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

FORM 10-K

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

For the fiscal year ended December 31, 2008

Commission file number 1-12672

AVALONBAY COMMUNITIES, INC.

(Exact name of registrant as specified in its charter)

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

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

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

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

Common Stock, par value $.01 per share	New York Stock Exchange
(Title of each class)	*(Name of each exchange on which registered)*

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.
Yes þ No o

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.
Yes o No þ

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

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

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).
Yes o No þ

The aggregate market value of the Registrant's Common Stock, par value $.01 per share, held by nonaffiliates of the registrant, as of June 30, 2008 was $6,818,282,578.

The number of shares of the registrant's Common Stock, par value $.01 per share, outstanding as of January 31, 2009 was 79,745,531.

Documents Incorporated by Reference

Portions of AvalonBay Communities, Inc.'s Proxy Statement for the 2009 annual meeting of stockholders, a definitive copy of which will be filed with the SEC within 120 days after the year end of the year covered by this Form 10-K, are incorporated by reference herein as portions of Part III of this Form 10-K.

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PART I

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

ITEM 1. BUSINESS

General

AvalonBay Communities, Inc. (the "Company," which term, unless the context otherwise requires, refers to AvalonBay Communities, Inc. together with its subsidiaries) is a Maryland corporation that has elected to be treated as a real estate investment trust, or REIT, for federal income tax purposes. We engage in the development, redevelopment, acquisition, ownership and operation of multifamily communities in high barrier-to-entry markets of the United States. These barriers-to-entry generally include a difficult and lengthy entitlement process with local jurisdictions and dense urban or suburban areas where zoned and entitled land is in limited supply. Our markets are located in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Midwest, the Pacific Northwest, and the Northern and Southern California regions of the United States. We focus on these markets because we believe that over the long term, a limited new supply of apartment homes and lower housing affordability in these markets will result in larger increases in cash flows relative to other markets.

At January 31, 2009, we owned or held a direct or indirect ownership interest in:

- 164 operating apartment communities containing 45,728 apartment homes in ten states and the District of Columbia, of which (i) seven wholly owned communities containing 2,143 apartment homes were under redevelopment, as discussed below and (ii) 19 communities containing 3,829 apartment homes, of which two communities containing 467 apartment homes were under redevelopment, were held by the Fund (as defined below), which we manage and in which we own a 15.2% equity interest;
- 14 communities under construction that are expected to contain an aggregate of 4,564 apartment homes when completed; and
- rights to develop an additional 27 communities that, if developed in the manner expected, will contain an estimated 7,304 apartment homes.

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

Our real estate investments consist of the following reportable segments: Established Communities, Other Stabilized Communities and Development/Redevelopment Communities. Established Communities are generally operating communities that are consolidated for financial reporting purposes and that were owned and had stabilized occupancy and operating expenses as of the beginning of the prior year such that year-over-year comparisons are meaningful. Other Stabilized Communities are generally all other operating communities that have stabilized occupancy and operating expenses during the current year, but that had not achieved stabilization as of the beginning of the prior year such that year-over-year comparisons are not meaningful. Development/Redevelopment Communities consist of communities that are under construction, communities where substantial redevelopment is in progress or is planned to begin during the current year and communities under lease-up. A more detailed description of these segments and other related information can be found in Note 9, "Segment Reporting," of the Consolidated Financial Statements set forth in Item 8 of this report.

Our principal financial goal is to increase long-term stockholder value through the development, acquisition, operation and ultimate disposition of apartments in our high barrier-to-entry markets. To help fulfill this goal, we regularly (i) monitor our investment allocation by geographic market and product type, (ii) develop, redevelop and acquire apartment communities in high barrier-to-entry markets with growing or high potential for demand and high for-sale housing costs, (iii) selectively sell apartment communities that no longer meet our long-term strategy or when opportunities are presented to realize a portion of the value created through our investment and redeploy the

proceeds from those sales, and (iv) endeavor to maintain a capital structure that is aligned with our business risks such that we maintain continuous access to cost-effective capital. Our long-term strategy is to more deeply penetrate the high barrier-to-entry markets in our chosen regions with a broad range of products and services and intense focus on our customer. A substantial majority of our current communities are upscale, which generally command among the highest rents in their markets. However, we also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services.

During the three years ended December 31, 2008, excluding acquisitions for the Fund (as defined below), we acquired two apartment communities and purchased our partner's interest in a joint venture that owns an apartment community. All three communities' financial results are consolidated for financial reporting purposes. During the same three-year period, excluding dispositions in which we retained an ownership interest, we disposed of 18 apartment communities, including a community held by a joint venture in which we held a 25% equity interest, disposed of one investment in a real estate joint venture and completed the development of 27 apartment communities and the redevelopment of seven apartment communities, including communities we redeveloped for the Fund (as defined below).

During this period, we also realized gains from the sale of a community owned by AvalonBay Value Added Fund, L.P. (the "Fund"), an institutional discretionary investment fund, which we manage and in which we own a 15.2% interest. The Fund acquired communities with the objective of either redeveloping or repositioning them, or taking advantage of market cycle timing and improved operating performance. Since its inception in March 2005, the Fund has acquired 20 communities and sold one community in 2008. The investment period for the Fund ended in March 2008.

In September 2008, we formed AvalonBay Value Added Fund II, L.P. ("Fund II"), an additional private, discretionary investment vehicle which we manage and in which we currently own a 45% interest. At final closing, the aggregate investor commitments to Fund II and our commitment and percentage interest in Fund II may change. Fund II will seek to create value through redevelopment, enhanced operations and/or improving market fundamentals of communities that it will acquire, principally in our markets. A more detailed description of the Fund and Fund II and the related investment activity can be found in the discussion under Item I., "Business — General — Financing Strategy" and Note 6, "Investments in Real Estate Entities" of the Consolidated Financial Statements in Item 8 of this report.

During 2008, we sold 11 assets including one Fund asset, resulting in a gain in accordance with U.S. generally accepted accounting principles ("GAAP") of $288,384,000.

As a result of the recent economic downturn and corresponding adverse impacts on employment and credit availability, we decreased our construction volume during 2008 (as measured by total projected capitalized cost at completion) and reduced our planned development activity for 2009. We do not anticipate starting any new development during the first half of 2009. Development starts in the second half of 2009, if any, will be evaluated based on our assessment of economic, real estate and capital market conditions at that time. We do anticipate an increase in our redevelopment activity for both wholly owned assets and assets held by the Fund.

For 2009, we anticipate asset sales in the range of $100,000,000 to $200,000,000, dependent on strategic and value realization opportunities. The level of our disposition activity also depends on real estate and capital market conditions. A further discussion of our development, redevelopment, disposition, acquisition, property management and related strategies follows.

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

- Boston, Massachusetts;
- Chicago, Illinois;
- Long Island, New York;
- Los Angeles, California;
- New York, New York;
- Newport Beach, California;
- San Francisco, California;
- San Jose, California;
- Seattle, Washington;
- Shelton, Connecticut;
- Virginia Beach, Virginia; and
- Woodbridge, New Jersey.

After selecting a target site, we usually negotiate for the right to acquire the site either through an option or a long-term conditional contract. Options and long-term conditional contracts allow us to acquire the target site shortly before the start of construction, which reduces development-related risks and preserves capital. However, as a result of competitive market conditions for land suitable for development, we have acquired and held land prior to construction for extended periods while entitlements are obtained, or acquired land zoned for uses other than residential with the potential for rezoning. We currently own land that is held for development with an aggregate carrying basis under GAAP of $239,456,000 on which we have not yet commenced construction.

Except for certain mid-rise and high-rise apartment communities where we may elect to use third-party general contractors or construction managers, when we start construction we act as our own general contractor and construction manager. We generally perform these functions directly (although we may use a wholly owned subsidiary) both for ourselves and for the joint ventures and partnerships of which we are a member or a partner. We believe this enables us to achieve higher construction quality, greater control over construction schedules and significant cost savings. Our development, property management and construction teams monitor construction progress to ensure quality workmanship and a smooth and timely transition into the leasing and operating phase.

When there is increased competition for desirable development opportunities, we will in some cases be engaged in more complicated developments. For example, at times we have acquired and may in the future acquire existing commercial buildings with the intent to pursue rezoning, tenant terminations or expirations and demolition of the existing structures. During the period that we hold these buildings for future development, the net revenue from these operations, which we consider to be incidental, is accounted for as a reduction in our investment in the development pursuit and not as net income. We have also participated, and may in the future participate, in master planned or other large multi-use developments where we commit to build infrastructure (such as roads) to be used by other participants or commit to act as construction manager or general contractor in building structures or spaces for third parties (such as municipal garages or parks). Costs we incur in connection with these activities may be accounted for as additional invested capital in the community or we may earn fee income for providing these services. Particularly with large scale, urban in-fill developments, we may engage in significant environmental remediation efforts to prepare a site for construction.

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

Redevelopment Strategy. When we undertake the redevelopment of a community, our goal is to renovate and/or rebuild an existing community so that our total investment is generally below replacement cost and the community is well positioned in the market to achieve attractive returns on our capital. We have established a dedicated group of

associates and procedures to control both the cost and risks of redevelopment. Our redevelopment teams, which include key redevelopment, construction and property management personnel, monitor redevelopment progress. We believe we achieve significant cost savings by acting as our own general contractor. More importantly, this helps to ensure quality design and workmanship and a smooth and timely transition into the lease-up and restabilization phases.

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

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

Acquisition Strategy. Our core competencies in development and redevelopment discussed above allow us to be selective in the acquisitions we target. Acquisitions allow us to achieve rapid penetration into markets in which we desire an increased presence. Acquisitions (and dispositions) also help us achieve our desired product mix or rebalance our portfolio. In 2005 we formed the Fund which, until its investment period closed in March 2008, served as the exclusive vehicle through which we acquired additional investments in apartment communities, subject to limited exceptions. In September 2008, we formed Fund II, which will serve as the exclusive vehicle through which we will acquire additional investments in apartment communities until the earlier of September 2011 or until 90% of its committed capital is invested, subject to limited exceptions. As of December 31, 2008, Fund II had made no investments.

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

- strong focus on resident satisfaction;
- staggering lease terms such that lease expirations are better matched to traffic patterns;
- balancing high occupancy with premium pricing, and increasing rents as market conditions permit; and
- managing community occupancy for optimal rental revenue levels.

Constraining growth in operating expenses is another way in which we seek to increase earnings growth. Growth in our portfolio and the resulting increase in revenue allows for fixed operating costs to be spread over a larger volume of revenue, thereby increasing operating margins. We constrain growth in operating expenses in a variety of ways, which include the following, among others:

- we use purchase order controls, acquiring goods and services from pre-approved vendors;
- we purchase supplies in bulk where possible;
- we bid third-party contracts on a volume basis;
- we strive to retain residents through high levels of service in order to eliminate the cost of preparing an apartment home for a new resident and to reduce marketing and vacant apartment utility costs;
- we perform turnover work in-house or hire third parties, generally depending upon the least costly alternative;
- we undertake preventive maintenance regularly to maximize resident satisfaction and property and equipment life; and
- we aggressively pursue real estate tax appeals.

On-site property management teams receive bonuses based largely upon the net operating income produced at their respective communities. We use and continuously seek ways to improve technology applications to help manage our communities, believing that the accurate collection of financial and resident data will enable us to maximize

revenue and control costs through careful leasing decisions, maintenance decisions and financial management.

We generally manage the operation and leasing activity of our communities directly (although we may use a wholly owned subsidiary) both for ourselves and the joint ventures and partnerships of which we are a member or a partner.

From time to time we also pursue or arrange ancillary services for our residents to provide additional revenue sources or increase resident satisfaction. In general, as a REIT we cannot directly provide services to our tenants that are not customarily provided by a landlord, nor can we share in the income of a third party that provides such services. However, we can provide such non-customary services to residents or share in the revenue from such services if we do so through a "taxable REIT subsidiary," which is a subsidiary that is treated as a "C corporation" and is therefore subject to federal income taxes.

Financing Strategy. We have consistently maintained, and intend to continue to maintain, a capital structure that provides us with flexibility in meeting the financial obligations and opportunities presented by our real estate development and ownership business. We estimate that a portion of our short-term liquidity needs will be met from retained operating cash, borrowings under our variable rate unsecured credit facility and sales of current operating communities. If required to meet the balance of our current or anticipated liquidity needs, we will borrow funds under our existing unsecured credit facility, sell existing communities or land and/or issue additional debt or equity securities. A determination to engage in an equity or debt offering depends on a variety of factors such as general market and economic conditions, including interest rates, our short and long term liquidity needs, the adequacy of our expected liquidity sources, the relative costs of debt and equity capital and growth opportunities. A summary of debt and equity activity for the last three years is reflected on our Consolidated Statement of Cash Flows of the Consolidated Financial Statements set forth in Item 8 of this report.

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

From its inception in 2005 until the investment period closed in March 2008, the Fund was the exclusive vehicle through which we invested in the acquisition of apartment communities, subject to certain exceptions. In September 2008, we formed Fund II. Fund II will now serve as the exclusive vehicle through which we will invest in the acquisition of apartment communities, subject to certain exceptions, until the earlier of September 2011 or until 90% of its committed capital is invested. These exceptions include significant individual asset and portfolio acquisitions, properties acquired in tax-deferred transactions and acquisitions that are inadvisable or inappropriate for Fund II. Fund II does not restrict our development activities, and will terminate after a term of ten years, subject to two one-year extensions. Fund II has four institutional investors, including us, with a combined equity capital commitment of $333,000,000. A significant portion of the investments made in Fund II by its investors are being made through

AvalonBay Value Added REIT II, LP, a Delaware limited partnership that intends to qualify as a REIT under the Internal Revenue Code (the "Fund II REIT"). A wholly owned subsidiary of the Company is the general partner of Fund II and has committed $150,000,000 to Fund II and the Fund II REIT (none of which has been invested as of January 31, 2009) representing a 45% combined general partner and limited partner equity interest. At final closing, the aggregate investor commitments to Fund II and our commitment and percentage interest in Fund II may change.
As of January 31, 2009, Fund II has made no investments.

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

Other Strategies and Activities. While we emphasize equity real estate investments in rental apartment communities, we have the ability to invest in other types of real estate, mortgages (including participating or convertible mortgages), securities of other REITs or real estate operating companies, or securities of technology companies that relate to our real estate operations or of companies that provide services to us or our residents, in each case consistent with our qualification as a REIT. On occasion, we own and lease retail space at our communities when either (i) the highest and best use of the space is for retail (e.g., street level in an urban area) or (ii) we believe the retail space will enhance the attractiveness of the community to residents. As of December 31, 2008, we had a total of 425,251 square feet of rentable retail space that produced gross rental revenue in 2008 of $10,166,000 (1.2% of total revenue). If we secure a development right and believe that its best use, in whole or in part, is to develop the real estate with the intent to sell rather than hold the asset, we may, through a taxable REIT subsidiary, develop real estate for sale. At present, through a taxable REIT subsidiary that is a 50% partner in Aria at Hathorne, LLC, we have an economic interest in the development of 64 for-sale town homes at a total projected capital cost of $23,621,000. This for-sale development is on a site that is adjacent to our Avalon Danvers community and that is zoned for for-sale development. Any investment in securities of other entities, and any development of real estate for sale, is subject to the percentage of ownership limitations, gross income tests, and other limitations that must be observed for REIT qualification.

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

Tax Matters

We filed an election with our 1994 federal income tax return to be taxed as a REIT under the Internal Revenue Code of 1986, as amended, and intend to maintain our qualification as a REIT in the future. As a qualified REIT, with limited exceptions, we will not be taxed under federal and certain state income tax laws at the corporate level on our taxable net income to the extent taxable net income is distributed to our stockholders. We expect to make sufficient distributions to avoid income tax at the corporate level. While we believe that we are organized and qualified as a REIT and we intend to operate in a manner that will allow us to continue to qualify as a REIT, there can be no assurance that we will be successful in this regard. Qualification as a REIT involves the application of highly technical and complex provisions of the Internal Revenue Code for which there are limited judicial and administrative interpretations and involves the determination of a variety of factual matters and circumstances not entirely within our control.

Competition

We face competition from other real estate investors, including insurance companies, pension and investment funds, partnerships and investment companies and other REITs, to acquire and develop apartment communities and acquire land for future development. As an owner and operator of apartment communities, we also face competition for prospective residents from other operators whose communities may be perceived to offer a better location or better amenities or whose rent may be perceived as a better value proposition given the quality, location and amenities that the resident seeks. We also compete against condominiums and single-family homes that are for sale or rent. Although we often compete against large sophisticated developers and operators for development opportunities and

for prospective residents, real estate developers and operators of any size can provide effective competition for both real estate assets and potential residents.

Environmental and Related Matters

As a current or prior owner, operator and developer of real estate, we are subject to various federal, state and local environmental laws, regulations and ordinances and also could be liable to third parties resulting from environmental contamination or noncompliance at our communities. For some development communities, we undertake extensive environmental remediation to prepare the site for construction, which could be a significant portion of our total construction cost. Environmental remediation efforts could expose us to possible liabilities for accidents or improper handling of contaminated materials during construction. These and other risks related to environmental matters are described in more detail in Item 1a., "Risk Factors".

Other Information

We file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20002. You may call the SEC at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. Our SEC filings are also available to the public from the SEC's website at www.sec.gov. In addition, you may read our SEC fillings at the offices of the New York Stock Exchange ("NYSE"), which is located at 20 Board Street, New York, New York 10005. Our SEC filings are available at the NYSE because our common stock is listed on the NYSE.

We maintain a website at www.avalonbay.com. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, filed or furnished pursuant to the Securities Exchange Act of 1934 are available free of charge in the "Investor Relations" section of our website as soon as reasonably practicable after the reports are filed with or furnished to the SEC. In addition, the charters of our Board's Nominating and Corporate Governance Committee, Audit Committee and Compensation Committee, as well as our Corporate Governance Guidelines and Code of Conduct, are available free of charge in that section of our website or by writing to AvalonBay Communities, Inc., 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314, Attention: Chief Financial Officer. To the extent required by the rules of the SEC and the NYSE, we will disclose amendments and waivers relating to these documents in the same place on our website.

We were incorporated under the laws of the State of California in 1978. In 1995, we reincorporated in the State of Maryland and have been focused on the ownership and operation of apartment communities since that time. As of January 31, 2009, we had 1,830 employees.

ITEM 1a. RISK FACTORS

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

Development, redevelopment and construction risks could affect our profitability.

We intend to continue to develop and redevelop apartment home communities. These activities can include long planning and entitlement timelines and can involve complex and costly activities, including significant environmental remediation or construction work in high-density urban areas. These activities may be exposed to the following risks:

- we may be unable to obtain, or experience delays in obtaining, necessary zoning, occupancy, or other required governmental or third party permits and authorizations, which could result in increased costs or the delay or abandonment of opportunities;
- we may abandon opportunities that we have already begun to explore for a number of reasons, including changes in local market conditions or increases in construction or financing costs, and, as a result, we may fail to recover expenses already incurred in exploring those opportunities;
- we may incur costs that exceed our original estimates due to increased material, labor or other costs;
- occupancy rates and rents at a community may fail to meet our expectations for a number of reasons, including changes in market and economic conditions beyond our control and the development by competitors of competing communities;
- we may be unable to complete construction and lease up of a community on schedule, resulting in increased construction and financing costs and a decrease in expected rental revenues;
- we may be unable to obtain financing with favorable terms, or at all, for the proposed development of a community, which may cause us to delay or abandon an opportunity;
- we may incur liabilities to third parties during the development process, for example, in connection with managing existing improvements on the site prior to tenant terminations and demolition (such as commercial space) or in connection with providing services to third parties, such as the construction of shared infrastructure or other improvements; and
- we may incur liability if our communities are not constructed and operated in compliance with the accessibility provisions of the Americans with Disabilities Acts, the Fair Housing Act or other federal, state or local requirements. Noncompliance could result in imposition of fines, an award of damages to private litigants, and a requirement that we undertake structural modifications to remedy the noncompliance. We are currently engaged in lawsuits alleging noncompliance with these statutes. See Item 3., “Legal Proceedings.”

We project construction costs based on market conditions at the time we prepare our budgets, and our projections include changes that we anticipate but cannot predict with certainty. Construction costs may increase, particularly for labor and certain materials and, for some of our Development Communities and Development Rights (as defined below), the total construction costs may be higher than the original budget. Total capitalized cost includes all capitalized costs projected to be incurred to develop or redevelop a community, determined in accordance with GAAP, including:

- land and/or property acquisition costs;
- fees paid to secure air rights and/or tax abatements;
- construction or reconstruction costs;
- costs of environmental remediation;
- 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 or redevelopment communities complete lease-up will be sufficient to fully offset the effects of any increased construction or reconstruction costs.

Unfavorable changes in market and economic conditions could hurt occupancy, rental rates, operating expenses, and the overall market value of our assets, including joint ventures and Fund investments.

Local conditions in our markets significantly affect occupancy, rental rates and the operating performance of our communities. The risks that may adversely affect conditions in those markets include the following:

- plant closings, industry slowdowns and other factors that adversely affect the local economy;
- an oversupply of, or a reduced demand for, apartment homes;
- a decline in household formation or employment or lack of employment growth;
- the inability or unwillingness of residents to pay rent increases;
- rent control or rent stabilization laws, or other laws regulating housing, that could prevent us from raising rents to offset increases in operating costs; and
- economic conditions that could cause an increase in our operating expenses, such as increases in property taxes, utilities, compensation of on-site associates and routine maintenance.

Changes in applicable laws, or noncompliance with applicable laws, could adversely affect our operations or expose us to liability.

We must develop, construct and operate our communities in compliance with numerous federal, state and local laws and regulations, some of which may conflict with one another or be subject to limited judicial or regulatory interpretations. These laws and regulations may include zoning laws, building codes, landlord tenant laws and other laws generally applicable to business operations. Noncompliance with laws could expose us to liability.

Compliance with changes in (i) laws imposing remediation requirements and the potential liability for environmental conditions existing on properties or the restrictions on discharges or other conditions, (ii) rent control or rent stabilization laws or (iii) other governmental rules and regulations or enforcement policies affecting the development, use and operation of our communities, including changes to building codes and fire and life-safety codes, may result in lower revenue growth or significant unanticipated expenditures.

Short-term leases expose us to the effects of declining market rents.

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

Competition could limit our ability to lease apartment homes or increase or maintain rents.

Our apartment communities compete with other housing alternatives to attract residents, including other rental apartments, condominiums and single-family homes that are available for rent, as well as new and existing condominiums and single-family homes for sale. Competitive residential housing in a particular area could adversely affect our ability to lease apartment homes and to increase or maintain rental rates.

Attractive investment opportunities may not be available, which could adversely affect our profitability.

We expect that other real estate investors, including insurance companies, pension funds, other REITs and other well-capitalized investors, will compete with us to acquire existing properties and to develop new properties. This competition could increase prices for properties of the type we would likely pursue and adversely affect our profitability.

Capital and credit market conditions may continue to adversely affect our access to various sources of capital and/or the cost of capital, which could impact our business activities, dividends, earnings, and common stock price, among other things.

The capital and credit markets have been experiencing extreme volatility and disruption, and this has affected the amounts, sources and cost of capital available to us. For example, during 2008 we used secured property financing more than in the past, as the interest rate we incur for that source of financing has remained relatively steady, and we may continue to rely more heavily on secured financings. We are unable to predict whether, or to what extent or for how long, the current capital market conditions will persist. We primarily use external financing to fund construction and to refinance indebtedness as it matures. If sufficient sources of external financing are not available to us on cost effective terms, we could be forced to further limit our development and redevelopment activity and/or take other actions to fund our business activities and repayment of debt, such as selling assets, reducing our cash dividend or paying out less than 100% of our taxable income. To the extent that we are able and/or choose to access capital at a higher cost than we have experienced in recent years (reflected in higher interest rates for debt financing or a lower stock price for equity financing) our earnings per share and cash flows could be adversely affected. In addition, the price of our common stock may fluctuate significantly and/or decline in a high-interest rate or volatile economic environment. We believe that the lenders under our unsecured credit line will fulfill their lending obligations thereunder, but if economic conditions deteriorate further there can be no assurance that the ability of those lenders to fulfill their obligations would not be adversely impacted.

Insufficient cash flow could affect our debt financing and create refinancing risk.

We are subject to the risks associated with debt financing, including the risk that our cash flow will be insufficient to meet required payments of principal and interest. In this regard, we note that we are required to annually distribute dividends generally equal to at least 90% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain, in order for us to continue to qualify as a REIT, and this requirement limits the amount of our cash flow available to meet required principal and interest payments. The principal outstanding balance on a portion of our debt will not be fully amortized prior to its maturity. Although we may be able to repay our debt by using our cash flows, we cannot assure you that we will have sufficient cash flows available to make all required principal payments. Therefore, we may need to refinance at least a portion of our outstanding debt as it matures. There is a risk that we may not be able to refinance existing debt or that a refinancing will not be done on as favorable terms, either of which could have a material adverse effect on our financial condition and results of operations.

Rising interest rates could increase interest costs and could affect the market price of our common stock.

We currently have, and may in the future incur, variable interest rate debt. In addition, we regularly seek access to both fixed and variable rate debt financing to repay maturing debt and to finance our development and redevelopment activity. Accordingly, if interest rates increase, our interest costs will also rise, unless we have made arrangements that hedge the risk of rising interest rates. In addition, an increase in market interest rates may lead purchasers of our common stock to demand a greater annual dividend yield, which could adversely affect the market price of our common stock.

Bond financing and zoning compliance requirements could limit our income, restrict the use of communities and cause favorable financing to become unavailable.

We have financed some of our apartment communities with obligations issued by local government agencies because the interest paid to the holders of this debt is generally exempt from federal income taxes and, therefore, the interest rate is generally more favorable to us. These obligations are commonly referred to as "tax-exempt bonds" and generally must be secured by communities. As a condition to obtaining tax-exempt financing, or on occasion as a condition to obtaining favorable zoning in some jurisdictions, we will commit to make some of the apartments in a community available to households whose income does not exceed certain thresholds (e.g., 50% or 80% of area median income), or who meet other qualifying tests. As of December 31, 2008, approximately 6.9% of our apartment homes at current operating communities were under income limitations such as these. These commitments, which may run without expiration or may expire after a period of time (such as 15 or 20 years) may limit our ability to raise rents aggressively and, in consequence, can also limit increases in the value of the communities subject to these restrictions.

In addition, some of our tax-exempt bond financing documents require us to obtain a guarantee from a financial institution of payment of the principal of, and interest on, the bonds. The guarantee may take the form of a letter of credit, surety bond, guarantee agreement or other additional collateral. If the financial institution defaults in its guarantee obligations, or if we are unable to renew the applicable guarantee or otherwise post satisfactory collateral, a default will occur under the applicable tax-exempt bonds and the community could be foreclosed upon.

Risks related to indebtedness.

We have a $1,000,000,000 revolving variable rate unsecured credit facility with JPMorgan Chase Bank, N.A., and Wachovia Bank, N.A., serving together as syndication agent and as banks, Bank of America, N.A., serving as administrative agent, swing lender, issuing bank and a bank, Morgan Stanley Bank, Wells Fargo Bank, N.A., and Deutsche Bank Trust Company Americas, serving collectively as documentation agent and as banks, and a syndicate of other financial institutions, serving as banks. Our organizational documents do not limit the amount or percentage of indebtedness that may be incurred. Accordingly, subject to compliance with outstanding debt covenants, we could incur more debt, resulting in an increased risk of default on our obligations and an increase in debt service requirements that could adversely affect our financial condition and results of operations.

The mortgages on those of our properties subject to secured debt, our unsecured credit facility, our unsecured term loan and the indentures under which a substantial portion of our debt was issued contain customary restrictions, requirements and other limitations, as well as certain financial and operating covenants including maintenance of certain financial ratios. Maintaining compliance with these restrictions could limit our flexibility. A default in these requirements, if uncured, could result in a requirement that we repay indebtedness, which could severely affect our liquidity and increase our financing costs.

Failure to generate sufficient revenue or other liquidity needs could limit cash flow available for distributions to stockholders.

A decrease in rental revenue or other liquidity needs, including the repayment of indebtedness or funding of our development activities, could have an adverse effect on our ability to pay distributions to our stockholders. Significant expenditures associated with each community such as debt service payments, if any, real estate taxes, insurance and maintenance costs are generally not reduced when circumstances cause a reduction in income from a community.

The form, timing and/or amount of dividend distributions in future periods may vary and be impacted by economic and other considerations.

The form, timing and/or amount of dividend distributions will be declared at the discretion of the Board of Directors and will depend on actual cash from operations, our financial condition, capital requirements, the annual distribution requirements under the REIT provisions of the Internal Revenue Code and other factors as the Board of Directors may consider relevant. The Board of Directors may modify our dividend policy from time to time.

We may in the future choose to pay dividends in our own stock, in which case stockholders may be required to pay tax in excess of the cash you receive.

We may in the future distribute taxable dividends that are payable in part in our stock, as we did in the fourth quarter of 2008. Taxable stockholders receiving such dividends will be required to include the full amount of the dividend as income to the extent of our current and accumulated earnings and profits for federal income tax purposes. As a result, a U.S. stockholder may be required to pay tax with respect to such dividends in excess of the cash received. If a U.S. stockholder sells the stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our stock at the time of the sale. Furthermore, with respect to non-U.S. stockholders, we may be required to withhold U.S. tax with respect to such dividends, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our stockholders sell shares of our stock in order to pay taxes owed on dividends, that may put downward pressure on the trading price of our stock.

Debt financing may not be available and equity issuances could be dilutive to our stockholders.

Our ability to execute our business strategy depends on our access to an appropriate blend of debt and equity financing. Debt financing may not be available in sufficient amounts or on favorable terms. If we issue additional equity securities, the interests of existing stockholders could be diluted.

Difficulty of selling apartment communities could limit flexibility.

Federal tax laws may limit our ability to earn a gain on the sale of a community (unless we own it through a subsidiary which will incur a taxable gain upon sale) if we are found to have held, acquired or developed the community primarily with the intent to resell the community, and this limitation may affect our ability to sell communities without adversely affecting returns to our stockholders. In addition, real estate in our markets can at times be difficult to sell quickly at prices we find acceptable. These potential difficulties in selling real estate in our markets may limit our ability to change or reduce the apartment communities in our portfolio promptly in response to changes in economic or other conditions.

Acquisitions may not yield anticipated results.

Subject to the requirements related to Fund II, we may in the future acquire apartment communities on a select basis. Our acquisition activities and their success may be exposed to the following risks:

- an acquired property may fail to perform as we expected in analyzing our investment; and
- our estimate of the costs of repositioning or redeveloping an acquired property may prove inaccurate.

Failure to succeed in new markets or in activities other than the development, ownership and operation of residential rental communities may have adverse consequences.

We may from time to time commence development activity or make acquisitions outside of our existing market areas if appropriate opportunities arise. As noted above, we also own and lease ancillary retail space when a retail component represents the best use of the space, as is often the case with large urban in-fill developments. Also, as noted in Item 1., “Business,” above, through a taxable REIT subsidiary that is a joint venture partner, we have a 50% economic interest in a 64 town home for-sale development with a total estimated capital cost at completion of $23,621,000, on a site adjacent to one of our communities. We may engage or have an interest in for-sale activity in the future. Our historical experience in our existing markets in developing, owning and operating rental communities does not ensure that we will be able to operate successfully in new markets, should we choose to enter them, or that we will be successful in other activities. We may be exposed to a variety of risks if we choose to enter new markets, including an inability to evaluate accurately local apartment market conditions; an inability to obtain land for development or to identify appropriate acquisition opportunities; an inability to hire and retain key

personnel; and lack of familiarity with local governmental and permitting procedures. We may be unsuccessful in owning and leasing retail space at our communities or in developing real estate with the intent to sell.

Risks involved in real estate activity through joint ventures.

Instead of acquiring or developing apartment communities directly, at times we invest as a partner or a co-venturer. Partnership or joint venture investments involve risks, including the possibility that our partner might become insolvent or otherwise refuse to make capital contributions when due; that we may be responsible to our partner for indemnifiable losses; that our partner might at any time have business goals which are inconsistent with ours; and that our partner may be in a position to take action or withhold consent contrary to our instructions or requests. Frequently, we and our partner may each have the right to trigger a buy-sell arrangement, which could cause us to sell our interest, or acquire our partner's interest, at a time when we otherwise would not have initiated such a transaction.

Risks associated with an investment in and management of a discretionary investment fund.

