreement in substantially the form of **EXHIBIT F**, entered into by a Bank and a Designated Lender and accepted by Administrative Agent.

"***Disposition***" means a sale (whether by assignment, transfer or Capital Lease) of an asset.

"***Documentation Agent***" means, individually and collectively, Morgan Stanley Bank, Wells Fargo Bank, National Association and Deutsche Bank Trust Company Americas**.**

"***Dollars***" and the sign "$" mean lawful money of the United States of America.

"***Elect***" and "***Election***" refer to election, if any, by Borrower pursuant to Section 2.12 to have all or a portion of an advance of the Ratable Loans be outstanding as LIBOR Loans.

"***Environmental Discharge***" means any discharge or release of any Hazardous Materials in violation of any applicable Environmental Law.

"***Environmental Law***" means any applicable Law relating to pollution or the environment, including Laws relating to noise or to emissions, discharges, releases or threatened releases of Hazardous Materials into the work place, the community or the environment, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"***Environmental Notice***" means any written complaint, order, citation or notice from any Person (1) affecting or relating to Borrower's compliance with any Environmental Law in connection with any activity or operations at any time conducted by Borrower, (2) relating to (a) the existence of any Hazardous Materials contamination or Environmental Discharges or threatened Hazardous Materials contamination or Environmental Discharges at any of Borrower**'**s locations or facilities or (b) remediation of any Environmental Discharge or Hazardous Materials at any such location or facility or any part thereof; or (3) relating to any violation or alleged violation by Borrower of any relevant Environmental Law.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, including the rules and regulations promulgated thereunder.

"***ERISA Affiliate***" means any corporation which is a member of the same controlled group of corporations (within the meaning of Section 414(b) of the Code) as Borrower, or any trade or business which is under common control (within the meaning of Section 414(c) of the Code) with Borrower, or any organization which is required to be treated as a single employer with Borrower under Section 414(m) or 414(o) of the Code.

"***Event of Default***" has the meaning specified in Section 9.01.

"***Extension Option***" and "***Notice to Extend***" have the respective meanings specified in Section 2.18.

"***Facility Fee Rate***" means the rate per annum determined, at any time, based on Borrower's Credit Rating in accordance with the following table. Any change in Borrower's Credit Rating which

causes it to move into a different range on the table shall effect an immediate change in the Facility Fee Rate.

Borrower's Credit Rating (S&P/Moody's)	Facility Fee Rate (% per annum)
Below BBB- or unrated/Below Baa3 or unrated	0.25
BBB-/Baa3	0.20
BBB/Baa2	0.15
BBB+/Baa1	0.15
A- or higher/A3 or higher	0.15

"***Federal Funds Rate***" means, for any day, the rate per annum (expressed on a 360-day basis of calculation) equal to the weighted average of the rates on overnight federal funds transactions as published by the Federal Reserve Bank of New York for such day provided that (1) if such day is not a Banking Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Banking Day as so published on the next succeeding Banking Day; and (2) if no such rate is so published on such next succeeding Banking Day, the Federal Funds Rate for such day shall be the average of the rates quoted by three (3) Federal Funds brokers to Administrative Agent on such day on such transactions.

"***First Solicitation***" has the meaning specified in Section 2.19.

"***Fiscal Year***" means each period from January 1 to December 31.

"***Fleet***" has the meaning specified in the preamble.

"***Funds From Operations***" means "funds from operations" as defined in accordance with resolutions adopted by the Board of Governors of the National Association of Real Estate Investment Trusts as in effect from time to time.

"***GAAP***" means generally accepted accounting principles in the United States of America as in effect from time to time, applied on a basis consistent with those used in the preparation of the financial statements referred to in Section 5.13 (except for changes concurred in by Borrower's Accountants).

"***Good Faith Contest***" means the contest of an item if: (1) the item is diligently contested in good faith, and, if appropriate, by proceedings timely instituted; (2) reserves that are adequate based on reasonably foreseeable likely outcomes are established with respect to the contested item; (3) during the period of such contest, the enforcement of any contested item is effectively stayed, delayed or postponed; and (4) the failure to pay or comply with the contested item during the period of the contest is not likely to result in a Material Adverse Change.

"***Governmental Approvals***" means any authorization, consent, approval, license, permit, certification, or exemption of, registration or filing with or report or notice to, any Governmental Authority.

"***Governmental Authority***" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"***Hazardous Materials***" means any pollutant, effluents, emissions, contaminants, toxic or hazardous wastes or substances, as any of those terms are defined from time to time in or for the purposes of any relevant Environmental Law, including asbestos fibers and friable asbestos, polychlorinated biphenyls, and any petroleum or hydrocarbon-based products or derivatives.

"***Initial Advance***" means the first advance of proceeds of the Loans.

"***Interest Expense***" means, for any period of time, Borrower's share of the consolidated interest expense (without deduction of consolidated interest income, and excluding (x) interest expense on construction loans and (y) other capitalized interest expense in respect of either construction activity or construction loans, in any such case under clauses (x) or (y), only until completion of the relevant construction) of Borrower and its Consolidated Businesses, including, without limitation or duplication (or, to the extent not so included, with the addition of), (1) the portion of any rental obligation in respect of any Capital Lease obligation allocable to interest expense in accordance with GAAP; (2) the amortization of Debt discounts; (3) any expense, payments or fees (other than up-front fees) with respect to interest rate swap or similar agreements; and (4) the interest expense and items listed in clauses (1) through (3) above applicable to each of the UJVs multiplied by Borrower's respective beneficial interests in the UJVs, in all cases as reflected in Borrower's Consolidated Financial Statements.

"***Interest Period***" means, (1) with respect to any LIBOR Loan, the period commencing on the date the same is advanced, Converted from a Base Rate Loan or Continued, as the case may be, and ending, as Borrower may select pursuant to Section 2.05, on the numerically corresponding day in the first, second or third calendar month thereafter, provided that each such Interest Period which commences on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Day of the appropriate calendar month; (2) with respect to any LIBOR Bid Rate Loan, the period commencing on the date the same is advanced and ending, as Borrower may select pursuant to Section 2.02, on the numerically corresponding day in the first, second or third calendar month thereafter, provided that each such Interest Period which commences on the last Banking Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Banking Day of the appropriate calendar month; and (3) with respect to any Absolute Bid Rate Loan, the period commencing on the date the same is advanced and ending, as Borrower may select pursuant to Section 2.02, provided, however, that each such period shall not be less than fourteen (14) days nor more than ninety (90) days.

"***Invitation for Bid Rate Quotes***" has the meaning specified in Section 2.02 (b).

"***Issuing Bank***" means Fleet in its capacity as issuing bank of the Letters of Credit under the Letter of Credit facility described in Section 2.16, and its successors in such capacity.

"***JPMC***" has the meaning specified in the preamble.

"***Law***" means any federal, state or local statute, law, rule, regulation, ordinance, order, code, or rule of common law, now or hereafter in effect, and in each case as amended, and any judicial or administrative order, consent decree or judgment.

"***Letter of Credit***" has the meaning specified in Section 2.16(a).

"***LIBOR Auction***" means a solicitation of Bid Rate Quotes setting forth LIBOR Bid Margins pursuant to Section 2.02.

"***LIBOR Base Rate***" means, with respect to any Interest Period therefor, the rate per annum (rounded up, if necessary, to the nearest 1/100 of 1%) that appears on Dow Jones Page 3750 at approximately 11:00 a.m. (London time) on the date (the "***LIBOR Determination Date***") two (2) Banking Days prior to the first day of the applicable Interest Period, for the same period of time as the Interest Period; or, if such rate does not appear on Dow Jones Page 3750 as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date, the rate (rounded up, if necessary, to the nearest 1/100 of 1%) for deposits in Dollars for a period comparable to the applicable Interest Period that appears on the Reuters Screen LIBOR Page as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date. If such rate does not appear on either Dow Jones Page 3750 or on the Reuters Screen LIBOR Page as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date, the LIBOR Base Rate for the Interest Period will be determined on the basis of the offered rates for deposits in Dollars for the same period of time as such Interest Period that are offered by four (4) major banks in the London interbank market at approximately 11:00 a.m. (London time) on the LIBOR Determination Date. Administrative Agent will request that the principal London office of each of the four (4) major banks provide a quotation of its Dollar deposit offered rate. If at least two (2) such quotations are provided, the LIBOR Base Rate will be the arithmetic mean of the quotations. If fewer than two (2) quotations are provided as requested, the LIBOR Base Rate will be determined on the basis of the rates quoted for loans in Dollars to leading European banks for amounts comparable to such amount requested by Borrower for the same period of time as such Interest Period offered by major banks in New York City at approximately 11:00 a.m. (New York time) on the LIBOR Determination Date. In the event that Administrative Agent is unable to obtain any such quotation as provided above, it will be deemed that the LIBOR Base Rate cannot be determined. For purposes of the foregoing definition, "Dow Jones Page 3750" means the display designated as "Page 3750" on the Dow Jones Markets Service (or such other page as may replace Page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for Dollar deposits); and "Reuters Screen LIBOR Page" means the display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page on that service for the purpose of displaying interbank rates from London in Dollars).

"***LIBOR Bid Margin***" has the meaning specified in Section 2.02(c)(2).

"***LIBOR Bid Rate***" means the rate per annum equal to the sum of (1) the LIBOR Interest Rate for the LIBOR Bid Rate Loan and Interest Period in question and (2) the LIBOR Bid Margin.

"***LIBOR Bid Rate Loan***" means a Bid Rate Loan bearing interest at the LIBOR Bid Rate.

"***LIBOR Interest Rate***" means, for any LIBOR Loan or LIBOR Bid Rate Loan, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by Administrative Agent to be equal to the quotient of (1) the LIBOR Base Rate for such LIBOR Loan or LIBOR Bid Rate Loan, as the case may be, for the Interest Period therefor divided by (2) one minus the LIBOR Reserve Requirement for such LIBOR Loan or LIBOR Bid Rate Loan, as the case may be, for such Interest Period.

"***LIBOR Loan***" means all or any portion (as the context requires) of any Bank's Ratable Loan which shall accrue interest at rate(s) determined in relation to LIBOR Interest Rate(s).

"***LIBOR Reserve Requirement***" means, for any LIBOR Loan or LIBOR Bid Rate Loan, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period for such LIBOR Loan or LIBOR Bid Rate Loan under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding $1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the LIBOR Reserve Requirement shall also reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (1) any category of liabilities which includes deposits by reference to which the LIBOR Base Rate is to be determined as provided in the definition of "LIBOR Base Rate" in this Section 1.01 or (2) any category of extensions of credit or other assets which include loans the interest rate on which is determined on the basis of rates referred to in said definition of "LIBOR Base Rate".

"***Lien***" means any mortgage, deed of trust, pledge, negative pledge, security interest, hypothecation, assignment for collateral purposes, deposit arrangement, lien (statutory or other), or other security agreement or charge of any kind or nature whatsoever of any third party (excluding any right of setoff but including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Law of any jurisdiction to evidence any of the foregoing and carriers, warehousemen, mechanics and other similar inchoate liens that have not been insured against in a manner reasonably satisfactory to Administrative Agent).

"***Loan***" means, with respect to each Bank, collectively, its Ratable Loan and Bid Rate Loan(s), and, in the case of the Swing Lender, its Swing Loan(s).

"***Loan Commitment***" means, with respect to each Bank, the obligation to make a Ratable Loan in the principal amount set forth in Schedule 1 (subject to change in accordance with the terms of this Agreement).

"***Loan Documents***" means this Agreement, the Notes, the Authorization Letter and the Solvency Certificate.

"***Majority Banks***" means at any time the Banks having Pro Rata Shares aggregating at least 51%; provided, however, that during the existence of an Event of Default, the "***Majority Banks***" shall be the Banks holding at least 51% of the then aggregate unpaid principal amount of the Loans. For purposes of this definition, a Bank's Loan shall be deemed to include its participating interest in

Swing Loans pursuant to Section 2.17(c) and the Swing Lender's Loans shall be deemed to exclude such participating interests of other Banks.

"***Material Adverse Change***" means an effect resulting from any circumstance or event or series of circumstances or events, of whatever nature, which does or could reasonably be expected to, on more than an interim basis, either (1) materially and adversely impair the ability of Borrower and its Consolidated Businesses, taken as a whole, to fulfill its material obligations or (2) cause a Default or an Event of Default.

"***Material Affiliates***" means the Affiliates of Borrower described on **EXHIBIT C**, together with (or excluding) any Affiliates of Borrower which are hereafter from time to time reasonably determined by Administrative Agent to be material (or no longer material), upon written notice to Borrower, based on the most recent Borrower's Consolidated Financial Statements.

"***Maturity Date***" means May 24, 2007, subject to extension in accordance with Section 2.18.

"***Moody's***" means Moody's Investors Service, Inc.

"***Multiemployer Plan***" means a Plan defined as such in Section 3(37) of ERISA to which contributions have been made by Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA.

"***New Bank***" and "***New Note***" have the respective meanings specified in Section 2.19.

"***Note***" and "***Notes***" have the respective meanings specified in Section 2.08.

"***Obligations***" means each and every obligation, covenant and agreement of Borrower, now or hereafter existing, contained in this Agreement, and any of the other Loan Documents, whether for principal, reimbursement obligations, interest, fees, expenses, indemnities or otherwise, and any amendments or supplements thereto, extensions or renewals thereof or replacements therefor, including but not limited to all indebtedness, obligations and liabilities of Borrower to Administrative Agent and any Bank now existing or hereafter incurred under or arising out of or in connection with the Notes, this Agreement, the other Loan Documents, and any documents or instruments executed in connection therewith; in each case whether direct or indirect, joint or several, absolute or contingent, liquidated or unliquidated, now or hereafter existing, renewed or restructured, whether or not from time to time decreased or extinguished and later increased, created or incurred, and including all indebtedness of Borrower, under any instrument now or hereafter evidencing or securing any of the foregoing.

"***Parent***" means, with respect to any Bank, any Person controlling such Bank.

"***Participant***" and "***Participation***" have the respective meanings specified in Section 12.05.

"***PBGC***" means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its functions under ERISA.

"***Person***" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"***Plan***" means any employee benefit or other plan established or maintained, or to which contributions have been made, by Borrower or any ERISA Affiliate and which is covered by Title IV of ERISA or to which Section 412 of the Code applies.

"***presence***", when used in connection with any Environmental Discharge or Hazardous Materials, means and includes presence, generation, manufacture, installation, treatment, use, storage, handling, repair, encapsulation, disposal, transportation, spill, discharge and release.

"***Prime Rate***" means the variable per annum rate of interest designated from time to time by Administrative Agent at its principal office as its "prime rate" (it being understood that the "prime rate" is a reference rate and does not necessarily represent the lowest or best rate being charged to any customer).

"***Pro Rata Share***" means, for purposes of this Agreement and with respect to each Bank, a fraction, the numerator of which is the amount of such Bank's Loan Commitment and the denominator of which is the Total Loan Commitment.

"***Prohibited Transaction***" means any transaction proscribed by Section 406 of ERISA or Section 4975 of the Code and to which no statutory or administrative exemption applies.

"***Ratable Loan***" has the meaning specified in Section 2.01(b).

"***Ratable Loan Note***" has the meaning specified in Section 2.08.

"***Recourse Debt***" means Debt, recourse for the satisfaction of which is not limited to specified collateral.

"***Refunded Swing Loans***" and "***Refunding Date***" have the respective meanings specified in Section 2.17.

"***Regulation D***" means Regulation D of the Board of Governors of the Federal Reserve System.

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System.

"***Regulatory Change***" means, with respect to any Bank, any change after the date of this Agreement in United States federal, state, municipal or foreign laws or regulations (including Regulation D) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including such Bank of or under any United States, federal, state, municipal or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof.

"***Reportable Event***" means any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the thirty (30) day notice period is waived under subsections .13, .14, .16, .18, .19 or .20 of PBGC Reg. §2615.

"***Requested Increase***" has the meaning specified in Section 2.19.

"***Secured Indebtedness***" means that portion of Total Outstanding Indebtedness that is secured by a Lien.

"***Shortfall***" has the meaning specified in Section 2.19.

"***Solvency Certificate***" means a certificate in the form of **EXHIBIT D**, to be delivered by Borrower pursuant to the terms of this Agreement.

"***Solvent***" means, when used with respect to any Person, that the fair value of the property of such Person, on a going concern basis, is greater than the total amount of liabilities (including, without limitation, contingent liabilities) of such Person.

"***S&P***" means Standard and Poor's Ratings Services, a division of McGraw-Hill Companies.

"***Super-Majority Banks***" means at any time the Banks having Pro Rata Shares aggregating at least 66-2/3%; provided, however, that during the existence of an Event of Default, the "Super-Majority Banks" shall be the Banks holding at least 66-2/3% of the then aggregate unpaid principal amount of the Loans. For purposes of this definition, a Bank's Loan shall be deemed to include its participating interest in Swing Loans pursuant to Section 2.17(c) and the Swing Lender's Loans shall be deemed to exclude such participating interests of other Banks.

"***Supplemental Fee Letter***" means, collectively, those certain letter agreements, each dated as of April 19, 2004, between Borrower and JPMC.

"***Supplemental Note***" has the meaning specified in Section 2.19.

"***Swing Lender***" means Fleet in its capacity as the lender under the Swing Loan facility described in Section 2.17, and its successors in such capacity.

"***Swing Loan***" means a loan made by the Swing Lender pursuant to Section 2.17.

"***Swing Loan Commitment***" means $20,000,000.

"***Swing Loan Note***" has the meaning specified in Section 2.08.

"***Swing Loan Refund Amount***" has the meaning specified in Section 2.17.

"***Syndication Agent***" means JPMorgan Chase Bank.

"***Syndication Expiration Date***" has the meaning specified in Section 2.19.

"***Total Loan Commitment***" means an amount equal to the aggregate amount of all Loan Commitments (i.e., initially, $500,000,000), as the same may increase pursuant to Section 2.19 or decrease pursuant to Section 2.10.

"***Total Outstanding Indebtedness***" means, at any time, the sum, without duplication, of (1) Consolidated Outstanding Indebtedness; (2) Borrower's Share of UJV Combined Outstanding Indebtedness; and (3) Contingent Obligations.

"***UJV Combined Outstanding Indebtedness***" means, as of any time, all indebtedness and liability for borrowed money, secured or unsecured, of the UJV's, on a combined basis, including mortgage and other notes payable but excluding any indebtedness which is margin indebtedness on cash and cash equivalent securities, all as reflected in the balance sheets of each of the UJVs, prepared in accordance with GAAP.

"***UJVs***" means the unconsolidated joint ventures (including general and limited partnerships) in which Borrower owns a beneficial interest and which are accounted for under the equity method in Borrower's Consolidated Financial Statements.

"***Unencumbered Asset Value***" means, as of the end of any calendar quarter, without duplication, (1) Unencumbered Combined EBITDA for such quarter, annualized (i.e., multiplied by four (4)), capitalized at a rate of 8.0% per annum (i.e., divided by 8.0%) plus (2) Unencumbered Land and Construction-in-Process, valued at cost in accordance with GAAP (up to a maximum of 10% of Unencumbered Asset Value), plus (3) Unencumbered Wholly-Owned Assets owned for less than twelve (12) months, valued at cost in accordance with GAAP, plus (4) the portion of Combined EBITDA for such quarter annualized, capitalized at 8.0% per annum (i.e., divided by 8.0%), which is attributable to assets that have been completed for more than twelve (12) months and would qualify as Unencumbered Wholly-Owned Assets except that they have not achieved the occupancy requirements set forth in clause (2) of the definition of Unencumbered Wholly-Owned Assets (up to a maximum of 10% of Unencumbered Asset Value).

"***Unencumbered Combined EBITDA***" means that portion of Combined EBITDA attributable to Unencumbered Wholly-Owned Assets (assuming general and administrative expense is allocated proportionately to Unencumbered Wholly-Owned Assets).

"***Unencumbered Land and Construction-in-Process***" means all land held for future development and Construction-in-Process reflected on Borrower's Consolidated Financial Statements, wholly-owned, directly or indirectly, by Borrower which are not, and the direct or indirect interests of Borrower therein are not, subject to any lien to secure all or any portion of Secured Indebtedness or any other encumbrances which in the reasonable judgment of the Administrative Agent may diminish the value of the asset in question.

"***Unencumbered Wholly-Owned Assets***" means income-producing assets, reflected on Borrower's Consolidated Financial Statements, wholly owned, directly or indirectly, by Borrower which (1) are not, and the direct or indirect interests of Borrower therein are not, subject to any Lien to secure all or any portion of Secured Indebtedness or any other encumbrances which, in the reasonable judgment of Administrative Agent, may diminish the value of the asset in question and (2) complies with the occupancy requirements set forth in the immediately following sentence. In order to qualify as an Unencumbered Wholly-Owned Asset for a particular calendar quarter an asset must (1) have average occupancy for the twelve (12)-month period ending with such quarter of 80% or more and (2) have average quarterly occupancy for at least three (3) of the four (4) calendar quarters during such twelve (12)-month period of 80% or more.

"***Unsecured Indebtedness***" means that portion of Total Outstanding Indebtedness that is not secured by a Lien.

"***Unsecured Interest Expense***" means that portion of Interest Expense relating to Unsecured Indebtedness.

Section 1.02 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP, and all financial data required to be delivered hereunder shall be prepared in accordance with GAAP.

Section 1.03 Computation of Time Periods. Except as otherwise provided herein, in this Agreement, in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and words "to" and "until" each means "to but excluding".

Section 1.04 Rules of Construction. Except as provided otherwise, when used in this Agreement (1) "or" is not exclusive; (2) a reference to a Law includes any amendment, modification or supplement to, or replacement of, such Law; (3) a reference to a Person includes its permitted successors and permitted assigns; (4) all terms used in the singular shall have a correlative meaning when used in the plural and vice versa; (5) a reference to an agreement, instrument or document shall include such agreement, instrument or document as the same may be amended, modified or supplemented from time to time in accordance with its terms and as permitted by the Loan Documents; (6) all references to Articles, Sections or Exhibits shall be to Articles, Sections and Exhibits of this Agreement unless otherwise indicated; (7) "hereunder", "herein", "hereof" and the like refer to this Agreement as a whole; and (8) all Exhibits to this Agreement shall be incorporated into this Agreement.

ARTICLE II

THE LOANS

Section 2.01 Ratable Loans; Bid Rate Loans; Purpose.

(a) Subject to the terms and conditions of this Agreement, the Banks agree to make loans to Borrower as provided in this Article II.