We formed the Fund which, through a wholly owned subsidiary, we manage as the general partner and in which we have invested approximately $48,000,000 at December 31, 2008, representing an equity interest of approximately 15%. This presents risks, including the following:

- investors in the Fund may fail to make their capital contributions when due and, as a result, the Fund may be unable to execute its investment objectives;
- our subsidiary that is the general partner of the Fund is generally liable, under partnership law, for the debts and obligations of the Fund, subject to certain exculpation and indemnification rights pursuant to the terms of the partnership agreement of the Fund;
- investors in the Fund holding a majority of the partnership interests may remove us as the general partner without cause, subject to our right to receive an additional nine months of management fees after such removal and our right to acquire one of the properties then held by the Fund;
- while we have broad discretion to manage the Fund and make investment decisions on behalf of the Fund, the investors or an advisory committee comprised of representatives of the investors must approve certain matters, and as a result we may be unable to cause the Fund to make certain investments or implement certain decisions that we consider beneficial; and
- we may be liable and/or our status as a REIT may be jeopardized if either the Fund, or the REIT through which a number of investors have invested in the Fund and which we manage, fails to comply with various tax or other regulatory matters.

We have also formed Fund II which, through a wholly owned subsidiary, we manage as the general partner and to which we have committed $150,000,000, representing a current equity interest of approximately 45%. This presents risks, including the following:

- investors in Fund II may fail to make their capital contributions when due and, as a result, Fund II may be unable to execute its investment objectives;
- our subsidiary that is the general partner of Fund II is generally liable, under partnership law, for the debts and obligations of Fund II, subject to certain exculpation and indemnification rights pursuant to the terms of the partnership agreement of Fund II;
- investors in Fund II holding a majority of the partnership interests may remove us as the general partner without cause, subject to our right to receive an additional nine months of management fees after such removal and our right to acquire one of the properties then held by Fund II;
- while we have broad discretion to manage Fund II and make investment decisions on behalf of Fund II, the investors or an advisory committee comprised of representatives of the investors must approve certain matters, and as a result we may be unable to cause Fund II to make certain investments or implement certain decisions that we consider beneficial;
- we can develop communities but have been generally prohibited from making acquisitions of apartment communities outside of Fund II, which is our exclusive investment vehicle until September 2011 or when 90% of Fund II's capital is invested, subject to certain exceptions; and

- we may be liable and/or our status as a REIT may be jeopardized if either Fund II , or the Fund II REIT through which a number of investors have invested in Fund II and which we manage, fails to comply with various tax or other regulatory matters.

Risk of earthquake damage.

As further described in Item 2., "Communities — Insurance and Risk of Uninsured Losses," many of our West Coast communities are located in the general vicinity of active earthquake faults. We cannot assure you that an earthquake would not cause damage or losses greater than insured levels. In the event of a loss in excess of insured limits, we could lose our capital invested in the affected community, as well as anticipated future revenue from that community. We would also continue to be obligated to repay any mortgage indebtedness or other obligations related to the community. Any such loss could materially and adversely affect our business and our financial condition and results of operations.

Insurance coverage for earthquakes can be costly due to limited industry capacity. As a result, we may experience shortages in desired coverage levels if market conditions are such that insurance is not available or the cost of insurance makes it, in management's view, economically impractical.

A significant uninsured property or liability loss could have a material adverse effect on our financial condition and results of operations.

In addition to the earthquake insurance discussed above, we carry commercial general liability insurance, property insurance and terrorism insurance with respect to our communities on terms 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 business and our financial condition and results of operations.

We may incur costs and increased expenses to repair property damage resulting from inclement weather.

Particularly in New England and the Midwest we are exposed to risks associated with inclement winter weather, including increased costs for the removal of snow and ice as well as from delays in construction. In addition, inclement weather could increase the need for maintenance and repair of our communities.

We may incur costs due to environmental contamination or non-compliance.

Under various federal, state and local environmental and public health laws, regulations and ordinances, we may be required, regardless of knowledge or responsibility, to investigate and remediate the effects of hazardous or toxic substances or petroleum product releases at our properties (including in some cases natural substances such as methane and radon gas) and may be held liable under these laws or common law to a governmental entity or to third parties for property, personal injury or natural resources damages and for investigation and remediation costs incurred as a result of the contamination. These damages and costs may be substantial and may exceed any insurance coverage we have for such events. The presence of such substances, or the failure to properly remediate the contamination, may adversely affect our ability to borrow against, sell or rent the affected property.

In addition, some environmental laws create or allow a government agency to impose a lien on the contaminated site in favor of the government for damages and costs it incurs as a result of the contamination.

The development, construction and operation of our communities are subject to regulations and permitting under various federal, state and local laws, regulations and ordinances, which regulate matters including wetlands protection, storm water runoff and wastewater discharge. Noncompliance with such laws and regulations may

subject us to fines and penalties. We do not currently anticipate that we will incur any material liabilities as a result of noncompliance with these laws.

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

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

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

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

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

We cannot assure you that:

- the environmental assessments described above have identified all potential environmental liabilities;
- no prior owner created any material environmental condition not known to us or the consultants who prepared the assessments;

- no environmental liabilities have developed since the environmental assessments were prepared;
- the condition of land or operations in the vicinity of our communities, such as the presence of underground storage tanks, will not affect the environmental condition of our communities;
- future uses or conditions, including, without limitation, changes in applicable environmental laws and regulations, will not result in the imposition of environmental liability; and
- no environmental liabilities will arise at communities that we have sold for which we may have liability.

Failure to qualify as a REIT would cause us to be taxed as a corporation, which would significantly reduce funds available for distribution to stockholders.

If we fail to qualify as a REIT for federal income tax purposes, we will be subject to federal income tax on our taxable income at regular corporate rates (subject to any applicable alternative minimum tax). In addition, unless we are entitled to relief under applicable statutory provisions, we would be ineligible to make an election for treatment as a REIT for the four taxable years following the year in which we lose our qualification. The additional tax liability resulting from the failure to qualify as a REIT would significantly reduce or eliminate the amount of funds available for distribution to our stockholders. Furthermore, we would no longer be required to make distributions to our stockholders. Thus, our failure to qualify as a REIT could also impair our ability to expand our business and raise capital, and would adversely affect the value of our common stock.

We believe that we are organized and qualified as a REIT, and we intend to operate in a manner that will allow us to continue to qualify as a REIT. However, we cannot assure you that we are qualified as a REIT, or that we will remain qualified in the future. This is because qualification as a REIT involves the application of highly technical and complex provisions of the Internal Revenue Code for which there are only limited judicial and administrative interpretations and involves the determination of a variety of factual matters and circumstances not entirely within our control. In addition, future legislation, new regulations, administrative interpretations or court decisions may significantly change the tax laws or the application of the tax laws with respect to qualification as a REIT for federal income tax purposes or the federal income tax consequences of this qualification.

Even if we qualify as a REIT, we will be subject to certain federal, state and local taxes on our income and property and on taxable income that we do not distribute to our shareholders. In addition, we may engage in activities through taxable subsidiaries and will be subject to federal income tax at regular corporate rates on the income of those subsidiaries.

The ability of our stockholders to control our policies and effect a change of control of our company is limited by certain provisions of our charter and bylaws and by Maryland law.

There are provisions in our charter and bylaws that may discourage a third party from making a proposal to acquire us, even if some of our stockholders might consider the proposal to be in their best interests. These provisions include the following:

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

To maintain our qualification as a REIT for federal income tax purposes, not more than 50% in value of our outstanding stock may be owned, directly or indirectly, by or for five or fewer individuals at any time during the last half of any taxable year. To maintain this qualification, and to otherwise address concerns about concentrations of ownership of our stock, our charter generally prohibits ownership (directly, indirectly by virtue of the attribution provisions of the Internal Revenue Code, or beneficially as defined in Section 13 of the Securities Exchange Act) by any single stockholder of more than 9.8% of the issued and outstanding shares of any class or series of our stock. In general, under our charter, pension plans and mutual funds may directly and beneficially own up to 15% of the outstanding shares of any class or series of stock. Under our charter, our Board of Directors may in its sole

discretion waive or modify the ownership limit for one or more persons. These ownership limits may prevent or delay a change in control and, as a result, could adversely affect our stockholders' ability to realize a premium for their shares of common stock.

Our bylaws provide that the affirmative vote of holders of a majority of all of the shares entitled to be cast in the election of directors is required to elect a director. In a contested election, if no nominee receives the vote of holders of a majority of all of the shares entitled to be cast, the incumbent directors would remain in office. This requirement may prevent or delay a change in control and, as a result, could adversely affect our stockholders' ability to realize a premium for their shares of common stock.

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

ITEM 1b. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. COMMUNITIES

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 consolidated communities where a comparison of operating results from the prior year to the current year is meaningful, as these communities were owned and had stabilized occupancy and operating expenses as of the beginning of the prior year. For the year ended December 31, 2008, the Established Communities are communities that are consolidated for financial reporting purposes, had stabilized occupancy and operating expenses as of January 1, 2007, 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 we own or have a direct or indirect ownership interest in, and that have stabilized occupancy, as defined above. Other Stabilized Communities do not include communities that are conducting or planning to conduct substantial redevelopment activities within the current year.
- *Lease-Up Communities* are communities where construction has been complete for less than one year and where physical occupancy has not reached 95%.

- *Redevelopment Communities* are communities where substantial redevelopment is in progress or is planned to begin during the current year. For communities that we wholly own, redevelopment is considered substantial when capital invested during the reconstruction effort is expected to exceed the lesser of $5,000,000 or 10% of the community's acquisition cost. The definition of substantial redevelopment may differ for communities owned through a joint venture arrangement.

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

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

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

As of December 31, 2008, communities that we owned or held a direct or indirect interest in were classified as follows:

	Number of communities	Number of apartment homes
Current Communities		
Established Communities:		
New England	23	5,351
Metro NY/NJ	17	5,309
Mid-Atlantic/Midwest	18	6,122
Pacific Northwest	6	1,320
Northern California	20	5,657
Southern California	11	3,430
Total Established	95	27,189
Other Stabilized Communities:		
New England	10	3,130
Metro NY/NJ	14	4,044
Mid-Atlantic/Midwest	9	2,443
Pacific Northwest	4	1,058
Northern California	10	2,820
Southern California	9	1,675
Total Other Stabilized	56	15,170
Lease-Up Communities	4	759
Redevelopment Communities	9	2,610
Total Current Communities	164	45,728
Development Communities	14	4,564
Development Rights	27	7,304

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

Current Communities

Our Current Communities are primarily garden-style apartment communities consisting of two and three-story buildings in landscaped settings. The Current Communities, as of January 31, 2009, include 125 garden-style (of

which 21 are mixed communities and include town homes), 22 high-rise and 17 mid-rise apartment communities. The Current Communities offer many attractive amenities including some or all of the following:

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

Other features at various communities may include:

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

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

Our Current Communities are located in the following geographic markets:

	Number of communities at		Number of apartment homes at		Percentage of total apartment homes at	
	1-31-08	1-31-09	1-31-08	1-31-09	1-31-08	1-31-09
New England	**36**	**36**	**9,600**	**9,077**	**20.2%**	**19.9%**
Boston, MA	22	24	5,788	6,460	12.7%	14.2%
Fairfield County, CT	14	12	3,812	2,617	7.5%	5.7%
Metro NY/NJ	**28**	**31**	**7,947**	**9,353**	**17.5%**	**20.4%**
Long Island, NY	7	7	1,732	1,732	3.8%	3.8%
Northern New Jersey	5	5	1,618	1,618	3.6%	3.5%
Central New Jersey	6	7	2,042	2,258	4.5%	4.9%
New York, NY	10	12	2,555	3,745	5.6%	8.2%
Mid-Atlantic/Midwest	**32**	**30**	**9,770**	**9,213**	**21.5%**	**20.2%**
Baltimore, MD	9	8	1,987	1,830	4.4%	4.0%
Washington, DC	16	16	5,831	5,831	12.8%	12.8%
Chicago, IL	7	6	1,952	1,552	4.3%	3.4%
Pacific Northwest	**12**	**11**	**3,111**	**2,746**	**6.8%**	**6.0%**
Seattle, WA	12	11	3,111	2,746	6.8%	6.0%
Northern California	**34**	**32**	**9,546**	**8,879**	**20.9%**	**19.4%**
Oakland-East Bay, CA	7	8	2,089	2,394	4.6%	5.2%
San Francisco, CA	11	11	2,489	2,489	5.5%	5.4%
San Jose, CA	16	13	4,968	3,996	10.8%	8.8%
Southern California	**21**	**24**	**5,958**	**6,460**	**13.1%**	**14.1%**
Los Angeles, CA	11	12	3,214	3,345	7.1%	7.3%
Orange County, CA	7	8	1,686	1,896	3.7%	4.1%
San Diego, CA	3	4	1,058	1,219	2.3%	2.7%
	163	164	45,932	45,728	100.0%	100.0%

We manage and operate substantially all of our Current Communities. During the year ended December 31, 2008, we completed construction of 4,036 apartment homes in 13 communities and sold 3,059 apartment homes in ten communities. In addition, the Fund sold 400 apartment homes in one community. The average age of our Current Communities, on a weighted average basis according to number of apartment homes, is 14.0 years. When adjusted to reflect redevelopment activity, as if redevelopment were a new construction completion date, the average age of our Current Communities is 8.7 years.

Of the Current Communities, as of January 31, 2009, we own:

- a full fee simple, or absolute, ownership interest in 125 operating communities, eight of which are on land subject to land leases expiring in October 2026, November 2028, July 2029, December 2034, January 2062, April 2095, April 2095, 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 and an indirect limited partnership interest in the Fund, which owns a fee simple interest in 19 operating communities;
- a general partnership interest in two partnerships structured as "DownREITs," as described more fully below, that own an aggregate of 10 communities;
- a membership interest in 6 limited liability companies that each hold a fee simple interest in an operating community, two of which are on land subject to land leases expiring in September 2044 and November 2089; and
- a residual profits interest (with no ownership interest) in a limited liability company to which an operating community was transferred upon completion of construction in the second quarter of 2006.

We also hold, directly or through wholly owned subsidiaries, the full fee simple ownership interest in the 14

Development Communities, all of which are currently consolidated for financial reporting purposes and three of which are subject to land leases expiring in September 2105, December 2105 and April 2106.

In our two 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. The holders of units of limited partnership interest have the right to present all or some of their units for redemption for a cash amount as determined by the applicable partnership agreement and based on the fair value of our common stock. 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 January 31, 2009, there were 19,430 DownREIT partnership units outstanding. The DownREIT partnerships are consolidated for financial reporting purposes.

Profile of Current, Development and Unconsolidated Communities (1)
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion / acquisition	Average size (Sq. Ft.)	Physical occupancy at 12/31/08	Average economic occupancy 2008	Average economic occupancy 2007	Average rental rate $ per Apt (4)	Average rental rate $ per Sq. Ft.	Financial reporting cost (5)
CURRENT COMMUNITIES												
NEW ENGLAND												
Boston, MA												
Avalon at Lexington	Lexington, MA	198	237,855	16.1	1994	1,201	97.5%	97.6%	96.5%	1,826	1.48	16,461
Avalon Oaks	Wilmington, MA	204	237,167	22.5	1999	1,163	96.6%	95.6%	95.4%	1,481	1.22	21,275
Avalon Summit	Quincy, MA	245	224,974	8.0	1986/1996	918	95.5%	97.1%	96.0%	1,346	1.42	17,694
Avalon Essex	Peabody, MA	154	201,063	11.1	2000	1,306	95.5%	96.3%	96.5%	1,574	1.16	21,956
Avalon at Faxon Park	Quincy, MA	171	183,954	8.3	1998	1,076	94.2%	95.7%	95.9%	1,667	1.48	15,884
Avalon at Prudential Center	Boston, MA	780	759,130	1.0	1968/1998	973	96.2%	97.5%	97.0%	2,932	2.94	157,295
Avalon Oaks West	Wilmington, MA	120	133,376	27.0	2002	1,111	93.3%	93.9%	95.0%	1,400	1.18	16,874
Avalon Orchards	Marlborough, MA	156	179,227	23.0	2002	1,149	96.2%	97.0%	96.0%	1,572	1.33	21,351
Avalon at Flanders Hill	Westborough, MA	280	301,675	62.0	2003	1,077	94.6%	95.8%	96.0%	1,511	1.34	37,564
Avalon at Newton Highlands (8)	Newton, MA	294	339,537	7.0	2003	1,155	94.2%	96.2%	95.5%	2,300	1.92	56,815
Avalon at The Pinehills I	Plymouth, MA	101	151,629	6.0	2004	1,501	95.0%	95.9%	95.8%	1,856	1.19	19,984
Avalon at Crane Brook	Peabody, MA	387	433,778	20.0	2004	1,121	96.4%	96.4%	95.7%	1,360	1.17	54,824
Essex Place	Peabody, MA	286	250,473	18.0	2004	876	91.6%	88.8% (2)	96.3% (2)	1,155	1.17 (2)	34,565
Avalon at Bedford Center	Bedford, MA	139	159,704	38.0	2005	1,149	93.5%	95.3%	95.6%	1,739	1.44	24,804
Avalon Chestnut Hill	Chestnut Hill, MA	204	271,899	4.7	2007	1,333	92.6%	93.1%	78.8%	2,337	1.63	60,353
Avalon Shrewsbury	Shrewsbury, MA	251	274,780	25.5	2007	1,095	92.8%	95.0%	84.3%	1,377	1.20	35,761
Avalon Danvers	Danvers, MA	433	512,991	75.0	2006	1,185	97.0%	86.4%	24.1% (3)	1,407	1.03	85,550
Avalon Woburn	Woburn, MA	446	486,091	56.0	2007	1,090	98.4%	96.7%	61.4% (3)	1,581	1.40	82,986
Avalon at Lexington Hills	Lexington, MA	387	511,454	23.0	2007	1,322	94.8%	71.1% (3)	15.5% (3)	1,811	2.91 (3)	86,351
Avalon Acton	Acton, MA	380	373,690	50.3	2007	983	95.3%	59.2% (3)	7.5% (3)	1,258	3.00 (3)	63,686
Avalon Sharon	Sharon, MA	156	178,628	27.2	2007	1,145	98.7%	62.3% (3)	N/A	1,508	1.96 (3)	30,011
Avalon at Center Place (11)	Providence, RI	225	233,910	1.2	1991/1997	1,040	90.7%	94.5%	92.8%	2,174	1.98	29,254
Fairfield-New Haven, CT												
Avalon Gates	Trumbull, CT	340	389,047	37.0	1997	1,144	96.5%	96.5%	94.9%	1,645	1.39	37,584
Avalon Glen	Stamford, CT	238	265,940	4.1	1991	1,117	95.8%	97.1%	97.2%	2,014	1.75	32,551
Avalon Springs	Wilton, CT	102	160,159	12.0	1996	1,570	90.2%	94.2%	96.5%	3,072	1.84	17,276
Avalon Valley	Danbury, CT	268	303,193	17.1	1999	1,131	90.7%	95.7%	96.8%	1,668	1.41	26,397
Avalon Orange	Orange, CT	168	161,795	9.6	2005	963	95.2%	95.3%	95.1%	1,554	1.54	22,097
Avalon on Stamford Harbor	Stamford, CT	323	337,572	12.1	2003	1,045	96.6%	96.5%	97.5%	2,544	2.35	62,931
Avalon New Canaan (9)	New Canaan, CT	104	145,118	9.1	2002	1,395	94.2%	96.1%	94.3%	2,910	2.00	24,379
Avalon at Greyrock Place	Stamford, CT	306	334,381	3.0	2002	1,093	93.8%	96.3%	97.5%	2,301	2.03	70,844
Avalon Danbury	Danbury, CT	234	238,952	36.0	2005	1,021	92.7%	96.0%	95.5%	1,651	1.55	35,534
Avalon Darien	Darien, CT	189	242,533	32.0	2004	1,283	91.0%	94.7%	96.2%	2,640	1.95	41,598
Avalon Milford I	Milford, CT	246	230,246	22.0	2004	936	97.2%	96.2%	96.1%	1,466	1.51	31,502
Avalon Huntington	Shelton, CT	99	145,573	7.1	2008	1,470	34.3%	17.0% (3)	N/A	2,421	0.28 (3)	23,956
METRO NY/NJ												
Long Island, NY												
Avalon Commons	Smithtown, NY	312	385,290	20.6	1997	1,235	92.9%	95.0%	95.4%	2,145	1.65	34,068
Avalon Towers	Long Beach, NY	109	135,036	1.3	1990/1995	1,239	95.4%	97.4%	96.8%	3,596	2.83	21,482
Avalon Court	Melville, NY	494	601,342	35.4	1997/2000	1,217	93.5%	94.2%	95.3%	2,474	1.91	60,189
Avalon at Glen Cove South (11)	Glen Cove, NY	256	262,285	4.0	2004	1,025	93.0%	95.8%	94.5%	2,362	2.21	67,965
Avalon Pines I	Coram, NY	298	364,124	32.0	2005	1,222	93.6%	95.8%	95.7%	1,985	1.56	46,876
Avalon at Glen Cove North (11)	Glen Cove, NY	111	100,851	1.3	2007	909	93.7%	96.8%	50.2% (3)	2,080	2.22	39,913
Avalon Pines II	Coram, NY	152	183,857	42.0	2006	1,210	92.1%	95.2%	96.3%	1,974	1.55	24,755

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Northern New Jersey												
Avalon Cove	Jersey City, NJ	504	640,467	11.0	1997	1,271	97.6%	96.1%	97.5%	3,014	2.28	93,461
Avalon at Edgewater	Edgewater, NJ	408	438,670	7.6	2002	1,075	96.8%	96.3%	95.2%	2,399	2.15	75,355
Avalon at Florham Park	Florham Park, NJ	270	330,410	41.9	2001	1,224	97.0%	95.8%	96.1%	2,696	2.11	42,114
Avalon Lyndhurst	Lyndhurst, NJ	328	352,462	5.8	2006	1,075	94.5%	94.9%	57.0% (3)	2,205	1.95	80,978
Central New Jersey												
Avalon Run East (8)	Lawrenceville, NJ	206	274,933	27.1	1996	1,335	97.1%	95.1%	96.2%	1,638	1.17	16,462
Avalon Watch	West Windsor, NJ	512	496,141	64.4	1988	969	95.1%	96.0%	95.6%	1,438	1.42	30,196
Avalon at Freehold	Freehold, NJ	296	317,416	40.3	2002	1,072	97.0%	96.2%	97.5%	1,780	1.60	34,810
Avalon Run East II	Lawrenceville, NJ	312	341,292	70.5	2003	1,094	95.5%	96.0%	96.2%	1,820	1.60	52,201
Avalon Run (7)	Lawrenceville, NJ	426	443,168	9.0	1994	1,040	97.2%	96.0%	96.2%	1,477	1.36	60,263
Avalon at Tinton Falls	Tinton Falls, NJ	216	240,747	35.0	2007	1,115	95.8%	56.3% (3)	N/A	1,412	2.83 (3)	40,518
New York, NY												
Avalon Gardens	Nanuet, NY	504	617,992	62.5	1998	1,226	96.6%	97.0%	96.9%	2,148	1.70	55,580
Avalon Green	Elmsford, NY	105	115,038	16.9	1995	1,096	97.1%	97.4%	97.3%	2,415	2.15	13,951
Avalon Willow	Mamaroneck, NY	227	240,459	4.0	2000	1,059	94.7%	98.0%	96.5%	2,299	2.13	47,570
The Avalon	Bronxville, NY	110	148,335	1.5	1999	1,349	96.4%	97.7%	97.4%	3,700	2.68	31,544
Avalon on the Sound (11)	New Rochelle, NY	412	415,369	2.4	2001	1,008	97.3%	96.2%	95.2%	2,269	2.17	117,260
Avalon Riverview I (11)	Long Island City, NY	372	352,988	1.0	2002	949	95.2%	96.8%	97.6%	3,229	3.30	94,698
Avalon Bowery Place I	New York, NY	206	162,000	1.1	2006	786	94.7%	96.2%	89.8%	3,982	4.87	92,216
Avalon Riverview North (11)	Long Island City, NY	602	519,092	1.8	2007	862	96.3%	92.2% (3)	30.6% (3)	3,575	3.82 (3)	173,788
Avalon on the Sound East (11)	New Rochelle, NY	588	622,999	1.7	2007	1,060	96.1%	79.6% (3)	27.8% (3)	3,463	2.60 (3)	179,477
Avalon Bowery Place II	New York, NY	90	73,624	1.1	2007	818	84.4%	97.1%	42.4% (3)	3,754	4.46	55,623
MID-ATLANTIC/MIDWEST												
Baltimore, MD												
Avalon at Fairway Hills	Columbia, MD	192	193,784	15.0	1987/1996	1,009	97.4%	94.6%	95.8%	1,275	1.19	10,436
Avalon at Fairway Hills II (7)	Columbia, MD	192	192,560	29.0	1987/1996	1,003	95.8%	93.9%	95.9%	1,297	1.21	12,656
Avalon Symphony Woods (SGlen)	Columbia, MD	176	179,880	10.0	1986	1,022	86.4%	88.8% (2)	93.2%	1,354	1.18 (2)	11,706
Avalon at Fairway Hills III (7)	Columbia, MD	336	337,683	15.0	1987/1996	1,005	94.3%	94.8%	95.5%	1,416	1.34	29,596
Avalon Symphony Woods (SGate)	Columbia, MD	215	214,670	12.7	1986/2006	998	86.1%	90.3% (2)	93.5%	1,233	1.12 (2)	38,782
Washington, DC												
Avalon at Foxhall	Washington, DC	308	297,876	2.7	1982	967	93.5%	96.3%	96.2%	2,291	2.28	44,994
Avalon at Gallery Place I	Washington, DC	203	184,157	0.5	2003	907	97.0%	96.7%	95.4%	2,511	2.68	49,045
Avalon at Decoverly	Rockville, MD	368	368,732	24.0	1991/1995	1,002	96.5%	96.2%	96.2%	1,462	1.40	32,842
Avalon Fields I	Gaithersburg, MD	192	197,280	5.0	1996	1,028	97.9%	96.7%	97.3%	1,391	1.31	14,468
Avalon Fields II	Gaithersburg, MD	96	100,268	5.0	1998	1,044	97.9%	97.0%	95.9%	1,580	1.47	8,333
Avalon Knoll	Germantown, MD	300	290,544	26.7	1985	968	96.3%	96.5%	96.0%	1,215	1.21	9,000
Avalon at Rock Spring (9) (11)	North Bethesda, MD	386	387,884	10.2	2003	1,005	98.4%	96.8%	95.0%	1,774	1.71	82,340
Avalon at Grosvenor Station	North Bethesda, MD	497	472,001	10.0	2004	950	95.6%	97.0%	95.8%	1,825	1.86	82,181
Avalon at Traville (8)	North Potomac, MD	520	575,529	47.9	2004	1,107	96.5%	97.0%	96.2%	1,761	1.54	70,014
Avalon at Decoverly II	Rockville, MD	196	182,560	10.8	2007	931	93.4%	95.2%	85.3% (3)	1,540	1.57	30,594
Avalon Fair Lakes	Fairfax, VA	420	354,945	24.3	1989/1996	845	92.4%	93.3% (2)	90.0% (2)	1,380	1.52 (2)	37,872
Avalon at Ballston — Washington Towers	Arlington, VA	344	294,954	4.1	1990	857	96.8%	96.2%	96.2%	1,811	2.03	39,215
Avalon at Cameron Court	Alexandria, VA	460	478,068	16.0	1998	1,039	94.6%	96.2%	95.6%	1,874	1.73	44,124
Avalon at Providence Park	Fairfax, VA	141	148,282	9.3	1988/1997	1,052	96.5%	96.7%	97.0%	1,558	1.43	11,874
Avalon Crescent	McLean, VA	558	613,426	19.1	1996	1,099	93.9%	96.5%	95.6%	1,944	1.71	57,915
Avalon at Arlington Square	Arlington, VA	842	628,433	20.1	2001	746	94.8%	96.8%	96.6%	1,879	2.44	113,201

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								2008	2007	$ per Apt (4)	$ per Sq. Ft.	
Chicago, IL												
Avalon at Danada Farms (8)	Wheaton, IL	295	351,206	19.2	1997	1,191	95.6%	96.2%	95.5%	1,432	1.16	40,030
Avalon at Stratford Green (8)	Bloomingdale, IL	192	237,124	12.7	1997	1,235	94.8%	96.7%	96.1%	1,460	1.14	22,238
Avalon Arlington Heights	Arlington Heights, IL	409	352,236	2.8	1987/2000	861	96.6%	96.2%	94.3% (2)	1,543	1.72	56,947
PACIFIC NORTHWEST												
Seattle, WA												
Avalon Redmond Place	Redmond, WA	222	219,075	8.4	1991/1997	987	91.4%	86.4% (2)	90.1% (2)	1,374	1.20 (2)	31,882
Avalon at Bear Creek	Redmond, WA	264	296,530	22.2	1998	1,123	93.9%	96.6%	95.5%	1,437	1.24	35,858
Avalon Bellevue (8)	Bellevue, WA	202	170,965	1.7	2001	846	95.0%	94.8%	96.6%	1,609	1.80	30,966
Avalon RockMeadow	Bothell, WA	206	246,683	11.2	2000	1,197	95.6%	95.2%	96.6%	1,332	1.06	24,993
Avalon WildReed (8)	Everett, WA	234	266,580	23.0	2000	1,139	95.3%	95.8%	96.7%	1,153	0.97	23,096
Avalon HighGrove (8)	Everett, WA	391	428,962	19.0	2000	1,097	93.4%	94.8%	96.6%	1,131	0.98	39,879
Avalon ParcSquare (8)	Redmond, WA	124	131,706	2.0	2000	1,062	95.2%	96.9%	96.5%	1,628	1.49	19,516
Avalon Brandemoor (8)	Lynwood, WA	424	465,257	27.0	2001	1,097	94.6%	95.1%	96.1%	1,214	1.05	45,671
Avalon Belltown	Seattle, WA	100	95,201	0.7	2001	952	97.0%	95.3%	97.2%	1,813	1.82	18,499
Avalon Meydenbauer	Bellevue, WA	368	333,502	3.6	2008	906	93.5%	48.1% (3)	N/A	1,783	1.89 (3)	89,119
NORTHERN CALIFORNIA												
Oakland-East Bay, CA												
Avalon Fremont	Fremont, CA	308	386,277	14.3	1994	1,254	97.1%	96.3%	97.4%	1,769	1.36	56,939
Avalon Dublin	Dublin, CA	204	179,004	13.0	1989/1997	877	95.6%	96.7%	97.3%	1,578	1.74	28,366
Avalon Pleasanton	Pleasanton, CA	456	366,062	14.7	1988/1994	803	97.8%	96.8%	95.8%	1,443	1.74	63,005
Avalon at Union Square	Union City, CA	208	150,320	8.5	1973/1996	723	94.2%	96.7%	97.6%	1,293	1.73	22,738
Waterford	Hayward, CA	544	452,043	11.1	1985/1986	831	93.8%	93.9%	96.5%	1,279	1.45	62,190
Avalon at Willow Creek	Fremont, CA	235	191,935	13.5	1985/1994	817	98.3%	97.0%	98.1%	1,558	1.85	36,493
Avalon at Dublin Station I	Dublin, CA	305	300,760	4.7	2006	986	95.4%	67.6% (3)	2.0% (3)	1,723	2.02 (3)	84,269
San Francisco, CA												
Avalon at Cedar Ridge	Daly City, CA	195	141,411	7.0	1972/1997	725	95.4%	97.0%	98.1%	1,593	2.13	27,534
Avalon at Nob Hill	San Francisco, CA	185	108,712	1.4	1990/1995	588	97.3%	96.8%	96.9%	1,957	3.22	28,191
Crowne Ridge	San Rafael, CA	254	222,685	21.9	1973/1996	877	95.3%	96.8%	97.8%	1,509	1.67	33,100
Avalon Foster City	Foster City, CA	288	222,364	11.0	1973/1994	772	97.2%	97.1%	97.1%	1,633	2.05	44,168
Avalon Towers by the Bay	San Francisco, CA	227	285,881	1.0	1999	1,259	97.4%	97.5%	97.6%	3,140	2.43	67,049
Avalon Pacifica	Pacifica, CA	220	186,800	21.9	1971/1995	849	97.3%	97.0%	96.9%	1,682	1.92	32,360
Avalon Sunset Towers	San Francisco, CA	243	171,854	16.0	1961/1996	707	97.1%	96.3%	96.9%	1,943	2.64	28,879
Avalon at Diamond Heights	San Francisco, CA	154	123,566	3.0	1972/1994	802	94.2%	95.9% (2)	97.7%	1,852	2.21 (2)	27,679
Avalon at Mission Bay North	San Francisco, CA	250	240,368	1.4	2003	961	96.8%	96.0%	94.5%	3,320	3.32	92,936

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								2008	2007	$ per Apt (4)	$ per Sq. Ft.	
San Jose, CA												
Avalon Campbell	Campbell, CA	348	329,816	10.8	1995	948	96.0%	96.9%	97.7%	1,761	1.80	60,533
CountryBrook	San Jose, CA	360	322,992	14.0	1985/1996	897	95.0%	95.9%	97.0%	1,584	1.69	52,751
Avalon at River Oaks	San Jose, CA	226	211,750	4.0	1990/1996	937	95.1%	97.3%	98.3%	1,713	1.78	45,008
Avalon at Parkside	Sunnyvale, CA	192	204,510	8.0	1991/1996	1,065	98.4%	97.3%	97.5%	1,987	1.82	38,327
Avalon on the Alameda	San Jose, CA	305	320,464	8.9	1999	1,051	94.8%	97.3%	97.7%	2,108	1.95	56,905
Avalon Rosewalk	San Jose, CA	456	459,162	16.6	1997/1999	1,007	97.4%	96.4%	97.2%	1,748	1.67	79,863
Avalon Silicon Valley	Sunnyvale, CA	710	659,729	13.6	1997	929	95.8%	96.1%	96.2%	2,049	2.12	123,316
Avalon Mountain View (9)	Mountain View, CA	248	211,552	10.5	1986	853	84.7%	88.0% (2)	96.6%	1,923	1.98 (2)	56,180
Avalon at Creekside	Mountain View, CA	294	215,680	13.0	1962/1997	734	94.6%	97.6%	98.0%	1,536	2.05	43,471
Avalon at Cahill Park	San Jose, CA	218	221,933	3.8	2002	1,018	97.7%	97.6%	97.7%	2,121	2.03	52,707
Avalon Towers on the Peninsula	Mountain View, CA	211	218,392	1.9	2002	1,035	97.2%	97.3%	97.0%	2,810	2.64	65,753
Countrybrook II	San Jose, CA	80	64,554	3.6	2007	807	91.3%	96.8%	95.9% (3)	1,552	1.86	17,891
SOUTHERN CALIFORNIA												
Orange County, CA												
Avalon Newport	Costa Mesa, CA	145	122,415	6.6	1956/1996	844	98.6%	96.3%	97.7%	1,707	1.95	10,417
Avalon Mission Viejo	Mission Viejo, CA	166	124,770	7.8	1984/1996	752	92.8%	95.4%	96.1%	1,351	1.71	14,095
Avalon at South Coast	Costa Mesa, CA	258	210,922	8.0	1973/1996	818	93.8%	94.4%	96.4%	1,467	1.70	26,030
Avalon Santa Margarita	Rancho Santa Margarita, CA	301	229,593	20.0	1990/1997	763	95.0%	96.7%	95.0%	1,386	1.76	24,528
Avalon at Pacific Bay	Huntington Beach, CA	304	268,720	9.7	1971/1997	884	97.4%	96.1%	96.1%	1,544	1.68	32,915
Avalon Warner Place	Canoga Park, CA	210	186,402	3.3	2007	888	91.9%	57.2% (3)	N/A	1,420	2.74 (3)	52,599
San Diego, CA												
Avalon at Mission Bay	San Diego, CA	564	402,320	12.9	1969/1997	713	96.8%	95.0%	94.8%	1,438	1.92	66,809
Avalon at Mission Ridge	San Diego, CA	200	208,125	4.0	1960/1997	1,041	94.5%	94.9%	96.2%	1,656	1.51	22,633
Avalon at Cortez Hill	San Diego, CA	294	227,373	1.4	1973/1998	773	96.3%	96.4%	94.9%	1,513	1.89	34,746
Avalon Fashion Valley	San Diego, CA	161	186,766	10.0	2008	1,160	30.4%	15.3% (3)	N/A	2,380	0.25 (3)	63,641

Profile of Current, Development and Unconsolidated Communities (1)
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion / acquisition	Average size (Sq. Ft.)	Physical occupancy at 12/31/08	Average economic occupancy		Average rental rate		Financial reporting cost (5)
								2008	2007	$ per Apt (4)	$ per Sq. Ft.	
Los Angeles, CA												
Avalon at Media Center	Burbank, CA	748	532,264	14.1	1961/1997	712	94.3%	95.6%	95.9%	1,514	2.03	76,877
Avalon Woodland Hills	Woodland Hills, CA	663	597,871	18.2	1989/1997	902	85.5%	76.9% (2)	94.8%	1,593	1.36 (2)	91,010
Avalon at Warner Center	Woodland Hills, CA	227	195,224	7.0	1979/1998	860	95.2%	94.7%	96.9%	1,693	1.87	27,313
Avalon Glendale (11)	Burbank, CA	223	241,714	5.1	2003	1,084	89.7%	94.2%	95.0%	2,357	2.05	41,480
The Promenade	Burbank, CA	400	360,587	6.9	1988/2002	901	92.0%	96.7% (2)	97.8%	1,936	2.08 (2)	77,672
Avalon Camarillo	Camarillo, CA	249	233,267	10.0	2006	937	91.6%	94.5%	94.9%	1,623	1.64	48,210
Avalon Wilshire	Los Angeles, CA	123	125,193	1.6	2007	1,018	93.5%	94.7%	55.8% (3)	2,684	2.50	46,732
Avalon Encino	Los Angeles, CA	131	131,220	2.0	N/A	1,002	38.9%	15.7% (3)	N/A	2,475	0.69 (3)	61,017
DEVELOPMENT COMMUNITIES												
Avalon Anaheim	Anaheim, CA	251	302,480	3.5	N/A	1,205	N/A	N/A	N/A	N/A	N/A	92,029
Avalon Union City	Union City, CA	438	428,730	6.0	N/A	979	N/A	N/A	N/A	N/A	N/A	97,057
Avalon Jamboree Village	Irvine, CA	279	243,157	4.5	N/A	872	N/A	N/A	N/A	N/A	N/A	55,581
Avalon at Mission Bay North III	San Francisco, CA	260	261,361	1.5	N/A	1,005	N/A	N/A	N/A	N/A	N/A	109,420
Avalon Walnut Creek (9)(11)	Walnut Creek, CA	422	448,384	5.3	N/A	1,063	N/A	N/A	N/A	N/A	N/A	36,591
Avalon Norwalk	Norwalk, CT	311	312,018	4.5	N/A	1,003	N/A	N/A	N/A	N/A	N/A	20,238
Avalon at Hingham Shipyard	Hingham, MA	235	298,981	12.9	N/A	1,272	N/A	N/A	N/A	N/A	N/A	50,782
Avalon Northborough I	Northborough, MA	163	183,000	14.0	N/A	1,123	N/A	N/A	N/A	N/A	N/A	9,225
Avalon Blue Hills	Randolph, MA	276	307,085	23.1	N/A	1,113	N/A	N/A	N/A	N/A	N/A	29,519
Avalon White Plains	White Plains, NY	407	379,555	0.1	N/A	933	N/A	N/A	N/A	N/A	N/A	131,371
Avalon Morningside Park (11)	New York, NY	295	243,157	0.8	N/A	824	N/A	N/A	N/A	N/A	N/A	105,801
Avalon Charles Pond	Coram, NY	200	176,000	39.0	N/A	880	N/A	N/A	N/A	N/A	N/A	38,674
Avalon Fort Greene	Brooklyn, NY	631	498,632	1.0	N/A	790	N/A	N/A	N/A	N/A	N/A	143,887
Avalon Towers Bellevue (11)	Bellevue, WA	396	330,194	1.5	N/A	834	N/A	N/A	N/A	N/A	N/A	13,425
UNCONSOLIDATED COMMUNITIES												
Avalon at Mission Bay North II (9)	San Francisco, CA	313	291,556	1.5	2006	931	93.6%	95.0%	83.3%	3,226	3.29	N/A
Avalon Del Rey (9)	Los Angeles, CA	309	284,387	5.0	2006	920	91.6%	92.7%	96.5%	2,100	2.11	N/A
Avalon Chrystie Place I (9)(11)	New York, NY	361	266,940	1.5	2005	739	95.8%	96.9%	96.1%	4,208	5.51	N/A
Avalon Juanita Village (10)	Kirkland, WA	211	209,335	2.9	2005	992	96.2%	95.3%	95.2%	1,602	1.54	N/A
Avalon at Redondo Beach (6)	Redondo Beach, CA	105	86,075	1.2	1971/2004	820	97.1%	94.3%	94.0%	2,015	2.32	N/A
Avalon Sunset (6)	Los Angeles, CA	82	71,037	0.8	1987/2005	866	91.5%	96.5%	88.3% (2)	1,997	2.23	N/A
Civic Center (6)	Norwalk, CA	192	174,378	8.7	1987/2005	908	89.1%	93.6%	85.5% (2)	1,676	1.73	N/A
Avalon Paseo Place (6)	Fremont, CA	134	106,249	7.0	1987/2005	793	97.0%	94.8% (2)	87.3% (2)	1,433	1.71 (2)	N/A
Avalon Yerba Buena (6)	San Francisco, CA	160	159,604	0.9	2000/2006	998	97.5%	97.1%	97.1%	3,059	2.98	N/A
The Springs (6)	Corona, CA	320	241,440	13.3	1987/2006	755	81.9%	87.7%	94.2%	1,093	1.27	N/A
Skyway Terrace (6)	San Jose,CA	348	287,918	18.4	1994/2007	827	97.1%	97.7%	96.2% (3)	1,470	1.74	N/A
South Hills Apartments (6)	West Covina, CA	85	107,150	5.3	1966/2007	1,261	89.4%	88.0% (2)	97.5% (3)	1,715	1.20 (2)	N/A
Avalon Lakeside (6)	Wheaton, IL	204	162,821	12.4	2004	798	95.6%	96.2%	95.1%	979	1.18	N/A
Avalon at Poplar Creek (6)	Schaumburg, IL	196	178,490	12.8	1986/2005	911	94.9%	91.3%	88.6% (2)	1,190	1.19	N/A
The Covington (6)	Schaumburg, IL	256	201,924	13.2	1988/2006	789	98.0%	96.2% (2)	93.1%	1,069	1.30 (2)	N/A
Middlesex Crossing (6)	Billerica, MA	252	188,915	13.0	2007	750	94.8%	96.0%	93.6% (3)	1,248	1.60	N/A
Colonial Towers/South Shore Manor (6)	Weymouth, MA	211	154,957	7.7	1971/2007	734	94.8%	95.8% (2)	87.9% (3)	1,043	1.36 (2)	N/A

Profile of Current, Development and Unconsolidated Communities (1)
(Dollars in thousands, except per apartment home data)

	City and state	Number of homes	Approx. rentable area (Sq. Ft.)	Acres	Year of completion / acquisition	Average size (Sq. Ft.)	Physical occupancy at 12/31/08	Average economic occupancy		Average rental rate		Financial reporting cost (5)
								2008	2007	$ per Apt (4)	$ per Sq. Ft.	
Avalon Columbia (6)	Columbia, MD	170	180,452	11.3	1989/2004	1,061	96.5%	96.3%	96.0% (2)	1,485	1.35	N/A
Cedar Place (6)	Columbia, MD	156	152,923	11.4	1972/2006	980	94.9%	86.8% (2)	95.3%	1,158	1.03 (2)	N/A
Avalon Centerpoint (6)	Baltimore, MD	392	312,356	6.9	2005/2007	797	94.6%	90.5%	92.9% (3)	909	1.03	N/A
Avalon at Aberdeen Station (6)	Aberdeen, NJ	290	414,585	16.8	2002/2006	1,430	99.0%	96.5%	96.1%	1,790	1.21	N/A
Avalon at Rutherford Station (6)	East Rutherford, NJ	108	131,937	1.5	2005/2007	1,222	95.4%	95.2%	89.2% (3)	2,237	1.74	N/A
Avalon Crystal Hill (6)	Pomona, NY	168	215,203	12.1	2001/2007	1,281	98.2%	95.2%	94.9% (3)	2,020	1.50	N/A

(1) We own a fee simple interest in the communities listed, excepted as noted below.

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

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

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

(5) Costs are presented in accordance with generally accepted accounting principles. For current Development Communities, cost represents total costs incurred through December 31, 2008. Financial reporting costs are excluded for unconsolidated communities, see Note 6, “Investments in Real Estate Entities.”

(6) We own a 15.2% combined general partnership and indirect limited partner equity interest in this community.

(7) We own a general partnership interest in a partnership that owns a fee simple interest in this community.

(8) We own a general partnership interest in a partnership structured as a DownREIT that owns this community.

(9) We own a membership interest in a limited liability company that holds a fee simple interest in this community.

(10) This community was transferred to a joint venture entity upon completion of development. We do not hold an equity interest in the entity, but retain a promoted residual interest in the profits of the entity. We receive a property management fee for this community.

(11) Community is located on land subject to a land lease.

Development Communities

As of December 31, 2008, we had 14 Development Communities under construction. We expect these Development Communities, when completed, to add a total of 4,564 apartment homes to our portfolio for a total capitalized cost, including land acquisition costs, of approximately $1,583,800,000. You should carefully review Item 1a., "Risk Factors," for a discussion of the risks associated with development activity and our discussion under Item 7., "Management's Discussion and Analysis of Financial Condition and Results of Operations," for further discussion of our 2009 outlook for development activity.

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

		Number of apartment homes	Total capitalized cost (1) ($ millions)	Construction start	Initial occupancy (2)	Estimated completion	Estimated stabilization (3)
1.	Avalon Morningside Park (4) *New York, NY*	295	$ 122.8	Q1 2007	Q3 2008	Q2 2009	Q3 2009
2.	Avalon White Plains *White Plains, NY*	407	154.0	Q2 2007	Q3 2008	Q4 2009	Q1 2010
3.	Avalon Anaheim Stadium *Anaheim, CA*	251	102.3	Q2 2007	Q4 2008	Q3 2009	Q1 2010
4.	Avalon Union City *Union City, CA*	438	122.2	Q3 2007	Q2 2009	Q4 2009	Q2 2010
5.	Avalon at the Hingham Shipyard *Hingham, MA*	235	53.5	Q3 2007	Q3 2008	Q2 2009	Q3 2009
6.	Avalon at Mission Bay North III *San Francisco, CA*	260	153.8	Q4 2007	Q2 2009	Q4 2009	Q2 2010
7.	Avalon Jamboree Village *Irvine, CA*	279	77.4	Q4 2007	Q2 2009	Q1 2010	Q3 2010
8.	Avalon Fort Greene *New York, NY*	631	306.8	Q4 2007	Q4 2009	Q1 2011	Q3 2011
9.	Avalon Charles Pond *Corham, NY*	200	47.8	Q1 2008	Q1 2009	Q3 2009	Q1 2010
10.	Avalon Blue Hills *Randolph, MA*	276	46.6	Q2 2008	Q2 2009	Q4 2009	Q2 2010
11.	Avalon Walnut Creek (4) *Walnut Creek, CA*	422	156.7	Q3 2008	Q3 2010	Q1 2011	Q3 2011
12.	Avalon Norwalk *Norwalk, CT*	311	86.4	Q3 2008	Q3 2010	Q2 2011	Q4 2011
13.	Avalon Northborough I *Northborough, MA*	163	27.4	Q4 2008	Q3 2009	Q1 2010	Q3 2010
14.	Avalon Towers Bellevue *Bellevue, WA*	396	126.1	Q4 2008	Q2 2010	Q2 2011	Q4 2011
	Total	4,564	$ 1,583.8				

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

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

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

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

Redevelopment Communities

As of December 31, 2008, we had seven consolidated communities under redevelopment. We expect the total capitalized cost to redevelop these communities to be $95,400,000, excluding costs prior to redevelopment. In addition, the Fund has two communities under redevelopment. We have found that the cost to redevelop an existing apartment community is more difficult to budget and estimate than the cost to develop a new community. Accordingly, we expect that actual costs may vary from our budget by a wider range than for a new development community. We cannot assure you that we will meet our schedule for reconstruction completion or restabilized operations, or that we will meet our budgeted costs, either individually or in the aggregate. We anticipate increasing our redevelopment activity related to Fund-owned communities, as well as communities in our current operating portfolio. You should carefully review Item 1a., "Risk Factors," for a discussion of the risks associated with redevelopment activity.

The following presents a summary of these Redevelopment Communities:

		Number of apartment homes	Total cost ($ millions)		Reconstruction start	Estimated reconstruction completion	Estimated restabilized operations (2)
			Pre-redevelopment cost	Total capitalized cost (1)			
1.	Essex Place *Peabody, MA*	286	$ 23.7	$ 34.5	Q3 2007	Q2 2009	Q4 2009
2.	Avalon Woodland Hills *Woodland Hills, CA*	663	72.1	109.3	Q4 2007	Q3 2010	Q1 2011
3.	Avalon at Diamond Heights *San Francisco, CA*	154	25.3	30.2	Q4 2007	Q4 2010	Q2 2011
4.	Avalon Symphony Woods I *Columbia, MD*	176	9.4	14.0	Q2 2008	Q3 2009	Q1 2010
5.	Avalon Symphony Woods II *Columbia, MD*	216	36.4	42.4	Q2 2008	Q3 2009	Q1 2010
6.	Avalon Mountain View *MountainView, CA*	248	51.6	60.1	Q2 2008	Q3 2009	Q1 2010
7.	The Promenade *Burbank, CA*	400	71.0	94.4	Q3 2008	Q2 2010	Q4 2010
8.	The Covington (3) *Lombard, IL*	256	32.6	34.9	Q4 2008	Q3 2009	Q4 2009
9.	Colonial Towers (3) *Weymouth, MA*	211	21.8	25.8	Q4 2008	Q3 2009	Q4 2009
	Total	2,610	$ 343.9	$ 445.6			

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

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

(3) This community is owned by the Fund.

Development Rights

As of December 31, 2008, we are evaluating the future development of 27 new apartment communities on land that is either owned by us, under contract, subject to a leasehold interest or for which we hold either a purchase or lease option. We generally prefer to hold Development Rights through options to acquire land, although for 14 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 7,304 apartment homes to our portfolio. Substantially all of these apartment homes will offer features like those offered by the communities we currently own. At December 31, 2008, there were cumulative capitalized costs (including legal fees, design fees and related overhead costs, but excluding land costs) of $57,365,000 relating to Development Rights that we consider probable for future development. In addition, land costs related to the pursuit of Development Rights (consisting of original land and additional carrying costs) of $239,456,000 are reflected as land held for development as of December 31, 2008 on the Consolidated Balance Sheet of the Consolidated Financial Statements set forth in Item 8 of this report.

The properties comprising the Development Rights are in different stages of the due diligence and regulatory approval process. The decisions as to which of the Development Rights to invest in, if any, or to continue to pursue once an investment in a Development Right is made, are business judgments that we make after we perform financial, demographic and other analyses. In the event that we do not proceed with a Development Right, we generally would not recover capitalized costs incurred in the pursuit of those communities, unless we were to recover amounts in connection with the sale of land; however, we cannot guarantee a recovery. Pre-development costs incurred in the pursuit of Development Rights for which future development is not yet considered probable are expensed as incurred. In addition, if the status of a Development Right changes, making future development no longer probable, any capitalized pre-development costs are charged to expense. During 2008, we incurred a charge of approximately $12,500,000 of pre-development cost for development rights that we determined would not likely be developed.

Refer to Item I., “Business” for a discussion of our expected 2009 development starts. In addition, you should carefully review Section 1a., “Risk Factors,” for a discussion of the risks associated with Development Rights.

The table below presents a summary of these Development Rights:

	Location	Estimated number of homes	Total capitalized cost ($ millions) (1)
1.	Wilton, CT	100	$ 30
2.	Seattle, WA	204	63
3.	Rockville Centre, NY	349	129
4.	Greenburgh, NY Phase II	444	118
5.	Wood-Ridge, NJ	406	104
6.	Cohasset, MA	200	38
7.	Northborough, MA Phase II	187	35
8.	North Bergen, NJ	164	47
9.	Andover, MA	115	26
10.	Garden City, NY	160	58
11.	New York, NY	681	307
12.	Plymouth, MA Phase II	92	20
13.	Lynnwood, WA Phase II	82	18
14.	West Long Branch, NJ	180	34
15.	Rockville, MD	240	62
16.	Shelton, CT	251	66
17.	Seattle, WA II	234	76
18.	San Francisco, CA	173	51
19.	Boston, MA	180	106
20.	Roselle Park, NJ	249	54
21.	Dublin, CA Phase II	405	126
22.	Tysons Corner, VA	393	99
23.	Canoga Park, CA	298	85
24.	Stratford, CT	130	22
25.	Yaphank, NY	343	57
26.	Brooklyn, NY	832	443
27.	Maynard, MA	212	39
	Total	7,304	$ 2,313

(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.

Land Acquisitions

We select land for development and follow established procedures that we believe minimize both the cost and the risks of development. During 2008, we acquired six land parcels for an aggregate purchase price of approximately $97,174,000, one of which we no longer plan to develop. The land parcels purchased, which are currently being developed or are held for future development, are as follows:

		Gross acres	Estimated number of apartment homes	Total capitalized cost (1) ($ millions)	Date acquired
1.	Avalon Ballard *Seattle, WA*	1.4	234	$ 320	January 2008
2.	Avalon North Bergen *North Bergen, NJ*	2.2	164	85	May 2008
3.	Avalon Norwalk *Norwalk, CT*	4.4	311	41	July 2008
4.	Avalon Willoughby West (2) *New York, NY*	4.2	832	158	November / December 2008
5.	Avalon at the Pinehills, Phase II *Plymouth, MA*	4.5	92	103	December 2008
	Total	16.7	1,633	$ 707	

(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) This represents a portion of the aggregate land purchase that we will transact under a non-cancelable commitment related to this expected development, as discussed in Note 8, “Commitments and Contingencies,” of the Consolidated Financial Statements set forth in Item 8 of this report.

Recent Disposition Activity

We (i) sell assets that do not meet our long-term investment strategy or when capital and real estate markets allow us to realize a portion of the value created over the past business cycle and (ii) redeploy the proceeds from those sales to develop, redevelop and acquire communities. Pending such redeployment, we will generally use the proceeds from the sale of these communities to reduce amounts outstanding under our variable rate unsecured credit facility. On occasion, we will set aside the proceeds from the sale of communities into a cash escrow account to facilitate a non-taxable, like-kind exchange transaction. From January 1, 2008 to January 31, 2009, we sold our interest in ten wholly owned communities, containing an aggregate of 3,059 apartment homes. The aggregate gross sales price from the dispositions of these assets was $564,950,000.

Insurance and Risk of Uninsured Losses

We carry commercial general liability insurance and property insurance with respect to all of our communities. These policies, and other insurance policies we carry, have policy specifications, insured limits and deductibles that we consider commercially reasonable. There are, however, certain types of losses (such as losses arising from acts of war) that are not insured, in full or in part, because they are either uninsurable or the cost of insurance makes it, in management’s view, economically impractical. You should carefully review the discussion under Item 1a., “Risk Factors,” of this Form 10-K for a discussion of risks associated with an uninsured property or liability loss.

Many of our West Coast communities are located in the general vicinity of active earthquake faults. Many of our communities are near, and thus susceptible to, the major fault lines in California, including the San Andreas Fault and the Hayward Fault. We cannot assure you that an earthquake would not cause damage or losses greater than insured levels. We have in place with respect to communities located in California, for any single occurrence and in the aggregate, $75,000,000 of coverage with a deductible per building equal to five percent of the insured value of that building. Earthquake coverage outside of California is subject to a $100,000,000 limit, except with respect to the state of Washington, for which the limit is $65,000,000. Our earthquake insurance outside of California provides

for a $100,000 deductible per occurrence except that the next $400,000 of loss per occurrence outside California will be treated as an additional deductible until the total deductible incurred exceeds $3,000,000.

On December 1, 2007, we elected to cancel and rewrite our property insurance policy for a 17 month term in order to take advantage of declining insurance premium rates. As a result, our property insurance premium decreased by approximately 15% with no material changes in coverage. We expect to renew this policy when it expires on May 1, 2009.

In August 2008, we renewed our general liability policy and worker's compensation coverage for a one year term, and experienced a decrease in the premium on these policies of approximately 13%, with no material changes in the coverage. These policies are in effect until August 1, 2009.

Just as with office buildings, transportation systems and government buildings, there have been reports that apartment communities could become targets of terrorism. In December 2007, Congress passed the Terrorism Risk Insurance Program Reauthorization Act ("TRIPRA") which is designed to make terrorism insurance available through a federal back-stop program until 2014. In connection with this legislation, we have purchased insurance for property damage due to terrorism up to $200,000,000. Additionally, we have purchased insurance for certain terrorist acts, not covered under TRIPRA, such as domestic-based terrorism. This insurance, often referred to as "non-certified" terrorism insurance, is subject to deductibles, limits and exclusions. Our general liability policy provides TRIPRA coverage (subject to deductibles and insured limits) for liability to third parties that result from terrorist acts at our communities.

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

We also carry crime policies (also commonly referred to as a fidelity policy or employee dishonesty policy) that protect the company, up to $5,000,000 per occurrence, from employee theft of money, securities or property.

ITEM 3. LEGAL PROCEEDINGS

On July 25, 2008, we filed a complaint in the U.S. District Court, Eastern District of Virginia (Alexandria), against Tetra Tech, Inc. and Tetra Tech MM, Inc. (collectively, "Tetra Tech") and Arthur Willden, a Tetra Tech employee during the relevant period and the brother of our former employee, James R. Willden. Our complaint alleges that portions of payments made by AvalonBay to Tetra Tech were improperly passed on by Tetra Tech to San Jose Water Conservation Corp. We previously obtained judgments against James Willden, San Jose Water Conservation Corp, and Michael Schroll, the President of San Jose Water Conservation Corp. Tetra Tech has filed a counterclaim and cross complaint against AvalonBay and others seeking damages in excess of $9 million. We believe that Tetra Tech's counterclaim is without merit with respect to AvalonBay and intend to vigorously defend such claim. Our insurer, as subrogee, will have a claim to a portion of recoveries we collect, if any, from James Willden, San Jose Water Conservation Corp., Michael Schroll and/or Tetra Tech. There can be no assurance that any meaningful amount will be collected in recovery or that we will be successful in our litigation with Tetra Tech.

We are currently involved in litigation alleging that communities constructed by us violate the accessibility requirements of the Fair Housing Act ("FHA") and the Americans with Disabilities Act. The Equal Rights Center filed a complaint against us on September 23, 2005 in the U.S. District Court, District of Maryland with respect to 100 properties. The lawsuit seeks monetary damages as well as injunctive relief, such as modifications to assets. The Company has filed a motion to dismiss all or parts of the suit, which has not been ruled on yet by the court. On August 13, 2008, the U.S. Attorney's Office for the Southern District of New York filed a civil lawsuit against the

Company and the joint venture (CVP I, LLC) in which it has an interest that owns Avalon Chrystie Place. The lawsuit alleges that Avalon Chrystie Place was not designed and constructed in accordance with the accessibility requirements of the FHA. The Company designed and constructed Avalon Chrystie Place with a view to compliance with New York City's Local Law 58, which for more than 20 years has been New York City's code regulating the accessible design and construction of apartments, and which we believe satisfies the requirements of the FHA. Due to the preliminary nature of the Equal Rights Center and Department of Justice matters, we cannot predict or determine the outcome of these matters, nor is it reasonably possible to estimate the amount of loss, if any, that would be associated with an adverse decision or settlement.

On August 1, 2008, we filed a lawsuit in the Superior Court of the State of Washington in the County of King (*Avalon DownREIT V, L.P. v. Grand-Glacier, LLC et al)* relating to our assertion that the homeowners association in which our former Avalon Wynhaven community is a part systematically overcharged us for various shared costs. We recently sold this property and agreed to indemnify the buyer for annual association fees to the extent they exceed an amount that we each agreed was reasonable. The defendants have filed a cross-claim against Avalon DownREIT V, L.P. seeking foreclosure of the property and satisfaction of all amounts alleged to be due. We intend to vigorously pursue our claim and defend against the counter claim. We cannot predict the likely terms of a final judgment or settlement.

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

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of our security holders during the fourth quarter of 2008.

PART II

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

Our common stock is traded on the NYSE under the ticker symbol AVB. The following table sets forth the quarterly high and low sales prices per share of our common stock for the years 2008 and 2007, as reported by the NYSE. On January 31, 2009 there were 669 holders of record of an aggregate of 79,745,531 shares of our outstanding common stock. The number of holders does not include individuals or entities who beneficially own shares but whose shares are held of record by a broker or clearing agency, but does include each such broker or clearing agency as one record holder.

	2008			2007		
	Sales Price		Dividends	Sales Price		Dividends
	High	Low	declared	High	Low	declared
Quarter ended March 31	$105.98	$79.78	$0.8925	$149.94	$125.30	$0.85
Quarter ended June 30	$107.37	$87.65	$0.8925	$134.62	$115.38	$0.85
Quarter ended September 30	$109.45	$82.97	$0.8925	$128.46	$105.91	$0.85
Quarter ended December 31	$ 96.68	$41.43	$ 2.70	$125.48	$ 88.97	$0.85

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

Dividends declared for the quarter ended December 31, 2008 included a special dividend, declared in December 2008, of $1.8075 per share (the "Special Dividend") in conjunction with the fourth quarter 2008 regular dividend of $0.8925 per share. These dividends were paid in cash and common shares. See discussion in Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations." The Special Dividend was declared to distribute a portion of the excess income attributable to gains on asset sales from the Company's disposition activities during 2008, as discussed in Note 7, "Real Estate Disposition Activities," elsewhere in this report. The Special Dividend is intended to qualify for the dividends paid deduction for tax purposes and minimize corporate level income taxes for 2008 and reduce federal excise taxes.

In February 2009, we announced that our Board of Directors declared a dividend on our common stock for the first quarter of 2009 of $0.8925 per share. The dividend will be payable on April 15, 2009 to all common stockholders as of April 1, 2009.

Issuer Purchases of Equity Securities

Period	(a) Total Number of Shares Purchased (1)	(b) Average Price Paid per Share (1)	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (2)	(d) Maximum Dollar Amount that May Yet be Purchased Under the Plans or Programs (in thousands) (2)
Month Ended October 31, 2008	4,000,206	$ 25.00	—	$ 200,000
Month Ended November 30, 2008	—	$ —	—	$ 200,000
Month Ended December 31, 2008	—	$ —	—	$ 200,000

(1) Includes shares surrendered to the Company in connection with employee stock option exercises or vesting of restricted stock as payment of exercise price or as payment of taxes. Amounts for the month ended October 31, 2008 include the redemption of all 4,000,000 outstanding shares of the Company's Series H Cumulative Redeemable Preferred Stock ("Preferred Stock") that occurred on October 15, 2008. The redemption of the Preferred stock was not part of the Company's publicly announced stock repurchase program.

(2) As disclosed in our Form 10-Q for the quarter ended March 31, 2008, on February 6, 2008, we disclosed that our Board of Directors voted to further increase the authorized limit of our stock repurchase program to $500,000,000. All amounts presented in the table above include this further increase. In determining whether to repurchase shares, we consider a variety of factors, including our liquidity needs, the then current market price of our shares and the effect of the share repurchases on our per share earnings and FFO. There is no scheduled expiration date to this program.

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

ITEM 6. SELECTED FINANCIAL DATA

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

	For the year ended				
	12-31-08	12-31-07	12-31-06	12-31-05	12-31-04
Revenue:					
Rental and other income	$ 847,640	$ 760,521	$ 671,382	$ 613,434	$ 561,752
Management, development and other fees	6,568	6,142	6,259	4,304	604
Total revenue	854,208	766,663	677,641	617,738	562,356
Expenses:					
Operating expenses, excluding property taxes	258,162	231,688	206,059	187,824	178,229
Property taxes	77,267	70,562	62,651	60,535	54,435
Interest expense, net	114,878	94,540	106,271	122,787	127,123
Depreciation expense	194,150	168,324	149,352	146,225	139,436
General and administrative expense	42,781	28,494	24,767	25,761	18,074
Impairment loss	57,899	—	—	—	—
Total expenses	745,137	593,608	549,100	543,132	517,297
Equity in income of unconsolidated entities	4,566	59,169	7,455	7,198	1,100
Venture partner interest in profit-sharing	—	—	—	—	(1,178)
Minority interest income (expense) in consolidated partnerships	741	(1,585)	(573)	(1,481)	(150)
Gain on sale of land	—	545	13,519	4,479	1,138
Income from continuing operations before cumulative effect of change in accounting principle	114,378	231,184	148,942	84,802	45,969
Discontinued operations:					
Income from discontinued operations	12,208	20,489	20,193	30,379	35,976
Gain on sale of communities	284,901	106,487	97,411	195,287	121,287
Total discontinued operations	297,109	126,976	117,604	225,666	157,263
Income before cumulative effect of change in accounting principle	411,487	358,160	266,546	310,468	203,232
Cumulative effect of change in accounting principle	—	—	—	—	4,547
Net income	411,487	358,160	266,546	310,468	207,779
Dividends attributable to preferred stock	(10,454)	(8,700)	(8,700)	(8,700)	(8,700)
Net income available to common stockholders	$ 401,033	$ 349,460	$ 257,846	$ 301,768	$ 199,079
Per Common Share and Share Information:					
Earnings per common share — basic [3]:					
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.35	$ 2.83	$ 1.89	$ 1.05	$ 0.58
Discontinued operations	3.87	1.61	1.59	3.09	2.20
Net income available to common stockholders	$ 5.22	$ 4.44	$ 3.48	$ 4.14	$ 2.78
Weighted average common shares outstanding — basic	76,783,515	78,680,043	74,125,795	72,952,492	71,564,202
Earnings per common share — diluted [3]:					
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.34	$ 2.79	$ 1.86	$ 1.03	$ 0.58
Discontinued operations	3.83	1.59	1.56	3.02	2.17
Net income available to common stockholders	$ 5.17	$ 4.38	$ 3.42	$ 4.05	$ 2.75
Weighted average common shares outstanding — diluted [1]	77,578,852	79,856,927	75,586,898	74,759,318	73,354,956
Cash dividends declared [2]	$ 3.57	$ 3.40	$ 3.12	$ 2 .84	$ 2.80

(1) Weighted average common shares outstanding — diluted for 2008 includes the impact of approximately 2.6 million common shares issued under the special dividend declared on December 17, 2008.