(b) Each of the Banks severally agrees to make loans to Borrower (each such loan by a Bank, a "***Ratable Loan***") in an amount up to its Loan Commitment, pursuant to which the Bank shall from time to time advance and re-advance to Borrower an amount equal to its Pro Rata Share of the excess (the "***Available Total Loan Commitment***") of the Total Loan Commitment over the sum of (1) all previous advances (including Bid Rate Loans and Swing Loans) made by the Banks which remain unpaid and (2) the outstanding amount of all Letters of Credit and unreimbursed drawings on all Letters of Credit. Within the limits set forth herein, Borrower may borrow from time to time under this paragraph (b) and prepay from time to time pursuant to Section 2.09 (subject, however, to the restrictions on prepayment set forth in said Section), and thereafter re-borrow pursuant to this paragraph (b). The Ratable Loans may be outstanding as (1) Base Rate Loans; (2) LIBOR Loans; or (3) a combination of the foregoing, as Borrower shall elect and notify

Administrative Agent in accordance with Section 2.14. The LIBOR Loan, Bid Rate Loan and Base Rate Loan of each Bank shall be maintained at such Bank's Applicable Lending Office.

(c) In addition to Ratable Loans pursuant to paragraph (b) above, so long as Borrower's Credit Rating is BBB- or higher by S&P or Baa3 or higher by Moody's or an equivalent rating by another nationally-recognized rating agency, as reasonably approved by Administrative Agent, one or more Banks may, at Borrower's request and in their sole discretion, make non-ratable loans which shall bear interest at the LIBOR Bid Rate or the Absolute Bid Rate in accordance with Section 2.02 (such loans being referred to in this Agreement as "***Bid Rate Loans***"). Borrower may borrow Bid Rate Loans from time to time pursuant to this paragraph (c) in an amount up to the Available Total Loan Commitment at the time of the borrowing (taking into account any repayments of the Loans made simultaneously therewith) and shall repay such Bid Rate Loans as required by Section 2.08, and it may thereafter re-borrow pursuant to this paragraph (c); provided, however, that the aggregate outstanding principal amount of Bid Rate Loans at any particular time shall not exceed the Bid Borrowing Limit.

(d) The obligations of the Banks under this Agreement are several, and no Bank shall be responsible for the failure of any other Bank to make any advance of a Loan to be made by such other Bank. However, the failure of any Bank to make any advance of the Loan to be made by it hereunder on the date specified therefor shall not relieve any other Bank of its obligation to make any advance of its Loan specified hereby to be made on such date.

(e) Borrower shall use the proceeds of the Loans for general capital and working capital requirements of Borrower and its Consolidated Businesses and UJVs (which shall include, but not be limited to, Acquisitions and/or costs incurred in connection with the development, construction or reconstruction of multi-family real estate properties). In no event shall proceeds of the Loans be used in a manner that would violate Regulation U or in connection with a hostile acquisition.

Section 2.02 Bid Rate Loans.

(a) When Borrower wishes to request offers from the Banks to make Bid Rate Loans, it shall transmit to Administrative Agent by facsimile a request (a "***Bid Rate Quote Request***") substantially in the form of **EXHIBIT G-1** so as to be received not later than 12:00 Noon (New York time) on (x) the fifth Banking Day prior to the date for funding of the LIBOR Bid Rate Loan(s) proposed therein in the case of a LIBOR Auction or (y) the second Banking Day prior to the date for funding of the Absolute Bid Rate Loan(s) proposed therein in the case of an Absolute Rate Auction, specifying:

(1) the proposed date of funding of the Bid Rate Loan(s), which shall be a Banking Day;

(2) the aggregate amount of the Bid Rate Loans requested, which shall be $10,000,000 or a larger integral multiple of $500,000;

(3) the duration of the Interest Period(s) applicable thereto, subject to the provisions of the definition of "Interest Period" in Section 1.01 and the provisions of Section 2.05; and

(4) whether the Bid Rate Quotes requested are to set forth a LIBOR Bid Margin (to be used to compute the LIBOR Bid Rate) or an Absolute Bid Rate.

Borrower may request offers to make Bid Rate Loans for more than one (1) Interest Period in a single Bid Rate Quote Request. No more than two (2) Bid Rate Quote Requests may be submitted by Borrower during any calendar month and no more than twenty-four (24) Bid Rate Quote Requests per year may be submitted by Borrower.

(b) Promptly (the same day, if possible) upon receipt of a Bid Rate Quote Request, Administrative Agent shall send to the Banks by facsimile an invitation (an "***Invitation for Bid Rate Quotes***") substantially in the form of **EXHIBIT G-2**, which shall constitute an invitation by Borrower to the Banks to submit Bid Rate Quotes offering to make Bid Rate Loans to which such Bid Rate Quote Request relates in accordance with this Section.

(c) (1) Each Bank may submit a Bid Rate Quote containing an offer or offers to make Bid Rate Loans in response to any Invitation for Bid Rate Quotes. Each Bid Rate Quote must comply with the requirements of this paragraph (c) and must be submitted to Administrative Agent by facsimile not later than (x) 2:00 p.m. (New York time) on the fourth Banking Day prior to the proposed date of the LIBOR Bid Rate Loan(s) in the case of a LIBOR Auction or (y) 9:30 a.m. (New York time) on the Banking Day immediately preceding the proposed date of the Absolute Bid Rate Loan(s) in the case of an Absolute Rate Auction; provided that Bid Rate Quotes submitted by Administrative Agent (or any Affiliate of Administrative Agent) in its capacity as a Bank may be submitted, and may only be submitted, if Administrative Agent or such Affiliate notifies Borrower of the terms of the offer or offers contained therein not later than (x) one (1) hour prior to the deadline for the other Banks in the case of a LIBOR Auction or (y) thirty (30) minutes prior to the deadline for the other Banks in the case of an Absolute Rate Auction. Any Bid Rate Quote so made shall (subject to Borrower's satisfaction of the conditions precedent set forth in this Agreement to its entitlement to an advance) be irrevocable except with the written consent of Administrative Agent given on the instructions of Borrower. Bid Rate Loans to be funded pursuant to a Bid Rate Quote may, as provided in Section 12.16, be funded by a Bank's Designated Lender. A Bank making a Bid Rate Quote shall, if then known, specify in its Bid Rate Quote whether the related Bid Rate Loans are intended to be funded by such Bank's Designated Lender, as provided in Section 12.16, provided, however, that whether or not the same is specified in a Bank's Bid Rate Quote, such Bank's Bid Rate Loan(s) may be funded by its Designated Lender at the time of funding thereof.

(2) Each Bid Rate Quote shall be in substantially the form of **EXHIBIT G-3** and shall in any case specify:

(i) the proposed date of funding of the Bid Rate Loan(s);

(ii) the principal amount of the Bid Rate Loan(s) for which each such offer is being made, which principal amount (w) may be greater than or less than the Loan Commitment of the quoting Bank, (x) must be in the aggregate $10,000,000 or a larger integral multiple of $500,000, (y) may not exceed the principal amount of Bid Rate Loans for which offers were requested and (z) may be subject to an aggregate limitation as to the

principal amount of Bid Rate Loans for which offers being made by such quoting Bank may be accepted;

(iii) in the case of a LIBOR Auction, the margin above or below the applicable LIBOR Interest Rate (the "***LIBOR Bid Margin***") offered for each such LIBOR Bid Rate Loan, expressed as a percentage per annum (specified to the nearest 1/1,000th of 1%) to be added to (or subtracted from) the applicable LIBOR Interest Rate;

(iv) in the case of an Absolute Rate Auction, the rate of interest, expressed as a percentage per annum (specified to the nearest 1/1,000th of 1%) (the "***Absolute Bid Rate***"), offered for each such Absolute Bid Rate Loan;

(v) the applicable Interest Period; and

(vi) the identity of the quoting Bank.

A Bid Rate Quote may set forth up to three (3) separate offers by the quoting Bank with respect to each Interest Period specified in the related Invitation for Bid Rate Quotes.

(3) Any Bid Rate Quote shall be disregarded if it:

(i) is not substantially in conformity with **EXHIBIT G-3** or does not specify all of the information required by sub-paragraph (c)(2) above;

(ii) contains qualifying, conditional or similar language (except for an aggregate limitation as provided in sub-paragraph (c)(2)(ii) above);

(iii) proposes terms other than or in addition to those set forth in the applicable Invitation for Bid Rate Quotes; or

(iv) arrives after the time set forth in sub-paragraph (c)(1) above.

(d) Administrative Agent shall (x) not later than 3:00 p.m. (New York time) on the fourth Banking Day prior to the proposed date of funding of the LIBOR Bid Rate Loan(s) in the case of a LIBOR Auction or (y) not later than 10:30 a.m. (New York time) on the Banking Day immediately preceding the proposed date of funding of the Absolute Bid Rate Loan(s) in the case of an Absolute Rate Auction, notify Borrower in writing of the terms of any Bid Rate Quote submitted by a Bank that is in accordance with paragraph (c). In addition, Administrative Agent shall, on the Banking Day of its receipt thereof, notify Borrower in writing of any Bid Rate Quote that amends, modifies or is otherwise inconsistent with a previous Bid Rate Quote submitted by such Bank with respect to the same Bid Rate Quote Request. Any such subsequent Bid Rate Quote shall be disregarded by Administrative Agent unless such subsequent Bid Rate Quote is submitted solely to correct a manifest error in such former Bid Rate Quote. Administrative Agent's notice to Borrower shall specify (A) the aggregate principal amount of Bid Rate Loans for which offers have been received for each Interest Period specified in the related Bid Rate Quote Request, (B) the respective principal amounts, LIBOR Bid Margins and Absolute Bid Rates so offered and (C) if applicable, limitations on the aggregate principal amount of Bid Rate Loans for which offers in any single Bid Rate Quote may be accepted.

(e) Not later than 9:30 a.m. (New York time) on (x) the third Banking Day prior to the proposed date of funding of the LIBOR Bid Rate Loan in the case of a LIBOR Auction or (y) the Banking Day immediately preceding the proposed date of funding of the Absolute Bid Rate Loan in the case of an Absolute Rate Auction, Borrower shall notify Administrative Agent of its acceptance or non-acceptance of the offers so notified to it pursuant to paragraph (d). If Borrower fails to notify Administrative Agent of its acceptance of such offers, it shall be deemed to have rejected such offers. A notice of acceptance shall be substantially in the form of **EXHIBIT G**-4 and shall specify the aggregate principal amount of offers for each Interest Period that are accepted. Borrower may accept any Bid Rate Quote in whole or in part; provided that:

(i) the principal amount of each Bid Rate Loan may not exceed the applicable amount set forth in the related Bid Rate Quote Request or be less than $500,000 per Bank and shall be an integral multiple of $100,000;

(ii) acceptance of offers with respect to a particular Interest Period may only be made on the basis of ascending LIBOR Bid Margins or Absolute Bid Rates, as the case may be, offered for such Interest Period from the lowest effective cost; and

(iii) Borrower may not accept any offer that is described in sub-paragraph (c)(3) or that otherwise fails to comply with the requirements of this Agreement.

(f) If offers are made by two (2) or more Banks with the same LIBOR Bid Margins or Absolute Bid Rates, as the case may be, for a greater aggregate principal amount than the amount in respect of which such offers are accepted for the related Interest Period, the principal amount of Bid Rate Loans in respect of which such offers are accepted shall be allocated by Administrative Agent among such Banks as nearly as possible (in multiples of $100,000, as Administrative Agent may deem appropriate) in proportion to the aggregate principal amounts of such offers. Administrative Agent shall promptly (and in any event within one (1) Banking Day after such offers are accepted) notify Borrower and each such Bank in writing of any such allocation of Bid Rate Loans. Determinations by Administrative Agent of the allocation of Bid Rate Loans shall be conclusive in the absence of manifest error.

(g) In the event that Borrower accepts the offer(s) contained in one (1) or more Bid Rate Quotes in accordance with paragraph (e), the Bank(s) making such offer(s) shall make a Bid Rate Loan in the accepted amount (as allocated, if necessary, pursuant to paragraph (f)) on the date specified therefor, in accordance with the procedures specified in Section 2.04, and such Bid Rate Loan shall bear interest at the accepted LIBOR Bid Rate or Absolute Bid Rate, as the case may be, for the applicable Interest Period.

(h) Notwithstanding anything to the contrary contained herein, each Bank shall be required to fund its Pro Rata Share of the Available Total Loan Commitment in accordance with Section 2.01(b) despite the fact that any Bank's Loan Commitment may have been or may be exceeded as a result of such Bank's making Bid Rate Loans.

(i) A Bank who is notified that it has been selected to make a Bid Rate Loan as provided above may designate its Designated Lender (if any) to fund such Bid Rate Loan on its behalf, as described in Section 12.16. Any Designated Lender which funds a Bid Rate Loan shall

on and after the time of such funding become the obligee under such Bid Rate Loan and be entitled to receive payment thereof when due. No Bank shall be relieved of its obligation to fund a Bid Rate Loan, and no Designated Lender shall assume such obligation, prior to the time the applicable Bid Rate Loan is funded.

(j) Administrative Agent shall promptly notify each Bank which submitted a Bid Rate Quote of Borrower's acceptance or non-acceptance thereof. At the request of any Bank which submitted a Bid Rate Quote, Administrative Agent will promptly notify all Banks which submitted Bid Rate Quotes of (a) the aggregate principal amount of, and (b) the range of Absolute Bid Rates or LIBOR Bid Margins of, the accepted Bid Rate Loans for each requested Interest Period.

Section 2.03 Advances, Generally. The Initial Advance shall be in the minimum amount of $500,000 and in integral multiples of $100,000 above such amount and shall be made upon satisfaction of the conditions set forth in Section 4.01. Subsequent advances shall be made no more frequently than twice weekly thereafter, upon satisfaction of the conditions set forth in Section 4.02. The amount of each advance subsequent to the Initial Advance shall be in the minimum amount of $500,000 (unless less than $500,000 is available for disbursement pursuant to the terms hereof at the time of any subsequent advance, in which case the amount of such subsequent advance shall be equal to such remaining availability) and in integral multiples of $100,000 above such amount. Additional restrictions on the amounts and timing of, and conditions to the making of, advances of Bid Rate Loans are set forth in Section 2.02.

Section 2.04 Procedures for Advances. In the case of advances of Ratable Loans hereunder, Borrower shall submit to Administrative Agent a request for each advance, stating the amount requested and certifying the purpose, in general terms, for which such advance is to be used, no later than 11:00 a.m. (New York time) on the date, in the case of advances of Base Rate Loans, which is one (1) Banking Day, and, in the case of advances of LIBOR Loans, which is three (3) Banking Days, prior to the date the advance is to be made. In the case of advances of Swing Loans hereunder, Borrower shall submit to Administrative Agent a request for such advance, stating the amount requested and certifying the purpose, in general terms, for which such advance is to be used, no later than 11:00 a.m. (New York time) on the date which is one (1) Banking Day prior to the date the advance is to be made. In the case of advances of Bid Rate Loans hereunder, Borrower shall submit a Bid Rate Quote Request at the time specified in Section 2.02, accompanied by a certification of the purpose, in general terms, for which the advance is to be used. Administrative Agent, on the Banking Day of its receipt and approval of the request for advance, will so notify the Banks (or, in the case of Swing Loans, the Swing Lender) either by telephone or by facsimile. Not later than 11:00 a.m. (New York time) on the date of each advance, each Bank (in the case of Ratable Loans) or the applicable Bank(s) (in the case of Bid Rate Loans) or the Swing Lender (in the case of Swing Loans) shall, through its Applicable Lending Office and subject to the conditions of this Agreement, make the amount to be advanced by it on such day available to Administrative Agent, at Administrative Agent's Office and in immediately available funds for the account of Borrower. The amount so received by Administrative Agent shall, subject to the conditions of this Agreement, be made available to Borrower, in immediately available funds, by Administrative Agent's crediting an account of Borrower designated by Borrower and maintained with Administrative Agent at Administrative Agent's Office.

Section 2.05 Interest Periods; Renewals. In the case of the LIBOR Loans and Bid Rate Loans, Borrower shall select an Interest Period of any duration in accordance with the definition of Interest Period in Section 1.01, subject to the following limitations: (1) no Interest Period may extend beyond the Maturity Date; and (2) if an Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next Banking Day, unless such Banking Day would fall in the next calendar month, in which event such Interest Period shall end on the immediately preceding Banking Day. Only twelve (12) discrete segments of a Bank's Ratable Loan bearing interest at a LIBOR Interest Rate, for a designated Interest Period, pursuant to a particular Election, Conversion or Continuation, may be outstanding at any one time (each such segment of each Bank's Ratable Loan corresponding to a proportionate segment of each of the other Banks' Ratable Loans). Upon notice to Administrative Agent as provided in Section 2.14, Borrower may Continue any LIBOR Loan on the last day of the Interest Period of the same or different duration in accordance with the limitations provided above. If Borrower shall fail to give notice to Administrative Agent of such a Continuation, such LIBOR Loan shall automatically become a LIBOR Loan with an Interest Period of one (1) month on the last day of the current Interest Period. Administrative Agent shall notify each of the Banks, either by telephone or by facsimile, at least two (2) Banking Days prior to the termination of the Interest Period in question in the event of such failure by Borrower to give such notice of Continuation.

Section 2.06 Interest. Borrower shall pay interest to Administrative Agent for the account of the applicable Bank on the outstanding and unpaid principal amount of the Loans, at a rate per annum as follows: (1) for Base Rate Loans at a rate equal to the Base Rate plus the Applicable Margin; (2) for LIBOR Loans at a rate equal to the applicable LIBOR Interest Rate plus the Applicable Margin; (3) for LIBOR Bid Rate Loans at a rate equal to the applicable LIBOR Bid Rate; (4) for Absolute Bid Rate Loans at a rate equal to the applicable Absolute Bid Rate; and (5) for Swing Loans at a three (3)-day LIBOR rate, as determined by the Swing Lender. Any principal amount not paid when due (when scheduled, at acceleration or otherwise) shall bear interest thereafter, payable on demand, at the Default Rate.

The interest rate on Base Rate Loans shall change when the Base Rate changes. Interest on Base Rate Loans, LIBOR Loans, Bid Rate Loans and Swing Loans shall not exceed the maximum amount permitted under applicable Law. Interest shall be calculated for the actual number of days elapsed on the basis of, in the case of Base Rate Loans, LIBOR Loans, Bid Rate Loans and Swing Loans, three hundred sixty (360) days.

Accrued interest shall be due and payable in arrears upon and with respect to any payment or prepayment of principal and, (x) in the case of Base Rate Loans, LIBOR Loans and Swing Loans, on the first Banking Day of each calendar month and (y) in the case of Bid Rate Loans, at the expiration of the Interest Period applicable thereto; provided, however, that interest accruing at the Default Rate shall be due and payable on demand.

Section 2.07 Fees.

(a) Borrower agrees to pay to and for the accounts of the parties specified therein, the fees provided for in the Supplemental Fee Letter.

(b) Borrower shall pay to Administrative Agent for the account of each Bank a facility fee computed on the daily Loan Commitment of such Bank (irrespective of usage) at a rate per annum equal to the daily Facility Fee Rate, calculated on the basis of a year of three hundred sixty (360) days for the actual number of days elapsed. The accrued facility fee shall be due and payable quarterly in arrears on the tenth (10th) day of October, January, April and July of each year, commencing on the first such date after the Closing Date, and upon the Maturity Date (as stated or by acceleration or otherwise) or earlier termination of the Loan Commitments.

Section 2.08 Notes. The Ratable Loan made by each Bank under this Agreement shall be evidenced by, and repaid with interest in accordance with, a single promissory note of Borrower in the form of **EXHIBIT B** duly completed and executed by Borrower, in the principal amount equal to such Bank's Loan Commitment, payable to such Bank for the account of its Applicable Lending Office (each such note, as the same may hereafter be amended, modified, extended, severed, assigned, renewed or restated from time to time, including any new or substitute notes pursuant to Section 2.19, 3.07 or 12.05, a "***Ratable Loan Note***"). The Bid Rate Loans of the Banks shall be evidenced by a single global promissory note of Borrower, in the form of **EXHIBIT B-1**, duly completed and executed by Borrower, in the principal amount of $250,000,000, payable to Administrative Agent for the account of the respective Banks making Bid Rate Loans (such note, as the same may hereafter be amended, modified, extended, severed, assigned, substituted, renewed or restated from time to time, the "***Bid Rate Loan Note***"). The Swing Loan of the Swing Lender shall be evidenced by, and repaid with interest in accordance with, a promissory note of Borrower, in the form of **EXHIBIT B-2**, duly completed and executed by Borrower, payable to the Swing Lender (such note, as the same may hereafter be amended, modified extended, severed, assigned, substituted, renewed or restated from time to time, the "***Swing Loan Note***"). A particular Bank's Ratable Loan Note, together with its interest, if any, in the Bid Rate Loan Note, and, in the case of the Swing Lender, the Swing Loan Note, are referred to collectively in this Agreement as such Bank's "***Note***"; all such Ratable Loan Notes, the Bid Rate Loan Note and the Swing Loan Note are referred to collectively in this Agreement as the "***Notes***". The Ratable Loan Notes shall mature, and all outstanding principal and accrued interest and other sums thereunder shall be paid in full, on the Maturity Date, as the same may be accelerated. The outstanding principal amount of each Bid Rate Loan evidenced by the Bid Rate Loan Note, and all accrued interest and other sums with respect thereto, shall become due and payable to the Bank making such Bid Rate Loan at the earlier of the expiration of the Interest Period applicable thereto or the Maturity Date, as the same may be accelerated. Principal amounts evidenced by the Swing Loan Notes shall become due and payable at the earlier of three (3) Banking Days after said amounts are advanced or the Maturity Date.

Each Bank is hereby authorized by Borrower to endorse on the schedule attached to the Ratable Loan Note held by it, the amount of each advance and each payment of principal received by such Bank for the account of its Applicable Lending Office(s) on account of its Ratable Loan, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Ratable Loan made by such Bank. The Swing Lender is hereby authorized by Borrower to endorse on the schedule attached to the Swing Loan Note held by it, the amount of each advance and each payment of principal received by the Swing Lender for the account of its Applicable Lending Office(s) on account of its Swing Loan, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Swing Loan made by the Swing Lender. Administrative Agent is hereby authorized by Borrower to endorse on the schedule attached to the Bid Rate Loan Note the amount of each LIBOR Bid Rate Loan and/or

Absolute Bid Rate Loan, the name of the Bank making the same, the date of the advance thereof, the interest rate applicable thereto and the expiration of the Interest Period applicable thereto (i.e., the maturity date thereof). The failure by Administrative Agent or any Bank to make such notations with respect to the Loans or each advance or payment shall not limit or otherwise affect the obligations of Borrower under this Agreement or the Notes. In case of any loss, theft, destruction or mutilation of any Bank's Note, Borrower shall, upon its receipt of an affidavit of an officer of such Bank as to such loss, theft, destruction or mutilation and an appropriate indemnification, execute and deliver a replacement Note to such Bank in the same principal amount and otherwise of like tenor as the lost, stolen, destroyed or mutilated Note.