(2) Does not include the special dividend of 1.8075, which was declared on December 17, 2008, and paid for by the Company using common stock par value $0.01.

(3) Earnings per common share — basic and Earnings per common share — diluted include $0.06 per share related to the cumulative effect of a change in accounting principle.

	For the year ended				
	12-31-08	12-31-07	12-31-06	12-31-05	12-31-04
Other Information:					
Net income	$ 411,487	$ 358,160	$ 266,546	$ 310,468	$ 207,779
Depreciation — continuing operations	194,150	168,324	149,352	146,225	139,436
Depreciation — discontinued operations	5,302	13,401	14,777	17,072	24,464
Interest expense, net — continuing operations	114,878	94,540	106,271	122,787	127,123
Interest expense, net — discontinued operations	1,490	3,692	4,775	4,311	4,505
EBITDA (1)	$ 727,307	$ 638,117	$ 541,721	$ 600,863	$ 503,307
Funds from Operations (2)	$ 315,947	$ 368,057	$ 320,199	$ 271,096	$ 235,514
Number of Current Communities (3)	164	163	150	143	138
Number of apartment homes	45,728	45,932	43,141	41,412	40,142
Balance Sheet Information:					
Real estate, before accumulated depreciation	$ 8,002,487	$ 7,556,740	$ 6,615,593	$ 5,940,146	$ 5,734,122
Total assets	$ 7,173,374	$ 6,736,484	$ 5,848,507	$ 5,198,598	$ 5,116,019
Notes payable and unsecured credit facilities	$ 3,674,457	$ 3,208,202	$ 2,866,433	$ 2,334,017	$ 2,451,354
Cash Flow Information:					
Net cash flows provided by operating activities	$ 386,855	$ 454,874	$ 351,660	$ 306,248	$ 275,617
Net cash flows used in investing activities	$ (266,309)	$ (809,247)	$ (511,371)	$ (19,761)	$ (251,683)
Net cash flows (used in) provided by financing activities	$ (75,111)	$ 366,360	$ 162,280	$ (282,293)	$ (29,471)

Notes to Selected Financial Data

(1) EBITDA is defined as net income before interest income and expense, income taxes, depreciation and amortization from both continuing and discontinued operations. Under this definition, EBITDA includes gains on sale of assets and gain on sale of partnership interests. Management generally considers EBITDA to be an appropriate supplemental measure to net income of our operating performance because it helps investors to understand our ability to incur and service debt and to make capital expenditures. EBITDA should not be considered as an alternative to net income (as determined in accordance with generally accepted accounting principles, or "GAAP"), as an indicator of our operating performance, or to cash flows from operating activities (as determined in accordance with GAAP) as a measure of liquidity. Our calculation of EBITDA may not be comparable to EBITDA as calculated by other companies.

(2) We generally consider Funds from Operations, or "FFO," as defined below, to be an appropriate supplemental measure of our operating and financial performance because, by excluding gains or losses related to dispositions of previously depreciated 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 Consolidated Statements of Operations and Other Comprehensive Income included elsewhere in this report.

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

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

- gains or losses on sales of previously depreciated operating communities;
- extraordinary gains or losses (as defined by GAAP);
- cumulative effect of 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.

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 provided in "Cash Flow Information" in the table on the previous page.

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

	For the year ended				
	12-31-08	12-31-07	12-31-06	12-31-05	12-31-04
Net income	$ 411,487	$ 358,160	$ 266,546	$ 310,468	$ 207,779
Dividends attributable to preferred stock	(10,454)	(8,700)	(8,700)	(8,700)	(8,700)
Depreciation — real estate assets, including discontinued operations and joint venture adjustments	203,082	184,731	165,982	163,252	159,221
Minority interest expense, including discontinued operations	216	280	391	1,363	3,048
Gain on sale of unconsolidated entities holding previously depreciated real estate assets	(3,483)	(59,927)	(6,609)	—	—
Cumulative effect of change in accounting principle	—	—	—	—	(4,547)
Gain on sale of previously depreciated real estate assets	(284,901)	(106,487)	(97,411)	(195,287)	(121,287)
Funds from Operations attributable to common stockholders	$ 315,947	$ 368,057	$ 320,199	$ 271,096	$ 235,514
Weighted average common shares outstanding — diluted	77,578,852	79,856,927	75,586,898	74,759,318	73,354,956
FFO per common share — diluted	$ 4.07	$ 4.61	$ 4.24	$ 3.63	$ 3.21

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

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

Executive Overview

Business Description

We are primarily engaged in developing, acquiring, owning and operating apartment communities in high barrier-to-entry markets of the United States. We believe that apartment communities are an attractive long-term investment opportunity compared to other real estate investments because a broad potential resident base should help reduce demand volatility over a real estate cycle. However, throughout the real estate cycle, apartment market fundamentals, and therefore operating cash flows, are affected by overall economic conditions. We seek to create long-term shareholder value by accessing capital on cost effective terms; deploying that capital to develop, redevelop and acquire apartment communities in high barrier-to-entry markets; operating apartment communities; and selling communities when they no longer meet our long-term investment strategy or when pricing is attractive. 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 the allocation of our investments by the amount of invested capital and by product type within our individual markets, which are located in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Midwest, the Pacific Northwest, and the Northern and Southern California regions of the United States. Our strategy is to penetrate these markets with a broad range of products and services and an intense focus on our customer. Our communities are predominately upscale, which generally command among the highest rents in their markets. However, we also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services.

Financial Highlights and Outlook

For the year ended December 31, 2008, net income available to common stockholders was $401,033,000 compared to $349,460,000 for 2007, an increase of 14.8%. The annual year-over-year increase is primarily attributable to an increase in gains from the sale of communities and joint venture real estate investments in 2008 as compared to 2007 and growth in income from existing and newly developed communities in 2008, partially offset by non-cash charges for land impairments, abandoned pursuit costs and other charges related to our reduction in our planned development activity and other items listed in the table below.

	Net Income and EPS/FFO Decrease (Increase) Full Year 2008	
	Amount	Per Share (1)
Land impairments	$ 57,899,000	$ 0.75
Severance and related costs	3,400,000	0.04
Federal excise tax	3,200,000	0.04
Fund II organizational costs	1,209,000	0.02
Gain on medium term notes repurchase	(1,839,000)	(0.02)
Preferred stock deferred offering expenses	3,566,000	0.05
Increase in abandoned pursuit costs	5,537,000	0.07
	$ 72,972,000	$ 0.94

(1) Per share amounts are computed using the weighted average common shares-diluted at December 31, 2008.

Apartment fundamentals, while in line with expectations, were challenged in the second half of 2008 as the recent economic downturn accelerated. We were able to achieve full year-over-year rental revenue growth of 3.1% for our Established Community portfolio, comprised entirely of an increase in rental rates of 3.1%, with no change in occupancy. This revenue growth, combined with constrained expense growth, contributed to our Established Community portfolio achieving year-over-year growth in net operating income ("NOI") of 3.6% in 2008. However, due to the decline in market fundamentals during the fourth quarter of 2008, rental revenue from Established Communities increased 1.7% and NOI increased 2.4% over the prior year period.

We expect a decrease in Earnings per share — diluted ("EPS") in 2009 from the prior year of approximately 50%, driven primarily by the decrease in expected dispositions for 2009. Contributing to these results will be an expected decline in the revenue and net operating income from our Established Communities in 2009. The recession, coupled with the short term nature of apartment leases, has adversely impacted current operating fundamentals. While certain apartment markets continue to exhibit positive trends, the negative impact on renter demand from net job losses is expected to result in year-over-year declines in NOI. We believe that the adverse impact of the recession will be somewhat offset by (i) the expected continued weakness in the for-sale housing market during 2009 and (ii) growth in those age groups that have historically demonstrated a higher propensity to rent. In addition, the level of new rental completions in the Company's markets is anticipated to decline during 2009 from 2008 levels. Our current financial outlook for 2009 provides for a decline in rental revenue of between 1.5% and 3.5% in our Established Community portfolio and a projected NOI decline of 4.25% to 6.25%.

While current capital market conditions continue to adversely affect access to liquidity, we were able to demonstrate the benefits of the financial flexibility that comes with a largely unencumbered capital structure. During the year ended December 31, 2008, we raised in excess of $1,900,000,000 of capital through the issuance of secured and unsecured debt, sales of assets, and joint venture partner capital commitments. During 2008 we sourced approximately $1,200,000,000 in debt at attractive prices from a variety of sources, including the Government Sponsored Enterprises, tax-exempt debt, money center banks and even a local bank for long term secured debt. In addition, we achieved a record level of dispositions during 2008, selling eleven communities (including one held by the Fund) for an aggregate gross sales price of $646,200,000. We anticipate our level of disposition activity to be in the range of gross sales of $100,000,000 to $200,000,000 in 2009. However, our actual disposition activity may differ significantly and will depend on various factors including market and economic conditions in 2009.

We used the proceeds from both the debt financing activity and community dispositions to fund our development and redevelopment activities, reduce amounts drawn under our unsecured line of credit, repay secured and unsecured debt, prepay certain secured debt with higher interest costs and repurchase common stock. Capital needs result primarily from development expenditures, maturing debt and dividend requirements. Our committed capital is sufficient to complete the development underway and meet other liquidity uses. See the discussion under *Liquidity and Capital Resources.*

While we believe that our development activity will continue to create long-term value, we reduced our expected level of development in response to the general deterioration in real estate and capital market conditions, the general

recessionary environment. As previously disclosed, we do not anticipate starting any new development during the first half of 2009. Development starts in the second half of 2009, if any, will be evaluated based on our assessment of economic and capital market conditions at that time. We do expect to increase redevelopment activity in 2009 for both wholly owned and Fund (as defined below) related assets. As a result of the reduction in our development activities, we incurred certain non-cash and other charges as discussed in the table above. During 2008 we completed 13 communities for an aggregate total capitalized cost of $1,044,300,000, while only starting six communities, which are expected to be completed for an estimated total capitalized cost of $491,000,000. During 2009, the Company expects to disburse approximately $650,000,000 related to the 14 communities under development at December 31, 2008 and expected acquisitions of land for future development. We expect approximately $100,000,000 of the projected 2009 disbursements will be funded from cash in escrow related to previously sourced tax-exempt debt.

Our 2009 financial plan anticipates a continuation of poor credit markets and constrained liquidity. However, we believe that our current level of indebtedness, our current ability to service interest and other fixed charges and our current limited use of financial encumbrances (such as secured financing) will provide adequate access to the capital necessary to fund our current development and redevelopment activities. We expect to meet our liquidity needs from the issuance of corporate securities (which could include unsecured debt and/or common and preferred equity) and secured debt, as well as from disposition proceeds, joint ventures or from retained cash. We believe that the current market provides for an opportunity to perform certain deferred maintenance and repositioning activities at attractive costs due to the continued decline in costs for construction materials and labor. During 2009, we expect to start 16 redevelopments of wholly owned communities, as well as five redevelopments of communities on behalf of the Fund, as defined below.

AvalonBay Value Added Fund, L.P. (the "Fund") is a discretionary investment fund with nine institutional investors, including us. One of our wholly owned subsidiaries is the general partner of the Fund and has invested approximately $48,000,000 in the Fund, representing a 15.2% combined general partner and limited partner equity interest. The Fund was our principal vehicle for acquiring apartment communities through the close of its investment period in March 2008.

On September 2, 2008, we announced the formation of AvalonBay Value Added Fund II, L.P. ("Fund II"), a private, discretionary investment vehicle with commitments from four institutional investors including us totaling $333,000,000. We have committed $150,000,000 to Fund II, representing a 45% equity interest. At final closing, the aggregate investor commitments to Fund II and our commitment and percentage interest in Fund II may change. Fund II can employ leverage of up to 65%, allowing for a total investment capacity of approximately $950,000,000 and has a term of ten years plus two one-year extension options. Fund II will acquire and operate multifamily apartment communities primarily in our current markets with the objective of creating value through redevelopment, enhanced operations and/or improving market fundamentals. Fund II will serve as the exclusive vehicle through which we will acquire investments in apartment communities for a period of three years from the closing date or until 90% of its committed capital is invested, subject to limited exceptions. Fund II will not include or involve our development activities. We will receive, in addition to any returns on its invested equity, asset management fees, property management fees and redevelopment fees. We will also receive a promoted interest if certain return thresholds are met. As of December 31, 2008, there has been no capital contributed to Fund II and Fund II has made no investments. In the fourth quarter of 2008, Fund II entered into a $75,000,000 unsecured credit facility, with an option to increase the facility up to $200,000,000, subject to certain lender requirements. The credit facility bears interest at LIBOR plus 2.50% per annum, and matures in December 2011, assuming the exercise of a one-year extension option. At December 31, 2008, there was $760,000 outstanding under the Fund II credit facility.

Communities Overview

Our real estate investments consist primarily of current operating apartment communities, communities in various stages of development ("Development Communities") and Development Rights (i.e., land or options to purchase land held for development), as further described in Item 2 of this report. Our current operating communities are further distinguished as Established Communities, Other Stabilized Communities, Lease-Up Communities and Redevelopment Communities. Established Communities are generally operating communities that are consolidated for financial reporting purposes and were owned and had stabilized occupancy and operating expenses as of the

beginning of the prior year, which allows the performance of these communities and the markets in which they are located to be compared and monitored between years. Other Stabilized Communities are generally all other consolidated operating communities that have stabilized occupancy and operating expenses during the current year, but had not achieved stabilization as of the beginning of the prior year. Lease-Up Communities consist of communities where construction is complete but stabilization has not been achieved. Redevelopment Communities consist of communities where substantial redevelopment is in progress or is planned to begin during the current year. A more detailed description of our reportable segments and other related operating information can be found in Note 9, "Segment Reporting," of our Consolidated Financial Statements.

Although each of these categories is important to our business, we generally evaluate overall operating, industry and market trends based on the operating results of 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. Discussions related to these segments of our business can be found in "Liquidity and Capital Resources."

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

As of December 31, 2008, we owned or held a direct or indirect ownership interest in 178 apartment communities containing 50,292 apartment homes in ten states and the District of Columbia, of which 14 communities were under construction and nine communities were under reconstruction. Of these communities, 23 were owned by entities that were not consolidated for financial reporting purposes, including 19 owned by the Fund. In addition, we owned a direct or indirect ownership interest in Development Rights to develop an additional 27 communities that, if developed in the manner expected, will contain an estimated 7,304 apartment homes.

Results of Operations

Our year-over-year operating performance is primarily affected by both overall and individual geographic market conditions and apartment fundamentals and reflected in changes in NOI of our Established Communities; NOI derived from acquisitions and development completions; the loss of NOI related to disposed communities; and capital market and financing activity. A comparison of our operating results for 2008, 2007 and 2006 follows (dollars in thousands):

	2008	2007	$ Change	% Change	2007	2006	$ Change	% Change
Revenue:								
Rental and other income	$ 847,640	$ 760,521	$ 87,119	11.5%	$ 760,521	$ 671,382	$ 89,139	13.3%
Management, development and other fees	6,568	6,142	426	6.9%	6,142	6,259	(117)	(1.9%)
Total revenue	854,208	766,663	87,545	11.4%	766,663	677,641	89,022	13.1%
Expenses:								
Direct property operating expenses, excluding property taxes	200,990	181,324	19,666	10.8%	181,324	164,852	16,472	10.0%
Property taxes	77,267	70,562	6,705	9.5%	70,562	62,651	7,911	12.6%
Total community operating expenses	278,257	251,886	26,371	10.5%	251,886	227,503	24,383	10.7%
Corporate-level property management and other indirect operating expenses	39,874	38,627	1,247	3.2%	38,627	34,177	4,450	13.0%
Investments and investment management	17,298	11,737	5,561	47.4%	11,737	7,030	4,707	67.0%
Interest expense, net	114,878	94,540	20,338	21.5%	94,540	106,271	(11,731)	(11.0%)
Depreciation expense	194,150	168,324	25,826	15.3%	168,324	149,352	18,972	12.7%
General and administrative expense	42,781	28,494	14,287	50.1%	28,494	24,767	3,727	15.0%
Impairment loss	57,899	—	57,899	N/A	—	—	—	—
Total other expenses	466,880	341,722	125,158	36.6%	341,722	321,597	20,125	6.3%
Equity in income of unconsolidated entities	4,566	59,169	(54,603)	(92.3%)	59,169	7,455	51,714	693.7%
Minority interest income (expense) in consolidated partnerships	741	(1,585)	2,326	146.8%	(1,585)	(573)	(1,012)	(176.6%)
Gain on sale of land	—	545	(545)	N/A	545	13,519	(12,974)	(96.0%)
Income from continuing operations	114,378	231,184	(116,806)	(50.5%)	231,184	148,942	82,242	55.2%
Discontinued operations:								
Income from discontinued operations	12,208	20,489	(8,281)	(40.4%)	20,489	20,193	296	1.5%
Gain on sale of communities	284,901	106,487	178,414	167.5%	106,487	97,411	9,076	9.3%
Total discontinued operations	297,109	126,976	170,133	134.0%	126,976	117,604	9,372	8.0%
Net income	411,487	358,160	53,327	14.9%	358,160	266,546	91,614	34.4%
Dividends attributable to preferred stock	(10,454)	(8,700)	(1,754)	20.2%	(8,700)	(8,700)	—	—
Net income available to common stockholders	$ 401,033	$ 349,460	$ 51,573	14.8%	$ 349,460	$ 257,846	$ 91,614	35.5%

Net income available to common stockholders increased $51,573,000 or 14.8%, to $401,033,000 in 2008 due primarily to gains from the sale of communities and year-over-year increases in community operating performance, partially offset by charges associated with land impairments and abandoned pursuits as well as increased costs for interest and depreciation. Net income available to common stockholders increased $91,614,000 or 35.5% in 2007 over the prior year period due primarily to sales of consolidated operating communities and investments in unconsolidated entities and related gains combined with growth in NOI from Established Communities and contributions to net operating income from newly developed communities.

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

NOI does not represent cash generated from operating activities in accordance with U.S. generally accepted accounting principles (“GAAP”). Therefore, NOI should not be considered an alternative to net income as an indication of our performance. NOI should also not be considered an alternative to net cash flow from operating activities, as determined by GAAP, as a measure of liquidity, nor is NOI necessarily indicative of cash available to fund cash needs. Reconciliations of NOI for the years ended December 31, 2008, 2007 and 2006 to net income for each year, are as follows (dollars in thousands):

	For the year ended		
	12-31-08	12-31-07	12-31-06
Net income	$ 411,487	$ 358,160	$ 266,546
Indirect operating expenses, net of corporate income	33,045	31,285	28,811
Investments and investment management	17,298	11,737	7,030
Interest expense, net	114,878	94,540	106,271
General and administrative expense	42,781	28,494	24,767
Equity in income of unconsolidated entities	(4,566)	(59,169)	(7,455)
Minority interest in consolidated partnerships	(741)	1,585	573
Depreciation expense	194,150	168,324	149,352
Impairment loss	57,899	—	—
Gain on sale of real estate assets	(284,901)	(107,032)	(110,930)
Income from discontinued operations	(12,208)	(20,489)	(20,193)
Net operating income	$ 569,122	$ 507,435	$ 444,772

The NOI increases for both 2008 and 2007, as compared to the prior year period, consist of changes in the following categories (dollars in thousands):

	2008 Increase	2007 Increase
Established Communities	$ 14,257	$ 27,665
Other Stabilized Communities	14,982	10,186
Development and Redevelopment Communities	32,448	24,812
Total	$ 61,687	$ 62,663

The NOI increases in Established Communities in 2008 were largely due to continued favorable but moderating apartment market fundamentals. During 2008, we continued to focus on rental rate growth, while maintaining occupancy of at least 95% in all regions.

We anticipate that rental rates and occupancy levels will decline in 2009 such that overall rental revenue will decline between 1.5% and 3.5% as compared to the 3.1% growth achieved in 2008. The expected revenue decline is due to the general decline in overall economic conditions and related employment levels. Expense growth also impacts growth in NOI and we continue to monitor and manage operating expenses to constrain expense growth. We expect operating expenses to increase between 3.0% and 4.0% in 2009 from prior year levels, attributable primarily to increases in property taxes, utilities, insurance and office operations. As a result, we expect NOI for our Established Communities to decline between 4.25% and 6.25%. These projections are based on our outlook for economic conditions in 2009, both nationally and in the markets where we operate. There can be no assurance that our outlook for economic conditions and/or their impact on our operating results will be accurate, and actual results could differ materially. Please see “Risk Factors,” “Forward Looking Statements” and other discussions in this report on Form 10-K for a discussion of factors which could affect our results of operations.

Net operating income (“NOI”) is considered by management to be an important and appropriate supplemental performance measure to net income because it helps both investors and management to understand the core operations of a community or communities prior to the allocation of any corporate-level or financing-related costs. NOI reflects the operating performance of a community and allows for an easy comparison of the operating performance of individual assets or groups of assets. In addition, because prospective buyers of real estate have different financing and overhead structures, with varying marginal impacts to overhead by acquiring real estate, NOI is considered by many in the real estate industry to be a useful measure for determining the value of a real estate asset or group of assets. We define NOI as total property revenue less direct property operating expenses, including property taxes.

Rental and other income increased in 2008 as compared to the prior year due to increased rental rates and occupancy for our Established Communities, coupled with additional rental income generated from newly developed communities.

Overall Portfolio — The weighted average number of occupied apartment homes decreased to 37,886 apartment homes for 2008 as compared to 38,436 homes for 2007 and 37,716 homes for 2006. This change is primarily the result of communities sold during 2008 containing 3,459 apartment homes, as well as declining occupancy levels due to the economic slow down, partially offset by increased homes available from newly developed communities,. The weighted average monthly revenue per occupied apartment home increased to $1,921 for 2008 as compared to $1,767 in 2007 and $1,610 in 2006.

Established Communities — Rental revenue increased $18,221,000, or 3.1%, for 2008 and increased $34,257,000, or 5.5%, for 2007. These increases are due entirely to increased average rental rates. For 2008, the weighted average monthly revenue per occupied apartment home increased 3.1% to $1,928 compared to $1,870 in 2007, primarily due to increased market rents. There was no change in year-over-year average economic occupancy for 2008. 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.

We experienced increases in Established Communities' rental revenue in all six of our regions for 2008 as compared to the prior year period. The largest percentage increases in rental revenue were in the Northern California and Pacific Northwest regions, with increases of 5.9% and 5.2%, respectively, between years. Almost 70% of our Established Community revenue is generated by the Metro New York/New Jersey, Northern California and the New England regions, and are discussed in more detail below.

The Metro New York/New Jersey region, which accounted for approximately 23.8% of Established Community rental revenue for 2008, experienced an increase in rental revenue of 2.3% for 2008 as compared to 2007. Average rental rates increased 2.4% to $2,353, and economic occupancy decreased 0.1% to 96.2% for 2008 as compared to 2007. During 2008 the trend of weakening rental market conditions in both New York City and surrounding suburban markets resulting from the recession is reflected in the declining occupancy levels in the second half of 2008. The challenges facing the financial services industry are expected to continue throughout 2009 resulting in a further decline in employment levels. We will remain focused on the current market conditions, as we seek to manage the resulting impact on our community operating results for 2009.

Northern California, which represented approximately 21.1% of Established Community rental revenue during 2008, experienced an increase in rental revenue of 5.9% as compared to 2007. Average rental rates increased by 6.2% to $1,943 and economic occupancy declined by 0.3% from 97.0% to 96.7% for 2008 as compared to 2007. We expect Northern California to see a modest decline in revenue in 2009.

The New England region accounted for approximately 21.0% of the Established Community rental revenue for 2008 and experienced rental revenue growth of 2.3% over the prior year. Average rental rates increased 2.2% to $2,053 and economic occupancy increased 0.1% to 96.3% for 2008, as compared to 2007. Given the significance of the financial services industry in the Boston metro area, as well as the impact of New York trends on Fairfield-New Haven, we continue to monitor the recent decline in job growth as compared to 2007 due to the current volatility in the financial services industry.

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

The following table reconciles total rental revenue in conformity with GAAP to total rental revenue adjusted to state concessions on a cash basis for our Established Communities for the years 2008 and 2007 (dollars in thousands). Information for the year ended December 31, 2006 is not presented, as Established Community classification is not comparable prior to January 1, 2007. See Note 9, "Segment Reporting," of our Consolidated Financial Statements.

	For the year ended	
	12-31-08	12-31-07
Rental revenue (GAAP basis)	$ 605,657	$ 587,436
Concessions amortized	5,973	5,316
Concessions granted	(7,271)	(5,469)
Rental revenue adjusted to state concessions on a cash basis	$ 604,359	$ 587,283
Year-over-year % change — GAAP revenue	3.1%	n/a
Year-over-year % change — cash concession based revenue	2.9%	n/a

Management, development and other fees increased $426,000, or 6.9% in 2008 and decreased $117,000, or 1.9% in 2007. The increase in 2008 was due primarily to increased redevelopment fees and property management fees as additional communities were acquired by the Fund. The decrease in 2007 was due primarily to lower development and redevelopment management fees coupled with the disposition of our interest in a joint venture, partially offset by increased management fees from Fund communities.

Direct property operating expenses, excluding property taxes increased $19,666,000, or 10.8% in 2008 and increased $16,472,000, or 10.0% for 2007 as compared to the prior year periods, primarily due to the addition of recently developed apartment homes.

For Established Communities, direct property operating expenses, excluding property taxes, increased $521,000, or 0.4% to $133,459,000 for 2008 and $1,661,000, or 1.1% to $148,628,000 for 2007, due primarily to increased utilities, administrative and community maintenance related costs, offset partially by a decrease in insurance and payroll related expenses. The increases in administrative expense are primarily due to increases in bad debt, due to a general decline in the economic climate.

Property taxes increased $6,705,000, or 9.5% and $7,911,000, or 12.6% in 2008 and 2007, respectively, due to the addition of newly developed and redeveloped apartment homes and overall higher assessments. Property tax increases are also impacted by the size and timing of successful tax appeals.

For Established Communities, property taxes increased by $3,107,000, or 5.6% and $2,618,000, or 4.5% for 2008 and 2007, respectively due to both higher assessments throughout all regions and reductions in property taxes realized in 2007 that did not occur in 2008. The impact of the current economic environment has not been reflected in current assessments, as there is typically a time lag between a change in the economy affecting property valuations and updated real estate tax assessments. We expect property taxes in 2009 to increase over 2008 due primarily to higher tax rates, without the benefit of lower assessed values. Property tax increases are limited by law (Proposition 13) for communities in California. We evaluate property tax increases internally, as well as engage third-party consultants, and appeal increases when appropriate.

Corporate-level property management and other indirect operating expenses increased by $1,247,000, or 3.2% in 2008 and $4,450,000, or 13.0% in 2007 over the prior year periods. These increases are due primarily to increased compensation and employee separation costs, as well as costs relating to corporate initiatives focused on increasing efficiency and enhancing controls at our operating communities. The 2008 expense includes transition and ongoing costs related to our Customer Care Center in Virginia Beach, Virginia that we opened in the third quarter of 2007 to centralize certain community-related accounting, administrative and customer service functions.

Investments and investment management reflects the costs incurred for investment acquisitions, investment management and abandoned pursuit costs, which include costs incurred for development pursuits not yet considered probable for development, as well as the abandonment of development pursuits, acquisition pursuits and disposition pursuits. Investments and investment management costs increased in 2008 and 2007 compared to the prior year periods due primarily to increases in abandoned pursuit costs. Abandoned pursuit costs were $12,511,000 in 2008, $6,974,000 in 2007 and $2,115,000 in 2006. The increase in abandoned pursuit costs in 2008 is due to the reduction in our planned development activity. These costs can be volatile,

particularly in periods of economic downturn or when there is limited access to capital, and the costs incurred in any given period may vary significantly in future periods.

Interest expense, net increased $20,338,000, or 21.5% and decreased $11,731,000, or 11.0% in 2008 and 2007, respectively. This category includes both interest expense and interest income. The increase in 2008 is due primarily to a decrease in interest income in 2008 as compared to the prior year period, coupled with increased interest expense in 2008 compared to 2007. The higher level of interest income in 2007 is due to higher invested cash balances from our January 2007 equity offering. The increased interest expense in 2008 is due primarily to increased amounts of debt outstanding in 2008 compared to the prior year period. In addition, interest expense in 2008 was reduced by including the gain of $1,950,000 recognized by repurchasing $15,000,000 of our $250,000,000, 5.5% unsecured notes at a discount of 87% of par for $13,050,000. Interest expense also includes charges of approximately $410,000 related to unamortized deferred financing costs and purchase premiums for debt that was repaid prior to its scheduled maturity.

*Depreciation expens*e increased in 2008 and 2007 primarily due to the completion of development and redevelopment activities.

General and administrative expense ("G&A") increased $14,287,000, or 50.1% in 2008 and increased $3,727,000, or 15.0% in 2007 as compared to the prior year periods. The 2008 increase is due primarily to compensation, including severance and related costs associated with the decrease in our planned development activity, federal excise tax expense resulting from gains on our increased disposition activity during 2008 and organization costs for the formation of Fund II. The 2007 increase is primarily due to increased compensation costs.

Impairment loss for 2008 is due primarily to the write down of eight land parcels which we have decided to not develop. We did not recognize an impairment loss in either 2007 or 2006.

Equity in income of unconsolidated entities for 2008 decreased from the prior year period due primarily to the gain on the sale of two partnership interests in 2007 and the related loss of partnership income, partially offset by our portion of the gain from the sale of a community by a joint venture partner, income from joint ventures where the underlying communities have achieved stabilized operations and gains from our investment in a joint venture formed to develop for-sale homes. The increase in 2007 over the prior year period is due primarily to approximately $60,000,000 in gains from the dispositions of two investments in 2007.

Minority interest in consolidated partnerships for 2008 resulted in income of $741,000, compared to expense of $1,585,000 in 2007 due to recognition of income for our joint venture partners' portion of the net loss incurred by Fund II, as well as the conversion and redemption of limited partnership units in 2007 and 2008, thereby reducing outside ownership interests and the allocation of net income to outside ownership interests. The increase in 2007 over the prior year period is due primarily to the recognition in 2007 of the sale of a 70% joint venture partner interest in one of our unconsolidated communities, partially offset by the redemption of limited partnership units, as discussed above.

Gain on sale of land for 2008 decreased from the prior year period due to the absence of land sales in 2008. Gain on sale of land from 2007 decreased from 2006 due to the volume and size of parcels sold each year.

Income from discontinued operations represents the net income generated by communities sold or qualifying as discontinued operations during the period from January 1, 2007 through December 31, 2008. This income decreased for 2008 and 2007 due to an increased number of communities sold in each year as compared to the prior year period. See Note 7, "Real Estate Disposition Activities," of our Consolidated Financial Statements.

Gain on sale of communities increased in 2008 and 2007 as compared to the prior year periods as a result of a higher volume of sales in each respective year. The amount of gain realized upon disposition of a community 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.

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

FFO is considered by management to be an appropriate supplemental measure of our operating and financial performance. In calculating FFO, we exclude gains or losses related to dispositions of previously depreciated property and exclude real estate depreciation, which can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates. FFO can help one compare the operating performance of a real estate company between periods or as compared to different companies. We believe that in order to understand our operating results, FFO should be examined with net income as presented in our Consolidated Financial Statements included elsewhere this report. For a more detailed discussion and presentation of FFO, see "Selected Financial Data," included in Item 6 of this report.