Section 2.09 Prepayments. Without prepayment premium or penalty but subject to Section 3.05, Borrower may, upon at least one (1) Banking Day's notice to Administrative Agent in the case of the Base Rate Loans and Swing Loans, and at least three (3) Banking Days' notice to Administrative Agent (who shall provide such notice, promptly upon receipt, to each of the Banks) in the case of LIBOR Loans, prepay the Ratable Loans, provided that (1) any partial prepayment under this Section shall be in integral multiples of $500,000; (2) a LIBOR Loan or Swing Loan may be prepaid at any time, subject, however, to the provisions of Section 3.05; and (3) each prepayment under this Section shall include all interest accrued on the amount of principal prepaid through the date of prepayment. Prepayment of Bid Rate Loans shall not be permitted.

Section 2.10 Cancellation of Commitments.

(a) At any time, Borrower shall have the right, without premium or penalty, to terminate any unused Loan Commitments (i.e., to terminate Loan Commitments to the extent of the Available Total Loan Commitment) or unused commitment of the Swing Lender to make Swing Loans, in whole or in part, from time to time, provided that: (1) Borrower shall give notice of each such termination to Administrative Agent (who shall provide such notice, promptly upon receipt, to each of the Banks) and the Swing Lender, if applicable, no later then 10:00 a.m. (New York time) on the date which is fifteen (15) Banking Days prior to the effectiveness of such termination; (2) the Loan Commitments of each of the Banks, or Swing Lender, as applicable, must be terminated ratably and simultaneously with those of the other Banks, or Swing Lender, as applicable; (3) each partial termination of the Loan Commitments, or commitments to make Swing Loans, as a whole (and corresponding reduction of the Total Loan Commitment) shall be in an integral multiple of $1,000,000 and (4) no partial cancellation of the Loan Commitments shall reduce the Total Loan Commitment to an amount below $200,000,000.

(b) The Loan Commitments, to the extent terminated, may not be reinstated.

Section 2.11 Method of Payment. Borrower shall make each payment under this Agreement and under the Notes not later than 11:00 a.m. (New York time) on the date when due in Dollars to Administrative Agent at Administrative Agent's Office in immediately available funds. Administrative Agent will thereafter, on the day of its receipt of each such payment, cause to be distributed to each Bank (1) such Bank's appropriate share determined pursuant to Section 10.15 of the payments of principal and interest in like funds for the account of such Bank's Applicable Lending Office; and (2) fees payable to such Bank in accordance with the terms of this Agreement. In the event Administrative Agent fails to pay funds received from Borrower to the Banks on the date on which Borrower is credited with payment, Administrative Agent shall pay interest on such

amounts at the Federal Funds Rate until such payment to the Banks is made. Borrower hereby authorizes Administrative Agent and the Banks, if and to the extent payment by Borrower is not made when due under this Agreement or under the Notes, to charge from time to time against any account Borrower maintains with Administrative Agent or any Bank any amount so due to Administrative Agent and/or the Banks. Except to the extent provided in this Agreement, whenever any payment to be made under this Agreement or under the Notes is due on any day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall in such case be included in the computation of the payment of interest and other fees, as the case may be.

Section 2.12 Elections, Conversions or Continuation of Loans. Subject to the provisions of Article III and Sections 2.05 and 2.13, Borrower shall have the right to Elect to have all or a portion of any advance of the Ratable Loans be LIBOR Loans, to Convert Base Rate Loans into LIBOR Loans, to Convert LIBOR Loans into Base Rate Loans, or to Continue LIBOR Loans as LIBOR Loans, at any time or from time to time, provided that (1) Borrower shall give Administrative Agent notice of each such Election, Conversion or Continuation as provided in Section 2.14; and (2) a LIBOR Loan may be Converted or Continued only on the last day of the applicable Interest Period for such LIBOR Loan. Except as otherwise provided in this Agreement, each Election, Continuation and Conversion shall be applicable to each Bank's Ratable Loan in accordance with its Pro Rata Share.

Section 2.13 Minimum Amounts. With respect to the Ratable Loans as a whole, each Election and each Conversion shall be in an amount at least equal to $1,000,000 and in integral multiples of $500,000.

Section 2.14 Certain Notices Regarding Elections, Conversions and Continuations of Loans. Notices by Borrower to Administrative Agent of Elections, Conversions and Continuations of LIBOR Loans shall be irrevocable and shall be effective only if received by Administrative Agent not later than 10:30 a.m. (New York time) on the number of Banking Days prior to the date of the relevant Election, Conversion or Continuation specified below:

	Number of Banking Days Prior Notice
Conversions into Base Rate Loans	two (2)
Elections of, Conversions into or Continuations as, LIBOR Loans	three (3)

Promptly following its receipt of any such notice, and no later than the close of business on the Banking Day of such receipt, Administrative Agent shall so advise the Banks either by telephone or by facsimile. Each such notice of Election shall specify the portion of the amount of the advance that is to be LIBOR Loans (subject to Section 2.13) and the duration of the Interest Period applicable thereto (subject to Section 2.05); each such notice of Conversion shall specify the LIBOR Loans or Base Rate Loans to be Converted; and each such notice of Conversion or Continuation shall specify the date of Conversion or Continuation (which shall be a Banking Day), the amount thereof (subject to Section 2.13) and the duration of the Interest Period applicable thereto (subject to Section 2.05). In the event that Borrower fails to Elect to have any portion of an

advance of the Ratable Loans be LIBOR Loans, the entire amount of such advance shall constitute Base Rate Loans. In the event that Borrower fails to Continue LIBOR Loans within the time period and as otherwise provided in this Section, such LIBOR Loans will automatically become LIBOR Loans with an Interest Period of one (1) month on the last day of the then current applicable Interest Period for such LIBOR Loans. Administrative Agent shall notify each of the Banks, either by telephone or by facsimile, at least two (2) Banking Days prior to the termination of the Interest Period in question in the event of such failure by Borrower.

Section 2.15 Late Payment Premium. Borrower shall, at Administrative Agent's option and upon notice to Borrower, pay to Administrative Agent for the account of the Banks a late payment premium in the amount of 4% of any payments of interest under the Loans made more than ten (10) days after the due date thereof, which shall be due with any such late payment.

Section 2.16 Letters of Credit.

(a) Borrower, by notice to Administrative Agent and the Issuing Bank, may request, in lieu of advances of proceeds of the Ratable Loans, that the Issuing Bank issue unconditional, irrevocable standby letters of credit or direct-pay letters of credit (each, a "***Letter of Credit***") for the account of Borrower, payable by sight drafts, for such beneficiaries and with such other terms as Borrower shall specify. Promptly upon receipt of notice from the Issuing Bank of the issuance, amendment or extension of a Letter of Credit, Administrative Agent shall notify each of the Banks.

(b) The amount of any Letter of Credit shall be limited to the lesser of (x) $70,000,000 less the aggregate amount of all Letters of Credit theretofore issued and outstanding or (y) the Available Total Loan Commitment, it being understood that the amount of each Letter of Credit issued and outstanding shall effect a reduction, by an equal amount, of the Available Total Loan Commitment (such reduction to be allocated to each Bank's Loan Commitment ratably in accordance with the Banks' respective Pro Rata Shares).

(c) The amount of each Letter of Credit shall be further subject to the limitations applicable to amounts of advances set forth in Section 2.03 and the procedures for the issuance of each Letter of Credit shall be the same as the procedures applicable to the making of advances as set forth in the first sentence of Section 2.04. The Issuing Bank's issuance of each Letter of Credit shall be subject to notice from the Administrative Agent that it has determined that Borrower has satisfied all conditions precedent to its entitlement to an advance of proceeds of the Loans.

(d) Each Letter of Credit shall expire no later than one (1) month prior to the Maturity Date, but may have a so-called "evergreen" clause allowing for the extension of the expiration date thereof upon the extension of the Maturity Date pursuant to Section 2.18.

(e) In connection with, and as a further condition to the issuance of, each Letter of Credit, Borrower shall execute and deliver to Administrative Agent and the Issuing Bank an application for the Letter of Credit on the Issuing Bank's standard form therefor, together with such other documents, opinions and assurances as Administrative Agent and the Issuing Bank shall reasonably require.

(f) In connection with each Letter of Credit, Borrower hereby covenants to pay to Administrative Agent the following fees: (1) a fee, payable quarterly in arrears (on the first

Banking Day of each calendar quarter following the issuance of the Letter of Credit), for the account of the Banks, computed daily on the amount of the Letter of Credit issued and outstanding at a rate per annum equal to the "Banks' L/C Fee Rate" (as hereinafter defined) and (2) the fee, for the Issuing Bank's account, required by the Supplemental Fee Letter between Borrower and Fleet. In addition to the fees described in the preceding sentence, the Borrower shall pay to the Issuing Bank such other customary letter of credit charges when incurred. For purposes of this Agreement, the "Banks' L/C Fee Rate" shall mean, at any time, a rate per annum equal to the Applicable Margin for LIBOR Loans less 0.125% per annum. It is understood and agreed that the last installment of the fees provided for in this paragraph (f) with respect to any particular Letter of Credit shall be due and payable on the first day of the calendar quarter following the return, undrawn, or cancellation of such Letter of Credit to the Issuing Bank, who shall promptly provide notice to Administrative Agent of such return or cancellation, and Borrower's receipt of notice from Administrative Agent.

(g) Upon any drawing under a Letter of Credit, the Issuing Bank shall immediately provide notice to the Borrower and Administrative Agent of such drawing. The Borrower shall reimburse the Issuing Bank on the date of any drawing under a Letter of Credit. Such reimbursement shall be made with the proceeds of an advance of Loans as set forth below unless such advance cannot for any reason be made. The parties hereto acknowledge and agree that, immediately upon notice from Administrative Agent of any drawing under a Letter of Credit, each Bank shall, notwithstanding the existence of a Default or Event of Default or the non-satisfaction of any conditions precedent to the making of an advance of the Loans, advance proceeds of its Ratable Loan, in an amount equal to its Pro Rata Share of such drawing, which advance shall be made to Administrative Agent for the account of the Issuing Bank to reimburse the Issuing Bank for such drawing. Each of the Banks further acknowledges that its obligation to fund its Pro Rata Share of drawings under Letters of Credit as aforesaid shall survive the Banks' termination of this Agreement or enforcement of remedies hereunder or under the other Loan Documents. In the event that any Ratable Loan cannot for any reason be made on the date otherwise required above (including, without limitation, as a result of the commencement of a proceeding under any applicable bankruptcy or insolvency Law with respect to Borrower), then each Bank shall purchase (on or as of the date such Ratable Loan would otherwise have been made) from the Issuing Bank a participation interest in any unreimbursed drawing in an amount equal to its Pro Rata Share of such unreimbursed drawing.

(h) Borrower agrees, upon the occurrence of an Event of Default and at the written request of Administrative Agent, (1) to deposit with Administrative Agent for the benefit of the Issuing Bank and the Banks cash collateral in the amount of all the outstanding Letters of Credit, which cash collateral shall be held by Administrative Agent for the benefit of the Issuing Bank and the Banks as security for Borrower's obligations in connection with the Letters of Credit and (2) to execute and deliver to Administrative Agent and the Issuing Bank such documents as Administrative Agent or the Issuing Bank reasonably requests to confirm and perfect the assignment of such cash collateral to Administrative Agent for the benefit of the Issuing Bank and the Banks.

Section 2.17 Swing Loans.

(a) During the term of this Agreement, the Swing Lender agrees, on the terms and conditions set forth in this Agreement, to make advances to Borrower pursuant to this Section from time to time in amounts such that (i) the aggregate of such advance and amount of Swing Loans theretofore advanced and still outstanding does not at any time exceed the Swing Loan Commitment and (ii) the amount of such advance does not exceed the Available Total Loan Commitment. Each advance under this Section shall be in an aggregate principal amount of $1,000,000 or a larger multiple of $100,000 (except that any such advance may be in the aggregate available amount of Swing Loans determined in accordance with the immediately preceding sentence). With the foregoing limits, Borrower may borrow under this Section, repay or, to the extent permitted by Section 2.09, prepay Swing Loans and reborrow under this Section at any time during the term of this Agreement.

(b) The Swing Lender shall, on behalf of Borrower (which hereby irrevocably directs the Swing Lender to act on its behalf), on notice given by the Swing Lender no later than 1:00 p.m. (New York time) on the Banking Day immediately following the funding of any Swing Loan, request each Bank to make, and each Bank hereby agrees to make, an advance of its Ratable Loan, in an amount (with respect to each Bank, its "***Swing Loan Refund Amount***") equal to such Bank's Pro Rata Share of the aggregate principal amount of the Swing Loans (the "***Refunded Swing Loans***") outstanding on the date of such notice, to repay the Swing Lender. Unless any of the events described in paragraph (5) of Section 9.01 with respect to Borrower shall have occurred and be continuing (in which case the procedures of paragraph (c) of this Section shall apply), each Bank shall make such advance of its Ratable Loan available to Administrative Agent at Administrative Agent's Office in immediately available funds, not later than 1:00 p.m. (New York time), on the third Banking Day immediately following the date of such notice. Administrative Agent shall pay the proceeds of such advance of Ratable Loans to the Swing Lender, which shall immediately apply such proceeds to repay Refunded Swing Loans. Effective on the day such advances of Ratable Loans are made, the portion of the Swing Loans so paid shall no longer be outstanding as Swing Loans, shall no longer be due as Swing Loans under the Swing Loan Note held by the Swing Lender, and shall be due as Ratable Loans under the respective Ratable Loan Notes issued to the Banks (including the Swing Lender). Borrower authorizes the Swing Lender to charge Borrower's accounts with Administrative Agent (up to the amount available in each such accounts) in order to immediately pay the amount of such Refunded Swing Loans to the extent amounts received from the Banks are not sufficient to repay in full such Refunded Swing Loans.

(c) If, prior to the time advances of Ratable Loans would have otherwise been made pursuant to paragraph (b) of this Section, one of the events described in paragraph (5) of Section 9.01 with respect to the Borrower shall have occurred and be continuing, each Bank shall, on the date such advances were to have been made pursuant to the notice referred to in paragraph (b) of this Section (the "***Refunding Date***"), purchase an undivided participating interest in the Swing Loans in an amount equal to such Bank's Swing Loan Refund Amount. On the Refunding Date, each Bank shall transfer to the Swing Lender, in immediately available funds, such Bank's Swing Loan Refund Amount, and upon receipt thereof, the Swing Lender shall deliver to such Bank a Swing Loan participation certificate dated the date of the Swing Lender's receipt of such funds and in the Swing Loan Refund Amount of such Bank.

(d) Whenever, at any time after the Swing Lender has received from any Bank such Bank's Swing Loan Refund Amount pursuant to paragraph (c) of this Section, the Swing Lender

receives any payment on account of the Swing Loans in which the Banks have purchased Participations pursuant to said paragraph (c), the Swing Lender will promptly distribute to each such Bank its ratable share (determined on the basis of the Swing Loan Refund Amounts of all of the Banks) of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Bank's participating interest was outstanding and funded); provided, however, that in the event that such payment received by the Swing Lender is required to be returned, such Bank will return to the Swing Lender any portion thereof previously distributed to it by the Swing Lender.

(e) Each Bank's obligation to make an advance of its Ratable Loan as provided in paragraph (b) of this Section or to purchase a participating interest pursuant to paragraph (c) of this Section shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (i) any set-off, counterclaim, recoupment, defense or other right which such Bank, Borrower or any other Person may have against the Swing Lender or any other Person, (ii) the occurrence or continuance of a Default or an Event of Default, the termination or reduction of the Loan Commitments or the non-satisfaction of any condition precedent to the making of any advance of the Loans, (iii) any adverse change in the condition (financial or otherwise) of Borrower or any other Person, (iv) any breach of this Agreement by Borrower, any other Bank or any other Person or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(f) Notwithstanding anything above in this Section or elsewhere in this Agreement to the contrary, in the event that the Swing Lender funds a Swing Loan hereunder when it has actual knowledge that a monetary Default, or material Event of Default (which, for the avoidance of doubt shall include any violation of any provision of Article VII or Article VIII) has occurred and is continuing, the Banks shall have the option, but not the obligation, to make Ratable Loans to fund their ratable shares of such Swing Loan as contemplated in paragraph (b) of this Section or to purchase participations as contemplated in paragraph (c) of this Section.

(g) For purposes of Article III, Swing Loans shall be deemed to be LIBOR Loans.

Section 2.18 Extension Of Maturity. Borrower shall have the option (the "***Extension Option***") to extend the original Maturity Date for a period of one (1) year. Subject to the conditions set forth below, Borrower may exercise the Extension Option by delivering a written notice to Administrative Agent (who shall provide such notice, promptly upon receipt, to each of the Banks) not more than ninety (90) days and not less than thirty (30) days prior to the original Maturity Date (a "***Notice to Extend***"), stating that Borrower has elected to extend the original Maturity Date for one (1) year. Borrower's delivery of the Notice to Extend shall be irrevocable and Borrower's right to exercise the Extension Option shall be subject to the following terms and conditions: (i) there shall exist no Event of Default on both the date Borrower delivers the Notice to Extend to Administrative Agent and on the original Maturity Date, (ii) Borrower shall have paid to Administrative Agent for the account of each Bank an extension fee equal to 0.15% of such Bank's Loan Commitment simultaneously with delivery of the Notice to Extend and (iii) Borrower shall be in compliance with the covenants contained in Articles VII and VIII, as evidenced by a certificate from Borrower of the sort required by paragraph (3) of Section 6.09 (based on financial results for the most recent calendar quarter for which Borrower is required to report financial results).

Section 2.19 Additional Loan Commitments.

(a) Borrower may, from time to time, up to a maximum of three (3) requests, request the Banks to increase their Loan Commitments, so as to increase the Total Loan Commitment to an amount no greater than the sum of (1) the Accordion Amount plus (2) $500,000,000 less (3) the amount of any reduction of the Total Loan Commitment pursuant to Section 2.10. The increase in the Total Loan Commitment pursuant to any such particular request shall be at least an amount (the "***Minimum Request***") equal to the lesser of (x) $50,000,000 or (y) the Accordion Amount less all previous increases in the Total Loan Commitment pursuant to this Section. Borrower shall make each such request by giving notice to Syndication Agent no later than forty-five (45) days prior to the date (the "***Syndication Expiration Date***") that is twenty-seven (27) months after the Closing Date, which notice shall set forth the amount (which shall be no less than the Minimum Request) of the requested increase in the Total Loan Commitment (the "***Requested Increase***") and such other details with respect to such increase as Syndication Agent shall reasonably request. Syndication Agent will use commercially reasonable efforts, with the assistance of Borrower, to arrange a syndicate of Banks with Loan Commitments (including the then-existing Loan Commitments) aggregating the then existing Total Loan Commitment plus the Requested Increase. Upon receipt of notice as aforesaid from Borrower, Syndication Agent shall promptly send a copy of such notice to each Bank and shall request that each Bank increase its Loan Commitment by an amount equal to its Pro Rata Share of the Requested Increase (the "***First Solicitation***"). Each Bank shall have the right, but not the obligation, to increase its Loan Commitment by an amount equal to its Pro Rata Share of the Requested Increase, and shall have a period of fifteen (15) days from the First Solicitation to notify Syndication Agent whether or not such Bank elects so to increase its Loan Commitment. Any Bank that fails to respond to the First Solicitation within such fifteen (15)-day period will be deemed to have elected not to increase its Loan Commitment. If all Banks elect to increase their respective Loan Commitments by amounts equal to their respective Pro Rata Shares of the Requested Increase, Syndication Agent shall so notify Borrower, Administrative Agent and each of the Banks, and Borrower shall proceed in accordance with paragraph (b) below. If any Bank (any such Bank, a "***Declining Bank***") shall not elect or shall be deemed to have elected not to increase its Loan Commitment as aforesaid, (i) the amount of such Declining Bank's Loan Commitment shall be unchanged, (ii) Syndication Agent shall notify Borrower, Administrative Agent and each of the Banks as to which Banks have elected to increase their Loan Commitments and by what amounts and (iii) if Borrower so requests, Syndication Agent shall either (A) solicit from the Banks that elected to increase their respective Loan Commitments a further increase in their Loan Commitments in an aggregate amount equal to all or any portion of the aggregate amount of the Declining Banks' Pro Rata Shares of the Requested Increase (the "***Shortfall***") or (B) submit a list of proposed syndicate members that are not then a party to this Agreement to Borrower for its review and approval (such approval not to be unreasonably withheld or delayed) in order to obtain additional commitments in an amount equal to the Shortfall. From and after the Syndication Expiration Date, Syndication Agent shall have no further obligation to syndicate the Facility or to obtain or accept any additional Loan Commitments.

(b) In connection with increases to the Loan Commitments of some or all of the Banks as provided in paragraph (a) above, Borrower shall execute supplemental Ratable Loan Notes (the "***Supplemental Notes***") evidencing such increases, as well as such other confirmatory modifications to this Agreement as Syndication Agent shall reasonably request. In connection with the addition of lenders as a result of solicitations by Syndication Agent pursuant to clause (B) of

paragraph (a) above ("***New Banks***"), Borrower, Administrative Agent and each New Bank shall execute an Acceptance Letter in the form of **EXHIBIT H,** Borrower shall execute a Ratable Loan Note to each New Bank in the amount of the New Bank's Loan Commitment (a "***New Note***") and Borrower and Administrative Agent (with the consent of only the New Banks and those Banks increasing their Loan Commitments) shall execute such confirmatory modifications to this Agreement as Administrative Agent shall reasonably request, whereupon the New Bank shall become, and have the rights and obligations of, a "Bank", with a Loan Commitment in the amount set forth in such Acceptance Letter. The Banks shall have no right of approval with respect to a New Bank's becoming a Bank or the amount of its Loan Commitment, provided, however, that Syndication Agent shall have such right of approval, not to be unreasonably withheld. Each Supplemental Note and New Note shall constitute "Ratable Loan Notes" for all purposes of this Agreement.

(c) If at the time a New Bank becomes a Bank (or a Bank increases its Loan Commitment) pursuant to this Section there is any principal outstanding under the Ratable Loan Notes of the previously admitted Banks (the "***Existing Banks***"), such New Bank (or Bank increasing its Loan Commitment) shall remit to Administrative Agent an amount equal to the Outstanding Percentage (as defined below) multiplied by the Loan Commitment of the New Bank (or the amount of the increase in the Loan Commitment of a Bank increasing its Loan Commitment), which amount shall be deemed advanced under the Ratable Loan of the New Bank (or the Bank increasing its Loan Commitment). Administrative Agent shall pay such amount to the Existing Banks in accordance with the Existing Banks' respective Pro Rata Shares (as calculated immediately prior to the admission of the New Bank (or the increase in a Bank's Loan Commitment)), and such payment shall effect an automatic reduction of the outstanding principal balance under the respective Ratable Loan Notes of the Existing Banks. For purposes of this Section, the term "Outstanding Percentage" means the ratio of (i) the aggregate outstanding principal amount under the Ratable Notes of the Existing Banks, immediately prior to the admission of the New Bank (or the increase in the Loan Commitment of a Bank), to (ii) the aggregate of the Loan Commitments of the Existing Banks (as increased pursuant to this Section, if applicable) and the New Bank.

(d) The fees payable by the Borrower upon any increase of the Loan Commitments shall be agreed upon by the Borrower, the Syndication Agent, the New Banks and those Banks increasing their Loan Commitments. Nothing in this Section 2.19 shall constitute or be deemed to constitute an agreement or commitment by any Bank to increase its Loan Commitment hereunder.

ARTICLE III

YIELD PROTECTION; ILLEGALITY, ETC.

Section 3.01 **Additional Costs**. Borrower shall pay directly to each Bank from time to time on demand such amounts as such Bank may determine to be necessary to compensate it for any increased costs which such Bank determines are attributable to its making or maintaining a LIBOR Loan or a LIBOR Bid Rate Loan, or its obligation to make or maintain a LIBOR Loan or a LIBOR Bid Rate Loan, or its obligation to Convert a Base Rate Loan to a LIBOR Loan hereunder, or any reduction in any amount receivable by such Bank hereunder in respect of its LIBOR Loan or LIBOR Bid Rate Loan(s) or such obligations (such increases in costs and reductions in amounts

receivable being herein called "***Additional Costs***"), in each case resulting from any Regulatory Change which:

(1) changes the basis of taxation of any amounts payable to such Bank under this Agreement or the Notes in respect of any such LIBOR Loan or LIBOR Bid Rate Loan (other than changes in the rate of general corporate, franchise, branch profit, net income or other income tax imposed on such Bank or its Applicable Lending Office by the jurisdiction in which such Bank has its principal office or such Applicable Lending Office); or

(2) (other than to the extent the LIBOR Reserve Requirement is taken into account in determining the LIBOR Rate at the commencement of the applicable Interest Period) imposes or modifies any reserve, special deposit, deposit insurance or assessment, minimum capital, capital ratio or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Bank (including any LIBOR Loan or LIBOR Bid Rate Loan or any deposits referred to in the definition of "LIBOR Interest Rate" in Section 1.01), or any commitment of such Bank (including such Bank's Loan Commitment hereunder); or

(3) imposes any other condition affecting this Agreement or the Notes (or any of such extensions of credit or liabilities).

Without limiting the effect of the provisions of the first paragraph of this Section, in the event that, by reason of any Regulatory Change, any Bank either (1) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits of other liabilities of such Bank which includes deposits by reference to which the LIBOR Interest Rate is determined as provided in this Agreement or a category of extensions of credit or other assets of such Bank which includes loans based on the LIBOR Interest Rate or (2) becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold, then, if such Bank so elects by notice to Borrower (with a copy to Administrative Agent), the obligation of such Bank to permit Elections of, to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended (in which case the provisions of Section 3.04 shall be applicable) until such Regulatory Change ceases to be in effect.

Determinations and allocations by a Bank for purposes of this Section of the effect of any Regulatory Change pursuant to the first or second paragraph of this Section, on its costs or rate of return of making or maintaining its Loan or portions thereof or on amounts receivable by it in respect of its Loan or portions thereof, and the amounts required to compensate such Bank under this Section, shall be included in a calculation of such amounts given to Borrower and shall be conclusive absent manifest error.

Section 3.02 Limitation on Types of Loans. Anything herein to the contrary notwithstanding, if, on or prior to the determination of the LIBOR Interest Rate for any Interest Period:

(1) Administrative Agent reasonably determines (which determination shall be conclusive), and provides Borrower, in writing, with reasonable detail supporting such determination, that quotations of interest rates for the relevant deposits referred to in the

definition of "LIBOR Interest Rate" in Section 1.01 are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for the LIBOR Loans or LIBOR Bid Rate Loans as provided in this Agreement; or

(2) a Bank reasonably determines (which determination shall be conclusive), and provides Borrower, in writing, with reasonable detail supporting such determination, and promptly notifies Administrative Agent that the relevant rates of interest referred to in the definition of "LIBOR Interest Rate" in Section 1.01 upon the basis of which the rate of interest for LIBOR Loans or LIBOR Bid Rate Loans for such Interest Period is to be determined do not adequately cover the cost to such Bank of making or maintaining such LIBOR Loan or LIBOR Bid Rate Loan for such Interest Period;

then Administrative Agent shall give Borrower prompt notice thereof, and so long as such condition remains in effect, the Banks (or, in the case of the circumstances described in clause (2) above, the affected Bank) shall be under no obligation to permit Elections of LIBOR Loans, to Convert Base Rate Loans into LIBOR Loans or to Continue LIBOR Loans and Borrower shall, on the last day(s) of the then current Interest Period(s) for the affected outstanding LIBOR Loans or LIBOR Bid Rate Loans, either (x) prepay the affected LIBOR Loans or LIBOR Bid Rate Loans or (y) Convert the affected LIBOR Loans into Base Rate Loans in accordance with Section 2.12 or convert the rate of interest under the affected LIBOR Bid Rate Loans to the rate applicable to Base Rate Loans by following the same procedures as are applicable for Conversions into Base Rate Loans set forth in Section 2.12.

Section 3.03 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Bank or its Applicable Lending Office to honor its obligation to make or maintain a LIBOR Loan or LIBOR Bid Rate Loan hereunder, to allow Elections or Continuations of a LIBOR Loan or to Convert a Base Rate Loan into a LIBOR Loan, then such Bank shall promptly notify Administrative Agent and Borrower thereof and such Bank's obligation to make or maintain a LIBOR Loan or LIBOR Bid Rate Loan, or to permit Elections of, to Continue, or to Convert its Base Rate Loan into, a LIBOR Loan shall be suspended (in which case the provisions of Section 3.04 shall be applicable) until such time as such Bank may again make and maintain a LIBOR Loan or a LIBOR Bid Rate Loan.

Section 3.04 Treatment of Affected Loans. If the obligations of any Bank to make or maintain a LIBOR Loan or a LIBOR Bid Rate Loan, or to permit an Election of a LIBOR Loan, to Continue its LIBOR Loan, or to Convert its Base Rate Loan into a LIBOR Loan, are suspended pursuant to Sections 3.01 or 3.03 (each LIBOR Loan or LIBOR Bid Rate Loan so affected being herein called an "***Affected Loan***"), such Bank's Affected Loan shall be automatically Converted into a Base Rate Loan (or, in the case of an Affected Loan that is a LIBOR Bid Rate Loan, the interest rate thereon shall be converted to the rate applicable to Base Rate Loans) on the last day of the then current Interest Period for the Affected Loan (or, in the case of a Conversion (or conversion) required by Sections 3.01 or 3.03, on such earlier date as such Bank may specify to Borrower).

To the extent that such Bank's Affected Loan has been so Converted (or the interest rate thereon so converted), all payments and prepayments of principal which would otherwise be applied to such Bank's Affected Loan shall be applied instead to its Base Rate Loan (or to its

LIBOR Bid Rate Loan bearing interest at the converted rate) and such Bank shall have no obligation to Convert its Base Rate Loan into a LIBOR Loan.

Section 3.05 Certain Compensation. Other than in connection with a Conversion of an Affected Loan, Borrower shall pay to Administrative Agent for the account of the applicable Bank, upon the request of such Bank through Administrative Agent which request includes a calculation of the amount(s) due, such amount or amounts as shall be sufficient (in the reasonable opinion of such Bank) to compensate it for any non-administrative, actual loss, cost or expense which such Bank reasonably determines is attributable to:

(1) any payment or prepayment of a LIBOR Loan or Bid Rate Loan made by such Bank, or any Conversion or Continuation of a LIBOR Loan (or conversion of the rate of interest on a LIBOR Bid Rate Loan) made by such Bank, in any such case on a date other than the last day of an applicable Interest Period, whether by reason of acceleration or otherwise; or

(2) any failure by Borrower for any reason to Convert a Base Rate Loan or a LIBOR Loan or Continue a LIBOR Loan to be Converted or Continued by such Bank on the date specified therefor in the relevant notice under Section 2.14; or

(3) any failure by Borrower to borrow (or to qualify for a borrowing of) a LIBOR Loan or Bid Rate Loan which would otherwise be made hereunder on the date specified in the relevant Election notice under Section 2.14 or Bid Rate Quote acceptance under Section 2.02(e) given or submitted by Borrower.

Without limiting the foregoing, such compensation shall include any loss incurred in obtaining, liquidating or employing deposits from third parties, but excluding loss of margin for the period after the date of such payment, prepayment, Conversion or Continuation (or failure to Convert, Continue or borrow). A determination of any Bank as to the amounts payable pursuant to this Section shall be conclusive absent manifest error. No Bank shall make any request pursuant to this Section 3.05 unless such amounts due to, and costs incurred by, such Bank are equal to or greater than $100.

Section 3.06 Capital Adequacy. If any Bank shall have determined that, after the date hereof, the adoption of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on capital of such Bank (or its Parent) as a consequence of such Bank's obligations hereunder to a level below that which such Bank (or its Parent) could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy) by an amount deemed by such Bank to be material, then from time to time, within fifteen (15) days after demand by such Bank (with a copy to Administrative Agent), Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank (or its Parent) for such reduction. A certificate of any Bank claiming compensation

under this Section, setting forth in reasonable detail the basis therefor, shall be conclusive absent manifest error.

Section 3.07 Substitution of Banks. If any Bank (an "***Affected Bank***") (1) makes demand upon Borrower for (or if Borrower is otherwise required to pay) Additional Costs pursuant to Section 3.01 or (2) is unable to make or maintain a LIBOR Loan or LIBOR Bid Rate Loan as a result of a condition described in Section 3.03 or clause (2) of Section 3.02, Borrower may, within ninety (90) days of receipt of such demand or notice (or the occurrence of such other event causing Borrower to be required to pay Additional Costs or causing said Section 3.03 or clause (2) of Section 3.02 to be applicable), as the case may be, give written notice (a "***Replacement Notice***") to Administrative Agent and to each Bank of Borrower's intention either (x) to prepay in full the Affected Bank's Note and to terminate the Affected Bank's entire Loan Commitment or (y) to replace the Affected Bank with another financial institution (the "***Replacement Bank***") designated in such Replacement Notice. In the event Borrower opts to give the notice provided for in clause (x) above, and if the Affected Bank shall not agree within thirty (30) days of its receipt thereof to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03 or clause (2) of Section 3.02, then, so long as no Default or Event of Default shall exist, Borrower may (notwithstanding the provisions of clause (2) of Section 2.10(a)) terminate the Affected Bank's entire Loan Commitment, provided that in connection therewith it pays to the Affected Bank all outstanding principal and accrued and unpaid interest under the Affected Bank's Note, together with all other amounts, if any, due from Borrower to the Affected Bank, including all amounts properly demanded and unreimbursed under Sections 3.01 and 3.05.

In the event Borrower opts to give the notice provided for in clause (y) above, and if (i) Administrative Agent shall, within thirty (30) days of its receipt of the Replacement Notice, notify Borrower and each Bank in writing that the Replacement Bank is reasonably satisfactory to Administrative Agent and (ii) the Affected Bank shall not, prior to the end of such thirty (30)-day period, agree to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03 or clause (2) of Section 3.02, then the Affected Bank shall, so long as no Default or Event of Default shall exist, assign its Note and all of its rights and obligations under this Agreement to the Replacement Bank, and the Replacement Bank shall assume all of the Affected Bank's rights and obligations, pursuant to an agreement, substantially in the form of an Assignment and Acceptance, executed by the Affected Bank and the Replacement Bank. In connection with such assignment and assumption, the Replacement Bank shall pay to the Affected Bank an amount equal to the outstanding principal amount under the Affected Bank's Note plus all interest accrued thereon, plus all other amounts, if any (other than the Additional Costs in question), then due and payable to the Affected Bank; provided, however, that prior to or simultaneously with any such assignment and assumption, Borrower shall have paid to such Affected Bank all amounts properly demanded and unreimbursed under Sections 3.01 and 3.05. Upon the effective date of such assignment and assumption, the Replacement Bank shall become a Bank party to this Agreement and shall have all the rights and obligations of a Bank as set forth in such Assignment and Acceptance, and the Affected Bank shall be released from its obligations hereunder, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this Section, a substitute Ratable Loan Note (and, if applicable, Swing Loan Note) shall be issued to the Replacement Bank by Borrower, in exchange for the return of the Affected Bank's Ratable Loan Note (and, if applicable, Swing Loan Note). The obligations evidenced by such substitute note shall constitute "Obligations" for all purposes of

this Agreement and the other Loan Documents. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. If the Replacement Bank is not incorporated under the Laws of the United States of America or a state thereof, it shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 10.13. Each Replacement Bank shall be deemed to have made the representations contained in, and shall be bound by the provisions of, Section 10.13.

Borrower, Administrative Agent and the Banks shall execute such modifications to the Loan Documents as shall be reasonably required in connection with and to effectuate the foregoing.

Section 3.08 Applicability. The provisions of this Article III shall be applied to Borrower so as not to discriminate against Borrower vis-a-vis similarly situated customers of the Banks.

ARTICLE IV

CONDITIONS PRECEDENT

Section 4.01 Conditions Precedent to the Initial Advance. The obligations of the Banks hereunder and the obligation of each Bank to make the Initial Advance are subject to the condition precedent that Administrative Agent shall have received and approved on or before the Closing Date (other than with respect to paragraph (10) below which shall be required prior to the Initial Advance) each of the following documents, and each of the following requirements shall have been fulfilled:

(1) Fees and Expenses. The payment of (a) all fees and expenses incurred by Syndication Agent and Administrative Agent (including, without limitation, the reasonable fees and expenses of legal counsel) and (b) those fees specified in the Supplemental Fee Letter to be paid by Borrower on or before the Closing Date;

(2) Loan Agreement and Notes. This Agreement, the Ratable Loan Notes for each of the Banks signatory hereto, the Bid Rate Loan Note for Administrative Agent, and the Swing Note for the Swing Lender, each duly executed by Borrower;

(3) Financial Statements. (a) Audited Borrower's Consolidated Financial Statements as of and for the year ended December 31, 2003 and (b) unaudited Borrower's Consolidated Financial Statements, certified by the chief financial officer thereof, as of and for the quarter ended March 31, 2004;

(4) Evidence of Formation of Borrower. Certified (as of the Closing Date) copies of Borrower's certificate of incorporation and by-laws, with all amendments thereto, and a certificate of the Secretary of State of the jurisdiction of formation as to its good standing therein;

(5) Evidence of All Corporate Action. Certified (as of the Closing Date) copies of all documents evidencing the corporate action taken by Borrower authorizing the execution, delivery and performance of the Loan Documents and each other document to be delivered by or on behalf of Borrower pursuant to this Agreement;

(6) Incumbency and Signature Certificate of Borrower. A certificate (dated as of the Closing Date) of the secretary of Borrower certifying the names and true signatures of each person authorized to sign on behalf of Borrower;

(7) Solvency Certificate. A duly executed Solvency Certificate;

(8) Opinion of Counsel for Borrower. A favorable opinion, dated the Closing Date, of Goodwin Procter LLP, counsel for Borrower, as to such matters as Administrative Agent may reasonably request;

(9) Authorization Letter. The Authorization Letter, duly executed by Borrower;

(10) Request for Advance. A request for an advance in accordance with Section 2.04;

(11) Certificate. The following statements shall be true and Administrative Agent shall have received a certificate dated the Closing Date signed by a duly authorized signatory of Borrower stating, to the best of the certifying party's knowledge, the following:

(a) All representations and warranties contained in this Agreement and in each of the other Loan Documents are true and correct on and as of the Closing Date as though made on and as of such date, and

(b) No Default or Event of Default has occurred and is continuing, or could result from the transactions contemplated by this Agreement and the other Loan Documents; and

(c) No Material Adverse Change exists on and as of the Closing Date;

(12) Supplemental Fee Letter. The Supplemental Fee Letter, duly executed by Borrower;

(13) Covenant Compliance. A covenant compliance certificate of the sort required by paragraph (3) of Section 6.09 for the most recent calendar quarter for which Borrower is required to report financial results; and

(14) Additional Materials. Such other approvals, documents, instruments or opinions as Administrative Agent may reasonably request.

Section 4.02 Conditions Precedent to Each Advance. The obligation of each Bank to make each advance of the Loans, and the obligation of the Issuing Bank to issue any Letter of Credit, shall be subject to satisfaction of the following conditions precedent:

(1) All conditions of Section 4.01 shall have been and remain satisfied as of the date of such advance or issuance;

(2) No Default or Event of Default shall have occurred and be continuing as of the date of the advance or issuance or would result from the making of such advance or issuance;

(3) Each of the representations and warranties contained in this Agreement and in each of the other Loan Documents shall be true and correct in all material respects as of the date of the advance or issuance; and

(4) Administrative Agent shall have received a request for an advance in accordance with Section 2.04 or Administrative Agent and the Issuing Bank shall have received a request for such Letter of Credit in accordance with Section 2.16.

Section 4.03 Deemed Representations. Each request by Borrower for, and acceptance by Borrower of, an advance of proceeds of the Loans, and each request by Borrower for, and each issuance by the Issuing Bank of, a Letter of Credit, shall constitute a representation and warranty by Borrower that, as of both the date of such request and the date of such advance or issuance (1) no Default or Event of Default has occurred and is continuing or would result from the making of such advance or issuance and (2) each representation or warranty contained in this Agreement or the other Loan Documents is true and correct in all material respects.

ARTICLE V

REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Administrative Agent and each Bank as follows:

Section 5.01 Due Organization. Borrower is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, has the power and authority to own its assets and to transact the business in which it is now engaged, and, if applicable, is duly qualified for the conduct of business and in good standing under the Laws of each other jurisdiction in which such qualification is required and where the failure to be so qualified would cause a Material Adverse Change.

Section 5.02 Power and Authority; No Conflicts; Compliance With Laws. The execution, delivery and performance of the obligations required to be performed by Borrower of the Loan Documents does not and will not (a) require the consent or approval of its shareholders or such consent or approval has been obtained, (b) contravene either its certificate of incorporation or by-laws, (c) to the best of Borrower's knowledge, violate any provision of, or require any filing, registration, consent or approval under, any Law (including, without limitation, Regulation U), order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to it, (d) result in a breach of or constitute a default under or require any consent under any indenture or loan or credit agreement or any other agreement, lease or instrument to which it may be a party or by which it or its properties may be bound or affected except for consents which have been obtained, (e) result in, or require, the creation or imposition of any Lien, upon or with respect to any of its properties now owned or hereafter acquired or (f) to the best of Borrower's

knowledge, cause it to be in default under any such Law, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument; to the best of its knowledge, Borrower is in material compliance with all Laws applicable to it and its properties.

Section 5.03 Legally Enforceable Agreements. Each Loan Document is a legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency and other similar Laws affecting creditors' rights generally.

Section 5.04 Litigation. There are no actions, suits or proceedings pending or, to its knowledge, threatened against Borrower or any of its Affiliates before any court or arbitrator or any Governmental Authority which are reasonably likely to result in a Material Adverse Change or challenge the validity or enforceability of any of the Loan Documents.

Section 5.05 Good Title to Properties. Borrower and each of its Material Affiliates have good, marketable and legal title to all of the properties and assets each of them purports to own (including, without limitation, those reflected in the Consolidated Financial Statements referred to in Section 5.13), only with exceptions which do not materially detract from the value of such property or assets or the use thereof in Borrower's and such Material Affiliate's business, and except to the extent that any such properties and assets have been encumbered or disposed of since the date of such financial statements without violating any of the covenants contained in Article VII or elsewhere in this Agreement. Borrower and its Material Affiliates enjoy peaceful and undisturbed possession of all leased property necessary in any material respect in the conduct of their respective businesses. All such leases are valid and subsisting and are in full force and effect.

Section 5.06 Taxes. Borrower has filed all tax returns (federal, state and local) required to be filed and has paid all taxes, assessments and governmental charges and levies due and payable without the imposition of a penalty, including interest and penalties, except to the extent they are the subject of a Good Faith Contest. Borrower qualifies as a real estate investment trust under the Code.

Section 5.07 ERISA. Borrower is in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred with respect to any Plan which could result in liability of Borrower; no notice of intent to terminate a Plan has been filed nor has any Plan been terminated within the past five (5) years; no circumstance exists which constitutes grounds under Section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; Borrower and the ERISA Affiliates have not completely or partially withdrawn under Sections 4201 or 4204 of ERISA from a Multiemployer Plan; Borrower and the ERISA Affiliates have met the minimum funding requirements of Section 412 of the Code and Section 302 of ERISA of each with respect to the Plans of each and there is no material "Unfunded Current Liability" (as such quoted term is defined in ERISA) with respect to any Plan established or maintained by each; and Borrower and the ERISA Affiliates have not incurred any liability to the PBGC under ERISA (other than for the payment of premiums under Section 4007 of ERISA). No part of the funds to be used by Borrower in satisfaction of its obligations under this Agreement constitute "plan assets" of any "employee benefit plan" within the meaning of ERISA or of any "plan" within the meaning of Section 4975(e)(1) of the Code, as interpreted by the

Internal Revenue Service and the U.S. Department of Labor in rules, regulations, releases, bulletins or as interpreted under applicable case law.

Section 5.08 No Default on Outstanding Judgments or Orders, Etc. Borrower and each of its Material Affiliates have satisfied all judgments which are not being appealed or which are not fully covered by insurance, and are not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other Governmental Authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

Section 5.09 No Defaults on Other Agreements. Except as disclosed to Administrative Agent in writing (who shall provide such information, promptly upon receipt, to each of the Banks), Borrower is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any partnership, trust or other restriction which is likely to result in a Material Adverse Change. Borrower is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument which is likely to result in a Material Adverse Change. Borrower and each of its Material Affiliates are in compliance in all material respects with all Laws applicable to it, except where no Material Adverse Change could occur as a result of such non-compliance.

Section 5.10 Government Regulation. Borrower is not subject to regulation under the Investment Company Act of 1940 or any statute or regulation limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

Section 5.11 Environmental Protection. To the best of Borrower's knowledge, none of Borrower's or its Material Affiliates' properties contains any Hazardous Materials that, under any Environmental Law currently in effect, (1) would impose liability on Borrower that is likely to result in a Material Adverse Change or (2) is likely to result in the imposition of a Lien on any assets of Borrower or its Material Affiliates, in each case if not properly handled in accordance with applicable Law or not covered by insurance or a bond, in either case reasonably satisfactory to Administrative Agent. To the best of Borrower's knowledge, neither it nor any of its Material Affiliates is in material violation of, or subject to any existing, pending or threatened material investigation or proceeding by any Governmental Authority under any Environmental Law.

Section 5.12 Solvency. Borrower is, and upon consummation of the transactions contemplated by this Agreement, the other Loan Documents and any other documents, instruments or agreements relating thereto, will be, Solvent.

Section 5.13 Financial Statements. The Borrower's Consolidated Financial Statements most recently delivered to the Banks pursuant to the terms of this Agreement are in all material respects complete and correct and fairly present the financial condition of the subject thereof as of the dates of and for the periods covered by such statements, all in accordance with GAAP. There has been no Material Adverse Change since the date of such most recently delivered Borrower's Consolidated Financial Statements.