Liquidity and Capital Resources

Factors affecting our liquidity and capital resources are our cash flows from operations, financing activities and investing activities (including dispositions), as well as general economic and market conditions. Operating cash flow has historically been determined by: (i) the number of apartment homes currently owned, (ii) rental rates, (iii) occupancy levels and (iv) operating expenses with respect to apartment homes. The timing and type of capital markets activity in which we engage, as well as our plans for development, redevelopment, acquisition and disposition activity, are affected by changes in the capital markets environment, such as changes in interest rates or the availability of cost-effective capital.

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

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

The capital and credit markets contracted significantly during 2008, resulting in a constrained liquidity environment. Although general market liquidity was constrained, we were able to satisfy our liquidity needs from a combination of cash flows provided by secured and unsecured financings, proceeds from asset sales and cash from operations. In 2009, we continue to expect to meet all of our liquidity needs from a variety of internal and external sources, including borrowing capacity under our Credit Facility (as defined below), secured financings and other public or private sources of liquidity as discussed below, as well as our operating activities. To the extent that currently available internal and external resources do not satisfy our needs, we may seek additional external financing. Additional external financing could come from a variety of sources, such as public sales of debt or equity securities or unsecured or secured loans from financial institutions or other private or governmental lenders, among others. Private equity through joint ventures may also be used. Our ability to obtain additional financing will depend on a variety of factors such as market conditions, the general availability of credit, the overall availability of credit to the real estate industry, our credit ratings and credit capacity, as well as the perception of lenders regarding our long or short-term financial prospects. At December 31, 2008, we have unrestricted cash and cash in escrow of $259,305,000 available for development activities. For the year ended December 31, 2008 we raised in excess of $1,900,000,000 of capital through the issuance of secured debt and unsecured debt, equity commitments from private equity sources and sales of assets. We used these proceeds to fund our development and redevelopment activities, reduce amounts drawn under our unsecured line of credit, repay secured and unsecured debt, prepay certain unsecured debt with interest costs above prevailing rates and repurchase our common and preferred stock.

Unrestricted cash and cash equivalents totaled $65,706,000 at December 31, 2008, an increase of $45,435,000 from $20,271,000 at December 31, 2007. The following discussion relates to changes in cash due to operating, investing

and financing activities, which are presented in our Consolidated Statements of Cash Flows included elsewhere in this report.

Operating Activities — Net cash provided by operating activities decreased to $386,855,000 in 2008 from $454,874,000 in 2007. The decrease was driven primarily by the payment of interest amounts and the timing of general corporate payables, partially offset by the additional NOI from our Established Communities, as well as NOI from recently developed communities.

Investing Activities — Net cash used in investing activities of $266,309,000 in 2008 related to investments in assets through the development and redevelopment of apartment communities, partially offset by the gross proceeds from the disposition of communities in the amount of $529,777,000 and an increase in construction escrows of $126,611,000. During 2008, we invested $902,327,000 in the purchase and development of the following real estate and capital expenditures:

- We acquired six parcels of land in connection with Development Rights, for a purchase price of approximately $97,174,000**.**
- We had capital expenditures of $20,824,000 for real estate and non-real estate assets.
- We invested approximately $881,503,000 in the development of communities, including the commencement of the development of six communities which are expected to contain an aggregate of 1,768 apartment homes for an expected aggregate total capitalized cost of $491,000,000.

Financing Activities — Net cash used by financing activities totaled $75,111,000 in 2008. The net cash used is due primarily to the payment of cash dividends in the amount of $278,795,000, the redemption of preferred stock for $100,000,000 and the repurchase of 482,100 shares of our common stock at an average price of $87.42 per share, offset somewhat by the net issuance of secured and unsecured debt of $350,054,000, including amounts repaid under our Credit Facility (as defined below).

In February 2008, our Board of Directors authorized an increase of $200,000,000 in our common stock repurchase program, increasing the total amount the Company can acquire to $500,000,000, of which approximately $300,000,000 has been used to repurchase our common stock as of December 31, 2008. The decision to use the additional share repurchase authorization will depend on current capital market conditions and liquidity, our share price relative to the net asset value per share and other uses of capital, including development.

In October 2008, we exercised our option to redeem all 4,000,000 outstanding shares of our 8.70% Series H Cumulative Redeemable Preferred Stock for $100,701,000. The repayment amount includes the redemption value of the outstanding shares of $25 per share and accrued but unpaid dividends through the redemption date. We recorded a non-cash charge for deferred offering expenses of approximately $3,566,000 in the fourth quarter of 2008 related to this redemption.

Variable Rate Unsecured Credit Facility

We currently have a $1,000,000,000 revolving variable rate unsecured credit facility (the "Credit Facility") with a syndicate of commercial banks that expires in November 2011 (assuming our exercise of a one-year renewal option). In the aggregate, we pay an annual facility fee of approximately $1,250,000. The Credit Facility bears interest at varying levels based on the London Interbank Offered Rate ("LIBOR"), our credit rating and on a maturity schedule selected by us. The current stated pricing is LIBOR plus 0.40% per annum (0.85% on January 31, 2009). The spread over LIBOR can vary from LIBOR plus 0.325% to LIBOR plus 1.00% based on our credit rating. In addition, a competitive bid option is available for borrowings of up to $422,500,000. This option allows banks that are part of the lender consortium to bid to provide us loans at a rate that is lower than the stated pricing provided by the Credit Facility. The competitive bid option may result in lower pricing if market conditions allow. We had no outstanding balance under this competitive bid option at January 31, 2009. At January 31, 2009, $335,000,000 was outstanding on the Credit Facility, $45,415,000 was used to provide letters of credit, and $619,585,000 was available for borrowing under the Credit Facility.

We are subject to certain customary financial and other covenants under the Credit Facility, our $330,000,000 variable rate, unsecured term loan and the indenture under which our unsecured notes were issued. The financial covenants include the following:

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

We are in compliance with these covenants at December 31, 2008.

Future Financing and Capital Needs — Debt Maturities

One of our principal long-term liquidity needs is the repayment of long-term debt at the time that such debt matures. For unsecured notes, we anticipate that no significant portion of the principal of these notes will be repaid substantially prior to maturity. If we do not have funds on hand sufficient to repay our indebtedness as it becomes due, it will be necessary for us to refinance the debt. This refinancing may be accomplished by uncollateralized private or public debt offerings, additional debt financing that is secured by mortgages on individual communities or groups of communities, draws on our Credit Facility or by equity offerings. Although we believe we will have the capacity to meet our currently anticipated liquidity needs, we cannot assure you that additional debt financing or debt or equity offerings will be available or, if available, that they will be on terms we consider satisfactory.

The following financing activity occurred during 2008:

- we repaid $50,000,000, 6.625% principal amount of previously issued unsecured notes, along with any unpaid interest, pursuant to their scheduled maturity;
- we redeemed $10,000,000 principal amount of our $150,000,000, 7.5% unsecured notes that mature in August 2009 for $10,287,500 with the premium above par recorded as a charge to earnings;
- we repaid $146,000,000 of unsecured notes with an annual interest rate of 8.25% pursuant to their scheduled maturity;
- we redeemed $15,000,000 principal amount of our $250,000,000, 5.5% unsecured notes that mature in January 2012 at a discount price of 87% of par;
- we repaid the loans secured by Avalon Knoll, which is located in Germantown, Maryland and had a fixed rate of 6.95%, Avalon Landing, which is located in Annapolis, Maryland and had a fixed rate of 6.85%, and Avalon at Fairway Hills, which is located in Columbia, Maryland and had a variable rate. These loans, which had contractual maturities of 2026 and an aggregate amount outstanding of $28,707,000, were repaid early at par;
- we repaid the $4,368,000, 6.99% fixed rate loan secured by a development right in Wheaton, Maryland pursuant to its scheduled maturity;
- we borrowed $170,125,000 under an interest-only mortgage note secured by Avalon at Arlington Square, located in Arlington, Virginia at an effective rate of 4.69% for five years;
- we borrowed $94,572,000 under an interest-only mortgage note secured by Avalon at Cameron Court, located in Alexandria, Virginia at an effective rate of 4.95% for five years;
- we borrowed $110,600,000 under an interest-only mortgage note secured by Avalon Crescent, located in McLean, Virginia at an effective rate of 5.48% for seven years;
- we borrowed $150,000,000 under an interest-only mortgage note secured by Avalon Silicon Valley, located in Sunnyvale, California at an effective rate of 5.66% for seven years;
- we entered into a $330,000,000, variable rate unsecured term loan comprised of three tranches bearing interest at LIBOR plus a spread of 1.25%, of which approximately one third matures in each of the next three years beginning in 2009;
- we closed both a variable rate bond financing relating to Avalon Walnut Creek in the aggregate amount of $135,000,000, of which $126,000,000 is tax-exempt, as well as an associated 4.0% fixed-rate construction loan of $2,500,000;
- we closed a $62,400,000, 6.02% fixed rate loan secured by Avalon at Greyrock Place, located in Stamford, Connecticut;
- we closed a $51,749,000, 6.12% fixed rate loan secured by Avalon Darien, located in Darien, Connecticut;
- we closed a $55,100,000, 5.875% fixed rate loan secured by Avalon Commons, located in Smithtown, New York;
- we repaid $390,500,000 outstanding under our Credit Facility;
- we repurchased 482,100 shares of our common stock at an average price of $87.42 per share, for a total approximate purchase price of $42,144,000;
- we redeemed 44,592 limited partnership units in certain DownREITs for $1,756,000; and

- we exercised our option to redeem all 4,000,000 outstanding shares of our 8.70% Series H Cumulative Redeemable Preferred Stock for $100,701,000, inclusive of accrued but unpaid dividends through the redemption date.

In January 2009, we made a cash tender offer for any and all of our 7.5% unsecured notes due August 2009 and December 2010. We purchased $37,438,000 of our $150,000,000, 7.5% unsecured notes due August 2009 at par. In addition, we purchased $64,423,000 of our $200,000,000, 7.5% unsecured notes due December 2010 at a discount price of 98% of par, for approximately $63,135,000, representing a yield to maturity of 8.66%. A gain of approximately $1,062,000 will be recorded in the first quarter of 2009 in conjunction with the purchase of the unsecured notes due December 2010. All of the notes purchased in the tender offer were cancelled. We previously acquired and cancelled an aggregate of $10,000,000 of the 7.5% unsecured notes due in August 2009.

The following table details debt maturities for the next five years, excluding our Credit Facility and amounts outstanding related to communities classified as held for sale, for debt outstanding at December 31, 2008 (dollars in thousands).

Community	All-In interest rate (1)	Principal maturity date	Balance outstanding 12-31-07	Balance outstanding 12-31-08	Scheduled maturities 2009	2010	2011	2012	2013	Thereafter
Tax-exempt bonds										
Fixed rate										
CountryBrook	6.30%	Mar-2012	$ 15,356	$ 14,680	$ 719	$ 766	$ 816	$ 12,379	$ —	$ —
Avalon at Symphony Glen	4.90%	Jul-2024	9,780	9,780	—	—	—	—	—	9,780
Avalon at Lexington	6.55%	Feb-2025	12,078	11,665	439	466	495	526	559	9,180
Avalon Campbell	6.48%	Jun-2025	31,877	30,914 (2)	—	—	—	—	—	30,914
Avalon Pacifica	6.48%	Jun-2025	14,460	14,023 (2)	—	—	—	—	—	14,023
Avalon Knoll	6.95%	Jun-2026	11,654	—	—	—	—	—	—	—
Avalon Fields	7.55%	May-2027	10,224	9,988	275	295	316	339	364	8,399
Avalon Oaks	7.45%	Jul-2041	17,077	16,940	147	157	168	180	193	16,095
Avalon Oaks West	7.48%	Apr-2043	16,919	16,795	133	142	152	162	173	16,033
Avalon at Chestnut Hill	5.82%	Oct-2047	42,149	41,834	331	349	368	388	409	39,989
			181,574	166,619	2,044	2,175	2,315	13,974	1,698	144,413
***Variable rate* (3)**										
The Promenade	2.55%	Oct-2010	30,844	30,142	754	29,388	—	—	—	—
Waterford	1.52%	Jul-2014	33,100	33,100 (4)	—	—	—	—	—	33,100
Avalon at Mountain View	1.42%	Feb-2017	18,300	18,300 (4)	—	—	—	—	—	18,300
Avalon at Mission Viejo	1.59%	Jun-2025	7,635	7,635 (4)	—	—	—	—	—	7,635
Avalon at Nob Hill	5.20%	Jun-2025	20,800	20,800 (4)	—	—	—	—	—	20,800
Avalon Campbell	0.87%	Jun-2025	6,923	7,886 (2)	—	—	—	—	—	7,886
Avalon Pacifica	0.87%	Jun-2025	3,140	3,577 (2)	—	—	—	—	—	3,577
Avalon at Fairway Hills I	0.00%	Jun-2026	11,500	—	—	—	—	—	—	—
Avalon Bowery Place I	2.12%	Nov-2037	93,800	93,800 (5)	—	—	—	—	—	93,800
Avalon Bowery Place II	2.07%	Nov-2039	48,500	48,500 (5)	—	—	—	—	—	48,500
Avalon Acton	1.77%	Jul-2040	45,000	45,000 (5)	—	—	—	—	—	45,000
Avalon Morningside Park	1.65%	Nov-2040	100,000	100,000 (5)	—	—	—	—	—	100,000
Avalon Walnut Creek	3.38%	Mar-2046	—	116,000 (5)	—	—	—	—	—	116,000
Avalon Walnut Creek	3.14%	Mar-2046	—	10,000 (5)	—	—	—	—	—	10,000
			419,542	534,740	754	29,388	—	—	—	504,598
Conventional loans (6)										
Fixed rate										
$50 million unsecured notes	6.63%	Jan-2008	50,000	—	—	—	—	—	—	—
$150 million unsecured notes	8.38%	Jul-2008	146,000	—	—	—	—	—	—	—
$150 million unsecured notes	7.63%	Aug-2009	150,000	140,000 (7)	140,000	—	—	—	—	—
$200 million unsecured notes	7.66%	Dec-2010	200,000	200,000 (8)	—	200,000	—	—	—	—
$300 million unsecured notes	6.79%	Sep-2011	300,000	300,000	—	—	300,000	—	—	—
$50 million unsecured notes	6.31%	Sep-2011	50,000	50,000	—	—	50,000	—	—	—
$250 million unsecured notes	5.73%	Jan-2012	250,000	235,000 (9)	—	—	—	235,000	—	—
$250 million unsecured notes	6.26%	Nov-2012	250,000	250,000	—	—	—	250,000	—	—
$100 million unsecured notes	5.11%	Mar-2013	100,000	100,000	—	—	—	—	100,000	—
$150 million unsecured notes	5.52%	Apr-2014	150,000	150,000	—	—	—	—	—	150,000
$250 million unsecured notes	5.89%	Sep-2016	250,000	250,000	—	—	—	—	—	250,000
Wheaton Development Right	6.99%	Oct-2008	4,432	—	—	—	—	—	—	—
4600 Eisenhower Avenue	8.08%	Apr-2009	4,293	4,175	4,175	—	—	—	—	—
Avalon at Twinbrook	7.25%	Oct-2011	8,007	7,801	223	239	7,339	—	—	—
Avalon at Tysons West	5.55%	Jul-2028	6,381	6,218	173	183	193	204	216	5,249
Avalon Orchards	7.65%	Jul-2033	19,612	19,322	311	333	357	382	409	17,530
Avalon at Arlington Square	4.69%	Apr-2013	—	170,125	—	—	—	—	170,125	—
Avalon at Cameron Court	4.95%	Apr-2013	—	94,572	—	—	—	—	94,572	—
Avalon Crescent	5.48%	May-2015	—	110,600	—	—	—	—	—	110,600
Avalon Silicon Valley	5.66%	Jul-2015	—	150,000	—	—	—	—	—	150,000
Avalon Darien	6.12%	Nov-2015	—	51,749	—	—	—	—	—	51,749
Avalon Greyrock Place	6.02%	Nov-2015	—	62,400	—	—	—	—	—	62,400
Avalon Commons	5.88%	Dec-2013	—	55,100	—	—	—	—	55,100	—
Avalon Walnut Creek	4.00%	Jul-2066	—	2,500	—	—	—	—	—	2,500
			1,938,725	2,409,562	144,882	200,755	357,889	485,586	420,422	800,028
***Variable rate* (3)**										
Avalon at Flanders Hill	4.06%	May-2009	20,510	19,735 (4)	19,735	—	—	—	—	—
Avalon at Newton Highlands	4.18%	Dec-2009	36,335	34,945 (4)	34,945	—	—	—	—	—
Avalon at Crane Brook	5.09%	Mar-2011	32,560	31,530 (4)	1,106	1,169	29,255	—	—	—
Avalon at Bedford Center	4.10%	May-2012	16,816	16,361 (4)	497	527	560	14,777	—	—
Avalon Walnut Creek	3.59%	Mar-2046	—	9,000 (5)	—	—	—	—	—	9,000
$105.6 million unsecured notes	2.96%	May-2009	—	105,600	105,600	—	—	—	—	—
$112.2 million unsecured notes	2.96%	Jan-2010	—	112,200	—	112,200	—	—	—	—
$112.2 million unsecured notes	2.96%	Jan-2011	—	112,200	—	—	112,200	—	—	—
			106,221	441,571	161,883	113,896	142,015	14,777	—	9,000
Total indebtedness — excluding unsecured credit facility			$ 2,646,062	$3,552,492	$ 309,563	$ 346,214	$ 502,219	$ 514,337	$ 422,120	$ 1,458,039

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

(2) Financed by variable rate, tax-exempt debt, but the interest rate on a portion of this debt is effectively fixed at December 31, 2008 and December 31, 2007 through a swap agreement. The portion of the debt fixed through a swap agreement decreases (and therefore the variable portion of the debt increases) monthly as payments are made to a principal reserve fund.

(3) Variable rates are given as of December 31, 2008.

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

(5) Represents full amount of the debt as of December 31, 2008. Actual amounts drawn on the debt as of December 31, 2008 are $93,279 for Bowery Place I, $44,678 for Bowery Place II, $44,148 for Avalon Acton, $78,505 for Morningside Park, and $0 for Walnut Creek.

(6) Balances outstanding represent total amounts due at maturity, and are not net of $2,035 of debt discount as of December 31, 2008 and $2,501 of debt discount as of December 31, 2007, as reflected in unsecured notes on our Consolidated Balance Sheets included elsewhere in this report.

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

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

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

Future Financing and Capital Needs — Dividend Requirements

As a REIT, we are subject to certain dividend distribution requirements in relation to taxable income to avoid paying federal income and federal excise taxes at the corporate level. During 2008, we sold 11 communities including one community sold by the Fund. Absent a special distribution in excess of our normal, recurring quarterly dividend, we would have had taxable income in excess of distributions resulting in federal income tax at the corporate level. To qualify for the dividends paid deduction for tax purposes and minimize this potential tax, in December 2008 we declared a combined special and regular dividend (the "Combined Dividend") of $2.70 per share, comprised of a special dividend of $1.8075 (the "Special Dividend") per share and our regular dividend of $0.8925 per share. The Company recorded a charge of $3,200,000 related to the expected federal excise taxes related to the gains on sale recognized during 2008.

Future Financing and Capital Needs — Portfolio and Other Activity

As of December 31, 2008, we had 14 new communities under construction, for which a total estimated cost of $666,623,000 remained to be invested. In addition, we had nine communities which we own, or in which we have a direct or indirect interest, under reconstruction, for which a total estimated cost of $53,214,000 remained to be invested. Substantially all of the capital expenditures necessary to complete the communities currently under construction and reconstruction, as well as development costs related to pursuing Development Rights, will be funded from:

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

Before planned reconstruction activity, including reconstruction activity related to communities acquired by the Fund or Fund II as discussed below, or the construction of a Development Right begins, we intend to arrange adequate financing to complete these undertakings, although we cannot assure you that we will be able to obtain such financing. In the event that financing cannot be obtained, we may have to abandon Development Rights, write-off associated pre-development costs that were capitalized and/or forego reconstruction activity. In such instances, we will not realize the increased revenues and earnings that we expected from such Development Rights or reconstruction activity and significant losses could be incurred.

On September 2, 2008, we announced the formation of Fund II, a private, discretionary investment vehicle with commitments from us and four institutional investors. Fund II has equity commitments totaling $333,000,000. We have committed $150,000,000 to the Fund, representing a 45% equity interest. Fund II will acquire and operate multifamily apartment communities primarily in our current markets with the objective of creating value through redevelopment, enhanced operations and/or improving market fundamentals. Fund II will serve as the exclusive vehicle through which we will acquire investments in apartment communities until 2011, or earlier when 90% of its committed capital is invested, subject to limited exceptions. Fund II will not include or involve our development activities. We will receive, in addition to any returns on our invested equity, asset management fees, property

management fees and redevelopment fees. We will also receive a promoted interest if certain return thresholds are met. As of January 31, 2009, there have been no capital contributions to Fund II, and Fund II has not made any investments. In the fourth quarter of 2008, Fund II entered into a $75,000,000 unsecured credit facility, with an option to increase the facility up to $200,000,000, subject to certain lender requirements. The credit facility bears interest at LIBOR plus 2.50% per annum, and matures in December 2011, assuming the exercise of a one-year extension option. At December 31, 2008, there was $760,000 outstanding under the Fund II credit facility.

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

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

Off-Balance Sheet Arrangements

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

- CVP I, LLC has outstanding tax-exempt, variable rate bonds maturing in November 2036 in the amount of $117,000,000, which have permanent credit enhancement. We have agreed to guarantee, under limited circumstances, the repayment to the credit enhancer of any advances it may make in fulfillment of CVP I, LLC’s repayment obligations under the bonds**.** We have also guaranteed to the credit enhancer that CVP I, LLC will obtain a final certificate of occupancy for the project (Chrystie Place in New York City) overall once tenant improvements related to a retail tenant are complete, which is expected in 2009. Our 80% partner in this venture has agreed that it will reimburse us its pro rata share of any amounts paid relative to these guaranteed obligations. The estimated fair value of, and our obligation under these guarantees, both at inception and as of December 31, 2008 were not significant. As a result we have not recorded any obligation associated with these guarantees at December 31, 2008.
- The Fund has 22 loans secured by individual assets with amounts outstanding in the aggregate of $436,698,000. These mortgage loans have varying maturity dates (or dates after which the loans can be prepaid), ranging from October 2011 to September 2016. These mortgage loans are secured by the underlying real estate. The Fund has two credit facilities that mature in December 2008. The Fund had $3,000,000 outstanding as of December 31, 2008 under its credit facilities. The mortgage loans and the credit facility are payable by the Fund with operating cash flow or disposition proceeds from the underlying real estate, and the credit facility is secured by capital commitments. We have not guaranteed the debt of the Fund, nor do we have any obligation to fund this debt should the Fund be unable to do so.

  In addition, as part of the formation of the Fund, we have provided to one of the limited partners a guarantee. The guarantee provides that if, upon final liquidation of the Fund, the total amount of all distributions to that partner during the life of the Fund (whether from operating cash flow or property sales) does not equal a minimum of the total capital contributions made by that partner, then we will pay the

partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner (maximum of approximately $7,192,000 as of December 31, 2008). As of December 31, 2008, the expected realizable value of the real estate assets owned by the Fund is considered adequate to cover such potential payment to that partner under the expected Fund liquidation scenario. The estimated fair value of, and our obligation under this guarantee, both at inception and as of December 31, 2008 was not significant and therefore we have not recorded any obligation for this guarantee as of December 31, 2008.

- MVP I, LLC, the entity that owns Avalon at Mission Bay North II, has a loan secured by the underlying real estate assets of the community for $105,000,000. The loan is a fixed-rate, interest-only note bearing interest at 6.02%, maturing in December 2015. We have not guaranteed the debt of MVP I, LLC, nor do we have any obligation to fund this debt should MVP I, LLC be unable to do so.
- Avalon Del Rey Apartments, LLC has a loan secured by the underlying real estate assets of the community for $40,763,000. The variable-rate loan had an interest rate of 3.40% at December 31, 2008. We have not guaranteed the debt of Avalon Del Rey Apartments, LLC, nor do we have any obligation to fund this debt should Avalon Del Rey Apartments, LLC be unable to do so.
- Aria at Hathorne Hill, LLC is a joint venture in which we have a non-managing member interest. The LLC is developing 64 for-sale town homes in Danvers, Massachusetts. The LLC has two separate variable rate loans with aggregate borrowings of $4,476,000 and an interest rate of 2.875% at December 31, 2008. In addition, Aria at Hathorne has a short-term variable rate note for approximately $263,000 at an interest rate of 3.7% due in 2009. We have not guaranteed the debt of Aria at Hathorne, nor do we have any obligation to fund this debt should Aria at Hathorne be unable to do so.
- PHVP I, LLC, a consolidated joint venture in which we hold a 99.0% controlling interest, is constructing a public garage adjacent to our Walnut Creek development. As part of the construction management services we provide to PHVP I, LLC for the construction of the public garage, we have provided a construction completion guarantee to the related lender in order to fulfill their standard financing requirements related to the garage construction financing. Our obligations under this guarantee terminate upon (i) the issuance of a certificate of substantial completion and (ii) completion of a list of lender requirements. The certificate of substantial completion was issued on July 11, 2008 and the completion of the lender's requirements list is nearing completion. We expect termination of the guarantee in the first half of 2009.
- In 2007 we entered into a non-cancelable commitment (the "Commitment") to acquire parcels of land in Brooklyn, New York for an aggregate purchase price of approximately $111,000,000. Under the terms of the Commitment, we will close on the various parcels over a period determined by the seller's ability to execute unrelated purchase transactions and achieve deferral of gains for the land sold under this Commitment. However, under no circumstances will the Commitment extend beyond 2011, at which time either we or the seller can compel execution of the remaining transactions. At December 31, 2008, we have an outstanding commitment to purchase the remaining land for approximately $62,519,000.

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

Contractual Obligations

We currently have contractual obligations consisting primarily of long-term debt obligations and lease obligations for certain land parcels and regional and administrative office space. During the third quarter of 2008, we entered into an operating land lease agreement relating to our Avalon Walnut Creek community currently under development. Aside from this lease, there have not been any other material changes outside the ordinary course of business to our contractual obligations during 2008. Scheduled contractual obligations required for the next five years and thereafter are as follows as of December 31, 2008 (dollars in thousands):

	Payments due by period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Debt Obligations (1)	$ 3,676,492	$ 433,563	$ 848,433	$ 936,457	$ 1,458,039
Operating Lease Obligations (2)	2,316,449	16,262	32,777	32,914	2,234,496
Total	$ 5,992,941	$ 449,825	$ 881,210	$ 969,371	$ 3,692,535

(1) Includes $124,000 outstanding under our variable rate Credit Facility as of December 31, 2008. The table of contractual obligations assumes repayment of this amount in 2009 — See "Liquidity and Capital Resources." Amounts exclude interest payable as of December 31, 2008.

(2) Includes land leases expiring between November 2028 and March 2142. Amounts do not include any adjustment for purchase options available under the land leases.

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

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

We cannot assure the future results or outcome of the matters described in these statements; rather, these statements merely reflect our current expectations of the approximate outcomes of the matters discussed. You should not rely on

forward-looking statements because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to differ materially from the anticipated future results, performance or achievements expressed or implied by these forward-looking statements. You should carefully review the discussion under Item 1a., "Risk Factors," in this document for a discussion of risks associated with forward-looking statements.

In addition, these forward-looking statements represent our estimates and assumptions only as of the date of this report. We do not undertake a duty to update these forward-looking statements, and therefore they may not represent our estimates and assumptions after the date of this report.

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

- we may fail to secure development opportunities due to an inability to reach agreements with third parties to obtain land at attractive prices or to obtain desired zoning and other local approvals;
- we may abandon or defer development opportunities for a number of reasons, including changes in local market conditions which make development less desirable, increases in costs of development, increases in the cost of capital or lack of capital availability, resulting in losses;
- construction costs of a community may exceed our original estimates;
- we may not complete construction and lease-up of communities under development or redevelopment on schedule, resulting in increased interest costs and construction costs and a decrease in our expected rental revenues;
- occupancy rates and market rents may be adversely affected by competition and local economic and market conditions which are beyond our control;
- financing may not be available on favorable terms or at all, and our cash flows from operations and access to cost effective capital may be insufficient for the development of our pipeline which could limit our pursuit of opportunities;
- our cash flows may be insufficient to meet required payments of principal and interest, and we may be unable to refinance existing indebtedness or the terms of such refinancing may not be as favorable as the terms of existing indebtedness;
- we may be unsuccessful in our management of the Fund, Fund II or the REIT vehicles that are used with each respective Fund; and
- we may be unsuccessful in managing changes in our portfolio composition.

Critical Accounting Policies

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

Principles of Consolidation

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

We determine whether to consolidate certain entities based on our rights and obligations under the joint venture agreements, applying the guidance of FIN 46(R), "Consolidation of Variable Interest Entities*"* (as revised) and

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

If we were to consolidate the joint ventures that we accounted for using the equity method at December 31, 2008, our assets would have increased by $953,524,000 and our liabilities would have increased by $723,395,000. We would be required to consolidate those joint ventures currently not consolidated for financial reporting purposes if the facts and circumstances changed, including but not limited to the following reasons, none of which are currently expected to occur:

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

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

Cost Capitalization

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

During the development and redevelopment efforts we capitalize all direct and those indirect costs which have been incurred as a result of the development and redevelopment activities. These costs include interest and related loan fees, property taxes as well as other direct and indirect costs. Interest is capitalized for any project specific financing, as well as for general corporate financing to the extent of our aggregate investment in the projects. Indirect project costs, which include personnel and office and administrative costs that are clearly associated with our development and redevelopment efforts are also capitalized. The estimation of the direct and indirect costs to capitalize as part of our development and redevelopment activities requires judgment, and as such, we believe cost capitalization to be a critical accounting estimate.

There may be a change in our operating expenses in the event that there are changes in accounting guidance governing capitalization or changes to development or redevelopment activity. If changes in the accounting guidance limit our ability to capitalize costs or if we reduce our development and redevelopment activities without a corresponding decrease in indirect project costs, there may be an increase in our operating expenses. For example, if in 2008 our development activities decreased by 10%, and there were no corresponding decrease in our indirect project costs, our operating expenses would have increased by $3,034,000.

We capitalize pre-development costs incurred in pursuit of Development Rights for which we currently believe future development is probable. These costs include legal fees, design fees and related overhead costs. Future development of these pursuits is dependent upon various factors, including zoning and regulatory approval, rental market conditions, construction costs and availability of capital. Pre-development costs incurred in the pursuit of

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

Due to the subjectivity in determining whether a pursuit will result in the acquisition or development of an apartment community, and therefore should be capitalized, the accounting for pursuit costs is a critical accounting estimate. If it were determined that 10% of our capitalized pursuits were no longer probable of occurring, net income for the year ended December 31, 2008 would have decreased by $5,737,000.

Asset Impairment Evaluation

We apply the provisions of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144") for our consolidated operating apartment communities, Development Communities and Development Rights to determine the need for performing impairment analyses, as well as to measure the loss if an impairment has occurred on a regular basis, considering qualitative economic factors**.** We also apply the provisions of SFAS 144 for assessing the need to perform an impairment analysis and measuring impairment losses on the underlying long-lived assets held by our unconsolidated joint venture investments. In addition, we apply the provisions of APB No. 18, "The Equity Method of Accounting for Investments in Common Stock" ("APB 18"), to determine if there has been an other than temporary decline in the value of our investments in our unconsolidated joint ventures. Because each asset is unique, requiring significant management judgment, we believe that the asset impairment evaluation under SFAS 144, and the assessment of other than temporary declines in fair value under APB 18, are critical accounting estimates.

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

To perform the SFAS 144 impairment analysis, we must estimate the undiscounted future cash flows associated with the asset, which in the case of an apartment community would be the cash flows from operations and any potential disposition proceeds for a given asset. Forecasting cash flows requires assumptions about such variables as the estimated holding period, rental rates, occupancy and operating expenses during the holding period, as well as disposition proceeds. In addition, when an impairment has occurred, we must estimate the discount factor, or market capitalization rate, to apply to the undiscounted cash flows to derive the fair value of the position. The market capitalization rate is influenced by many factors, including national and local economic conditions, as well as the location and quality of the asset.

Our analysis of investments in unconsolidated joint ventures under APB 18 considers our ability to recover the carrying amount of our investment by evaluating the current fair value of the net assets underlying the investment using our estimate of the forecasted cash flows that the asset will generate, including any incremental cash flows from investment management or other fees related to the investment, disposition proceeds and an estimated market capitalization rate. Our estimate of the fees considers various factors, including any contractually guaranteed amounts and expected periods over which the fees will be earned. In the event that the current fair value of our investment, considering the above factors, is less than our current carrying basis, an impairment exists. We must then determine if the impairment is other than temporary. Whether an impairment is other than temporary is a subjective determination, primarily considering the ability of the joint venture entity to generate cash flows from operations, the expected proceeds from the disposition of our position, and whether our expected investment horizon is adequate to recover any unrealized loss in the fair value of our investment.

Changes in the future cash flows associated with an asset have a direct, linear relationship to the fair value of the position. For example, holding all other variables constant, if there is a 10% decline in the estimated cash flows from operations for a community, there would be a corresponding decrease in the fair value of that asset of 10%. Changes in the market capitalization rate have an inverse relationship with the fair value of an asset, with a decrease in the market capitalization rate resulting in an increase in the fair value of the asset. For example, an asset that is valued at $80,000,000 when using a five percent market capitalization rate will increase in value to $100,000,000 if the market capitalization rate decreases by one

percent to four percent, and to $133,000,000 if the market capitalization rate decreases by two percent, to a three percent market capitalization rate.

For the year ended December 31, 2008, we recognized an impairment loss of $57,899,000 associated with certain land parcels which we no longer intend to develop. At December 31, 2008 we determined that none of our consolidated operating communities, Development Communities, or investments in unconsolidated joint ventures were impaired under the provisions of SFAS 144, or APB 18, as appropriate. These conclusions were based on the factors that existed as of December 31, 2008. Given the recent deterioration in real estate and capital market conditions, we cannot predict the occurrence of future events that may cause an impairment assessment to be performed, or the likelihood of any future impairment charges, if any. You should also review Item 1a., "Risk Factors" of this Form 10-K.

REIT Status

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

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

ITEM 7a. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

Our operating results are affected by changes in interest rates as a result of borrowings under our variable rate Credit Facility and outstanding bonds with variable interest rates, primarily associated with short-term interest rates such as LIBOR. We had $1,088,848,000 and $1,084,653,000 in variable rate debt outstanding (excluding variable rate debt effectively fixed through swap agreements) as of December 31, 2008 and 2007, respectively. If interest rates on the variable rate debt had been 100 basis points higher throughout 2008 and 2007, our annual interest costs would have increased by approximately $11,490,000 and $6,417,000, respectively, based on balances outstanding during the applicable years.

We currently use interest rate protection agreements (consisting of interest rate swap and interest rate cap agreements) to reduce the impact of interest rate fluctuations on certain variable rate indebtedness, not for trading or speculative purposes. Under swap agreements:

- we agree to pay to a counterparty the interest that would have been incurred on a fixed principal amount at a fixed interest rate (generally, the interest rate on a particular treasury bond on the date the agreement is entered into, plus a fixed increment); and
- the counterparty agrees to pay to us the interest that would have been incurred on the same principal amount at an assumed floating interest rate tied to a particular market index.

As of December 31, 2008, the effect of interest rate swap agreements is to fix the interest rate on approximately $44,937,000 of our variable rate, tax-exempt debt. The interest rate protection provided by certain swap agreements on the consolidated variable rate, tax-exempt debt was not electively entered into by us but, rather, was a requirement of either the bond issuer or the credit enhancement provider related to certain tax-exempt bond financings. Had these swap agreements not been in place during 2008 and 2007, our annual interest costs would have been approximately $1,451,000 and $931,000 lower, respectively, based on balances outstanding and reported interest rates during the applicable years. Additionally, if the variable interest rates on this debt had been 100 basis points higher throughout 2008 and 2007 and these swap agreements had not been in place, our annual interest costs would have been approximately $887,000 and $248,000 lower, respectively.

Because the counterparties providing the swap agreements are major financial institutions which have an A+ or better credit rating by the Standard & Poor's Ratings Group and the interest rates fixed by the swap agreements are significantly higher than current market rates for such agreements, we do not believe there is exposure at this time to a default by a counterparty provider.

In addition, changes in interest rates affect the fair value of our fixed rate debt, computed using a discounted cash flow model considering our current market yields, which impacts the fair value of our aggregate indebtedness. Debt securities and notes payable (excluding amounts outstanding under our variable rate credit facility) with an aggregate carrying value of $3,552,492,000 at December 31, 2008 had an estimated aggregate fair value of $3,569,817,000 at December 31, 2008. Fixed rate debt (excluding our variable rate debt effectively fixed through swap agreements) represented $2,531,244,000 of the carrying value and $2,548,569,000 of the fair value at December 31, 2008. If interest rates had been 100 basis points higher as of December 31, 2008, the fair value of this fixed rate debt would have decreased by $88,723,000.

We do not have any exposure to foreign currency or equity price risk, and our exposure to commodity price risk is insignificant.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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

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

None.

ITEM 9a. CONTROLS AND PROCEDURES

(a) *Evaluation of Disclosure Controls and Procedures*. As required by Rule 13a-15 under the Securities Exchange Act of 1934, as of the end of the period covered by this report, the Company carried out an evaluation under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. We continue to review and document our disclosure controls and procedures, including our internal control over financial reporting, and may from time to time make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.

(b) *Management's Report on Internal Control Over Financial Reporting*. Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2008 based on the framework in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on that evaluation, our management concluded that our internal control over financial reporting was effective as of December 31, 2008.

Our internal control over financial reporting as of December 31, 2008 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included elsewhere herein.

(c) *Changes in Internal Control Over Financial Reporting*. There was no change in our internal control over financial reporting that occurred during the fourth quarter of the period covered by this Annual Report on Form 10-K that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9b. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information pertaining to directors and executive officers of the Company and the Company's Code of Conduct are incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 21, 2009.

ITEM 11. EXECUTIVE COMPENSATION

Information pertaining to executive compensation is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 21, 2009.

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

Information pertaining to security ownership of management and certain beneficial owners of the Company's common stock is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 21, 2009.

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

The following table gives information about equity awards under the Company's 1994 Plan and ESPP as of December 31, 2008:

Plan category	(a) Number of securities to be issued upon exercise of outstanding options, warrants and rights	(b) Weighted-average exercise price of outstanding options, warrants and rights	(c) Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders (1)	2,733,553(2)	$ 83.49(3)	1,744,159
Equity compensation plans not approved by security holders (4)	—	n/a	772,275
Total	2,733,553	$ 83.49(3)	2,516,434

(1) Consists of the 1994 Plan.

(2) Includes 110,418 deferred units granted under the 1994 Plan, which, subject to vesting requirements, will convert in the future to common stock on a one-for-one basis, but does not include 207,070 shares of restricted stock that are outstanding and that are already reflected in the Company's outstanding shares.

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

(4) Consists of the ESPP.

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

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

Information pertaining to certain relationships and related transactions is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 21, 2009.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information pertaining to the fees paid to and services provided by the Company's principal accountant is incorporated herein by reference to the Company's Proxy Statement to be filed with the Securities and Exchange Commission within 120 days after the end of the year covered by this Form 10-K with respect to the Annual Meeting of Stockholders to be held on May 21, 2009.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULE

15(a)(1) Financial Statements

Index to Financial Statements

Consolidated Financial Statements and Financial Statement Schedule:

15(a)(2) Financial Statement Schedule

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

15(a)(3) Exhibits

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

INDEX TO EXHIBITS

3(i).1	—	Articles of Amendment and Restatement of Articles of Incorporation of the Company, dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-K of the Company filed March 1, 2007.)
3(i).2	—	Articles of Amendment, dated as of October 2, 1998. (Incorporated by reference to Exhibit 3(i).2 to Form 10-K of the Company filed March 1, 2007.)
3(ii).1	—	Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on February 13, 2003. (Filed herewith.)
4.1	—	Indenture for Senior Debt Securities, dated as of January 16, 1998, between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.2	—	First Supplemental Indenture, dated as of January 20, 1998, between the Company and State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.2 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.3	—	Second Supplemental Indenture, dated as of July 7, 1998, between the Company and State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.3 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.4	—	Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.5	—	Fourth Supplemental Indenture, dated as of September 18, 2006, between the Company and U.S. Bank National Association as Trustee. (Incorporated by reference to Exhibit 4.5 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.6	—	Dividend Reinvestment and Stock Purchase Plan of the Company. (Incorporated by reference to Exhibit 8.1 to Registration Statement on Form S-3 of the Company (File No. 333-87063), filed September 14, 1999.)
4.7	—	Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on December 17, 1999. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(2) of the Securities Act of 1933 on December 17, 1999.)
4.8	—	Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on March 26, 2004. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(3) of the Securities Act of 1933 on March 26, 2004.)
10.1	—	Amended and Restated Distribution Agreement, dated August 6, 2003, among the Company and the Agents, including Administrative Procedures, relating to the MTNs. (Filed herewith.)

10.2	—	Amended and Restated Limited Partnership Agreement of AvalonBay Value Added Fund, L.P., dated as of March 16, 2005. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed May 6, 2005.)
10.3	—	Term Loan Agreement, dated May 15, 2008, among the Company, as Borrower, JPMorgan Chase Bank, N.A., as Syndication Agent, Sumitomo Mitsui Banking Corporation, Wells Fargo Bank, N.A., and Deutsche Bank Trust Company Americas, each as a Documentation Agent, the other banks signatory thereto, each as a Bank, J.P. Morgan Securities, Inc., as Sole Bookrunner and Lead Arranger, and Bank of America, N.A., as Administrative Agent. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed on May 19, 2008.)
10.4+	—	Endorsement Split Dollar Agreements and Amendments thereto with Messrs. Blair, Naughton, Fuller, Sargeant, Horey and Meyer (Incorporated by reference to Exhibit 10.2 to Form 10-Q of the Company filed May 6, 2005.)
10.5+	—	Form of Amendment to Endorsement Split Dollar Agreement with Messrs. Blair, Naughton, Sargeant, and Horey. (Filed herewith.)
10.6+	—	Employment Agreement, dated as of July 1, 2003, between the Company and Thomas J. Sargeant. (Incorporated by reference to Exhibit 10.1 to Amendment No. 3 to the Company's Registration Statement on Form S-3 (File No. 333-103755), filed July 7, 2003.)
10.7+	—	First Amendment to Employment Agreement between the Company and Thomas J. Sargeant, dated as of March 31, 2005. (Incorporated by reference to Exhibit 10.5 to Form 10-Q of the Company filed May 6, 2005.)
10.8+	—	Form of Second Amendment to Employment Agreements between the Company and Certain Executive Officers. (Incorporated by reference to Exhibit 10.2 to form 8-K of the Company filed on May 22, 2008.)
10.9+	—	Third Amendment to Employment Agreement between the Company and Thomas J. Sargeant, dated as of December 14, 2008. (Filed herewith.)
10.10+	—	Employment Agreement, dated as of January 10, 2003, between the Company and Bryce Blair. (Filed herewith.)
10.11+	—	First Amendment to Employment Agreement between the Company and Bryce Blair, dated as of March 31, 2005. (Incorporated by reference to Exhibit 10.3 to Form 10-Q of the Company filed May 6, 2005.)
10.12+	—	Third Amendment to Employment Agreement between the Company and Bryce Blair, dated as of December 14, 2008. (Filed herewith.)
10.13+	—	Employment Agreement, dated as of February 26, 2001, between the Company and Timothy J. Naughton. (Incorporated by reference to Exhibit 10.8 to Form 10-K of the Company filed March 1, 2007.)
10.14+	—	First Amendment to Employment Agreement between the Company and Timothy J. Naughton, dated as of March 31, 2005. (Incorporated by reference to Exhibit 10.4 to Form 10-Q of the Company filed May 6, 2005.)
10.15+	—	Third Amendment to Employment Agreement between the Company and Timothy J. Naughton, dated as of December 14, 2008. (Filed herewith.)

10.16+	—	Employment Agreement, dated as of September 10, 2001, between the Company and Leo S. Horey. (Incorporated by reference to Exhibit 10.10 to Form 10-K of the Company filed March 1, 2007.)
10.17+	—	First Amendment to Employment Agreement between the Company and Leo S. Horey, dated as of March 31, 2005. (Incorporated by reference to Exhibit 10.6 to Form 10-Q of the Company filed May 6, 2005.)
10.18+	—	Third Amendment to Employment Agreement between the Company and Leo S. Horey, dated as of December 14, 2008.) (Filed herewith.)
10.19+	—	Retirement Agreement, dated as of March 24, 2000, between the Company and Gilbert M. Meyer. (Incorporated by reference to Exhibit 10.15 to Form 10-K of the Company filed March 1, 2007.)
10.20+	—	First Amendment to Retirement Agreement between the Company and Gilbert M. Meyer, dated as of March 31, 2005. (Incorporated by reference to Exhibit 10.8 to Form 10-Q of the Company filed May 6, 2005.)
10.21+	—	AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated in full on December 8, 2004. (Filed herewith.)
10.22+	—	Amendment, dated February 9, 2006, to the AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated on December 8, 2004. (Incorporated by reference to Exhibit 10.32 to Form 10-K of the Company filed March 14, 2006.)
10.23+	—	Amendment, dated December 6, 2006, to the AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated on December 8, 2004. (Incorporated by reference to Exhibit 10.22 1 to Form 10-K of the Company filed March 1, 2007.)
10.24+	—	Amendment, dated September 20, 2007, to the AvalonBay Communities, Inc. 1994 Stock Incentive Plan, as amended and restated on December 8, 2004. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed November 9, 2007.)
10.25+	—	1996 Non-Qualified Employee Stock Purchase Plan, dated June 26, 1997, as amended and restated. (Incorporated by reference to Exhibit 99.1 to Post-effective Amendment No. 1 to Registration Statement on Form S-8 of the Company (File No. 333-16837), filed June 26, 1997.)
10.26+	—	1996 Non-Qualified Employee Stock Purchase Plan — Plan Information Statement dated June 26, 1997. (Incorporated by reference to Exhibit 99.2 to Registration Statement on Form S-8 of the Company (File No. 333-16837), filed November 26, 1996.)
10.27+	—	Form of Indemnity Agreement between the Company and its Directors. (Incorporated by reference to Exhibit 10.1 to Form 10-Q of the Company filed November 9, 2005.)
10.28+	—	The Company's Officer Severance Plan, as amended and restated on November 18, 2008. (Filed herewith.)
10.29+	—	Form of AvalonBay Communities, Inc. Non-Qualified Stock Option Agreement (1994 Stock Incentive Plan, as Amended and Restated). (Incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on February 12, 2008.)

10.30+	—	Form of Addendum to AvalonBay Communities, Inc. Non-Qualified Stock Option Agreement for Certain Officers. (Filed herewith.)
10.31+	—	Form of AvalonBay Communities, Inc. Incentive Stock Option Agreement (1994 Stock Incentive Plan, as Amended and Restated). (Incorporated by reference to Exhibit 10.2 to the Company's Form 8-K filed on February 12, 2008.)
10.32+	—	Form of Addendum to AvalonBay Communities, Inc. Incentive Stock Option Agreement for Certain Officers. (Filed herewith.)
10.33+	—	Form of AvalonBay Communities, Inc. Employee Stock Grant and Restricted Stock Agreement. (Filed herewith.)
10.34+	—	Form of AvalonBay Communities, Inc. Director Restricted Unit Agreement. (Incorporated by reference to Exhibit 10.4 to the Company's Form 10-Q filed on November 9, 2007.)
10.35+	—	Form of AvalonBay Communities, Inc. Director Restricted Stock Agreement. (Incorporated by reference to Exhibit 10.3 to the Company's Form 10-Q filed on November 9, 2007.)
10.36.1	—	Second Amended and Restated Revolving Loan Agreement, dated as of November 14, 2006, among the Company, as Borrower, JPMorgan Chase Bank, N.A., and Wachovia Bank, National Association, each as a Bank and Syndication Agent, Bank of America, N.A., as a Bank, Swing Lender and Issuing Bank, Morgan Stanley Bank, Wells Fargo Bank, National Association, 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 Bank of America, N.A., as Administrative Agent. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed November 17, 2006.)
10.36.2	—	First Amendment to the Second Amended and Restated Revolving Loan Agreement, dated as of November 13, 2007, among the Company, as Borrower, the banks signatory thereto, each as a Bank, and Bank of America, N.A., as Administrative Agent. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed November 16, 2007.)
10.37+	—	Rules and Procedures for Non-Employee Directors' Deferred Compensation Program. (Incorporated by reference to Exhibit 10.33 to Form 10-K of the Company filed March 1, 2007.)
10.38+	—	Amendment to Rules and Procedures for Non-Employee Directors' Deferred Compensation Program adopted December 11, 2008. (Filed herewith.)
10.39+	—	Compensation Arrangements for Directors and Named Executive Officers. (Incorporated by reference to Item 5.02 of the Company's Current Report on Form 8-K filed February 12, 2008.)
10.40+	—	Amendment, effective September 30, 2007, to the Company's quarterly compensation of Non-Employee Directors. (Incorporated by reference to Exhibit 10.2 to the Company's Form 10-Q filed on November 9, 2007.)

10.41+	—	Form of AvalonBay Communities, Inc. 2008 Performance Plan Deferred Stock Award Agreement. (Incorporated by reference to Exhibit 10.1 to Form 8-K of the Company filed on May 22, 2008).
10.42+	—	Amended and Restated AvalonBay Communities, Inc. Deferred Compensation Plan. (Filed herewith.)
12.1	—	Statements re: Computation of Ratios. (Filed herewith.)
21.1	—	Schedule of Subsidiaries of the Company. (Filed herewith.)
23.1	—	Consent of Ernst & Young LLP. (Filed herewith.)
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.)

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

SIGNATURES

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

AvalonBay Communities, Inc.

Date: February 27, 2009

By: /s/ Bryce Blair
Bryce Blair, Chairman of the Board and Chief Executive Officer

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

Date: February 27, 2009

By: /s/ Bryce Blair
Bryce Blair, Director, Chairman of the Board and Chief Executive Officer (Principal Executive Officer)

Date: February 27, 2009

By: /s/ Thomas J. Sargeant
Thomas J. Sargeant, Chief Financial Officer (Principal Financial and Accounting Officer)

Date: February 27, 2009

By: /s/ Bruce A. Choate
Bruce A. Choate, Director

Date: February 27, 2009

By: /s/ John J. Healy, Jr.
John J. Healy, Jr., Director

Date: February 27, 2009

By: /s/ Gilbert M. Meyer
Gilbert M. Meyer, Director

Date: February 27, 2009

By: /s/ Timothy J. Naughton
Timothy J. Naughton, Director

Date: February 27, 2009

By: /s/ Lance R. Primis
Lance R. Primis, Director

Date: February 27, 2009

By: /s/ Peter S. Rummell
Peter S. Rummell, Director

Date: February 27, 2009

By: /s/ H. Jay Sarles
H. Jay Sarles, Director

Date: February 27, 2009

By: /s/ W. Edward Walter
W. Edward Walter, Director

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of
AvalonBay Communities, Inc.:

We have audited the accompanying consolidated balance sheets of AvalonBay Communities, Inc. as of December 31, 2008 and 2007, and the related consolidated statements of operations and other comprehensive income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15(a)(2). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of AvalonBay Communities, Inc. at December 31, 2008 and 2007, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2008 in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects, the information set forth therein.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), AvalonBay Communities, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 25, 2009 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

McLean, Virginia
February 25, 2009

Report of Independent Registered Public Accounting Firm on Internal Control Over Financial Reporting

The Board of Directors and Stockholders of
AvalonBay Communities, Inc.:

We have audited AvalonBay Communities, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). AvalonBay Communities, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting in Item 9a. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

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

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

In our opinion, AvalonBay Communities, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria**.**

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of AvalonBay Communities, Inc. as of December 31, 2008 and 2007, and the related consolidated statements of operations and other comprehensive income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2008 of AvalonBay Communities, Inc. and our report dated February 25, 2009 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

McLean, Virginia
February 25, 2009

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

	12-31-08	12-31-07
ASSETS		
Real estate:		
Land	$ 1,151,456	$ 966,021
Buildings and improvements	5,569,034	4,833,328
Furniture, fixtures and equipment	175,480	151,976
	6,895,970	5,951,325
Less accumulated depreciation	(1,352,744)	(1,158,899)
Net operating real estate	5,543,226	4,792,426
Construction in progress, including land	867,061	946,814
Land held for development	239,456	288,423
Operating real estate assets held for sale, net	—	269,519
Total real estate, net	6,649,743	6,297,182
Cash and cash equivalents	65,706	20,271
Cash in escrow	193,599	188,264
Resident security deposits	29,935	29,240
Investments in unconsolidated real estate entities	55,025	57,990
Deferred financing costs, net	31,374	27,421
Deferred development costs	57,365	60,996
Prepaid expenses and other assets	90,627	55,120
Total assets	$ 7,173,374	$ 6,736,484
LIABILITIES AND STOCKHOLDERS' EQUITY		
Unsecured notes, net	$ 2,002,965	$ 1,893,499
Variable rate unsecured credit facility	124,000	514,500
Mortgage notes payable	1,547,492	750,062
Dividends payable	208,209	67,909
Payables for construction	64,257	91,275
Accrued expenses and other liabilities	227,827	233,326
Accrued interest payable	32,651	38,503
Resident security deposits	40,603	39,938
Liabilities related to real estate assets held for sale	—	57,666
Total liabilities	4,248,004	3,686,678
Minority interest in consolidated ventures	8,974	23,152
Commitments and contingencies	—	—
Stockholders' equity:		
Preferred stock, $0.01 par value; $25 liquidation preference; 50,000,000 shares authorized at both December 31, 2008 and December 31, 2007; zero shares issued and outstanding at December 31, 2008 and 4,000,000 shares issued and outstanding at December 31, 2007	—	40
Common stock, $0.01 par value; 140,000,000 shares authorized at both December 31, 2008 and December 31, 2007; 77,119,963 and 77,318,611 shares issued and outstanding at December 31, 2008 and December 31, 2007, respectively	771	773
Additional paid-in capital	2,940,499	3,026,708
Accumulated earnings less dividends	(21,942)	2,499
Accumulated other comprehensive loss	(2,932)	(3,366)
Total stockholders' equity	2,916,396	3,026,654
Total liabilities and stockholders' equity	$ 7,173,374	$ 6,736,484

See accompanying notes to Consolidated Financial Statements.

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

	For the year ended		
	12-31-08	12-31-07	12-31-06
Revenue:			
Rental and other income	$ 847,640	$ 760,521	$ 671,382
Management, development and other fees	6,568	6,142	6,259
Total revenue	854,208	766,663	677,641
Expenses:			
Operating expenses, excluding property taxes	258,162	231,688	206,059
Property taxes	77,267	70,562	62,651
Interest expense, net	114,878	94,540	106,271
Depreciation expense	194,150	168,324	149,352
General and administrative expense	42,781	28,494	24,767
Impairment loss — land holdings	57,899	—	—
Total expenses	745,137	593,608	549,100
Equity in income of unconsolidated entities	4,566	59,169	7,455
Minority interest income (expense) in consolidated partnerships	741	(1,585)	(573)
Gain on sale of land	—	545	13,519
Income from continuing operations	114,378	231,184	148,942
Discontinued operations:			
Income from discontinued operations	12,208	20,489	20,193
Gain on sale of communities	284,901	106,487	97,411
Total discontinued operations	297,109	126,976	117,604
Net income	411,487	358,160	266,546
Dividends attributable to preferred stock	(10,454)	(8,700)	(8,700)
Net income available to common stockholders	$ 401,033	$ 349,460	$ 257,846
Other comprehensive income:			
Unrealized gain on cash flow hedges	434	213	891
Comprehensive income	$ 401,467	$ 349,673	$ 258,737
Earnings per common share — basic:			
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.35	$ 2.83	$ 1.89
Discontinued operations	3.87	1.61	1.59
Net income available to common stockholders	$ 5.22	$ 4.44	$ 3.48
Earnings per common share — diluted:			
Income from continuing operations (net of dividends attributable to preferred stock)	$ 1.34	$ 2.79	$ 1.86
Discontinued operations	3.83	1.59	1.56
Net income available to common stockholders	$ 5.17	$ 4.38	$ 3.42

See accompanying notes to Consolidated Financial Statements.

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

	Shares issued							
	Preferred stock	Common stock	Preferred stock	Common stock	Additional paid-in capital	Accumulated earnings less dividends	Accumulated other comprehensive loss	Total stockholders' equity
Balance at December 31, 2005	4,000,000	73,663,048	$ 40	$ 737	$ 2,429,568	$ 71,950	$ (4,470)	$ 2,497,825
Net income	—	—	—	—	—	266,546	—	266,546
Unrealized gain on cash flow hedges	—	—	—	—	—	—	891	891
Change in redemption value of minority interest	—	—	—	—	—	(2,593)	—	(2,593)
Dividends declared to common and preferred stockholders	—	—	—	—	—	(241,155)	—	(241,155)
Issuance of common stock	—	1,005,324	—	10	38,839	(1,318)	—	37,531
Amortization of deferred compensation	—	—	—	—	14,109	—	—	14,109
Balance at December 31, 2006	4,000,000	74,668,372	40	747	2,482,516	93,430	(3,579)	2,573,154
Net income	—	—	—	—	—	358,160	—	358,160
Unrealized gain on cash flow hedges	—	—	—	—	—	—	213	213
Change in redemption value of minority interest	—	—	—	—	—	(6,124)	—	(6,124)
Dividends declared to common and preferred stockholders	—	—	—	—	—	(276,823)	—	(276,823)
Issuance of common stock	—	5,130,855	—	51	619,359	(1,741)	—	617,669
Purchase of common stock	—	(2,480,616)	—	(25)	(93,501)	(164,403)	—	(257,929)
Amortization of deferred compensation	—	—	—	—	18,334	—	—	18,334
Balance at December 31, 2007	4,000,000	77,318,611	40	773	3,026,708	2,499	(3,366)	3,026,654
Net income	—	—	—	—	—	411,487	—	411,487
Unrealized gain on cash flow hedges	—	—	—	—	—	—	434	434
Change in redemption value of minority interest	—	—	—	—	—	11,443	—	11,443
Dividends declared to common and preferred stockholders	—	—	—	—	—	(423,118)	—	(423,118)
Issuance of common stock	—	323,085	—	3	5,838	(185)	—	5,656
Purchase of common stock	—	(521,733)	—	(5)	(18,086)	(24,068)	—	(42,159)
Redemption of preferred stock	(4,000,000)	—	(40)	—	(96,425)	—		(96,465)
Amortization of deferred compensation	—	—	—	—	22,464	—	—	22,464
Balance at December 31, 2008	—	77,119,963	$ —	$ 771	$ 2,940,499	$ (21,942)	$ (2,932)	$ 2,916,396

See accompanying notes to Consolidated Financial Statements

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

	For the year ended		
	12-31-08	12-31-07	12-31-06
Cash flows from operating activities:			
Net income	$ 411,487	$ 358,160	$ 266,546
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation expense	194,150	168,324	149,352
Depreciation expense from discontinued operations	5,302	13,401	14,777
Amortization of deferred financing costs and debt premium/discount	6,003	4,934	4,474
Amortization of stock-based compensation	11,888	14,353	10,095
(Income) Loss allocated to minority interest in consolidated partnerships	(741)	1,585	573
Equity in income of unconsolidated entities, net of eliminations	(3,436)	(58,122)	(6,480)
Return on investment of unconsolidated entities	—	130	298
Impairment loss — land holdings	57,899	—	—
Gain on retirement of unsecured notes	(1,950)	—	—
Abandonment of development pursuits	9,428	3,429	—
Gain on sale of real estate assets	(284,901)	(107,032)	(110,930)
Decrease (increase) in cash in operating escrows	3,054	(7,403)	(844)
(Increase) decrease in resident security deposits, prepaid expenses and other assets	(4,902)	8,747	(4,381)
(Decrease) increase in accrued expenses, other liabilities and accrued interest payable	(16,426)	54,368	28,180
Net cash provided by operating activities	386,855	454,874	351,660
Cash flows from investing activities:			
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(881,503)	(1,112,590)	(735,167)
Acquisition of real estate assets, including partner equity interest	—	(13,841)	(74,924)
Capital expenditures — existing real estate assets	(15,534)	(13,851)	(21,289)
Capital expenditures — non-real estate assets	(5,290)	(1,424)	(957)
Proceeds from sale of real estate communities, net of selling costs	529,777	261,089	272,223
(Decrease) increase in payables for construction	(27,018)	32,348	34,542
Decrease in cash in construction escrows	126,611	54,149	19,572
Decrease (increase) in investments in unconsolidated real estate entities	6,648	(15,127)	(5,371)
Net cash used in investing activities	(266,309)	(809,247)	(511,371)
Cash flows from financing activities:			
Issuance of common stock	7,433	621,029	26,551
Repurchase of common stock	(42,159)	(257,929)	—
Redemption of preferred stock	(100,000)	—	—
Dividends paid	(278,795)	(268,966)	(234,958)
Net (repayments) borrowings under unsecured credit facility	(390,500)	514,500	(66,800)
Issuance of mortgage notes payable and draws on construction loans	697,046	59,126	113,849
Repayments of mortgage notes payable	(67,442)	(27,256)	(6,827)
Issuance of unsecured debt	330,000	—	343,743
Repayment of unsecured notes	(219,050)	(260,000)	—
Payment of deferred financing costs	(9,491)	(6,550)	(12,698)
Redemption of units for cash by minority partners	(1,756)	(6,851)	(80)
Contributions from minority and profit-sharing partners	—	1,333	—
Distributions to DownREIT partnership unitholders	(216)	(280)	(392)
Distributions to joint venture and profit-sharing partners	(181)	(1,796)	(108)
Net cash (used in) provided by financing activities	(75,111)	366,360	162,280
Net increase in cash and cash equivalents	45,435	11,987	2,569
Cash and cash equivalents, beginning of year	20,271	8,284	5,715
Cash and cash equivalents, end of year	$ 65,706	$ 20,271	$ 8,284
Cash paid during the period for interest, net of amount capitalized	$ 110,290	$ 98,594	$ 102,640

See accompanying notes to Consolidated Financial Statements.

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

During the year ended December 31, 2008:

- 130,325 shares of common stock valued at $11,646 were issued in connection with stock grants, 5,703 shares valued at $458 were issued through the Company's dividend reinvestment plan, 24,407 shares valued at $1,357 were issued to members of the Board of Directors in fulfillment of deferred stock awards, 39,633 shares valued at $3,483 were withheld to satisfy employees' tax withholding and other liabilities and 1,101 shares valued at $109 were forfeited, for a net value of $9,869. In addition, the Company granted 401,212 options for common stock at a value of $3,976.
- The Company recorded a decrease to other liabilities and a corresponding gain to other comprehensive income of $434 to adjust the Company's Hedging Derivatives (as defined in Note 5, "Derivative Instruments and Hedging Activities") to their fair value.
- The Company issued $135,000 of variable rate debt relating to Avalon Walnut Creek. The proceeds were placed in an escrow account until requisitioned for construction funding and no amounts have been drawn for use in the development of the community.
- Common and preferred dividends declared but not paid totaled $208,209.
- The Company recorded a decrease of $11,443 to minority interest with a corresponding gain to accumulated earnings less dividends to adjust the redemption value associated with the put option held by a joint venture partner. This put option allows our partner to require the Company to purchase their interest in the investment at the future fair market value, payable in cash or, at the Company's option, shares of the Company's common stock. For further discussion of the nature and valuation of the put option, see Note 11, "Fair Value Measurements."

During the year ended December 31, 2007:

- 75,231 shares of common stock valued at $10,971 were issued in connection with stock grants, 2,929 shares valued at $365 were issued through the Company's dividend reinvestment plan, 41,000 shares valued at $4,381 were withheld to satisfy employees' tax withholding and other liabilities and 8,609 shares valued at $231 were forfeited, for a net value of $6,724. In addition, the Company granted 331,356 options for common stock, net of forfeitures, at a value of $7,518.
- 19,231 units of limited partnership, valued at $887, 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 recorded a decrease to other liabilities and a corresponding gain to other comprehensive income of $213 to adjust the Company's Hedging Derivatives to their fair value.
- The Company issued $100,000 of variable rate tax-exempt debt relating to Avalon Morningside Park. The proceeds were placed in an escrow account until requisitioned for construction funding, none of which was drawn for use in the development of the community.
- Common and preferred dividends declared but not paid totaled $67,909.
- The Company recorded an increase of $6,124 to minority interest with a corresponding decrease to accumulated earnings less dividends to adjust the redemption value associated with a put option held by a joint venture partner. This put option allows our partner to require the Company to purchase their interest in the investment at the future fair market value, payable in cash or, at the Company's option, shares of the Company's common stock.