Section 5.14 Valid Existence of Affiliates. At the Closing Date, the only Material Affiliates of Borrower are listed on **EXHIBIT C**. Each Material Affiliate is a corporation,

partnership or limited liability company duly organized and existing in good standing under the Laws of the jurisdiction of its formation. As to each Material Affiliate, its correct name, the jurisdiction of its formation, Borrower's percentage of beneficial interest therein, and the type of business in which it is primarily engaged, are set forth on said **EXHIBIT C**. Borrower and each of its Material Affiliates have the power to own their respective properties and to carry on their respective businesses now being conducted. Each Material Affiliate is duly qualified as a foreign corporation to do business and is in good standing in every jurisdiction in which the nature of the respective businesses conducted by it or its respective properties, owned or held under lease, make such qualification necessary and where the failure to be so qualified would cause a Material Adverse Change.

Section 5.15 Insurance. Borrower and each of its Material Affiliates have in force paid insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same type of business and similarly situated.

Section 5.16 Accuracy of Information; Full Disclosure. Neither this Agreement nor any documents, financial statements, reports, notices, schedules, certificates, statements or other writings furnished by or on behalf of Borrower to Administrative Agent or any Bank in connection with the negotiation of this Agreement or the consummation of the transactions contemplated hereby, or required herein to be furnished by or on behalf of Borrower (other than projections which are made by Borrower in good faith), contains any untrue or misleading statement of a material fact or omits a material fact necessary to make the statements herein or therein not misleading. To the best of Borrower's knowledge, there is no fact which Borrower has not disclosed to Administrative Agent and the Banks in writing which materially affects adversely nor, so far as Borrower can now foresee, will materially affect adversely the business affairs or financial condition of Borrower or the ability of Borrower to perform this Agreement and the other Loan Documents.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as any of the Notes shall remain unpaid or the Loan Commitments remain in effect, or any other amount is owing by Borrower to any Bank Party hereunder or under any other Loan Document, Borrower shall, and, in the case of Sections 6.01 through 6.07, inclusive, shall cause each of its Material Affiliates to:

Section 6.01 Maintenance of Existence. Preserve and maintain its legal existence and good standing in the jurisdiction of its organization, and qualify and remain qualified as a foreign entity in each other jurisdiction in which such qualification is required except to the extent that failure to be so qualified in such other jurisdictions is not likely to result in a Material Adverse Change.

Section 6.02 Maintenance of Records. Keep adequate records and books of account, in which complete entries will be made reflecting all of its financial transactions, in accordance with GAAP.

Section 6.03 Maintenance of Insurance. At all times, maintain and keep in force insurance with financially sound and reputable insurance companies or associations in such amounts and covering such risks as are usually carried by companies engaged in the same type of business and similarly situated, which insurance shall be acceptable to Administrative Agent and may provide for reasonable deductibility from coverage thereof. In connection with the foregoing, it is understood that Borrower's earthquake insurance coverage in place as of the Closing Date is acceptable to Administrative Agent.

Section 6.04 Compliance with Laws; Payment of Taxes. Comply in all material respects with all Laws applicable to it or to any of its properties or any part thereof, such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property, except to the extent they are the subject of a Good Faith Contest.

Section 6.05 Right of Inspection. At any reasonable time and from time to time upon reasonable notice, permit Administrative Agent or any Bank or any agent or representative thereof to examine and make copies and abstracts from its records and books of account and visit its properties and to discuss its affairs, finances and accounts with the independent accountants of Borrower.

Section 6.06 Compliance With Environmental Laws. Comply in all material respects with all applicable Environmental Laws and timely pay or cause to be paid all costs and expenses incurred in connection with such compliance, except to the extent there is a Good Faith Contest.

Section 6.07 Maintenance of Properties. Do all things reasonably necessary to maintain, preserve, protect and keep its properties in good repair, working order and condition except where the cost thereof is not in Borrower's best interests and the failure to do so would not result in a Material Adverse Change.

Section 6.08 Payment of Costs. Pay all costs and expenses required for the satisfaction of the conditions of this Agreement.

Section 6.09 Reporting and Miscellaneous Document Requirements. Furnish directly to Administrative Agent (who shall provide, promptly upon receipt, to each of the Banks):

(1) Annual Financial Statements. As soon as available and in any event within ninety (90) days after the end of each Fiscal Year, Borrower's Consolidated Financial Statements as of the end of and for such Fiscal Year, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior Fiscal Year and audited by Borrower's Accountants;

(2) Quarterly Financial Statements. As soon as available and in any event within forty-five (45) days after the end of each calendar quarter (other than the last quarter of the Fiscal Year), the unaudited Borrower's Consolidated Financial Statements as of the end of and for such calendar quarter, in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior Fiscal Year;

(3) Certificate of No Default and Financial Compliance. Within ninety (90) days after the end of each Fiscal Year and within forty-five (45) days after the end of each calendar quarter, a certificate of Borrower's chief financial officer or treasurer (a) stating that, to the best of his or her knowledge, no Default or Event of Default has occurred and is continuing, or if a Default or Event of Default has occurred and is continuing, specifying the nature thereof and the action which is proposed to be taken with respect thereto; (b) stating that the covenants contained in Sections 7.02, 7.03 and 7.04 and in Article VIII have been complied with (or specifying those that have not been complied with) and including computations demonstrating such compliance (or non-compliance); (c) setting forth the details of all items comprising Total Outstanding Indebtedness, Secured Indebtedness, Unencumbered Combined EBITDA, Interest Expense and Unsecured Indebtedness (including amount, maturity, interest rate and amortization requirements with respect to all Indebtedness and including an occupancy report for each Unencumbered Wholly-Owned Asset for each of the preceding four (4) calendar quarters and for such four (4) calendar quarter-period as a whole); and (d) only at the end of each Fiscal Year, stating Borrower's taxable income;

(4) Certificate of Borrower's Accountants. Simultaneously with the delivery of the annual financial statements required by paragraph (1) of this Section, (a) a statement of Borrower's Accountants who audited such financial statements comparing the computations set forth in the financial compliance certificate required by paragraph (3) of this Section to the audited financial statements required by paragraph (1) of this Section and (b) when the audited financial statements required by paragraph (1) of this Section have a qualified auditor's opinion, a statement of Borrower's Accountants who audited such financial statements of whether any Default or Event of Default has occurred and is continuing;

(5) Notice of Litigation. Promptly after the commencement and knowledge thereof, notice of all actions, suits, and proceedings before any court or arbitrator, affecting Borrower which, if determined adversely to Borrower is likely to result in a Material Adverse Change;

(6) Notices of Defaults and Events of Default. As soon as possible and in any event within ten (10) days after Borrower becomes aware of the occurrence of a material Default or any Event of Default, a written notice (which notice shall state that it is a "Notice of Default") setting forth the details of such Default or Event of Default and the action which is proposed to be taken with respect thereto;

(7) Sales or Acquisitions of Assets. Promptly after the occurrence thereof, written notice (which may be in the form of a press release sent to Administrative Agent) of (i) any Disposition or acquisition (including Acquisitions) of assets (other than acquisitions or Dispositions of investments such as certificates of deposit, Treasury securities, money market deposits and other similar financial instruments in the ordinary course of Borrower's cash management) with respect to which Borrower is required to file an "8-K", or (ii) the granting of a Lien on any Unencumbered Wholly-Owned Asset or Unencumbered Land or Construction-In-Process, together with, in the case of any acquisition of such an asset, copies of all material agreements governing the acquisition and historical financial information and Borrower's projections with respect to the property acquired;

(8) Material Adverse Change. As soon as is practicable and in any event within five (5) days after knowledge of the occurrence of any event or circumstance which is likely to result in or has resulted in a Material Adverse Change, written notice thereof;

(9) Offices. Thirty (30) days' prior written notice of any change in the chief executive office or principal place of business of Borrower;

(10) Environmental and Other Notices. As soon as possible and in any event within ten (10) days after receipt, copies of all Environmental Notices received by Borrower which are not received in the ordinary course of business and which relate to a situation which is likely to result in a Material Adverse Change;

(11) Insurance Coverage. Promptly, such information concerning Borrower's insurance coverage as Administrative Agent may reasonably request;

(12) Proxy Statements, Etc.. Promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports which Borrower or its Material Affiliates sends to its shareholders, and copies of all regular, periodic and special reports, and all registration statements which Borrower or its Material Affiliates files with the Securities and Exchange Commission or any Governmental Authority which may be substituted therefor, or with any national securities exchange;

(13) Operating Statements. As soon as available and in any event within forty-five (45) days after the end of each calendar quarter, an operating statement for each property directly or indirectly owned in whole or in part by Borrower;

(14) Capital Expenditures. As soon as available and in any event within forty-five (45) days after the end of each Fiscal Year, a schedule of such Fiscal Year's capital expenditures and a budget for the next Fiscal Year's planned capital expenditures for each property directly or indirectly owned in whole or in part by Borrower; and

(15) General Information. Promptly, such other information respecting the condition or operations, financial or otherwise, of Borrower or any properties of Borrower as Administrative Agent may from time to time reasonably request.

Section 6.10 Principal Prepayments as a Result of Reduction in Total Loan Commitment. If the outstanding principal amount under the Notes at any time exceeds the Total Loan Commitment, Borrower shall, within ten (10) days of Administrative Agent's written demand, make a payment in the amount of such excess in reduction of such outstanding principal balance.

ARTICLE VII

NEGATIVE COVENANTS

So long as any of the Notes shall remain unpaid, or the Loan Commitments remain in effect, or any other amount is owing by Borrower to any Bank Party hereunder or under any other Loan Document, Borrower shall not do any or all of the following:

Section 7.01 Mergers Etc. Merge or consolidate with (except where Borrower is the surviving entity), or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired).

Section 7.02 Investments. Directly or indirectly, make any loan or advance to any Person or purchase or otherwise acquire any capital stock, assets, obligations or other securities of, make any capital contribution to, or otherwise invest in, or acquire any interest in, any Person (any such transaction, an "***Investment***") if such Investment constitutes the acquisition of a minority interest in a Person (a "***Minority Interest***") and the amount of such Investment, together with the value of all other Minority Interests, would exceed 20% of Capitalization Value, determined as of the end of the most recent calendar quarter for which Borrower is required to have reported financial results pursuant to Section 6.09. A 50% beneficial interest in a Person, in connection with which the holder thereof exercises joint control over such Person with the holder(s) of the other 50% beneficial interest, shall not constitute a "Minority Interest" for purposes of this Section.

Section 7.03 Sale of Assets. Effect (i) a Disposition of any of its now owned or hereafter acquired assets (including equity interests therein), including assets in which Borrower owns a beneficial interest through its ownership of interests in joint ventures, (a) in one or more transactions after the Closing Date aggregating more than 25% of Capitalization Value or (b) if after giving effect to such Disposition, a Default or Event of Default would exist, or (ii) the granting of a Lien on any Unencumbered Wholly-Owned Assets or Unencumbered Land and Construction-In-Process, if after granting such Lien, a Default or Event of Default would exist.

Section 7.04 Distributions. In addition to the limitations under Section 8.07, during the existence of any Event of Default, make, declare or pay, directly or indirectly, any dividend or distribution to any of its equity holders in an amount greater than the minimum dividend or distribution required under the Code to maintain the real estate investment trust status of Borrower under the Code, as evidenced by a detailed certificate of Borrower's chief financial officer or treasurer reasonably satisfactory in form and substance to Administrative Agent; provided, however, that following acceleration of the maturity of the Notes, Borrower shall not, directly or indirectly, make, declare or pay any dividend or distribution to any of its equity holders.

ARTICLE VIII

FINANCIAL COVENANTS

So long as any of the Notes shall remain unpaid, or the Loan Commitments remain in effect, or any other amount is owing by Borrower to any Bank Party under this Agreement or under any other Loan Document, Borrower shall not permit or suffer any or all of the following:

Section 8.01 Consolidated Tangible Net Worth. At any time, Consolidated Tangible Net Worth to be less than $2,000,000,000.

Section 8.02 Relationship of Total Outstanding Indebtedness to Capitalization Value. At any time, Total Outstanding Indebtedness to exceed 60% of Capitalization Value.

Section 8.03 **Relationship of Combined EBITDA to Interest Expense**. For any calendar quarter, the ratio of (1) Combined EBITDA to (2) Interest Expense (each for the twelve (12)-month period ending with such quarter), to be less than 2.25 to 1.00.

Section 8.04 **Relationship of Combined EBITDA to Combined Debt Service**. For any calendar quarter, the ratio of (1) Combined EBITDA to (2) Combined Debt Service (each for the twelve (12)-month period ending with such quarter), to be less than 1.80 to 1.00.

Section 8.05 **Ratio of Unsecured Indebtedness to Unencumbered Asset Value**. At any time, the ratio of (1) Unsecured Indebtedness to (2) Unencumbered Asset Value to exceed 60%.

Section 8.06 **Relationship of Unencumbered Combined EBITDA to Unsecured Interest Expense**. For any calendar quarter, the ratio of (1) Unencumbered Combined EBITDA to (2) Unsecured Interest Expense (each for such calendar quarter), to be less than 2.00 to 1.00.

Section 8.07 **Relationship of Dividends to Funds From Operations**. For any calendar year, dividends declared by Borrower on to exceed 95% of Funds From Operations, each for such calendar year, or such greater amount as may be required under the Code to maintain the real estate investment trust status of Borrower under the Code, as evidenced by a detailed certificate of Borrower's chief financial officer or treasurer reasonably satisfactory in form and substance to Administrative Agent.

Section 8.08 **Relationship of Secured Indebtedness to Capitalization Value**. At any time, Secured Indebtedness to exceed 40% of Capitalization Value.

ARTICLE IX

EVENTS OF DEFAULT

Section 9.01 **Events of Default**. Any of the following events shall be an "Event of Default":

(1) If Borrower shall fail to pay the principal of any Notes as and when due, and such failure to pay shall continue unremedied for five (5) days after the due date of such amount; or fail to pay interest accruing on any Notes as and when due, and such failure to pay shall continue unremedied for five (5) days after written notice by Administrative Agent of such failure to pay; or fail to make any payment required under Section 6.10 as and when due; or fail to pay any fee or any other amount due under this Agreement, any other Loan Document or the Supplemental Fee Letter as and when due and such failure to pay shall continue unremedied for two (2) Banking Days after written notice by Administrative Agent of such failure to pay; or

(2) If any representation or warranty made by Borrower in this Agreement or in any other Loan Document or which is contained in any certificate, document, opinion, financial or other statement furnished at any time under or in connection with a Loan Document shall prove to have been incorrect in any material respect on or as of the date made; or

(3) If Borrower shall fail (a) to perform or observe any term, covenant or agreement contained in Article VII or Article VIII; or (b) to perform or observe any term, covenant or agreement contained in this Agreement (other than obligations specifically referred to elsewhere in this Section 9.01) or any Loan Document, or any other document executed by Borrower and delivered to Administrative Agent or the Banks in connection with the transactions contemplated hereby and such failure under this clause (b) shall remain unremedied for thirty (30) consecutive calendar days after notice thereof (or such shorter cure period as may be expressly prescribed in the applicable document); provided, however, that if any such default under clause (b) above cannot by its nature be cured within such thirty (30) day, or shorter, as the case may be, grace period and so long as Borrower shall have commenced cure within such thirty (30) day, or shorter, as the case may be, grace period and shall, at all times thereafter, diligently prosecute the same to completion, Borrower shall have an additional period, not to exceed sixty (60) days, to cure such default; in no event, however, is the foregoing intended to effect an extension of the Maturity Date; or

(4) If Borrower shall fail (a) to pay any Recourse Debt (other than the payment obligations described in paragraph (1) of this Section) in any amount, or any Debt (other than Recourse Debt) in an amount equal to or greater than $50,000,000, in any such case when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) after the expiration of any applicable grace period, or (b) to perform or observe any material term, covenant, or condition under any agreement or instrument relating to any such Debt, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate, or to permit the acceleration of, after the giving of notice or the lapse of time, or both (other than in cases where, in the judgment of the Majority Banks, meaningful discussions likely to result in (i) a waiver or cure of the failure to perform or observe, or (ii) otherwise averting such acceleration are in progress between Borrower and the obligee of such Debt), the maturity of such Debt, or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled or otherwise required prepayment), prior to the stated maturity thereof; or

(5) If Borrower, or any Affiliate of Borrower to which $50,000,000 or more of Capitalization Value is attributable, shall (a) generally not, or be unable to, or shall admit in writing its inability to, pay its debts as such debts become due; or (b) make an assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (c) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation Law of any jurisdiction, whether now or hereafter in effect; or (d) have had any such petition or application filed or any such proceeding shall have been commenced, against it, in which an adjudication or appointment is made or order for relief is entered, or which petition, application or proceeding remains undismissed or unstayed for a period of sixty (60) days or more; or (e) be the subject of any proceeding under which all or a substantial part of its assets may be subject to seizure, forfeiture or divestiture; or (f) by any act or omission indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (g) suffer any such custodianship,

receivership or trusteeship for all or any substantial part of its property, to continue undischarged for a period of sixty (60) days or more; or

(6) If one or more judgments, decrees or orders for the payment of money in an amount in excess of 5% of Consolidated Tangible Net Worth (excluding any such judgments, decrees or orders which are fully covered by insurance) in the aggregate shall be rendered against Borrower or any of its Material Affiliates, and any such judgments, decrees or orders shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal; or

(7) If any of the following events shall occur or exist with respect to Borrower or any ERISA Affiliate: (a) any Prohibited Transaction involving any Plan; (b) any Reportable Event with respect to any Plan; (c) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan; (d) any event or circumstance which would constitute grounds for the termination of, or for the appointment of a trustee to administer, any Plan under Section 4042 of ERISA, or the institution by the PBGC of proceedings for any such termination or appointment under Section 4042 of ERISA; or (e) complete or partial withdrawal under Section 4201 or 4204 of ERISA from a Multiemployer Plan or the reorganization, insolvency, or termination of any Multiemployer Plan; and in each case above, if such event or conditions, if any, could in the reasonable opinion of any Bank subject Borrower to any tax, penalty, or other liability to a Plan, Multiemployer Plan, the PBGC or otherwise (or any combination thereof) which in the aggregate exceeds or is likely to exceed $50,000; or

(8) If at any time Borrower is not a qualified real estate investment trust under Sections 856 through 860 of the Code or is not a publicly traded company listed on the New York Stock Exchange; or

(9) If at any time any portion of Borrower's assets constitute plan assets for ERISA purposes (within the meaning of C.F.R. §2510.3-101); or

(10) If, in the reasonable judgment of all of the Banks (and the basis for such determination is provided to Borrower in writing in reasonable detail), there shall occur a Material Adverse Change; or

(11) If, during any period of up to twelve (12) consecutive months commencing on or after the Closing Date, individuals who were directors of Borrower at the beginning of such period (the "***Continuing Directors***"), plus any new directors whose election or appointment was approved by a majority of the Continuing Directors then in office, shall cease for any reason to constitute a majority of the Board of Directors of Borrower; or

(12) If, through any transaction or series of related transactions, any Person (including Affiliates of such Person) shall acquire beneficial ownership, directly or indirectly, of securities of Borrower (or of securities convertible into securities of Borrower) representing 25% or more of the combined voting power of all securities of Borrower entitled to vote in the election of directors.

Section 9.02 Remedies. If any Event of Default shall occur and be continuing, Administrative Agent shall, upon request of the Majority Banks, by notice to Borrower, (1) declare the outstanding balance of the Notes, all interest thereon, and all other amounts payable under this Agreement to be forthwith due and payable, whereupon such balance, all such interest, and all such amounts due under this Agreement and under any other Loan Document shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Borrower; and/or (2) exercise any remedies provided in any of the Loan Documents or by law. Notwithstanding the foregoing, if an Event of Default under Section 9.01(10) shall occur and be continuing, Administrative Agent shall not be entitled to exercise the foregoing remedies until (1) it has received a written notice from all of the Banks (the "***Unanimous Bank Notices***") (i) requesting Administrative Agent exercise such remedies and (ii) indicating each Bank's conclusion in its reasonable judgment that a Material Adverse Change has occurred and (2) Administrative Agent has provided notice to Borrower, together with copies of all of the Unanimous Bank Notices.

ARTICLE X

ADMINISTRATIVE AGENT; RELATIONS AMONG BANKS

Section 10.01 Appointment, Powers and Immunities of Administrative Agent. Each Bank hereby irrevocably appoints and authorizes Administrative Agent to act as its agent hereunder and under any other Loan Document with such powers as are specifically delegated to Administrative Agent by the terms of this Agreement and any other Loan Document, together with such other powers as are reasonably incidental thereto. Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and any other Loan Document or required by Law, and shall not by reason of this Agreement be a fiduciary or trustee for any Bank except to the extent that Administrative Agent acts as an agent with respect to the receipt or payment of funds (nor shall Administrative Agent have any fiduciary duty to Borrower nor shall any Bank have any fiduciary duty to Borrower or to any other Bank). No implied covenants, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Administrative Agent. Neither Administrative Agent nor any of its directors, officers, employees, attorneys-in-fact or affiliates shall be responsible to the Banks for any recitals, statements, representations or warranties made by Borrower or any officer, partner or official of Borrower or any other Person contained in this Agreement or any other Loan Document, or in any certificate or other document or instrument referred to or provided for in, or received by any of them under, this Agreement or any other Loan Document, or for the value, legality, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or any other document or instrument referred to or provided for herein or therein, for the perfection or priority of any Lien securing the Obligations or for any failure by Borrower to perform any of its obligations hereunder or thereunder. Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible, except as to money or securities received by it or its authorized agents, for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. Neither Administrative Agent nor any of its directors, officers, employees, attorneys-in-fact, agents or affiliates shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Borrower

shall pay any fee agreed to by Borrower and Administrative Agent with respect to Administrative Agent's services hereunder.

Section 10.02 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. Administrative Agent may deem and treat each Bank as the holder of the Loan made by it for all purposes hereof and shall not be required to deal with any Person who has acquired a Participation in any Loan or Participation from a Bank. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Majority Banks, Super-Majority Banks or all Banks, as required by this Agreement, and such instructions of the Majority Banks, Super-Majority Banks or all Banks, as the case may be, and any action taken or failure to act pursuant thereto, shall be binding on all of the Banks and any other holder of all or any portion of any Loan or Participation.

Section 10.03 Defaults. Administrative Agent shall not be deemed to have knowledge of the occurrence of a Default or Event of Default unless Administrative Agent has received notice from a Bank or Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, Administrative Agent shall give prompt notice thereof to the Banks. Administrative Agent, following consultation with the Banks, shall (subject to Section 10.07 and Section 12.02) take such action with respect to such Default or Event of Default which is continuing as shall be directed by the Majority Banks; provided that, unless and until Administrative Agent shall have received such directions, Administrative Agent may take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Banks; and provided further that Administrative Agent shall not send a notice of Default or acceleration to Borrower without the approval of the Majority Banks. In no event shall Administrative Agent be required to take any such action which it determines to be contrary to Law or to the Loan Documents. Each of the Banks acknowledges and agrees that no individual Bank may separately enforce or exercise any of the provisions of any of the Loan Documents, including, without limitation, the Notes, other than through Administrative Agent.

Section 10.04 Rights of Administrative Agent as a Bank. With respect to its Loan Commitment and the Loan provided by it, Administrative Agent in its capacity as a Bank hereunder shall have the same rights and powers hereunder as any other Bank and may exercise the same as though it were not acting as Administrative Agent, and the term "Bank" or "Banks" shall, unless the context otherwise indicates, include Administrative Agent in its capacity as a Bank. Administrative Agent and its Affiliates may (without having to account therefor to any Bank) accept deposits from, lend money to (on a secured or unsecured basis), and generally engage in any kind of banking, trust or other business with Borrower (and any Affiliates of Borrower) as if it were not acting as Administrative Agent.

Section 10.05 Indemnification of Administrative Agent. Each Bank agrees to indemnify Administrative Agent (to the extent not reimbursed under Section 12.04 or under the applicable provisions of any other Loan Document, but without limiting the obligations of Borrower under Section 12.04 or such provisions), for its Pro Rata Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of this Agreement, any other Loan Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which Borrower is obligated to pay under Section 12.04) or under the applicable provisions of any other Loan Document or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided that no Bank shall be liable for (1) any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified, (2) any loss of principal or interest with respect to Administrative Agent's Loan or (3) any loss suffered by Administrative Agent in connection with a swap or other interest rate hedging arrangement entered into with Borrower.

Section 10.06 Non-Reliance on Administrative Agent and Other Banks. Each Bank agrees that it has, independently and without reliance on Administrative Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own credit analysis of Borrower and the decision to enter into this Agreement and that it will, independently and without reliance upon Administrative Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Loan Document. Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower of this Agreement or any other Loan Document or any other document referred to or provided for herein or therein or to inspect the properties or books of Borrower. Except for notices, reports and other documents and information expressly required to be furnished to the Banks by Administrative Agent hereunder, Administrative Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the affairs, financial condition or business of Borrower (or any Affiliate of Borrower) which may come into the possession of Administrative Agent or any of its Affiliates. Administrative Agent shall not be required to file this Agreement, any other Loan Document or any document or instrument referred to herein or therein, for record or give notice of this Agreement, any other Loan Document or any document or instrument referred to herein or therein, to anyone.

Section 10.07 Failure of Administrative Agent to Act. Except for action expressly required of Administrative Agent hereunder, Administrative Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall have received further assurances (which may include cash collateral) of the indemnification obligations of the Banks under Section 10.05 in respect of any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. If any indemnity furnished by the Banks to Administrative Agent for any purpose shall, in the reasonable opinion of Administrative Agent, be insufficient or become impaired, Administrative Agent may call for additional indemnity and cease, or not commence, to do the action indemnified against until such additional indemnity is furnished.

Section 10.08 **Resignation or Removal of Administrative Agent**. Administrative Agent hereby agrees not to unilaterally resign except in the event it becomes an Affected Bank and is removed or replaced as a Bank pursuant to Section 3.07, in which event it shall have the right to resign. Fleet agrees that it may be replaced as Administrative Agent by the Majority Banks if its Loan Commitment is reduced to $25,000,000 or less through assignments to Assignees. In addition, Administrative Agent may be removed at any time with cause by the Super-Majority Banks. In the case of any removal of Administrative Agent, Borrower and the Banks shall be promptly notified thereof. Upon any such resignation or removal of Administrative Agent, the Super-Majority Banks shall have the right to appoint a successor Administrative Agent, which successor Administrative Agent, so long as it is reasonably acceptable to the Super-Majority Banks, shall be that Bank then having the greatest Loan Commitment; if two (2) or more Banks have an equal greatest Loan Commitment, the Super-Majority Banks shall select between or among them. If no successor Administrative Agent shall have been so appointed by the Super-Majority Banks and shall have accepted such appointment within thirty (30) days after the Super-Majority Banks' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be one of the Banks. The Super-Majority Banks or the retiring Administrative Agent, as the case may be, shall upon the appointment of a successor Administrative Agent promptly so notify Borrower and the other Banks. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's removal hereunder as Administrative Agent, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

Section 10.09 **Amendments Concerning Agency Function**. Notwithstanding anything to the contrary contained herein, Administrative Agent shall not be bound by any waiver, amendment, supplement or modification hereof or of any other Loan Document which affects its duties, rights, and/or function hereunder or thereunder unless it shall have given its prior written consent thereto.

Section 10.10 **Liability of Administrative Agent**. Administrative Agent shall not have any liabilities or responsibilities to Borrower on account of the failure of any Bank to perform its obligations hereunder or to any Bank on account of the failure of Borrower to perform its obligations hereunder or under any other Loan Document.

Section 10.11 **Transfer of Agency Function**. Without the consent of Borrower or any Bank, Administrative Agent may at any time or from time to time transfer its functions as Administrative Agent hereunder to any of its offices wherever located in the United States, provided that Administrative Agent shall promptly notify Borrower and the Banks thereof.

Section 10.12 **Non-Receipt of Funds by Administrative Agent**. (a) Unless Administrative Agent shall have received notice from a Bank or Borrower (either one as appropriate being the "Payor") prior to the date on which such Bank is to make payment hereunder to Administrative Agent of the proceeds of a Loan or Borrower is to make payment to Administrative Agent, as the case may be (either such payment being a "***Required Payment***"), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in

full to Administrative Agent, Administrative Agent may assume that the Required Payment has been made in full to Administrative Agent on such date, and Administrative Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Administrative Agent, the recipient of such payment shall repay to Administrative Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount, at the customary rate set by Administrative Agent for the correction of errors among Banks for three (3) Banking Days and thereafter at the Base Rate.

(a) If, after Administrative Agent has paid each Bank's share of any payment received or applied by Administrative Agent in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Administrative Agent, whether pursuant to any bankruptcy or insolvency Law, sharing of payments clause of any loan agreement or otherwise, such Bank shall, at Administrative Agent's request, promptly return its share of such payment or application to Administrative Agent, together with such Bank's proportionate share of any interest or other amount required to be paid by Administrative Agent with respect to such payment or application. In addition, if a court of competent jurisdiction shall adjudge that any amount received and distributed by Administrative Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Administrative Agent its share of the amount so adjudged to be repaid or shall pay over to the same in such manner and to such Persons as shall be determined by such court.

Section 10.13 Withholding Taxes. Each Bank represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to Administrative Agent such forms, certifications, statements and other documents as Administrative Agent may request from time to time to evidence such Bank's exemption from the withholding of any tax imposed by any jurisdiction or to enable Administrative Agent or Borrower to comply with any applicable Laws or regulations relating thereto. Without limiting the effect of the foregoing, if any Bank is not created or organized under the Laws of the United States of America or any state thereof, such Bank will furnish to Administrative Agent a United States Internal Revenue Service Form W-8ECI in respect of all payments to be made to such Bank by Borrower or Administrative Agent under this Agreement or any other Loan Document or a United States Internal Revenue Service Form W-8BEN establishing such Bank's complete exemption from United States withholding tax in respect of payments to be made to such Bank by Borrower or Administrative Agent under this Agreement or any other Loan Document, or such other forms, certifications, statements or documents, duly executed and completed by such Bank as evidence of such Bank's exemption from the withholding of U.S. tax with respect thereto. Administrative Agent shall not be obligated to make any payments hereunder to such Bank in respect of any Loan or Participation or such Bank's Loan Commitment or obligation to purchase Participations until such Bank shall have furnished to Administrative Agent the requested form, certification, statement or document.

Section 10.14 Minimum Commitment by Syndication Agent. In the event JPMC's individual Loan Commitment is reduced to $25,000,000 or less through assignments, Borrower may replace JPMC as Syndication Agent with a lending institution selected by Borrower. In

making such selection, Borrower will consider in good faith Fleet, Morgan Stanley Bank, Wells Fargo Bank, National Association and Deutsche Bank Trust Company Americas**.**

Section 10.15 Pro Rata Treatment. Except to the extent otherwise provided, (1) each advance of proceeds of the Ratable Loans shall be made by the Banks; (2) each reduction of the amount of the Total Loan Commitment under Section 2.10 shall be applied to the Loan Commitments of the Banks; and (3) each payment of the fee accruing under paragraph (b) of Section 2.07 and clause (1) of Section 2.16(f) shall be made for the account of the Banks, ratably according to the amounts of their respective Loan Commitments. Except as otherwise expressly provided in this Agreement, each payment in respect of principal or interest under the Loans shall be applied to such obligations owing to the Banks pro rata according to the respective amounts then due and owing to the Banks.

Section 10.16 Sharing of Payments Among Banks. If a Bank shall obtain payment of any principal of or interest on any Loan made by it through the exercise of any right of setoff, banker's lien, counterclaim, or by any other means (including direct payment), and such payment results in such Bank receiving a greater payment than it would have been entitled to had such payment been paid directly to Administrative Agent for disbursement to the Banks, then such Bank shall promptly purchase for cash from the other Banks Participations in the Loans made by the other Banks in such amounts, and make such other adjustments from time to time as shall be equitable to the end that all the Banks shall share ratably the benefit of such payment. To such end the Banks shall make appropriate adjustments among themselves (by the resale of Participations sold or otherwise) if such payment is rescinded or must otherwise be restored. Borrower agrees that any Bank so purchasing a Participation in the Loans made by other Banks may exercise all rights of setoff, banker's lien, counterclaim or similar rights with respect to such Participation. Nothing contained herein shall require any Bank to exercise any such right or shall affect the right of any Bank to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness of Borrower.

Section 10.17 Possession of Documents. Each Bank shall keep possession of its own Ratable Loan Note and the Swing Lender shall keep possession of its Swing Loan Note. Administrative Agent shall hold all the other Loan Documents and related documents in its possession and maintain separate records and accounts with respect thereto, and shall permit the Banks and their representatives access at all reasonable times to inspect such Loan Documents, related documents, records and accounts.

ARTICLE XI

NATURE OF OBLIGATIONS

Section 11.01 Absolute and Unconditional Obligations. Borrower acknowledges and agrees that its obligations and liabilities under this Agreement and under the other Loan Documents shall be absolute and unconditional irrespective of (1) any lack of validity or enforceability of any of the Obligations, any Loan Documents, or any agreement or instrument relating thereto; (2) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from any Loan Documents or any other documents or instruments executed in connection with or related to the

Obligations; (3) any exchange or release of any collateral, if any, or of any other Person from all or any of the Obligations; or (4) any other circumstances which might otherwise constitute a defense available to, or a discharge of, Borrower or any other Person in respect of the Obligations.

The obligations and liabilities of Borrower under this Agreement and other Loan Documents shall not be conditioned or contingent upon the pursuit by any Bank or any other Person at any time of any right or remedy against Borrower or any other Person which may be or become liable in respect of all or any part of the Obligations or against any collateral or security or guarantee therefor or right of setoff with respect thereto.

Section 11.02 **Non-Recourse to Borrower's Principals**. Notwithstanding anything to the contrary contained herein, in any of the other Loan Documents, or in any other instruments, certificates, documents or agreements executed in connection with the Loans (all of the foregoing, for purposes of this Section, hereinafter referred to, individually and collectively, as the "***Relevant Documents***"), no recourse under or upon any Obligation, representation, warranty, promise or other matter whatsoever shall be had against any of Borrower's Principals and each Bank expressly waives and releases, on behalf of itself and its successors and assigns, all right to assert any liability whatsoever under or with respect to the Relevant Documents against, or to satisfy any claim or obligation arising thereunder against, any of Borrower's Principals or out of any assets of Borrower's Principals, provided, however, that nothing in this Section shall be deemed to (1) release Borrower from any personal liability pursuant to, or from any of its respective obligations under, the Relevant Documents, or from personal liability for its fraudulent actions or fraudulent omissions; (2) release any of Borrower's Principals from personal liability for its or his own fraudulent actions or fraudulent omissions; (3) constitute a waiver of any obligation evidenced or secured by, or contained in, the Relevant Documents or affect in any way the validity or enforceability of the Relevant Documents; or (4) limit the right of Administrative Agent and/or the Banks to proceed against or realize upon any collateral hereafter given for the Loans or any and all of the assets of Borrower (notwithstanding the fact that any or all of Borrower's Principals have an ownership interest in Borrower and, thereby, an interest in the assets of Borrower) or to name Borrower (or, to the extent that the same are required by applicable Law or are determined by a court to be necessary parties in connection with an action or suit against Borrower or any collateral hereafter given for the Loans, any of Borrower's Principals) as a party defendant in, and to enforce against any collateral hereafter given for the Loans and/or assets of Borrower any judgment obtained by Administrative Agent and/or the Banks with respect to, any action or suit under the Relevant Documents so long as no judgment shall be taken (except to the extent taking a judgment is required by applicable Law or determined by a court to be necessary to preserve Administrative Agent's and/or Banks' rights against any collateral hereafter given for the Loans or Borrower, but not otherwise) or shall be enforced against Borrower's Principals or their assets.

ARTICLE XII

MISCELLANEOUS

Section 12.01 **Binding Effect of Request for Advance**. Borrower agrees that, by its acceptance of any advance of proceeds of the Loans under this Agreement, it shall be bound in all respects by the request for advance submitted on its behalf in connection therewith with the same

force and effect as if Borrower had itself executed and submitted the request for advance and whether or not the request for advance is executed and/or submitted by an authorized person.

Section 12.02 Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Majority Banks and, solely for purposes of its acknowledgment thereof, Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, provided, however, that no amendment, waiver or consent shall, unless in writing and signed or consented to by (A) the Super-Majority Banks modify any provision of Section 7.02, Article VIII or clause (11) or (12) of Section 9.01, or any other provision requiring the consent of the Super-Majority Banks; and (B) all the Banks do any of the following: (1) reduce the principal of, or interest on, the Notes or any fees due hereunder or any other amount due hereunder or under any Loan Document; (2) except as provided in Section 2.18, postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees due hereunder or under any Loan Document; (3) change the definition of "Majority Banks" or "Super-Majority Banks"; (4) amend this Section or any other provision requiring the consent of all the Banks; or (5) waive any default under paragraph (5) of Section 9.01. Any advance of proceeds of the Loans made, or any Letter of Credit issued, prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to Administrative Agent and the Banks, shall not constitute a waiver of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances and issuances of Letters of Credit. No failure on the part of Administrative Agent or any Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. All communications from Administrative Agent to the Banks requesting the Banks' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Bank, (ii) shall be accompanied by a description of the matter or thing as to which such determination, approval, consent or disapproval is requested and (iii) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Bank shall reply promptly, but in any event within ten (10) Banking Days (or five (5) Banking Days with respect to any decision to accelerate or stop acceleration of the Loan) after receipt of the request therefor by Administrative Agent (the "***Bank Reply Period***"). Unless a Bank shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Bank Reply Period, such Bank shall be deemed to have approved or consented to such recommendation or determination.

Section 12.03 Usury. Anything herein to the contrary notwithstanding, the obligations of Borrower under this Agreement and the Notes shall be subject to the limitation that payments of interest shall not be required to the extent that receipt thereof would be contrary to provisions of Law applicable to a Bank limiting rates of interest which may be charged or collected by such Bank.

Section 12.04 Expenses; Indemnification. Borrower agrees (i) to reimburse Administrative Agent on demand for all costs, expenses, and charges (including, without limitation, all reasonable fees and charges of engineers, appraisers and legal counsel) incurred by it in

connection with the Loans and the preparation, execution, delivery and administration of the Loan Documents and any amendment or waiver with respect thereto, and (ii) to reimburse each of the Banks for reasonable legal costs, expenses and charges incurred by each of the Banks in connection with the performance or enforcement of this Agreement, the Notes, or any other Loan Documents; provided, however, that Borrower is not responsible for costs, expenses and charges incurred by the Bank Parties in connection with the administration or syndication of the Loans (other than the fees required by the Supplemental Fee Letter). Borrower agrees to indemnify Administrative Agent and each Bank and their respective directors, officers, employees and agents from, and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses incurred by any of them arising out of or by reason of (x) any claims by brokers due to acts or omissions by Borrower, (y) this Agreement or the transactions contemplated hereby or (z) any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Borrower of the proceeds of the Loans, including without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation or litigation or other proceedings (but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified).

The obligations of Borrower under this Section and under Article III shall survive the repayment of all amounts due under or in connection with any of the Loan Documents and the termination of the Loans, provided, however, that in the case of Article III, such obligations shall survive only for a period of ninety (90) days after such repayment and termination.

Section 12.05 Assignment; Participation. This Agreement shall be binding upon, and shall inure to the benefit of, Borrower, Administrative Agent, the Banks and their respective successors and permitted assigns. Borrower may not assign or transfer its rights or obligations hereunder.

Any Bank may at any time grant to one or more banks or other institutions (each a "***Participant***") participating interests in its Loan (each a "***Participation***"). In the event of any such grant by a Bank of a Participation to a Participant, whether or not Borrower or Administrative Agent was given notice, such Bank shall remain responsible for the performance of its obligations hereunder, and Borrower and Administrative Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations hereunder. Any agreement pursuant to which any Bank may grant such a participating interest shall provide that such Bank shall retain the sole right and responsibility to enforce the obligations of Borrower hereunder and under any other Loan Document including, without limitation, the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided that such participation agreement may provide that such Bank will not agree to any modification, amendment or waiver of this Agreement described in clause (B)(1) through (B)(5) of Section 12.02 without the consent of the Participant. Any Participant hereunder shall have the same benefits as any Bank with respect to the yield protection and increased cost provisions of Article III.

Any Bank may at any time assign to any bank or other institution with the consent of Administrative Agent and the Issuing Bank and, provided there exists no Event of Default, Borrower, which consents shall not be unreasonably withheld or delayed (such assignee, an "***Assignee***"), all, or a proportionate part of all, of its rights and obligations under this Agreement

and its Note, and such Assignee shall assume rights and obligations, pursuant to an Assignment and Acceptance executed by such Assignee and the assigning Bank, provided that, in each case, after giving effect to such assignment the Assignee's Loan Commitment, and, in the case of a partial assignment, the assigning Bank's Loan Commitment, each will be equal to or greater than $5,000,000, provided, further, however, that the assigning Bank shall not be required to maintain a Loan Commitment in the minimum amount aforesaid in the event it assigns all of its rights and obligations under this Agreement and its Note. Notwithstanding the provisions of the immediately preceding sentence, the consent of Borrower shall not be required in the case of assignments by any Bank provided that the Assignee thereunder (or a guarantor of such Assignee's obligations under this Agreement) has a credit rating of AA (or its equivalent) or higher from a nationally recognized rating agency. Upon (i) execution and delivery of such instrument, (ii) payment by such Assignee to the Bank of an amount equal to the purchase price agreed between the Bank and such Assignee and (iii) payment by such Assignee to Administrative Agent of a fee, for Administrative Agent's own account, in the amount of $3,500, such Assignee shall be a Bank Party to this Agreement and shall have all the rights and obligations of a Bank as set forth in such Assignment and Acceptance, and the assigning Bank shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this paragraph, substitute Ratable Loan Notes (and, if applicable, Swing Loan Note) shall be issued to the assigning Bank and Assignee by Borrower, in exchange for the return of the original Ratable Loan Note (and, if applicable, Swing Loan Note). The obligations evidenced by such substitute notes shall constitute "Obligations" for all purposes of this Agreement and the other Loan Documents. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. If the Assignee is not incorporated under the Laws of the United States of America or a state thereof, it shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 10.13. Each Assignee shall be deemed to have made the representations contained in, and shall be bound by the provisions of, Section 10.13. Notwithstanding the foregoing, any Designated Lender may assign at any time to its Designating Lender, without the consents required by or other limitations set forth in the first sentence of this paragraph, any or all of the Loans it may have funded hereunder and pursuant to its Designation Agreement.

Any Bank may at any time assign all or any portion of its rights under this Agreement and its Note to a Federal Reserve Bank. No such assignment shall release the transferor Bank from its obligations hereunder.

Borrower recognizes that in connection with a Bank's selling of Participations or making of assignments, any or all documentation, financial statements, appraisals and other data, or copies thereof, relevant to Borrower or the Loans may be exhibited to and retained by any such Participant or assignee or prospective Participant or assignee. In connection with a Bank's delivery of any financial statements and appraisals to any such Participant or assignee or prospective Participant or assignee, such Bank shall also indicate that the same are delivered on a confidential basis. Borrower agrees to provide all assistance reasonably requested by a Bank to enable such Bank to sell Participations or make assignments of its Loan as permitted by this Section. Each Bank agrees

to provide Borrower with notice of all Participations sold by such Bank to other than its Affiliates. Any Bank or Participant may pledge its Loans or Participations as collateral in accordance with applicable law.

Section 12.06 Documentation Satisfactory. All documentation required from or to be submitted on behalf of Borrower in connection with this Agreement and the documents relating hereto shall be subject to the prior approval of, and be satisfactory in form and substance to, Administrative Agent, its counsel and, where specifically provided herein, the Banks. In addition, the persons or parties responsible for the execution and delivery of, and signatories to, all of such documentation, shall be acceptable to, and subject to the approval of, Administrative Agent and its counsel and the Banks.

Section 12.07 Notices. Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, and except as otherwise provided in this Agreement, notices shall be given to Administrative Agent by telephone, confirmed by writing, and to the Banks and to Borrower by ordinary mail or overnight courier, receipt confirmed, addressed to such party at its address on the signature page of this Agreement. Notices shall be effective (1) if by telephone, at the time of such telephone conversation, (2) if given by mail, three (3) days after mailing; and (3) if given by overnight courier, upon receipt.

Section 12.08 Setoff. Borrower agrees that, in addition to (and without limitation of) any right of setoff, bankers' lien or counterclaim a Bank may otherwise have, each Bank shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Borrower at any of such Bank's offices, in Dollars or in any other currency, against any amount payable by Borrower to such Bank under this Agreement or such Bank's Note, or any other Loan Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and Administrative Agent thereof; provided that such Bank's failure to give such notice shall not affect the validity thereof. Payments by Borrower hereunder or under the other Loan Documents shall be made without setoff or counterclaim.

Section 12.09 Table of Contents; Headings. Any table of contents and the headings and captions hereunder are for convenience only and shall not affect the interpretation or construction of this Agreement.

Section 12.10 Severability. The provisions of this Agreement are intended to be severable. If for any reason any provision of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions hereof in any jurisdiction.

Section 12.11 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing any such counterpart.

Section 12.12 Integration. The Loan Documents and Supplemental Fee Letter set forth the entire agreement among the parties hereto relating to the transactions contemplated thereby and supersede any prior oral or written statements or agreements with respect to such transactions.