During the year ended December 31, 2006:

- 122,172 shares of common stock valued at $12,568 were issued in connection with stock grants, 2,306 shares valued at $256 were issued through the Company's dividend reinvestment plan, 47,111 shares valued at $3,449 were withheld to satisfy employees' tax withholding and other liabilities and 5,910 shares valued at $193 were forfeited, for a net value of $9,182. In addition, the Company granted 849,769 options for common stock, net of forfeitures, at a value of $9,946.
- 308,345 units of limited partnership, valued at $14,166, 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 issued $187,300 of variable rate, tax-exempt debt, of which $107,451 in proceeds were not received, but placed in an escrow until requisitioned for construction funding.
- The Company recorded a decrease to other liabilities and a corresponding gain to other comprehensive income of $891 to adjust the Company's Hedging Derivatives to their fair value.
- The Company recorded an increase of $2,593 to minority interest with a corresponding decrease to accumulated earnings less dividends to adjust the redemption value associated with a put option held by a joint venture partner. This put option allows our partner to require the Company to purchase their interest in the investment at the future fair market value, payable in cash or, at the Company's option, shares of the Company's common stock.
- Common and preferred dividends declared but not paid totaled $60,417.

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

1. Organization and Significant Accounting Policies

Organization

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

At December 31, 2008, the Company owned or held a direct or indirect ownership interest in 164 operating apartment communities containing 45,728 apartment homes in ten states and the District of Columbia, of which nine communities containing 2,610 apartment homes were 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 4,564 apartment homes when completed. The Company also owned or held a direct or indirect ownership interest in rights to develop an additional 27 communities that, if developed as expected, will contain an estimated 7,304 apartment homes.

Principles of Consolidation

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

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

In each of the partnerships structured as DownREITs, either the Company or one of the Company's wholly owned subsidiaries is the general partner, and there are one or more limited partners whose interest in the partnership is represented by units of limited partnership interest. For each DownREIT partnership, limited partners are entitled to receive an initial distribution of current cash flow before any distribution is made to the general partner. Although the partnership agreements for each of the DownREITs are different, generally the distributions per unit paid to the holders of units of limited partnership interests have approximated the Company's current common stock dividend

per share. The holders of units of limited partnership interests have the right to present all or some of their units for redemption for a cash amount as determined by the applicable partnership agreement and based on the fair value of the Company's common stock. In lieu of cash redemption, the Company may elect to exchange such units for an equal number of shares of the Company's common stock. In 2008, the Company redeemed 44,592 operating units for cash.

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

If there is an event or change in circumstance that indicates a loss in the value of an investment, the Company's policy is to record the loss and reduce the value of the investment to its fair value. A loss in value would be indicated if the Company could not recover the carrying value of the investment or if the investee could not sustain an earnings capacity that would justify the carrying amount of the investment. The Company did not recognize an impairment loss on any of its investments in unconsolidated entities during the years ended December 31, 2008, 2007 or 2006.

Revenue and Gain Recognition

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

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

Real Estate

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

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

Project costs related to the development, construction and redevelopment of real estate projects (including interest and related loan fees, property taxes and other direct costs) are capitalized as a cost of the project. Indirect project costs that relate to several projects are capitalized and allocated to the projects to which they relate. Indirect costs not clearly related to development, construction and redevelopment activity are expensed as incurred. For development, capitalization begins when the Company has determined that development of the future asset is probable and ends when the asset, or a portion of an asset, is delivered and is ready for its intended use. For redevelopment efforts, we capitalize costs either (i) in advance of taking homes out of service when significant renovation of the common area has begun until the redevelopment is completed, or (ii) when an apartment home is taken out of service for redevelopment until the redevelopment is completed and the apartment home is available for a new resident. Rental income and operating costs incurred during the initial lease-up or post-redevelopment lease-up period are recognized as they accrue.

In accordance with SFAS No. 67, "Accounting for Costs and Initial Rental Operations of Real Estate Projects," the Company capitalizes pre-development costs incurred in pursuit of new development opportunities for which the Company currently believes future development is probable ("Development Rights"). Future development of these Development Rights is dependent upon various factors, including zoning and regulatory approval, rental market

conditions, construction costs and the availability of capital. Pre-development costs incurred in the pursuit of Development Rights for which future development is not yet considered probable are expensed as incurred. In addition, if the status of a Development Right changes, making future development by the Company no longer probable, any capitalized pre-development costs are written-off with a charge to expense. The Company expensed costs related to abandoned pursuits, which includes the abandonment or impairment of Development Rights, acquisition pursuits and disposition pursuits, in the amounts of $12,511 in 2008, $6,974 in 2007 and $2,115 in 2006. These costs are included in operating expenses, excluding property taxes on the accompanying Consolidated Statements of Operations and Other Comprehensive Income. Abandoned pursuit costs can vary greatly, and the costs incurred in any given period may be significantly different in future years.

The Company owns 11 land parcels improved with office buildings, industrial space and other commercial ventures occupied by unrelated third parties, four of which are Development Rights. In December 2008, the Company decided to no longer pursue development on seven of these parcels, resulting in the recognition of an impairment loss, as discussed below. For the parcels of land for which the Company does not intend to pursue development, rental revenue from the incidental operations will be recognized as a component of rental and other income. For those land parcels on which the Company intends to pursue development, the Company intends to manage the current improvements until such time as all tenant obligations have been satisfied or eliminated through negotiation, and construction of new apartment communities is ready to begin. As provided under the guidance of SFAS No. 67, the revenue from incidental operations received from the current improvements in excess of any incremental costs are being recorded as a reduction of total capitalized costs of the Development Right and not as part of net income.

In connection with the acquisition of an operating community, the Company performs a valuation, allocating to each asset and liability acquired in such transaction, their estimated fair values at the date of acquisition in accordance with SFAS No. 141, “Business Combinations.” The purchase price allocations to tangible assets, such as land, buildings and improvements, and furniture, fixtures and equipment, are reflected in real estate assets and depreciated over their estimated useful lives. Any purchase price allocation to intangible assets, such as in-place leases, is included in prepaid expenses and other assets on the accompanying Consolidated Balance Sheets and amortized over the average remaining lease term of the acquired leases. The fair value of acquired in-place leases is determined based on the estimated cost to replace such leases, including foregone rents during an assumed re-lease period, as well as the impact on projected cash flow of acquired leases with leased rents above or below current market rents.

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.

It is the Company’s policy to perform a quarterly qualitative analysis to determine if there are changes in circumstances that suggest the carrying value of a long-lived asset may not be recoverable. If there is an event or change in circumstance that indicates an impairment in the value of a real estate asset, the Company compares the current and projected net cash flow from the asset over its remaining useful life, or estimated holding period for those assets expected to be disposed of, on an undiscounted basis, to the Company’s carrying amount of the asset. If the carrying amount is in excess of the estimated projected net cash flows, the Company would recognize an impairment loss equivalent to an amount required to adjust the carrying amount to its estimated fair market value. In the fourth quarter of 2008, the Company concluded that a general deterioration in capital market conditions and the related decline in employment levels do not support the development and construction of certain new apartment communities previously in planning, for which the Company owns the related land parcels. As a result of the conditions discussed above, the Company recognized an impairment loss of $57,899 relating to eight land parcels for which the Company no longer intends to pursue development, as well as a charge for severance and employment related costs associated with the reduction in planned development activity of approximately $3,400 reported as a component of general and administrative expense. The recent economic downturn resulted in there being few or no transactions negotiated in the second half of 2008 upon which to base pricing. The Company therefore looked to a combination of internal models and third-party pricing estimates to determine the fair values for these land parcels at December 31, 2008. Considering the Company’s knowledge of multifamily residential development, the fair values of the land parcels that are zoned for multifamily residential development were generated using an internal model, and the land parcels zoned for other purposes were valued using third party estimates of fair value. For the internally

generated fair values, the Company used a discounted cash flow analysis on the expected cash flows for a multifamily residential rental community.

The Company did not recognize an impairment loss on any of its non-operating assets during the years ended December 31, 2007 or 2006. In addition, the Company did not recognize an impairment loss on any of its operating communities during the years ended December 31, 2008, 2007 or 2006.

Income Taxes

As of December 31, 2008, the Company did not have any unrecognized tax benefits as defined in FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109," ("FIN 48"). We do not believe that there will be any material changes in our unrecognized tax positions over the next 12 months. The Company is subject to examination by the respective taxing authorities for the tax years 2005 through 2007.

The Company elected to be taxed as a REIT under the Code, as amended, for the year ended December 31, 1994 and has not revoked such election. A corporate REIT is a legal entity which holds real estate interests and must meet a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its adjusted taxable income to stockholders. As a REIT, the Company generally will not be subject to corporate level federal income tax on taxable income if it distributes 100% of the taxable income over the time period allowed under the Code to its stockholders. Management believes that all such conditions for the avoidance of income taxes have been met for the periods presented. Accordingly, no provision for federal and state income taxes has been made. If the Company fails to qualify as a REIT in any taxable year, it will be subject to federal income taxes at regular corporate rates (including any applicable alternative minimum tax) and may not be able to qualify as a REIT for four subsequent taxable years. Even if the Company qualifies for taxation as a REIT, the Company may be subject to certain state and local taxes on its income and property, and to federal income and excise taxes on its undistributed taxable income. The Company incurred a charge of $3,200 for federal excise taxes as a component of general and administrative expense in the Consolidated Statement of Operations and Other Comprehensive Income as a result of the excess income attributable to gains on asset sales from the Company's disposition activities during 2008. For further discussion of the real estate disposition activities, see Note 7, "Real Estate Disposition Activities." In addition, taxable income from non-REIT activities performed through taxable REIT subsidiaries is subject to federal, state and local income taxes.

The following reconciles net income available to common stockholders to taxable net income for the years ended December 31, 2008, 2007 and 2006 (unaudited):

	2008 Estimate	2007 Actual	2006 Actual
Net income available to common stockholders	$ 401,033	$ 349,460	$ 257,846
Dividends attributable to preferred stock, not deductible for tax	7,215	8,700	8,700
GAAP gain on sale of communities less than tax gain	70,398	12,245	7,242
Depreciation/Amortization timing differences on real estate	(21,929)	(78,438)	(21,974)
Tax compensation expense less than (in excess of) GAAP	11,479	(24,239)	(26,540)
Impairment loss	53,399	—	—
Other adjustments	3,694	17,186	13,335
Taxable net income	$ 525,289	$ 284,914	$ 238,609

The following summarizes the tax components of the Company's common and preferred dividends declared for the years ended December 31, 2008, 2007 and 2006 (unaudited):

	2008	2007	2006
Ordinary income	16%	35%	48%
15% capital gain	60%	54%	43%
Unrecaptured §1250 gain	24%	11%	9%

Deferred Financing Costs

Deferred financing costs include fees and other expenditures necessary to obtain debt financing and are amortized on a straight-line basis, which approximates the effective interest method, over the shorter of the term of the loan or the related credit enhancement facility, if applicable. Unamortized financing costs are charged to interest expense, net when debt is retired before the maturity date. Accumulated amortization of deferred financing costs was $24,264 at December 31, 2008 and was $19,368 at December 31, 2007.

Cash, Cash Equivalents and Cash in Escrow

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

Interest Rate Contracts

The Company utilizes derivative financial instruments to manage interest rate risk and generally designates these financial instruments as cash flow hedges under the guidance of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. As of December 31, 2008 and December 31, 2007, the Company had approximately $61,298 and $213,108, respectively, in variable rate debt subject to cash flow hedges. Excluding debt on communities classified as held for sale, the Company did not apply hedge accounting for an additional $125,310 in variable rate debt which is subject to interest rate caps as of December 31, 2008. See Note 5, "Derivative Instruments and Hedging Activities," for further discussion of derivative financial instruments.

Comprehensive Income

Comprehensive income, as reflected on the 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 on the Consolidated Statements of Stockholders' Equity, reflects the effective portion of the cumulative changes in the fair value of derivatives in qualifying cash flow hedge relationships.

Earnings per Common Share

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 year ended		
	12-31-08	12-31-07	12-31-06
Basic and diluted shares outstanding			
Weighted average common shares — basic	76,783,515	78,680,043	74,125,795
Weighted average DownREIT units outstanding	59,886	105,859	172,255
Effect of dilutive securities	735,451	1,071,025	1,288,848
Weighted average common shares — diluted	77,578,852	79,856,927	75,586,898
Calculation of Earnings per Share — basic			
Net income available to common stockholders	$ 401,033	$ 349,460	$ 257,846
Weighted average common shares — basic	76,783,515	78,680,043	74,125,795
Earnings per common share — basic	$ 5.22	$ 4.44	$ 3.48
Calculation of Earnings per Share — diluted			
Net income available to common stockholders	$ 401,033	$ 349,460	$ 257,846
Add: Minority interest of DownREIT unitholders in consolidated partnerships, including discontinued operations	216	280	391
Adjusted net income available to common stockholders	$ 401,249	$ 349,740	$ 258,237
Weighted average common shares — diluted	77,578,852	79,856,927	75,586,898
Earnings per common share — diluted	$ 5.17	$ 4.38	$ 3.42

In the fourth quarter of 2008, the Company declared a combined special and regular dividend of $2.70 per share. Shareholders had the option to receive payment of the dividend in cash, shares of common stock, or a combination of cash and shares of common stock, provided that the aggregate cash payable to all stockholders, other than cash payable in lieu of fractional shares, was limited to an amount equal to the regular dividend of $0.8925 per share, multiplied by the number of shares outstanding on the record date. As discussed in Note 15, “Subsequent Events,” the Company issued approximately 2,626,000 shares in payment of the special dividend. The Company concluded that the stock issued for the special dividend did not qualify for accounting treatment as a stock dividend as that term is defined within Accounting Research Bulletin No. 43, “Restatement and Revision of Accounting Research Bulletins” *(*ARB 43), and therefore will not restate the number of shares outstanding or per share results for 2008 or prior year periods. However, in accordance with the provisions of SFAS No. 128, “Earnings per Share” (SFAS 128), the shares issued under the special dividend are considered to be contingently issuable shares. Therefore the Company included approximately 109,000 shares in the calculation of the Earnings per common share - diluted for the year ended December 31, 2008 resulting from the special dividend, and prior year shares outstanding were not adjusted to reflect the impact of the additional shares outstanding pursuant to the special dividend.

In addition, certain options to purchase shares of common stock in the amounts of 1,534,784 and 335,856 were outstanding at December 31, 2008 and 2007, respectively, but were not included in the computation of diluted earnings per share because in applying the treasury stock method under the provisions of SFAS No. 123(R), “Share Based Payments” as discussed below, such options are anti-dilutive.

Stock-Based Compensation

The Company adopted the provisions of SFAS No. 123(R) using the modified prospective transition method on January 1, 2006. The adoption of SFAS No. 123(R) did not have a material impact on the Company’s financial position or results of operations. However, the adoption of SFAS No. 123(R) changed the service period for, and timing of, the recognition of compensation cost related to retirement eligibility, which will generally result in accelerated expense recognition by the Company for its stock-based compensation programs.

Under the provisions of SFAS No. 123(R), the Company is required to estimate the forfeiture of stock options and recognize compensation cost net of the estimated forfeitures. The estimated forfeitures included in compensation cost are adjusted to reflect actual forfeitures at the end of the vesting period. Prior to the adoption of SFAS No. 123(R), option forfeitures were recognized as they occurred. The forfeiture rate at December 31, 2008 was 2.2%. The application of estimated forfeitures did not materially impact compensation expense for the years ended December 31,

2008, 2007 or 2006.

Assets Held for Sale & Discontinued Operations

The Company follows SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS No. 144") which requires that the assets and liabilities of any communities which have been sold, or otherwise qualify as held for sale, be presented separately in the Consolidated Balance Sheets. In addition, the results of operations for those assets that meet the definition of discontinued operations are presented as such in the Company's Consolidated Statements of Operations and Other Comprehensive Income. Held for sale and discontinued operations classifications are provided in both the current and prior periods presented. Real estate assets held for sale are measured at the lower of the carrying amount or the fair value less the cost to sell. Both the real estate assets and corresponding liabilities are presented separately in the accompanying Consolidated Balance Sheets. Subsequent to classification of a community as held for sale, no further depreciation is recorded. For those assets qualifying for classification as discontinued operations, the community specific components of net income presented as discontinued operations include net operating income, minority interest expense, depreciation expense and interest expense, net. For periods prior to the asset qualifying for discontinued operations under SFAS No. 144, the Company reclassified the results of operations to discontinued operations in accordance with SFAS No. 144. In addition, the net gain or loss (including any impairment loss) on the eventual disposal of communities held for sale will be presented as discontinued operations when recognized. A change in presentation for held for sale or discontinued operations will not have any impact on the Company's financial condition or results of operations. The Company combines the operating, investing and financing portions of cash flows attributable to discontinued operations with the respective cash flows from continuing operations on the accompanying Consolidated Statements of Cash Flows. The Company did not have any assets that qualified for held for sale presentation at December 31, 2008.

Use of Estimates

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

Reclassifications

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

Recently Issued Accounting Standards

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," which standardizes the definition of fair value, establishes a framework for measuring fair value and expands disclosures about fair value measurements. SFAS No. 157 applies under other accounting pronouncements that require or permit fair value measurements, and accordingly, this statement does not require any new fair value measurements. SFAS No. 157 is effective for all fiscal years beginning after November 15, 2007. The FASB issued FASB Staff Position ("FSP") SFAS No. 157-2, "Effective Date of FASB Statement No. 157 (FSP 157-2)," which allowed for the delay of the application of SFAS No. 157 for non-financial assets until fiscal years beginning after November 15, 2008. In accordance with this FSP, the Company elected to defer applying the provisions of SFAS No. 157 for non-financial instruments until January 2009. The Company does not believe the adoption of SFAS No. 157 will have a material impact on its financial position on results of operations.

In December 2007, the FASB issued Statement No. 141(R), "Business Combinations." This statement changes the accounting for acquisitions, specifically eliminating the step acquisition model, changing the recognition of contingent consideration from being recognized when it is probable to being recognized at the time of acquisition, disallowing the capitalization of transaction costs and delays when restructurings related to acquisitions can be recognized. The Company will adopt this standard beginning January 1, 2009 and will apply the accounting to acquisitions subsequent to adoption.

In December 2007, the FASB issued Statement No. 160, "Accounting and Reporting of Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51." Under this statement, noncontrolling interests are considered equity and thus the practice of reporting minority interests in the mezzanine section of the Consolidated Balance Sheets will be eliminated. Also, under the new standard, net income will encompass the total income of all consolidated subsidiaries and there will be separate disclosure on the face of the Consolidated Statement of Operations and Other Comprehensive Income of the attribution of that income between controlling and noncontrolling interests. Finally, increases and decreases in noncontrolling interests will be treated as equity transactions. The Company will adopt this standard on a prospective basis as of January 1, 2009, with the presentation and disclosure requirements applied to all periods presented on a retrospective basis.

In March 2008, the FASB issued FASB Statement No. 161, "Disclosures about Derivative Instruments and Hedging Activities (an amendment of FASB Statement No. 133)." This statement require entities to provide greater transparency about how and why an entity uses derivative instruments, how derivative instruments and related hedged items are accounted for under SFAS No. 133 and its related interpretations, and how derivative instruments and related hedged items affect an entity's financial positions, results of operations, and cash flows. SFAS No. 161 is effective for fiscal years beginning after November 15, 2008. The Company will adopt the expanded disclosure requirements of this standard effective January 1, 2009.

In June 2008, the FASB issued FSP EITF 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions are Participating Securities." In this FSP, the FASB concluded that all outstanding unvested share-based payment awards that contain rights to non-forfeitable dividends or dividend equivalents participate in undistributed earnings with common shareholders and, accordingly, are considered participating securities that shall be included in the two-class method of computing basic and diluted EPS. The FSP does not address awards that contain rights to forfeitable dividends. The FSP is effective for the Company's fiscal year beginning January 1, 2009, with early adoption prohibited. The Company does not believe the provisions of FSP EITF 03-6-1 will have a material impact on its financial position or results of operations.

In November 2008, the FASB ratified the consensus of Emerging Issues Task Force on Issue 08-6, "Equity Method Investment Accounting Considerations" ("EITF No. 08-6"). EITF No. 08-6 addresses the impact of SFAS 141(R) and SFAS 160 on accounting for equity method investments. The Task Force reached a consensus that the initial carrying value of an equity method investment should be determined by applying the cost accumulation model set forth in SFAS 141(R) and that an entity should use the other-than-temporary impairment model of APB 18 when testing an equity method investment for impairment. Further, share issuances by an investee should be accounted for as if the equity method investor had sold a proportionate share of its investment and recognize any gain or loss in earnings. Finally, when an investment no longer is within the scope of equity method accounting, the current carrying amount of the investment should be its initial cost and the investor should prospectively apply the provisions of APB 18 or SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities" in applying cost method or other appropriate accounting. EITF 08-6 is effective for fiscal years beginning on or after December 15, 2008, with early adoption prohibited. The Company does not believe that the provisions of EITF 08-6 will have a material impact on its financial position or results of operations.

In December 2008, the FASB issued FSP No. FAS 140-4 and FIN 46(R)-8, "Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities." Under this FSP, entities are required to provide additional disclosures about transfers of financial assets and their involvement with variable interest entities ("VIEs"), including qualifying special purpose entities. The additional disclosures related to VIEs include the method for determining whether an enterprise is the primary beneficiary of a VIE, including significant judgments and assumptions made, and whether the consolidation conclusion has changed in the most recent financial statements. It also requires disclosure of the details of any financial or other support provided to a VIE that the enterprise was not previously contractually required to provide, as well as the primary reasons for providing such support. Finally, the primary beneficiary of a VIE is required to disclose the terms of any arrangements that could require the enterprise to provide future support to the VIE. This FSP is effective for the first reporting period ending after December 15, 2008. The Company has included the required disclosures in this Form 10-K.

2. Interest Capitalized

The Company capitalizes interest during the development and redevelopment of real estate assets in accordance with

SFAS No. 34, "Capitalization of Interest Cost." Capitalized interest associated with communities under development or redevelopment totaled $74,621 for 2008, $73,118 for 2007 and $46,388 for 2006.

3. Notes Payable, Unsecured Notes and Credit Facility

The Company's mortgage notes payable, unsecured notes and variable rate unsecured credit facility as of December 31, 2008 and December 31, 2007 are summarized below. The following amounts and discussion do not include the mortgage notes related to the communities classified as held for sale, if any, as of December 31, 2008 and 2007, as shown in the Consolidated Balance Sheets (see Note 7, "Real Estate Disposition Activities").

	12-31-08	12-31-07
Fixed rate unsecured notes (1)	$ 1,672,965	$ 1,893,499
Variable rate unsecured notes	330,000	—
Fixed rate mortgage notes payable — conventional and tax-exempt	901,181	224,299
Variable rate mortgage notes payable — conventional and tax-exempt	646,311	525,763
Total notes payable and unsecured notes	3,550,457	2,643,561
Variable rate unsecured credit facility	124,000	514,500
Total mortgage notes payable, unsecured notes and unsecured credit facility	$ 3,674,457	$ 3,158,061

(1) Balances at December 31, 2008 and December 31, 2007 include $2,035 and $2,501 of debt discount, respectively.

The following debt activity occurred during the year ended December 31, 2008:

- the Company repaid $50,000 in previously issued 6.625% unsecured notes, along with any unpaid interest, pursuant to their scheduled maturity;
- the Company repurchased $10,000 principal amount of its $150,000, 7.5% unsecured notes, due August 2009 for $10,288 with the premium above par recorded as a charge to earnings;
- the Company repaid the 6.95% loan in the amount of $11,522 secured by Avalon Knoll located in Gaithersburg, Maryland, and a variable-rate loan secured by Avalon at Fairway Hills in Columbia, Maryland in the amount of $11,500 early at par. The loans for Avalon Knoll and Avalon at Fairway Hills had contractual maturities of June 2026;
- the Company repaid $146,000 of unsecured notes with an annual interest rate of 8.25% pursuant to their scheduled maturity;
- the Company repaid the $4,368, 6.99% loan secured by a development right in Wheaton, Maryland pursuant to its scheduled maturity;
- the Company repurchased $15,000 of its $250,000, 5.5% unsecured notes due January 2012 for $13,050 with the discount below par recorded as a gain;
- the Company executed two separate five-year, interest only mortgage loans for aggregate borrowings of approximately $264,697 at a weighted average effective interest rate of approximately 4.78%. One mortgage loan for approximately $170,125 is secured by Avalon at Arlington Square, located in Arlington, Virginia. The second mortgage loan, for approximately $94,572 is secured by Avalon at Cameron Court, located in Alexandria, Virginia;
- the Company executed two separate seven-year, interest only mortgage loans for aggregate borrowings of approximately $260,600 at a weighted average effective interest rate of approximately 5.58%. One mortgage loan for approximately $110,600 is secured by Avalon Crescent, located in McLean, Virginia. The second mortgage loan, for approximately $150,000 is secured by Avalon Silicon Valley, located in Sunnyvale, California;
- the Company entered into a $330,000 variable rate, unsecured term loan comprised of three tranches, each representing approximately one third of the borrowing, bearing interest at LIBOR plus a spread of 1.25%. One tranche matures in each of the next three years, with the final tranche maturing in January 2011;
- the Company closed variable-rate bond financing relating to Avalon Walnut Creek in the aggregate amount of $135,000, of which $126,000 is tax-exempt. In addition, the Company also closed a 4.0% fixed rate construction loan for $2,500 related to Avalon Walnut Creek;
- the Company executed three fixed rate mortgage loans for an aggregate borrowing of $169,249 with a weighted average interest rate of 6.0% of which $55,100 is secured by Avalon Commons, located in

Smithtown, New York, $51,749 is secured by Avalon Darien, located in Darien, Connecticut and $62,400 is secured by Avalon at Greyrock Place, located in Stamford, Connecticut; and

- the Company used a portion of the net proceeds from these borrowings to reduce the amounts outstanding under its unsecured credit facility to $124,000.

In the aggregate, secured notes payable mature at various dates from April 2009 through July 2066, and are secured by certain apartment communities and improved land parcels (with a net carrying value of $1,567,783 as of December 31, 2008). As of December 31, 2008, the Company has guaranteed approximately $390,171 of mortgage notes payable held by wholly owned subsidiaries; all such mortgage notes payable are consolidated for financial reporting purposes. The weighted average interest rate of the Company's fixed rate mortgage notes payable (conventional and tax-exempt) was 5.7% and 6.5% at December 31, 2008 and December 31, 2007, respectively. The weighted average interest rate of the Company's variable rate mortgage notes payable, unsecured term loan and its unsecured credit facility, including the effect of certain financing related fees, was 2.9% at December 31, 2008 and 5.4% at December 31, 2007.

Scheduled payments and maturities of mortgage notes payable and unsecured notes outstanding at December 31, 2008 are as follows:

Year	Secured notes payments (1)	Secured notes maturities	Unsecured notes maturities	Stated interest rate of unsecured notes (2)
2009	$ 5,108	$ 58,855	$ 140,000	7.500%
			105,600	3.720%
2010	4,626	29,388	200,000	7.500%
			112,200	3.720%
2011	3,425	36,594	300,000	6.625%
			50,000	6.625%
			112,200	3.720%
2012	2,181	27,156	250,000	6.125%
			235,000	5.500%
2013	2,323	319,797	100,000	4.950%
2014	2,475	33,100	150,000	5.375%
2015	2,637	374,749	—	—
2016	2,806	—	250,000	5.750%
2017	2,989	18,300	—	—
2018	3,185	—	—	—
Thereafter	369,114	248,684	—	—
	$ 400,869	$ 1,146,623	$ 2,005,000	

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

(2) The stated interest rate for variable-rate unsecured notes is the rate as of December 31, 2008.

The Company's unsecured notes are redeemable at our option, in whole or in part, at a redemption price equal to the greater of (i) 100% of their principal amount or (ii) the sum of the present value of the remaining scheduled payments of principal and interest discounted at a rate equal to the yield on U.S. Treasury securities with a comparable maturity plus a spread of 25 basis points, plus accrued and unpaid interest to the redemption date. The indenture under which the Company's unsecured notes were issued contains restrictions on incurring debt and using our assets as security in other financing transactions and other customary financial and other covenants, with which the Company was in compliance at December 31, 2008.

The Company has a variable rate unsecured credit facility (the "Credit Facility") in the amount of $1,000,000 with a syndicate of commercial banks, to whom the Company pays, in the aggregate, an annual facility fee of approximately $1,250. The Company had $124,000 outstanding under the Credit Facility and $45,976 outstanding in letters of credit as of December 31, 2008. At December 31, 2007, there was $514,500 outstanding under the Credit Facility and $61,689 outstanding in letters of credit. The Credit Facility bears interest at varying levels based on the London Interbank Offered Rate ("LIBOR"), rating levels achieved on the Company's unsecured notes and on a maturity schedule selected by the Company. The current stated pricing is LIBOR plus 0.40% per annum (0.84% at December 31, 2008). The stated spread over LIBOR can vary from LIBOR plus 0.325% to LIBOR plus 1.00% based on the Company's credit ratings. In addition, the Credit Facility includes a competitive bid option, which allows banks that are part of the lender consortium to bid to make loans to the Company at a rate that is lower than the stated rate provided by the Credit Facility for up to $422,500. The competitive bid option may result in lower pricing than the stated rate if market conditions allow. The Company did not have any amounts outstanding under this competitive bid option as of December 31, 2008. The Credit Facility matures in November 2011, assuming exercise of a one-year renewal option by the Company.

The Company was in compliance at December 31, 2008 with certain customary financial and other covenants under the Credit Facility, the $330,000 variable rate unsecured term loan and the Company's unsecured notes.

4. Stockholders' Equity

As of December 31, 2008 and 2007, the Company had authorized for issuance 140,000,000 and 50,000,000 shares of common and preferred stock, respectively. In October 2008, the Company redeemed all 4,000,000 outstanding shares of its Series H Cumulative Redeemable Preferred Stock, including accrued but unpaid dividends, for $100,701. As of December 31, 2007, the Company had 4,000,000 shares of Series H redeemable preferred stock outstanding at a stated liquidation preference of $100,000.

During the year ended December 31, 2008, the Company:

(i) issued 155,291 shares of common stock in connection with stock options exercised;

(ii) recognized 24,407 common shares granted to members of the Board of Directors in fulfillment of deferred stock awards;

(iii) issued 5,703 common shares through the Company's dividend reinvestment plan;

(iv) issued 130,325 common shares in connection with stock grants;

(v) issued 8,460 common shares through the Company's employee stock purchase plan;

(vi) withheld 39,633 common shares to satisfy employees' tax withholding and other liabilities;

(vii) purchased 482,100 common shares through the Company's stock repurchase program;

(viii) had 1,101 shares of restricted common stock forfeited; and

(ix) redeemed all 4,000,000 shares of outstanding preferred stock.

In addition, the Company granted 401,212 options for common stock to employees. As required under SFAS No. 123(R), any deferred compensation related to the Company's stock option and restricted stock grants during 2008 is not reflected on the Company's Consolidated Balance Sheet as of December 31, 2008, and will not be reflected until earned as compensation cost.

Dividends per common share were $5.3775 for the year ended December 31, 2008, which included a special dividend declared in December 2008, of $1.8075 per share (the "Special Dividend") in conjunction with the fourth quarter 2008 regular dividend of $0.8925 per share. The Special Dividend was declared to distribute a portion of the excess income attributable to gains on asset sales from the Company's disposition activities during 2008, as discussed in Note 7, "Real Estate Disposition Activities," which resulted in aggregate gains recognized for federal income tax purposes of $355,000. The Special Dividend is intended to qualify for the dividends paid deduction for tax purposes and minimize corporate level income taxes for 2008 and reduce federal excise taxes.

Stockholders had the option to receive payment of the Special Dividend and regular dividend (collectively the "Combined Dividend") in the form of cash, shares of common stock or a combination of cash and shares of common stock, provided that the aggregate amount of cash payable to all stockholders (other than cash payable in lieu of

fractional shares) was limited to an amount equal to the regular dividend of $0.8925 per share multiplied by the number of shares outstanding at the record date.

Dividends per common share were $3.40 for the year ended December 31, 2007 and $3.12 for the year ended December 31, 2006. The average dividend for preferred shares was $1.81 for the year ended December 31, 2008. The average dividend for all non-redeemed preferred shares during the years ended December 31, 2007 and 2006 was $2.18 per share.

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

In February 2008, the Company announced that its Board of Directors increased the Company's common stock repurchase program for purchases of shares of its common stock in open market or negotiated transactions to $500,000. During the year ended December 31, 2008, the Company repurchased 482,100 shares at an average price of $87.42 per share through this program, bringing the total amount of common stock purchased under the program to approximately $300,000.