Section 12.13 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York (without giving effect to New York's principles of conflicts of Laws).

Section 12.14 Waivers. In connection with the obligations and liabilities as aforesaid, Borrower hereby waives (1) promptness and diligence; (2) notice of any actions taken by any Bank Party under this Agreement, any other Loan Document or any other agreement or instrument relating thereto except to the extent otherwise provided herein; (3) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this Section, might constitute grounds for relieving Borrower of its obligations hereunder; (4) any requirement that any Bank Party protect, secure, perfect or insure any Lien on any collateral or exhaust any right or take any action against Borrower or any other Person or any collateral; (5) any right or claim of right to cause a marshalling of the assets of Borrower; and (6) all rights of subrogation or contribution, whether arising by contract or operation of law (including, without limitation, any such right arising under the Federal Bankruptcy Code) or otherwise by reason of payment by Borrower, either jointly or severally, pursuant to this Agreement or other Loan Documents.

Section 12.15 Jurisdiction; Immunities. Borrower, Administrative Agent and each Bank hereby irrevocably submit to the jurisdiction of any New York State or United States Federal court sitting in New York City over any action or proceeding arising out of or relating to this Agreement, the Notes or any other Loan Document. Borrower, Administrative Agent, and each Bank irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such New York State or United States Federal court. Borrower, Administrative Agent, and each Bank irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to Borrower, Administrative Agent or each Bank, as the case may be, at the addresses specified herein. Borrower, Administrative Agent and each Bank agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Borrower, Administrative Agent and each Bank further waive any objection to venue in the State of New York and any objection to an action or proceeding in the State of New York on the basis of forum non conveniens. Borrower, Administrative Agent and each Bank agree that any action or proceeding brought against Borrower, Administrative Agent or any Bank, as the case may be, shall be brought only in a New York State court sitting in New York City or a United States Federal court sitting in New York City, to the extent permitted or not expressly prohibited by applicable Law.

Nothing in this Section shall affect the right of Borrower, Administrative Agent or any Bank to serve legal process in any other manner permitted by Law.

To the extent that Borrower, Administrative Agent or any Bank have or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution, execution or

otherwise) with respect to itself or its property, Borrower, Administrative Agent and each Bank hereby irrevocably waive such immunity in respect of its obligations under this Agreement, the Notes and any other Loan Document. BORROWER, ADMINISTRATIVE AGENT AND EACH BANK WAIVE ANY RIGHT EACH SUCH PARTY MAY HAVE TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT WITH RESPECT TO THIS AGREEMENT, THE NOTES OR THE LOANS.

Section 12.16 Designated Lender. Any Bank (other than a Bank who is such solely because it is a Designated Lender) (each, a "***Designating Lender***") may at any time designate one (1) Designated Lender to fund Bid Rate Loans on behalf of such Designating Lender subject to the terms of this Section and the provisions in Section 12.05 shall not apply to such designation. No Bank may designate more than one (1) Designated Lender. The parties to each such designation shall execute and deliver to Administrative Agent for its acceptance a Designation Agreement. Upon such receipt of an appropriately completed Designation Agreement executed by a Designating Lender and a designee representing that it is a Designated Lender, Administrative Agent will accept such Designation Agreement and give prompt notice thereto to Borrower, whereupon, (i) from and after the "Effective Date" specified in the Designation Agreement, the Designated Lender shall become a party to this Agreement with a right to make Bid Rate Loans on behalf of its Designating Lender pursuant to Section 2.02 after Borrower has accepted the Bid Rate Quote of the Designating Lender and (ii) the Designated Lender shall not be required to make payments with respect to any obligations in this Agreement except to the extent of excess cash flow of such Designated Lender which is not otherwise required to repay obligations of such Designated Lender which are then due and payable; provided, however, that regardless of such designation and assumption by the Designated Lender, the Designating Lender shall be and remain obligated to Borrower, Administrative Agent and the Banks for each and every of the obligations of the Designating Lender and its related Designated Lender with respect to this Agreement, including, without limitation, any indemnification obligations under Section 10.05. Each Designating Lender shall serve as the administrative agent of its Designated Lender and shall on behalf of, and to the exclusion of, the Designated Lender: (i) receive any and all payments made for the benefit of the Designated Lender and (ii) give and receive all communications and notices and take all actions hereunder, including, without limitation, votes, approvals, waivers and consents under or relating to this Agreement and the other Loan Documents. Any such notice, communication, vote, approval, waiver or consent shall be signed by the Designating Lender as administrative agent for the Designated Lender and shall not be signed by the Designated Lender on its own behalf, but shall be binding on the Designated Lender to the same extent as if actually signed by the Designated Lender. Borrower, Administrative Agent and the Banks may rely thereon without any requirement that the Designated Lender sign or acknowledge the same. No Designated Lender may assign or transfer all or any portion of its interest hereunder or under any other Loan Document, other than assignments to the Designating Lender which originally designated such Designated Lender.

Section 12.17 No Bankruptcy Proceedings. Each of Borrower, the Banks and Administrative Agent hereby agrees that it will not institute against any Designated Lender or join any other Person in instituting against any Designated Lender any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any federal or state bankruptcy or similar Law, for one (1) year and one (1) day after the payment in full of the latest maturing commercial paper note issued by such Designated Lender.

Section 12.18 USA Patriot Act. Each Bank hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub.L.107-56 (signed into law October 26, 2001)) (the "***Act***"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Bank to identify Borrower in accordance with the Act.

Section 12.19 Transitional Arrangements.

(a) 2001 Credit Agreement Superseded. This Agreement shall supersede the 2001 Credit Agreement in its entirety, except as provided in this Section 12.19. On the Closing Date, the rights and obligations of the parties under the 2001 Credit Agreement and the "Notes" defined therein shall be subsumed within and be governed by this Agreement and the Notes; *provided however*, that any of the "Obligations" (as defined in the 2001 Credit Agreement) outstanding under the 2001 Credit Agreement shall, for purposes of this Agreement, be Obligations hereunder. The Banks' interests in such Obligations, and participations in such Letters of Credit shall be reallocated on the Closing Date in accordance with each Bank's applicable Pro Rata Share.

(b) Return and Cancellation of Notes. Upon its receipt of the Notes to be delivered hereunder on the Closing Date, each Bank will promptly return to Borrower, marked "Cancelled" or "Replaced", the notes of Borrower held by such Bank pursuant to the 2001 Credit Agreement.

(c) Interest and Fees Under Original Agreement. All interest and all commitment, facility and other fees and expenses owing or accruing under or in respect of the 2001 Credit Agreement shall be calculated as of the Closing Date (prorated in the case of any fractional periods), and shall be paid on the Closing Date in accordance with the method specified in the 2001 Credit Agreement as if such agreement were still in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

AVALONBAY COMMUNITIES, INC.

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

Address for Notices:

220 Elm Street
Suite 200
New Canaan, CT 06840

Attention: Joanne M. Lockridge

Telephone: (203) 801-3331
Telecopy: (203) 801-3335

Address of principal place of business:

2900 Eisenhower Ave.
Suite 300
Alexandria, VA 22314

Taxpayer Identification Number: 77-0404318

FLEET NATIONAL BANK (as Bank and Administrative Agent)

By: /s/ Lisa Sanders
Name: Lisa Sanders
Title: Senior Vice President

Address for Notices and Applicable Lending Office:

Fleet National Bank
One Landmark Square
Stamford, CT 06904

Attention: Lisa Sanders

Telephone: (203) 973-1984
Telecopy: (301) 438-7696

JPMORGAN CHASE BANK (as Bank and Syndication Agent)

By: /s/ Marc E. Costantino
Name: Marc E. Costantino
Title: Vice President

Address for Notices and Applicable Lending Office:

JPMorgan Chase Bank
270 Park Avenue, 4th Floor
New York, NY 10017

Attention: Marc Costantino

Telephone: (212) 270-9554
Telecopy: (212) 270-0213

WACHOVIA BANK, NATIONAL ASSOCIATION (as Bank and Syndication Agent)

By: /s/ David Hoagland
Name: David Hoagland
Title: Director

Address for Notices and Applicable Lending Office:

Wachovia Bank, National Association
301 South College Street
Charlotte NC 28288-0172

Attention: David Hoagland

Telephone: (704) 374-4809
Telecopy: (704) 383-6205

DEUTSCHE BANK TRUST COMPANY
AMERICAS (as Bank and
Documentation Agent)

By: /s/ Linda Wang
Name: Linda Wang
Title: Vice President

Address for Notices and
Applicable Lending Office:

Deutsche Bank Trust Company Americas
60 Wall Street, 10th Floor
New York, NY 10005

Attention: Linda Wang

Telephone: (212) 250-2368
Telecopy: (212) 797-4496

MORGAN STANLEY BANK (as Bank and Documentation Agent)

By: /s/ Daniel Twenge
Name: Daniel Twenge
Title: Vice President

Address for Notices and Applicable Lending Office:

Morgan Stanley Bank
1585 Broadway, 2nd Floor
New York, NY 10036

Attention: Elizabeth Frattaroli

Telephone: (212) 761-1285
Telecopy: (212) 507-3505

WELLS FARGO BANK, NATIONAL ASSOCIATION (as Bank and Documentation Agent)

By: /s/ Stephen Gray
Name: Stephen Gray
Title: Assistant Vice President

Address for Notices and Applicable Lending Office:

Wells Fargo Bank, National Association
1750 H Street, N.W., Suite 400
Washington, DC 20006

Attention: Stephen Gray

Telephone: (202) 303-3010
Telecopy: (202) 429-2984

SOUTHTRUST BANK

By: /s/ Renald Ferrovecchio
Name: Renald Ferrovecchio
Title: Vice President

Address for Notices and
Applicable Lending Office:

SouthTrust Bank
171 17th Street, 6th Floor
Atlanta, GA 30363

Attention: Renald Ferrovecchio

Telephone: (404) 214-5913
Telecopy: (404) 214-3728

SUNTRUST BANK

By: /s/ Nancy B. Richards
Name: Nancy B. Richards
Title: Vice President

Address for Notices and
Applicable Lending Office:

SunTrust Bank
8245 Boone Blvd., Suite 820
Vienna, VA 22182

Attention: Nancy B. Richards

Telephone: (703) 902-9039
Telecopy: (703) 902-9245

By: /s/ Joselin Fernandes
Name: Joselin Fernandes
Title: Associate Director
Banking Products Services, US

UBS LOAN FINANCE LLC
By: /s/ Doris Mesa
Name: Doris Mesa
Title: Associate Director
Banking Products Services, US

Address for Notices and
Applicable Lending Office:

UBS Loan Finance, LLC
677 Washington Boulevard
Stamford, CT 06901

Attention: Christopher Aitkin

Telephone: (203) 719-3845
Telecopy: (203) 719-3888

AMSOUTH BANK

By: /s/ Robert W. Blair
Name: Robert W. Blair
Title: Vice President

Address for Notices and
Applicable Lending Office:

AmSouth Bank
1900 5th Avenue N.
Birmingham, AL 35203

Attention: Robert Blair

Telephone: (205) 326-4071
Telecopy: (205) 326-4075

BANK OF CHINA, NEW YORK BRANCH

By: /s/ Bailin Zheng
Name: Bailin Zheng
Title: General Manager

Address for Notices and
Applicable Lending Office:

Bank of China, New York Branch
410 Madison Avenue
New York, NY 10017

Attention: David Hoang

Telephone: (212) 935-3101 ext. 229
Telecopy: (212) 308-4993

THE BANK OF NEW YORK

By: /s/ Anthony A. Filorimo
Name: Anthony A. Filorimo
Title: Vice President

Address for Notices and
Applicable Lending Office:

The Bank of New York
One Wall Street
New York, NY 10286

Attention: Anthony Filorimo

Telephone: (212) 635-7519
Telecopy: (212) 809-9526

KEYBANK NATIONAL
ASSOCIATION

By: /s/ Jennifer A. Dakin
Name: Jennifer A. Dakin
Title: AVP

Address for Notices and
Applicable Lending Office:

KeyBank, N.A.
1146 19th Street, N.W., Ste. 400
Washington, DC 20036

Attention: John Scott

Telephone: (202) 452-4941
Telecopy: (202) 452-4925

With a copy to:

Attention: Jennifer Dakin

Telephone: (202) 452-4940
Telecopy: (202) 452-4925

PNC BANK, NATIONAL ASSOCIATION

By: /s/ William R. Lynch, III
Name: William R. Lynch, III
Title: Senior Vice President

Address for Notices and Applicable Lending Office:

PNC Bank, National Association
One PNC Plaza
249 Fifth Avenue
P1-POPP-19-2
Pittsburgh, PA 15222

Attention: Real Estate Banking

Telephone: (412) 762-8519
Telecopy: (412) 768-3930

with a copy to:

7200 Wisconsin Avenue, Suite 314
Bethesda, MD 20814

Attention: William Lynch

Telephone: (301) 986-5268
Telecopy: (301) 986-5279

SCOTIABANC INC.

By: /s/ William E. Zarrett
Name: William E. Zarrett
Title: Managing Director

Address for Notices and
Applicable Lending Office:

Scotiabanc Inc.
600 Peachtree St. N.E., Suite 2700
Atlanta, GA 30308

Attention: William. E. Zarrett

Telephone: (404) 877-1504
Telecopy: (404) 888-8995

CHANG HWA COMMERCIAL BANK,
LTD., NEW YORK BRANCH

By: /s/ Ming-Hsien Lin
Name: Ming-Hsien Lin
Title: SVP & General Manager

Address for Notices and
Applicable Lending Office:

Chang Hwa Commercial Bank, Ltd.,
New York Branch
685 Third Avenue, 29th Floor
New York, NY 10017

Attention: Danielle Tsai

Telephone: (212) 651-9770 ext. 29
Telecopy: (212) 651-9785

COMERICA BANK

By: /s/ Jessica L. Kempf
Name: Jessica L. Kempf
Title: Assistant Vice President

Address for Notices and
Applicable Lending Office:

Overnight Mail:
Comerica Bank
500 Woodward Ave., 7th Floor
Detroit, MI 48226-3256

U.S. Mail:
Comerica Bank
P.O. Box 75000
Detroit, MI 48275-3256

Attention: Casey L. Ostrander

Telephone: (313) 222-5286
Telecopy: (313) 222-9295

FIRST HORIZON BANK, a division of
First Tennessee Bank N.A.

By: /s/ J. Jordan O'Neill, III
Name: J. Jordan O'Neill, III
Title: Senior Vice President

Address for Notices and
Applicable Lending Office:

First Horizon Bank, a division of
First Tennessee Bank N.A.
1650 Tysons Boulevard, Suite 1150
McLean, VA 22102

Attention: J. Jordan O'Neill, III

Telephone: (703) 394-2518
Telecopy: (703) 734-1834

US BANK NATIONAL ASSOCIATION

By: /s/ Sherry Reynolds
Name: Sherry Reynolds
Title: Vice President

Address for Notices and
Applicable Lending Office:

US Bank National Association
800 Nicollet Mall, 3rd Floor
Minneapolis, MN 55402-7020

Attention: Michael Raarup

Telephone: (612) 303-3586
Telecopy: (612) 303-2270

E.SUN COMMERCIAL BANK, LTD.,
LOS ANGELES BRANCH

By: /s/ Peter Shih
Name: Peter Shih
Title: Chief Financial Officer

Address for Notices and
Applicable Lending Office:

E.Sun Commercial Bank, Ltd.,
Los Angeles Branch
17700 Castleton Street, Suite 500
City of Industry, CA 91748

Attention: Homer Hou

Telephone: (626) 810-2400 ext. 225
Telecopy: (626) 839-5531

EXHIBITS

EXHIBIT A	-	Authorization Letter
EXHIBIT B	-	Ratable Loan Note
EXHIBIT B-1	-	Bid Rate Loan Note
EXHIBIT B-2	-	Swing Loan Note
EXHIBIT C	-	Information Regarding Material Affiliates
EXHIBIT D	-	Solvency Certificate
EXHIBIT E	-	Assignment and Acceptance
EXHIBIT F	-	Designation Agreement
EXHIBIT G-1	-	Bid Rate Quote Request
EXHIBIT G-2	-	Invitation for Bid Rate Quotes
EXHIBIT G-3	-	Bid Rate Quote
EXHIBIT G-4	-	Borrower's Acceptance of Bid Rate Quote
EXHIBIT H	-	Acceptance Letter

SCHEDULES

SCHEDULE 1	-	Loan Commitments

EXHIBIT A

AUTHORIZATION LETTER

_____ ___, 2004

Fleet National Bank

_____

_____

_____

Re: Amended and Restated Revolving Loan Agreement dated as of May _____, 2004 (the "***Loan Agreement***"; capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement) among us, as Borrower, the Banks named therein, and you, as Administrative Agent for said Banks

Ladies/Gentlemen:

In connection with the captioned Loan Agreement, we hereby designate any of the following persons to give to you instructions, including notices required pursuant to the Loan Agreement, orally, by telephone or teleprocess, or in writing:

[NAMES]

Instructions may be honored on the oral, telephonic, teleprocess or written instructions of anyone purporting to be any one of the above designated persons even if the instructions are for the benefit of the person delivering them. We will furnish you with written confirmation of each such instruction signed by any person designated above (including any telecopy which appears to bear the signature of any person designated above) on the same day that the instruction is provided to you, but your responsibility with respect to any instruction shall not be affected by your failure to receive such confirmation or by its contents.

Without limiting the foregoing, we hereby unconditionally authorize any one of the above-designated persons to execute and submit requests for advances of proceeds of the Loans (including the Initial Advance) and notices of Elections, Conversions and Continuations to you under the Loan Agreement with the identical force and effect in all respects as if executed and submitted by us.

You and the Banks shall be fully protected in, and shall incur no liability to us for, acting upon any instructions which you in good faith believe to have been given by any person designated above, and in no event shall you or the Banks be liable for special, consequential or punitive damages. In addition, we agree to hold you and the Banks and your and their respective agents harmless from any and all liability, loss and expense arising directly or indirectly out of instructions that we provide to you in connection with the Loan Agreement except for liability, loss or expense occasioned by your gross negligence or willful misconduct.

Upon notice to us, you may, at your option, refuse to execute any instruction, or part thereof, without incurring any responsibility for any loss, liability or expense arising out of such

refusal if you in good faith believe that the person delivering the instruction is not one of the persons designated above or if the instruction is not accompanied by an authentication method that we have agreed to in writing.

We will promptly notify you in writing of any change in the persons designated above and, until you have actually received such written notice and have had a reasonable opportunity to act upon it, you are authorized to act upon instructions, even though the person delivering them may no longer be authorized.

Very truly yours,

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

EXHIBIT B

RATABLE LOAN NOTE

$_____ New York, New York
_____, 200_

For value received, AvalonBay Communities, Inc., a Maryland corporation ("***Borrower***"), hereby promises to pay to the order of _____ or its successors or assigns (collectively, the "***Bank***"), at the principal office of Fleet National Bank ("***Administrative Agent***") located at _____ for the account of the Applicable Lending Office of the Bank, the principal sum of _____ Dollars ($_____), or if less, the amount loaned by the Bank under its Ratable Loan to Borrower pursuant to the Loan Agreement (as defined below) and actually outstanding, in lawful money of the United States and in immediately available funds, in accordance with the terms set forth in the Loan Agreement. Borrower also promises to pay interest on the unpaid principal balance hereof, for the period such balance is outstanding, in like money, at said office for the account of said Applicable Lending Office, at the time and at a rate per annum as provided in the Loan Agreement. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at the rate set forth in the Loan Agreement.

The date and amount of each advance of the Ratable Loan made by the Bank to Borrower under the Loan Agreement referred to below, and each payment of said Ratable Loan, shall be recorded by the Bank on its books and, prior to any transfer of this Note (or, at the discretion of the Bank, at any other time), may be endorsed by the Bank on the schedule attached hereto and any continuation thereof.

This Note is one of the Ratable Loan Notes referred to in the Amended and Restated Revolving Loan Agreement dated as of May 24, 2004 (as the same may be amended from time to time, the "***Loan Agreement***") among Borrower, the Banks named therein (including the Bank) and Administrative Agent, as administrative agent for the Banks. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

The Loan Agreement contains, among other things, provisions for the prepayment of and acceleration of this Note upon the happening of certain stated events.

No recourse shall be had under this Note against Borrower's Principals except as and to the extent set forth in Section 11.02 of the Loan Agreement.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor. This Note shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York, provided that, as to the maximum lawful rate of interest which may be charged or collected,

if the Laws applicable to the Bank permit it to charge or collect a higher rate than the Laws of the State of New York, then such Law applicable to the Bank shall apply to the Bank under this Note.

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

Date	Amount of Loan	Amount of Principal Paid or Prepaid	Balance of Principal Unpaid	Notation Made By:

EXHIBIT B-1

BID RATE LOAN NOTE

$250,000,000 New York, New York
_____, 2004

For value received, AvalonBay Communities, Inc., a Maryland corporation ("***Borrower***"), hereby promises to pay to the order of Fleet National Bank ("***Administrative Agent***") or its successors or assigns for the account of the respective Banks making Bid Rate Loans or their respective successors or assigns (for the further account of their respective Applicable Lending Offices), at the principal office of Administrative Agent located at _____, the principal sum of Two Hundred Fifty Million Dollars ($250,000,000), or if less, the amount loaned by one or more of said Banks under their respective Bid Rate Loans to Borrower pursuant to the Loan Agreement (as defined below) and actually outstanding, in lawful money of the United States and in immediately available funds, in accordance with the terms set forth in the Loan Agreement. Borrower also promises to pay interest on the unpaid principal balance hereof, for the period such balance is outstanding, in like money, at said office for the account of said Banks for the further account of their respective Applicable Lending Offices, at the times and at the rates per annum as provided in the Loan Agreement. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at the rate set forth in the Loan Agreement.

The date and amount of each Bid Rate Loan to Borrower under the Loan Agreement referred to below, the name of the Bank making the same, the interest rate applicable thereto and the maturity date thereof (i.e., the end of the Interest Period Applicable thereto) shall be recorded by Administrative Agent on its records and may be endorsed by Administrative Agent on the schedule attached hereto and any continuation thereof.

This Note is the Bid Rate Loan Note referred to in the Amended and Restated Revolving Loan Agreement dated as of May 24, 2004 (as the same may be amended from time to time, the "***Loan Agreement***") among Borrower, the Banks named therein and Administrative Agent, as administrative agent for the Banks. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

The Loan Agreement contains, among other things, provisions for the prepayment of and acceleration of this Note upon the happening of certain stated events.

No recourse shall be had under this Note against the Borrower's Principals except as and to the extent set forth in Section 11.02 of the Loan Agreement.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor.

This Note shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York, provided that, as to the maximum lawful rate of interest which may be charged or collected, if the Laws applicable to a particular Bank permit it to charge or collect a higher rate than the Laws of the State of New York, then such Law applicable to such Bank shall apply to such Bank under this Note.

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

Bid Rate Loan Number	Date	Amount of Bid Rate Loan	Interest Rate	Expiration of Interest Period	Notation Made By:

EXHIBIT B-2

SWING LOAN NOTE

New York, New York
_____, 200_

For value received, AvalonBay Communities, Inc., a Maryland corporation ("***Borrower***"), hereby promises to pay to the order of _____ or its successors or assigns (collectively, the "***Bank***"), at the principal office of Fleet National Bank ("***Administrative Agent***") located at _____ for the account of the Applicable Lending Office of the Bank, the principal sum equal to the amount loaned by the Bank under its Swing Loan to Borrower pursuant to the Loan Agreement (as defined below) and actually outstanding, in lawful money of the United States and in immediately available funds, in accordance with the terms set forth in the Loan Agreement. Borrower also promises to pay interest on the unpaid principal balance hereof, for the period such balance is outstanding, in like money, at said office for the account of said Applicable Lending Office, at the time and at a rate per annum as provided in the Loan Agreement. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at the rate set forth in the Loan Agreement.

The date and amount of each advance of the Swing Loan made by the Bank to Borrower under the Loan Agreement referred to below, and each payment of said Swing Loan, shall be recorded by the Bank on its books and, prior to any transfer of this Note (or, at the discretion of the Bank, at any other time), may be endorsed by the Bank on the schedule attached hereto and any continuation thereof.

This Note is one of the Swing Loan Notes referred to in the Amended and Restated Revolving Loan Agreement dated as of May 24, 2004 (as the same may be amended from time to time, the "***Loan Agreement***") among Borrower, the Banks named therein (including the Bank) and Administrative Agent, as administrative agent for the Banks. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

The Loan Agreement contains, among other things, provisions for the prepayment of and acceleration of this Note upon the happening of certain stated events.

No recourse shall be had under this Note against Borrower's Principals except as and to the extent set forth in Section 11.02 of the Loan Agreement.

All parties to this Note, whether principal, surety, guarantor or endorser, hereby waive presentment for payment, demand, protest, notice of protest and notice of dishonor.

This Note shall be governed by, and construed and enforced in accordance with, the Laws of the State of New York, provided that, as to the maximum lawful rate of interest which may be charged or collected, if the Laws applicable to the Bank permit it to charge or collect a higher rate than the Laws of the State of New York, then such Law applicable to the Bank shall apply to the Bank under this Note.

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

Date	Amount of Loan	Amount of Principal Paid or Prepaid	Balance of Principal Unpaid	Notation Made By:

EXHIBIT C

INFORMATION REGARDING MATERIAL AFFILIATES

[Omitted — Lists all AvalonBay subsidiaries without regard to size or materiality]

EXHIBIT D

SOLVENCY CERTIFICATE

The person executing this certificate is the _____ of AvalonBay Communities, Inc., a Maryland corporation ("***Borrower***"), and is familiar with its properties, assets and businesses, and is duly authorized to execute this certificate on behalf of Borrower pursuant to Section 4.01(7) of the Amended and Restated Revolving Loan Agreement dated the date hereof (the "***Loan Agreement***") among Borrower, the banks party thereto (each a "***Bank***" and collectively, the "***Banks***") and Fleet National Bank, as administrative agent for the Banks (in such capacity, together with its successors in such capacity, "***Administrative Agent***"). In executing this Certificate, such person is acting solely in his or her capacity as the _____ of Borrower, and not in his or her individual capacity. Unless otherwise defined herein, terms defined in the Loan Agreement are used herein as therein defined.

The undersigned further certifies that he or she has carefully reviewed the Loan Agreement and the other Loan Documents and the contents of this Certificate and, in connection herewith, has made such investigation and inquiries as he or she deems reasonably necessary and prudent therefor. The undersigned further certifies that the financial information and assumptions which underlie and form the basis for the representations made in this Certificate were reasonable when made and were made in good faith and continue to be reasonable as of the date hereof.

The undersigned understands that Administrative Agent and the Banks are relying on the truth and accuracy of this Certificate in connection with the transactions contemplated by the Loan Agreement.

The undersigned certifies that Borrower is Solvent.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on May _____, 2004.

_____
Name:
Title:

EXHIBIT E

ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (the "***Assignment and Acceptance***") is dated as of the Effective Date set forth below and is entered into by and between _____ (the "***Assignor***") and _____ (the "***Assignee***"). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the "***Loan Agreement***"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (a) all of the Assignor's rights and obligations in its capacity as a Bank under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any letters of credit, guarantees, and swingline loans included in such facilities) and (b) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Bank) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (a) above (the rights and obligations sold and assigned pursuant to clauses (a) and (b) above being referred to herein collectively as, the "***Assigned Interest***"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by the Assignor.

1.	Assignor:	_____
2.	Assignee:	_____ [and is an Affiliate of _____[1]]
3.	Borrower:	AvalonBay Communities, Inc.
4.	Administrative Agent:	[Fleet National Bank], as the Administrative Agent under the Loan Agreement
5.	Loan Agreement:	The Amended and Restated Revolving Loan Agreement dated as of May 24, 2004, among AvalonBay Communities, Inc., as borrower, the Banks parties thereto, JPMorgan Chase Bank, and Fleet National Bank or any successor thereto, individually and as Administrative Agent, Swing Lender and Issuing Bank.
6.	Assigned Interest:	

_____

[1]Select Bank as applicable.

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders*	Amount of Commitment/Loans Assigned*	Percentage Assigned of Commitment/Loans[2]
Commitment	$	$	%
Revolving Loans	$	$	%
Bid Rate Loans	$	$	%
Participations in Letters of Credit	$	$	%
[Swing Loans]	$	$	%

[7. Trade Date: _____][3]

Effective Date: _____, 20___[TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[Remainder of Page Intentionally Left Blank]

_____

*Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

[2]Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

[3]To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____
Name:
Title:

Consented to and Accepted:

[FLEET NATIONAL BANK],
acting in its capacity as Administrative
Agent and as Issuing Bank

By: _____
Name:
Title:

[Consented to:

AVALONBAY COMMUNITIES, Inc.,
a Maryland corporation

By: _____
Name:
Title:][4]

[4]Borrower consent is required when no Event of Default exists; provided that no Borrower consent is required in the event that the Assignee (or a guarantor of Assignee's obligations) has a credit rating of AA (or its equivalent) or higher from a nationally recognized rating agency.

ANNEX 1

The Amended and Restated Revolving Loan Agreement dated as of May 24, 2004, among AvalonBay Communities, Inc., as borrower, the Banks parties thereto, JPMorgan Chase Bank, Fleet National Bank and any successors thereto, individually and as Administrative Agent, Swing Lender and Issuing Bank (the "***Loan Agreement***"). Capitalized terms used but not defined herein shall have the meanings given to them in the Assignment and Acceptance to which this annex is attached and if not defined therein, shall have the meanings given to them in the Loan Agreement.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ACCEPTANCE

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of their subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of their subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Bank under the Loan Agreement, (ii) it meets all requirements of an Assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Bank thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Bank thereunder, and (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to §4.01(3) and §6.09 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Bank, and (v) if it is a non-U.S. Bank, attached to the Assignment and Acceptance is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Bank.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to, on or after the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by the Administrative Agent for periods prior to the Effective Date or with respect to the making of this assignment directly between themselves.

3. General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be governed by, and construed in accordance with, the laws of the State of New York.

EXHIBIT F

DESIGNATION AGREEMENT

Reference is made to that certain Amended and Restated Revolving Loan Agreement dated as of May 24, 2004 (as amended, supplemented or otherwise modified from time to time, the "***Loan Agreement***") among AvalonBay Communities, Inc., a Maryland corporation, the banks parties thereto, and Fleet National Bank, as administrative agent for said banks. Terms defined in the Loan Agreement not otherwise defined herein are used herein with the same meaning.

[BANK] ("***Designor***") and _____, a _____(" ***Designee***") agree as follows:

1. Designor hereby designates Designee, and Designee hereby accepts such designation, to have a right to make Bid Rate Loans pursuant to Section 2.02 of the Loan Agreement. Any assignment by Designor to Designee of its rights to make a Bid Rate Loan pursuant to such Section shall be effective at the time of the funding of such Bid Rate Loan and not before such time.

2. Except as set forth in Section 6 below, Designor makes no representation or warranty and assumes no responsibility pursuant to this Designation Agreement with respect to (a) any statements, warranties or representations made in or in connection with any Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of any Loan Document or any other instrument and document furnished pursuant thereto and (b) the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto.

3. Designee (a) confirms that it has received a copy of each Loan Document, together with copies of such financial statements and other documents and information as it has med appropriate to make its own credit analysis and decision to enter into this Designation Agreement; (b) agrees that it will independently and without reliance upon Administrative Agent, Designor or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under any Loan Document; (c) represents that it is a Designated Lender; (d) appoints and authorizes Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under any Loan Document as are delegated to Administrative Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (e) agrees that it will perform in accordance with their terms all of the obligations which by the terms of any Loan Document are required to be performed by it as a Bank.

4. Designee hereby appoints Designor as Designee's agent and attorney-in-fact, and grants to Designor an irrevocable power of attorney, to receive payments made for the benefit of Designee under the Loan Agreement, to deliver and receive all communications and notices under the Loan Agreement and other Loan Documents and to exercise on Designee's behalf all rights to vote and to grant and make approvals, waivers, consents or amendments to or under the

Loan Agreement or other Loan Documents. Any document executed by Designor on Designee's behalf in connection with the Loan Agreement or other Loan Documents shall be binding on Designee. Borrower, Administrative Agent and each of the Banks may rely on and are beneficiaries of this Designation Agreement.

5. Following the execution of this Designation Agreement by Designor and Designee, it will be delivered to Administrative Agent for acceptance by Administrative Agent. The effective date for this Designation Agreement (the "***Effective Date***") shall be the date of acceptance hereof by Administrative Agent.

6. Designor unconditionally agrees to pay or reimburse Designee and save Designee harmless against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed or asserted by any of the parties to the Loan Documents against Designee, in its capacity as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by the Designee hereunder or thereunder, provided that Designor shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements if the same results from Designee's gross negligence or willful misconduct.

7. As of the Effective Date, Designee shall be a party to the Loan Agreement with a right to make Bid Rate Loans as a Bank pursuant to Section 2.02 of the Loan Agreement and the rights and obligations of a Bank related thereto; provided, however, that Designee shall not be required to make payments with respect to such obligations except to the extent of excess cash flow of such Designee which is not otherwise required to repay obligations of such Designated Lender which are then due and payable. Notwithstanding the foregoing, Designor, as administrative agent for Designee, shall be and remain obligated to Borrower, Administrative Agent and the Banks for each and every of the obligations of Designee and its Designor with respect to the Loan Agreement, including, without limitation, any indemnification obligations under Section 10.05 of the Loan Agreement.

8. This Designation Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

9. This Designation Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Designor and Designee have executed and delivered this Designation Agreement as of the date first set forth above.

[DESIGNOR]

By: _____
Name:
Title:

[DESIGNEE]

By: _____
Name:
Title:

Applicable Lending Office and Address for Notices:

_____
_____
_____

Attention:_____
Telephone: (___) _____
Telecopy: (___) _____

ACCEPTED AS OF THE _____DAY OF _____,200_.

[ADMINISTRATIVE AGENT], as Administrative Agent

By: _____
Name:
Title:

EXHIBIT G-1

BID RATE QUOTE REQUEST

[Date]

To: **[Administrative Agent]**, as Administrative Agent (the "***Administrative Agent***")

From: AvalonBay Communities, Inc.

Re: Amended and Restated Revolving Loan Agreement (the ***"Loan Agreement***") dated as of May 24, 2004 among AvalonBay Communities, Inc., the Banks parties thereto and the Administrative Agent

We hereby give notice pursuant to Section 2.02 of the Loan Agreement that we request Bid Rate Quotes for the following proposed Bid Rate Loans:

Date of Borrowing: _____

Principal Amount* Interest Period**

$

Such Bid Rate Quotes should offer a(n) [LIBOR Bid Margin] [Absolute Bid Rate].

Terms used herein have the meanings assigned to them in the Loan Agreement.

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title: [5]

_____

* Subject to the minimum amount and other requirements set forth in Section 2.02(a) of the Loan Agreement.

** Subject to the provisions regarding #Interest Period# in the Loan Agreement.

EXHIBIT G-2

INVITATION FOR BID RATE QUOTES

To: [Bank]

Re: Invitation for Bid Rate Quotes to AvalonBay Communities, Inc. ("***Borrower***")

Pursuant to Section 2.02 of the Amended and Restated Revolving Loan Agreement dated as of May 24, 2004 among Borrower, the Banks parties thereto and the undersigned, as Administrative Agent, we are pleased on behalf of Borrower to invite you to submit Bid Rate Quotes to Borrower for the following proposed Bid Rate Loans:

Date of Borrowing: _____

Principal Amount	Interest Period
$	

Such Bid Rate Quotes should offer a(n) [LIBOR Bid Margin] [Absolute Bid Rate].

Please respond to this invitation by no later than 2:00 P.M. (New York time) on [date].

[ADMINISTRATIVE AGENT], as Administrative Agent

By: _____
Name:
Title:

EXHIBIT G-3

BID RATE QUOTE

To: **[Administrative Agent]**, as Administrative Agent

Re: Bid Rate Quote to AvalonBay Communities, Inc. ("***Borrower***") pursuant to the Amended and Restated Revolving Loan Agreement dated May 24, 2004 among Borrower, the Banks party thereto and you, as Administrative Agent (the "***Loan Agreement***")

In response to your invitation on behalf of Borrower dated 200___, we hereby make the following Bid Rate Quote on the following terms:

1. Quoting Bank:
2. Person to contact at quoting Bank: _____
3. Date of borrowing: _____*
4. We hereby offer to make Bid Rate Loan(s) in the following principal amounts, for the following Interest Periods and at the following rates:

Principal Amount**	Interest Period***	LIBOR Bid Margin****	Absolute Bid Rate
$			
$			

[Provided, that the aggregate principal amount of Bid Rate Loans for which the above offers may be accepted shall not exceed $ _____.]

5. LIBOR Reserve Requirement, if any: _____
6. Terms used herein have the meanings assigned to them in the Loan Agreement.

_____

*As specified in the related Invitation for Bid Rate Quotes.

**Principal amount bid for each Interest Period may not exceed principal amount requested. Specify aggregate limitation if the sum of the individual offers exceeds the amount the Bank is willing to lend. Amounts of bids are subject to the requirements of Section 2.02(c) of the Loan Agreement.

***No more than three (3) bids are permitted for each Interest Period.

****Margin over or under the LIBOR Interest Rate determined for the applicable Interest Period. Specify percentage (to the nearest 1/1,000 of 1%) and specify whether "PLUS" or "MINUS".

We understand and agree that the offer(s) set forth above, subject to the satisfaction of the applicable conditions set forth in the Loan Agreement, irrevocably obligates us to make the Bid Rate Loan(s) for which any offer(s) are accepted, in whole or in part.

Very truly yours, [NAME OF BANK]

Date: _____

By: _____
Authorized Officer

EXHIBIT G-4

ACCEPTANCE OF BID RATE QUOTE

To: **[Administrative Agent]**, as Administrative Agent (the "***Administrative Agent***")

From: AvalonBay Communities, Inc.

Re: Amended and Restated Revolving Loan Agreement (the "***Loan Agreement***") dated as of May 24, 2004 among AvalonBay Communities, Inc., the Banks parties thereto and Administrative Agent

We hereby accept the offers to make Bid Rate Loan(s) set forth in the Bid Rate Quote(s) identified below:

Bank	Date of Bid Rate Quote	Principal Amount	Interest Period	LIBOR Bid Margin	Absolute Bid Rate

Very truly yours,

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

EXHIBIT H

ACCEPTANCE LETTER

Fleet National Bank,
as Administrative Agent

AvalonBay Communities, Inc.

Gentlemen:

We refer to the Amended and Restated Revolving Loan Agreement, dated as of May 24, 2004, among AvalonBay Communities, Inc., as Borrower; JPMorgan Chase Bank, Fleet National Bank and the other lenders who have become a party to said Amended and Restated Revolving Loan Agreement as original signatories thereto or through the execution of Acceptance Letters or Assignment and Assumption Agreements prior to the date hereof, as Banks; and Fleet National Bank, as Administrative Agent. Said Amended and Restated Revolving Loan Agreement, as amended from time to time, is hereinafter referred to as the "***Loan Agreement***". Capitalized terms not otherwise defined herein shall have the respective definitions given them in the Loan Agreement.

You and we hereby acknowledge and agree that, pursuant to Section 2.19 of the Loan Agreement, we are hereby made a party to the Loan Agreement, and for all purposes of the Loan Agreement shall be, and shall have all the rights and obligations of, a Bank, with a Loan Commitment in the amount of $_____. We hereby acknowledge receipt of a Ratable Loan Note from Borrower in said principal amount. Each of you acknowledges your consent to our becoming a Bank and to the amount of our Loan Commitment.

Immediately following the execution hereof by all parties, we shall, pursuant to paragraph (c) of Section 2.19 of the Loan Agreement, remit to Administrative Agent the sum of $_____, which shall be deemed the first advance under our Ratable Loan. Attached hereto as Schedule A is an updated list setting forth the Total Loan Commitment, each Bank's Loan Commitment and the principal balance that will be outstanding under each Bank's Ratable Loan Note following our disbursement of funds as aforesaid and the application thereof as provided in said paragraph (c) of Section 2.19.

Set forth beneath our signature are the location of our Applicable Lending Office(s) and our address for notices under the Loan Agreement.

Kindly indicate your agreement with the foregoing by your execution below.

Very truly yours,

[NEW BANK]

By _____
Name:
Title:

Address for notices:

Applicable Lending Office:

Agreement acknowledged this day of _____, 200_.

AVALONBAY COMMUNITIES, INC.

By _____
Name:
Title:

Agreement acknowledged this day of _____, 200_.

FLEET NATIONAL BANK, as Administrative Agent

By _____
Name:
Title:

Agreement acknowledged this day of _____, 200_.

_____, as Syndication Agent

By _____
Name:
Title:

Schedule 1

Loan Commitments

Lender	Commitment
Fleet National Bank	$ 35,000,000
JPMorgan Chase Bank	$ 35,000,000
Wachovia Bank, National Association	$ 35,000,000
Deutsche Bank Trust Company Americas	$ 35,000,000
Morgan Stanley Bank	$ 35,000,000
Wells Fargo Bank, National Association	$ 35,000,000
SouthTrust Bank	$ 30,000,000
SunTrust Bank	$ 30,000,000
UBS Loan Finance LLC	$ 30,000,000
AmSouth Bank	$ 23,000,000
Bank of China, New York Branch	$ 23,000,000
The Bank of New York	$ 23,000,000
KeyBank National Association	$ 23,000,000
PNC Bank, National Association	$ 23,000,000
Scotiabanc Inc.	$ 23,000,000
Chang Hwa Commercial Bank, Ltd., New York Branch	$ 13,000,000
Comerica Bank	$ 13,000,000
First Horizon Bank	$ 13,000,000
US Bank National Association	$ 13,000,000
E.Sun Commercial Bank, Ltd., Los Angeles	$ 10,000,000
Total:	**$500,000,000**

Exhibit 12.1

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

	Six Months Ended June 30, 2004	Year Ended December 31, 2003	Year Ended December 31, 2002	Year Ended December 31, 2001	Year Ended December 31, 2000	Year Ended December 31, 1999
Income before gain on sale of communities and cumulative effect of change in accounting principle	$ 41,597	$ 100,471	$ 103,825	$ 163,146	$ 149,502	$ 110,575
(Plus) Minority interest in consolidated partnerships	275	999	914	997	1,086	1,231
Earnings before fixed charges	$ 41,872	$ 101,470	$ 104,739	$ 164,143	$ 150,588	$ 111,806
(Plus) Fixed charges:						
Portion of rents representative of the interest factor	$ 204	$ 503	$ 527	$ 472	$ 461	$ 526
Interest expense	64,768	134,911	119,666	101,170	81,071	72,461
Interest capitalized	10,078	24,709	29,937	27,635	18,328	21,888
Preferred dividend	4,350	10,744	17,896	40,035	39,779	39,779
Total fixed charges (1)	$ 79,400	$ 170,867	$ 168,026	$ 169,312	$ 139,639	$ 134,654
(Less):						
Interest capitalized	10,078	24,709	29,937	27,635	18,328	21,888
Preferred dividend	4,350	10,744	17,896	32,497	39,779	39,779
Earnings (2)	$ 106,844	$ 236,884	$ 224,932	$ 273,323	$ 232,120	$ 184,793
Ratio (2 divided by 1)	1.35	1.39	1.34	1.61	1.66	1.37

Exhibit 12.1 (continued)

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO FIXED CHARGES

	Six Months Ended June 30, 2004	Year Ended December 31, 2003	Year Ended December 31, 2002	Year Ended December 31, 2001	Year Ended December 31, 2000	Year Ended December 31, 1999
Income before gain on sale of communities and extraordinary item	$ 41,597	$ 100,471	$ 103,825	$ 163,146	$ 149,502	$ 110,575
(Plus) Minority interest in consolidated partnerships	275	999	914	997	1,086	1,231
Earnings before fixed charges	$ 41,872	$ 101,470	$ 104,739	$ 164,143	$ 150,588	$ 111,806
(Plus) Fixed charges:						
Portion of rents representative of the interest factor	$ 204	$ 503	$ 527	$ 472	$ 461	$ 526
Interest expense	64,768	134,911	119,666	101,170	81,071	72,461
Interest capitalized	10,078	24,709	29,937	27,635	18,328	21,888
Total fixed charges (1)	$ 75,050	$ 160,123	$ 150,130	$ 129,277	$ 99,860	$ 94,875
(Less):						
Interest capitalized	10,078	24,709	29,937	27,635	18,328	21,888
Earnings (2)	$ 106,844	$ 236,884	$ 224,932	$ 265,785	$ 232,120	$ 184,793
Ratio (2 divided by 1)	1.42	1.48	1.50	2.06	2.32	1.95

Exhibit 31.1

CERTIFICATION

I, Bryce Blair, certify that:

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

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2004

/s/ Bryce Blair
Bryce Blair
Chief Executive Officer and President

Exhibit 31.2

CERTIFICATION

I, Thomas J. Sargeant, certify that:

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

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

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

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2004

/s/ Thomas J. Sargeant
Thomas J. Sargeant
Chief Financial Officer

Exhibit 32

CERTIFICATION

The undersigned officers of AvalonBay Communities, Inc. (the "Company") hereby certify that the Company's quarterly report on Form 10-Q to which this certification is attached (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 6, 2004

/s/ Bryce Blair
Bryce Blair
Chief Executive Officer and President

/s/ Thomas J. Sargeant
Thomas J. Sargeant
Chief Financial Officer

This certification is being furnished and not filed, and shall not be incorporated into any document for any purpose, under the Securities Exchange Act of 1934 or the Securities Act of 1933.