5. Derivative Instruments and Hedging Activities

The Company enters into interest rate swap and interest rate cap agreements (collectively, the "Hedging Derivatives") to reduce the impact of interest rate fluctuations on its variable rate, tax-exempt bonds and its variable rate conventional secured debt (collectively, the "Hedged Debt"). The Company has not entered into any interest rate hedge agreements for its conventional unsecured debt and does not enter into derivative transactions for trading or other speculative purposes. The following table summarizes the consolidated Hedging Derivatives at December 31, 2008, excluding derivatives executed to hedge debt on communities classified as held for sale (dollars in thousands):

	Interest Rate Caps	Interest Rate Swaps
Notional balance	$188,885	$44,937
Weighted average interest rate [1]	3.6%	6.5%
Weighted average capped interest rate	7.2%	n/a
Earliest maturity date	May-09	Jun-10
Latest maturity date	Mar-14	Jun-10
Estimated fair value, asset/(liability)	$ 116	$ (2,561)

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

Excluding derivatives executed to hedge debt on communities classified as held for sale, the Company had three derivatives designated as cash flow hedges and seven derivatives not designated as hedges at December 31, 2008. For the derivative positions that the Company has determined qualify as effective cash flow hedges under SFAS No. 133, the Company has recorded the effective portion of cumulative changes in the fair value of the Hedging Derivatives in other comprehensive income. Amounts recorded in other comprehensive income will be reclassified into earnings in the periods in which earnings are affected by the hedged cash flow. To adjust the Hedging Derivatives to their fair value and recognize the impact of hedge accounting, the Company recorded an increase in other comprehensive income of $434, $213 and $891 during the years ended December 31, 2008, 2007 and 2006, respectively. Amounts in other comprehensive income will be reclassified into earnings in conjunction with the periodic adjustment of the floating rates on the Hedged Debt, in interest expense, net. The amount reclassified into earnings in 2008, as well as the estimated amount included in accumulated other comprehensive income as of December 31, 2008, expected to be reclassified into earnings within the next twelve months to offset the variability of cash flows of the hedged items during this period are not material.

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

accompanying Consolidated Balance Sheets.

Derivative financial instruments expose the Company to credit risk in the event of nonperformance by the counterparties under the terms of the Hedging Derivatives. The Company minimizes its credit risk on these transactions by dealing with major, creditworthy financial institutions which have an A+ or better credit rating by the Standard & Poor's Ratings Group. As part of its on-going control procedures, the Company monitors the credit ratings of counterparties and the exposure of the Company to any single entity, thus minimizing credit risk concentration. The Company believes the likelihood of realizing losses from counterparty non-performance is remote. Consistent with the provisions of SFAS No. 157, the Company incorporates credit valuation adjustments to appropriately reflect both its own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements of its derivative financial instruments. Refer to Note 13, "Fair Value Measurements," for further discussion of fair value measurements under SFAS No. 157.

6. Investments in Real Estate Entities

Investments in Unconsolidated Real Estate Entities

The Company accounts for its investments in unconsolidated real estate entities in accordance with the literature as discussed in Note 1, "Organization and Significant Accounting Policies," under *Principles of Consolidation*.

As of December 31, 2008, the Company had investments in the following real estate entities:

- *Arna Valley View LP —* In connection with the municipal approval process for the development of a consolidated community, the Company agreed to participate in the formation of a limited partnership in February 1999 to develop, finance, own and operate Arna Valley View, a 101 apartment-home community located in Arlington, Virginia. This community has affordable rents for 100% of apartment homes related to the tax-exempt bond financing and tax credits used to finance construction of the community. A subsidiary of the Company is the general partner of the partnership with a 0.01% ownership interest. The Company is responsible for the day-to-day operations of the community and is the management agent subject to the terms of a management agreement. As of December 31, 2008, Arna Valley View has $5,520 of variable rate, tax-exempt bonds outstanding, which mature in June 2032. In addition, Arna Valley View has $5,121 of 4% fixed rate county bonds outstanding that mature in December 2030. Arna Valley View's debt is neither guaranteed by, nor recourse to the Company. Due to the Company's limited ownership in this venture and the terms of the management agreement regarding the rights of the limited partners, it is accounted for using the cost method.
- *CVP I, LLC —* In February 2004, the Company entered into a joint venture agreement with an unrelated third-party for the development of Avalon Chrystie Place, a 361 apartment-home community located in New York, New York, for which construction was completed in late 2005. The Company has contributed $6,270 to this joint venture and holds a 20% equity interest (with a right to 50% of distributions after achievement of a threshold return, which was achieved in 2008). The Company is the managing member of CVP I, LLC, however, property management services at the community are performed by an unrelated third party.

  As of December 31, 2008, CVP I, LLC has tax-exempt variable rate bonds in the amount of $117,000 outstanding, which have a permanent credit enhancement and mature in February 2036. The Company has guaranteed, under limited circumstance, the repayment to the credit enhancer of any advance in fulfillment of CVP I LLC's repayment obligations under the bonds. The Company has also guaranteed the credit enhancer that CVP I, LLC will obtain a final certificate of occupancy for the project overall once tenant improvements related to a retail tenant are complete, which is expected in 2009. The Company's maximum obligation under this guarantee at December 31, 2008 was $117,000. The Company's 80% partner in this venture has agreed that it will reimburse the Company its pro rata share of any amounts paid relative to these guaranteed obligations. The Company does not currently expect to incur any liability under either of these guarantees. The estimated fair value of, and the Company's obligation under these guarantees, both at inception and as of December 31, 2008 were not significant. As a result, the Company has not recorded any

obligation associated with these guarantees at December 31, 2008. This community is unconsolidated for financial reporting purposes and is accounted for under the equity method.

In addition, the Company and the joint venture that owns Avalon Chrystie Place, in which it has an interest, are defendants in a matter related to FHA accessibility. See discussion in Note 8, "Commitments and Contingencies."

- *Avalon Del Rey Apartments, LLC* — In March 2004, the Company entered into an agreement with an unrelated third party which provided that, upon construction completion, Avalon Del Rey would be owned and operated by a joint venture between the Company and the third party. Avalon Del Rey is a 309 apartment-home community located in Los Angeles, California that was developed by the Company, with construction completed during the third quarter of 2006. During the fourth quarter of 2006, the third-party venture partner invested $49,000 and was granted a 70% ownership interest in the venture, with the Company retaining a 30% equity interest. The Company continues to be responsible for the day-to-day operations of the community and is the management agent subject to the terms of a management agreement. Avalon Del Rey Apartments, LLC has a variable rate $50,000 secured construction loan, of which $40,763 is outstanding as of December 31, 2008 and which matures in September 2009, subject to the exercise of an additional one-year extension option. In conjunction with the construction management services that the Company provided to Avalon Del Rey Apartments, LLC, the Company has provided a construction completion guarantee to the construction loan lender in order to fulfill their standard financing requirements related to construction financing. Although the obligation of the Company under this guarantee exists at December 31, 2008, the Company does not have any potential liability at December 31, 2008, as construction has been completed. This guarantee will terminate at the time that Avalon Del Rey Apartments LLC refinances the note.

  In conjunction with the admittance of the joint venture partner to the LLC, the Company provided the third-party investor an operating guarantee. This guarantee, which extended for one year, provided that if the one-year return for the initial year of the joint venture partner's investment was less than a threshold return of 7% on its initial equity investment, that the Company would pay the joint venture partner an amount equal to the shortfall, up to the 7% threshold return required. Over the guarantee period, the cash flows and return on investment for Avalon Del Rey exceeded the initial year threshold return required by our joint venture partner, satisfying all obligations of the Company under this guarantee.

  Concurrent with the satisfaction of the operating guarantee in the fourth quarter of 2007, the Company recognized the sale of a 70% ownership interest in the entity that owns Avalon Del Rey, reporting a gain of $3,607 as a component of equity in income of unconsolidated entities on the Consolidated Statements of Operations and Other Comprehensive Income. Therefore, in the fourth quarter of 2007, the Company began to account for its investment in the joint venture under the equity method of accounting.

- *Juanita Construction, Inc.* — In April 2004, a taxable REIT subsidiary of the Company entered into an agreement to develop Avalon at Juanita Village, a 211 apartment-home community located in Kirkland, Washington, for which construction was completed in late 2005. Avalon at Juanita Village was developed through Juanita Construction, Inc., a wholly owned taxable REIT subsidiary and was sold to a joint venture in the first quarter of 2006, at which point, the subsidiary was reimbursed for all the costs of construction and retained a promoted interest in the residual profits of the joint venture. The third-party joint venture partner received a 100% equity interest in the joint venture and will control the joint venture. The Company was engaged to manage the community for a property management fee. This community is unconsolidated for financial reporting purposes effective with the sale to the joint venture.

- *Aria at Hathorne LLC* — In the second quarter of 2007, a wholly owned taxable REIT subsidiary of the Company entered into an LLC agreement with a joint venture partner to develop 64 for-sale town homes with a total capital cost of $23,621 in Danvers, Massachusetts. The homes will be developed between 2008 and 2010 on an out parcel adjacent to our Avalon Danvers rental apartment community. The out parcel was zoned for for-sale activity, and was contributed to the LLC by the subsidiary of the Company in exchange for a 50% ownership interest. The LLC has $1,868 outstanding on a variable rate $5,400 secured construction loan and $2,608 outstanding on a $3,200 variable rate development loan as of December 31,

2008. The Company's joint venture partner has provided a payment and completion guarantee to both the acquisition and development and the construction loan lender. In addition, the LLC has a short-term note for $263 that is expected to be repaid in 2009. The Company accounts for this investment under the equity method.

- *MVP I, LLC* — In December 2004, the Company entered into a joint venture agreement with an unrelated third-party for the development of Avalon at Mission Bay North II. Construction for Avalon at Mission Bay North II, a 313 apartment-home community located in San Francisco, California, was completed in December 2006. The Company has contributed $5,902 to this venture and holds a 25% equity interest. The Company is responsible for the day-to-day operations of the community and is the management agent subject to the terms of a management agreement. In December 2007, MVP I, LLC executed a seven-year, fixed rate conventional loan. The Company has guaranteed, under limited circumstance, the repayment to the credit enhancer of any advance in fulfillment of MVP I, LLC's repayment obligations under the bonds. The Company's 75% partner in this venture has agreed that it will reimburse the Company its pro rata share of any amounts paid relative to this guarantee obligation. The Company does not currently expect to incur any liability under this guarantee. The estimated fair value of, and the Company's obligation under this guarantee, both at inception and as of December 31, 2008 was not significant. As a result, the Company has not recorded any obligation associated with this guarantee at December 31, 2008. This community is unconsolidated for financial reporting purposes and is accounted for under the equity method.

- *AvalonBay Value Added Fund, LP (the "Fund")* — In March 2005, the Company admitted outside investors into the Fund, a private, discretionary investment vehicle, which acquired and operates communities in the Company's markets. The Fund served as the principal vehicle through which the Company acquired investments in apartment communities, subject to certain exceptions until March 2008. The Fund has nine institutional investors, including the Company, and a combined equity capital commitment of $330,000. A significant portion of the investments made in the Fund by its investors were made through AvalonBay Value Added Fund, Inc., a Maryland corporation that qualifies as a REIT under the Internal Revenue Code (the "Fund REIT"). A wholly owned subsidiary of the Company is the general partner of the Fund and has committed $50,000 to the Fund and the Fund REIT, representing a 15.2% combined general partner and limited partner equity interest. At December 31, 2008, the Fund was fully invested. The Company receives asset management fees, property management fees and redevelopment fees, as well as a promoted interest if certain thresholds are met (which were not achieved in 2008).

  As of December 31, 2008, the Fund owns the following 19 communities, subject to certain mortgage debt. In addition, as of December 31, 2008, the Fund has $3,000 outstanding under its variable rate credit facility, which matures in December 2009. The Company has not guaranteed any of the Fund debt, nor does it have any obligation to fund this debt should the Fund be unable to do so.

Community Name	Location	# of apt homes	Outstanding Debt			
			Amount	Type	Interest Rate	Maturity Date
Avalon at Redondo Beach	Los Angeles, CA	105	$21,033	Fixed	4.87%	Oct 2011
Avalon Lakeside	Chicago, IL	204	12,056	Fixed	5.74%	Mar 2012
Avalon Columbia	Baltimore, MD	170	22,275	Fixed	5.48%	Apr 2012
Avalon Sunset	Los Angeles, CA	82	12,750	Fixed	5.41%	Feb 2014
Avalon at Poplar Creek	Chicago, IL	196	16,500	Fixed	4.83%	Oct 2012
Avalon at Civic Center	Norwalk, CA	192	27,001	Fixed	5.38%	Aug 2013
Avalon Paseo Place	Fremont, CA	134	11,800	Fixed	5.74%	Nov 2013
Avalon at Yerba Buena	San Francisco, CA	160	41,500	Fixed	5.88%	Mar 2014
Avalon at Aberdeen Station	Aberdeen, NJ	290	39,842	Fixed	5.64%	Sep 2013
The Springs	Corona, CA	320	26,000	Fixed	6.06%	Oct 2014
The Covington	Lombard, IL	256	17,243	Fixed	5.43%	Jan 2014
Avalon Cedar Place	Columbia, MD	156	12,000	Fixed	5.68%	Feb 2014
Avalon Centerpoint	Baltimore, MD	392	45,000	Fixed	5.74%	Dec 2013
Middlesex Crossing	Billerica, MA	252	24,100	Fixed	5.49%	Dec 2013
Avalon Crystal Hill	Ponoma, NY	168	24,500	Fixed	5.43%	Dec 2013
Skyway Terrace	San Jose, CA	348	37,500	Fixed	6.11%	Mar 2014
Avalon Rutherford Station	East Rutherford, NJ	108	20,382	Fixed	6.13%	Sep 2016
South Hills Apartments	West Covina, CA	85	11,761	Fixed	5.92%	Dec 2013
Colonial Towers/South Shore Manor	Weymouth, MA	211	13,455	Fixed	5.12%	Mar 2015

In addition, as part of the formation of the Fund, the Company provided a guarantee to one of the limited partners. The guarantee provides that, if, upon final liquidation of the Fund, the total amount of all distributions to that partner during the life of the Fund (whether from operating cash flow or property sales) does not equal the total capital contributions made by that partner, then the Company will pay the partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner (maximum of approximately $7,192 as of December 31, 2008). As of December 31, 2008, the expected realizable value of the real estate assets owned by the Fund is considered adequate to cover such potential payment under the expected Fund liquidation scenario. The estimated fair value of and the Company's obligation under this guarantee, both at inception and as of December 31, 2008 was not significant and therefore the Company has not recorded any obligation for this guarantee as of December 31, 2008.

In June 2008, the Fund sold Avalon Redmond, located in Redmond, WA. Avalon Redmond contains 400 apartment homes and was sold for a sales price of $81,250 resulting in a gain in accordance with GAAP of $25,417. The Company's share of the gain in accordance with GAAP was approximately $3,483 reported as a component of equity in income of unconsolidated entities on the Consolidated Statements of Operations and Other Comprehensive Income.

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

	12-31-08 (unaudited)	12-31-07 (unaudited)
Assets:		
Real estate, net	$ 995,680	$ 997,319
Other assets	12,869	31,772
Total assets	$ 1,008,549	$ 1,029,091
Liabilities and partners' capital:		
Mortgage notes payable and credit facility	$ 705,332	$ 719,310
Other liabilities	18,063	20,494
Partners' capital	285,154	289,287
Total liabilities and partners' capital	$ 1,008,549	$ 1,029,091

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

	For the year ended		
	12-31-08 (unaudited)	12-31-07 (unaudited)	12-31-06 (unaudited)
Rental and other income	$ 105,421	$ 92,078	$ 67,207
Operating and other expenses	(43,992)	(39,952)	(30,913)
Gain on sale of communities	25,417	—	26,661
Interest expense, net	(38,478)	(40,791)	(23,545)
Depreciation expense	(31,152)	(26,622)	(18,054)
Net income (loss)	$ 17,216	$ (15,287)	$ 21,356

In conjunction with the acquisition and development of the investments in unconsolidated entities, the Company incurred costs in excess of its equity in the underlying net assets of the respective investments. These costs represent $4,817 at December 31, 2008 and $5,375 at December 31, 2007 of the respective investment balances.

In October 2007, the Company completed the sale of its partnership interest in Avalon Grove to its third—party venture partner for $63,446 with a gain in accordance with GAAP of $56,320 reported as a component of equity in income of unconsolidated entities on the Consolidated Statements of Operations and Other Comprehensive Income. Avalon Grove, located in the Fairfield-New Haven market of Connecticut, was previously reported as an unconsolidated real estate investment. The Company continues to manage this community for a customary property management fee.

Investments in Unconsolidated Non-Real Estate Entities

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

	For the year ended		
	12-31-08	12-31-07	12-31-06
Town Grove, LLC (1)	$ 31	$ 57,821	$ 1,457
Avalon Del Rey, LLC (2)	241	3,616	—
CVP I, LLC	1,109	567	(68)
Town Run Associates	—	107	298
Avalon Terrace, LLC (3)	—	22	6,736
MVP I, LLC	(474)	(1,261)	(662)
AvalonBay Value Added Fund, L.P. (4)	2,532	(1,775)	(799)
Rent.com	—	—	433
Constellation Real Technologies	—	72	60
Aria at Hathorne, LLC	1,127	—	—
Total	$ 4,566	$ 59,169	$ 7,455

(1) Equity in income from this entity for 2007 includes a gain of $56,320 for the Company from the fourth quarter disposition of its partnership interest in Avalon Grove, an asset held by Town Grove, LLC.

(2) Equity in income from this entity for 2007 includes a gain of $3,607 for the Company from the fourth quarter disposition of its ownership interest in Avalon Del Rey, the sole asset held by Avalon Del Rey, LLC.

(3) Equity in income from this entity for 2006 includes a gain of $6,609 for the Company's 25% share of the gain from the fourth quarter disposition of Avalon Bedford, the sole asset held by Avalon Terrace, LLC.

(4) Equity in income from this entity for 2008 includes a gain of $3,483 for the Company's 15.2% share of the gain from the second quarter disposition of Avalon Redmond, an asset held by AvalonBay Value Added Fund, L.P.

Investments in Consolidated Real Estate Entities

- PHVP I LP — In the third quarter of 2008, the Company became the general partner of PHVP I, LP, acquiring a 99% controlling interest in the entity. The Company also entered into a ground lease in connection with the land related to the proposed development of Avalon at Walnut Creek, and became the borrower under the increased bond financing of $135,000 and a $2,500, 4.0% fixed rate loan in order to fund construction of Avalon at Walnut Creek, the multifamily portion of the development.
- On September 2, 2008, the Company announced the formation of AvalonBay Value Added Fund II, LP ("Fund II"), a private, discretionary investment vehicle with commitments from five institutional investors including the Company. Fund II has equity commitments totaling $333,000. The Company has committed $150,000 to Fund II, representing a 45% equity interest.

  Fund II will acquire and operate multifamily apartment communities primarily in the Company's current markets with the objective of creating value through redevelopment, enhanced operations and/or improving market fundamentals. Fund II will serve as the exclusive vehicle through which the Company will acquire investments in apartment communities for a period of three years from the closing date or until 90% of its committed capital is invested, subject to limited exceptions. Fund II will not include or involve the Company's development activities. The Company will receive, in addition to any returns on its invested equity, asset management fees, property management fees and redevelopment fees. The Company will also receive a promoted interest if certain return thresholds are met. As of December 31, 2008, Fund II has not made any investments.

  The Company, which serves as the general partner for Fund II, evaluated its investment in Fund II under EITF 04-5 and determined that the presumption of control by the Company was not overcome by the rights of the limited partners. The Company therefore accounts for its investment in Fund II as a consolidated subsidiary.

In conjunction with the formation of Fund II, we have provided to one of the limited partners a guarantee. The guarantee provides that if, upon final liquidation of Fund II, the total amount of all distributions to that partner during the life of Fund II (whether from operating cash flow or property sales) does not equal a minimum of the total capital contributions made by that partner, then we will pay the partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner. As of December 31, 2008, there have not yet been any capital contributions by the partners of Fund II. The estimated fair value of, and our obligation under this guarantee, both at inception and as of December 31, 2008 is zero and therefore we have not recorded any obligation for this guarantee as of December 31, 2008.

7. Real Estate Disposition Activities

During the year ended December 31, 2008, the Company sold ten wholly owned communities for an aggregate gross sales price of $564,950, a portion of which was used to repay outstanding debt related to these dispositions in the amount of $43,715. These dispositions resulted in a gain in accordance with GAAP of approximately $284,901. Details regarding the community asset sales are summarized in the following table:

Community Name	Location	Period of sale	Apartment homes	Debt	Gross sales price	Net proceeds
Avalon at West Grove	Westmont, IL	Q208	400	$ —	$ 38,650	$ 36,829
Avalon Haven	North Haven,IL	Q208	128	—	23,750	22,953
Avalon at Foxchase I and II	San Jose, CA	Q208	396	26,400	91,250	62,478
Avalon Landing	Annapolis, MD	Q308	158	—	25,750	24,935
Avalon Walk	Hamden, CT	Q308	764	—	124,000	120,816
Avalon at Pruneyard	Campbell, CA	Q308	252	—	53,800	53,093
Avalon Wynhaven	Issaquah, WA	Q308	333	—	66,250	59,780
Avalon Blossom Hill	San Jose, CA	Q308	324	—	84,000	83,193
Avalon Ledges	Weymouth, MA	Q408	304	17,315	57,500	39,300
Total of all 2008 asset sales			3,059	$ 43,715	$ 564,950	$ 503,377
Total of all 2007 asset sales			1,384	$ 8,116	$ 268,096	$ 257,396
Total of all 2006 asset sales			1,036	$ 37,200	$ 261,850	$ 218,492

The Company is a party to litigation with the developer of the planned community in which Avalon Wynhaven is a member, concerning shared costs with another association controlled by the same developer. The Company believes that the developer has overcharged, and continues to overcharge the community. In conjunction with the sale of Avalon Wynhaven, the Company provided the purchaser with an indemnification for past costs and certain future costs to the extent that the dispute is resolved in favor of the developer. The Company has deferred recognition of $3,272 associated with these potential costs. As of December 31, 2008, the Company had no communities that qualified as discontinued operations and held for sale under the provisions of SFAS No. 144.

In accordance with the requirements of SFAS No. 144, the operations for any communities sold from January 1, 2006 through December 31, 2008 and the communities that qualified as discontinued operations and held for sale as of December 31, 2008 have been presented as such in the accompanying Consolidated Financial Statements and are reported as a component of the Company's Other Stabilized results in Note 9 "Segment Reporting". Accordingly, certain reclassifications have been made in prior periods to reflect discontinued operations consistent with current period presentation.

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

	For the year ended		
	12-31-08	12-31-07	12-31-06
Rental income	$ 28,497	$ 56,989	$ 61,446
Operating and other expenses	(9,497)	(19,407)	(21,701)
Interest expense, net	(1,490)	(3,692)	(4,775)
Depreciation expense	(5,302)	(13,401)	(14,777)
Income from discontinued operations	$ 12,208	$ 20,489	$ 20,193

The Company's Consolidated Balance Sheets include other assets (excluding net real estate) of $0 and $3,730 as of December 31, 2008 and 2007, respectively, $0 and $50,141 of mortgage notes as of December 31, 2008 and 2007, respectively and other liabilities of $0 and $7,525 as of December 31, 2008 and 2007, respectively relating to real estate assets sold or classified as held for sale.

During the year ended December 31, 2008, the Company did not sell any land parcels**.** The Company had gains on the sale of land parcels of $545 in 2007 and $13,519 in 2006.

8. Commitments and Contingencies

Employment Agreements and Arrangements

As of December 31, 2008, the Company had employment agreements with four executive officers. The employment agreements provide for severance payments and generally provide for accelerated vesting of stock options and restricted stock in the event of a termination of employment (except for a termination by the Company with cause or a voluntary termination by the employee). The current terms of these agreements end on dates that vary between December 2009 and November 2010. The employment agreements provide for one-year automatic renewals (two years in the case of the Chief Executive Officer ("CEO")) after the initial term unless an advance notice of non-renewal is provided by either party. Upon a notice of non-renewal by the Company, each of the officers may terminate his employment and receive a severance payment. Upon a change in control, the agreements provide for an automatic extension of up to three years from the date of the change in control. The employment agreements provide for base salary and incentive compensation in the form of cash awards, stock options and stock grants subject to the discretion of, and attainment of performance goals established by the Compensation Committee of the Board of Directors.

The Company's stock incentive plan, as described in Note 10, "Stock-Based Compensation Plans," provides that upon an employee's Retirement (as defined in the plan documents) from the Company, all outstanding stock options and restricted shares of stock held by the employee will vest, and the employee will have up to 12 months to exercise any options held upon retirement. Under the plan, Retirement means a termination of employment, other than for cause, after attainment of age 50, provided that (i) the employee has worked for the Company for at least 10 years, (ii) the employee's age at Retirement plus years of employment with the Company equals at least 70, (iii) the employee provides at least six months written notice of his intent to retire, and (iv) the employee enters into a one year non-compete and employee non-solicitation agreement.

The Company also has an Officer Severance Program (the "Program") for the benefit of those officers of the Company who do not have employment agreements. Under the Program, in the event an officer who is not otherwise covered by a severance arrangement is terminated (other than for cause) within two years following a change in control (as defined) of the Company, such officer will generally receive a cash lump sum payment equal to the sum of such officer's base salary and cash bonus, as well as accelerated vesting of stock options and restricted stock. Costs related to the Company's employment agreements and the Program are accounted for in accordance with SFAS No. 5, "Accounting for Contingencies," and therefore are recognized when considered by management to be probable and estimable.

Construction and Development Contingencies

In connection with the pursuit of a development in Pleasant Hill, California, $125,000 in bond financing was previously issued by the Contra Costa County Redevelopment Agency (the "Agency") in connection with the future construction of a multifamily rental community by PHVP I, LP. The bond proceeds were invested in their entirety in a guaranteed investment contract ("GIC") administered by a trustee. This development, Avalon Walnut Creek, in Walnut Creek, California is planned as a mixed-use development, with residential, for-sale, retail and office components. In the third quarter of 2008, the Company became the general partner of PHVP I, LP, entered into a ground lease in connection with the land related to the proposed development, and became the borrower under the increased bond financing of $135,000 in order to fund construction of Avalon Walnut Creek, the multifamily portion of the development, which began in the third quarter of 2008. In addition, the Company obtained a construction loan of $2,500 related to the community. The Company consolidates PHVP I, LP, reporting the outstanding bond financing as a component of Mortgage notes payable on the accompanying Consolidated Balance Sheet as of December 31, 2008.

In addition, as part of providing construction management services to PHVP I, LLC for the construction of a public garage, the Company has provided a construction completion guarantee to the related lender in order to fulfill their standard financing requirements related to the garage construction financing. The Company's obligations under this guarantee will terminate following construction completion of the garage once all of the lender's standard completion requirements have been satisfied, which the Company currently expects to occur in 2009. The estimated fair value of and the Company's obligation under this guarantee, both at inception and as of December 31, 2008 was not significant and therefore the Company has not recorded any obligation for this guarantee as of December 31, 2008.

In 2007 the Company entered into a non-cancelable commitment (the "Commitment") to acquire land in Brooklyn, New York for an aggregate purchase price of approximately $111,000. Under the terms of the Commitment, the Company will close on the various parcels over a period as determined by the seller's ability to execute unrelated purchase transactions and achieve deferral of gains for the land sold under this Commitment. However, under no circumstances will the Commitment extend beyond 2011, at which time either the Company or the seller can compel execution of the remaining transactions. During the fourth quarter of 2008, the Company acquired a portion of the land under the Commitment for aggregate purchase price of approximately $48,481. At December 31, 2008, the Company had an outstanding commitment to purchase the remaining land for approximately $62,519.

Legal Contingencies

The Company is currently involved in litigation alleging that 100 communities currently or formerly owned by the Company violated the accessibility requirements of the Fair Housing Act ("FHA") and the Americans with Disabilities Act. The lawsuit, Equal Rights Center v. AvalonBay Communities, Inc., was filed on September 23, 2005 in the federal district court in Maryland. The plaintiff seeks compensatory and punitive damages in unspecified amounts as well as injunctive relief (such as modification of existing communities), an award of attorneys' fees, expenses and costs of suit. The Company has filed a motion to dismiss all or parts of the suit, which has not been ruled on yet by the court. In a matter also related to the FHA, on August 13, 2008 the U.S. Attorney's Office for the Southern District of New York filed a civil lawsuit against the Company and the joint venture in which it has an interest that owns Avalon Chrystie Place. The lawsuit alleges that Avalon Chrystie Place was not designed and constructed in accordance with the accessibility requirements of the FHA. The Company designed and constructed the community with a view to compliance with New York City's Local Law 58, which for more than 20 years has been New York City's code regulating the accessible design and construction of apartments, and which the Company believes satisfies the requirements of the FHA. Due to the preliminary nature of these matters, we cannot predict or determine the outcome of either lawsuit, nor is it reasonably possible to estimate the amount of loss, if any, that would be associated with an adverse decision or settlement.

In addition, the Company is subject to various other legal proceedings and claims that arise in the ordinary course of business. These matters are frequently covered by insurance. If it has been determined that a loss is probable to occur and such probable loss can be estimated, the estimated amount of the loss is expensed in the financial statements. While the resolution of these matters cannot be predicted with certainty, management currently believes the final outcome of such matters will not have a material adverse effect on the financial position or results of operations of the Company.

Lease Obligations

The Company owns 11 apartment communities and one commercial property which are located on land subject to land leases expiring between November 2028 and March 2142. In addition, the Company leases certain office space. These leases are accounted for as operating leases under SFAS No. 13, "Accounting for Leases." These leases have varying escalation terms, and four of these leases have purchase options exercisable between 2008 and 2095. The Company incurred costs of $16,937, $15,516 and $14,850 in the years ended December 31, 2008, 2007 and 2006, respectively, related to these leases.

The following table details the future minimum lease payments under the Company's current leases:

	Payments due by period				
2009	2010	2011	2012	2013	Thereafter
$16,262	$ 16,328	$ 16,449	$ 16,347	$ 16,567	$ 2,234,496

9. Segment Reporting

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

- *Established Communities (also known as Same Store Communities)* are communities where a comparison of operating results from the prior year to the current year is meaningful, as these communities were owned and had stabilized occupancy and operating expenses as of the beginning of the prior year. For the year 2008, the Established Communities are communities that are consolidated for financial reporting purposes, had stabilized occupancy and operating expenses as of January 1, 2007, 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, 2007.

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

SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," requires that segment disclosures present the measure(s) used by the chief operating decision maker for purposes of assessing such segments' performance. The Company's chief operating decision maker is comprised of several members of its executive management team who use net operating income ("NOI") as the primary financial measure for Established Communities and Other Stabilized Communities. NOI is defined by the Company as total revenue less direct property operating expenses. Although the Company considers NOI a useful measure of a community's or communities' operating performance, NOI should not be considered an alternative to net income or net cash flow from operating activities, as determined in accordance with GAAP. NOI excludes a number of income and expense categories as detailed in the reconciliation of NOI to net income.

A reconciliation of NOI to net income for years ended December 31, 2008, 2007 and 2006 is as follows:

	For the year ended		
	12-31-08	12-31-07	12-31-06
Net income	$ 411,487	$ 358,160	$ 266,546
Indirect operating expenses, net of corporate income	33,045	31,285	28,811
Investments and investment management	17,298	11,737	7,030
Interest expense, net	114,878	94,540	106,271
General and administrative expense	42,781	28,494	24,767
Equity in income of unconsolidated entities	(4,566)	(59,169)	(7,455)
Minority interest in consolidated partnerships	(741)	1,585	573
Depreciation expense	194,150	168,324	149,352
Impairment loss	57,899	—	—
Gain on sale of real estate assets	(284,901)	(107,032)	(110,930)
Income from discontinued operations	(12,208)	(20,489)	(20,193)
Net operating income	$ 569,122	$ 507,435	$ 444,772

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

The following table provides details of the Company's segment information as of the dates specified. The segments are classified based on the individual community's status as of the beginning of the given calendar year. Therefore, each year the composition of communities within each business segment is adjusted. Accordingly, the amounts between years are not directly comparable. The accounting policies applicable to the operating segments described above are the same as those described in Note 1, "Organization and Significant Accounting Policies." Segment information for the years ended December 31, 2008, 2007 and 2006 have been adjusted for the communities that were sold from January 1, 2006 through December 31, 2008, or otherwise qualify as discontinued operations as of December 31, 2008, as described in Note 7, "Real Estate Disposition Activities."

	Total revenue	NOI	% NOI change from prior year	Gross real estate (1)
For the year ended December 31, 2008				
Established New England	$ 126,958	$ 82,181	2.7%	$ 824,369
Metro NY/NJ	144,295	99,060	2.0%	931,783
Mid-Atlantic/Midwest	124,067	78,490	2.0%	765,501
Pacific Northwest	21,524	15,493	7.5%	175,503
Northern California	127,659	94,862	8.0%	1,039,280
Southern California	61,449	44,048	1.1%	377,841
Total Established (2)	605,952	414,134	3.6%	4,114,277
Other Stabilized	111,952	74,864	n/a	1,013,232
Development / Redevelopment	129,736	80,124	n/a	2,502,820
Land Held for Future Development	n/a	n/a	n/a	239,456
Non-allocated (3)	6,568	n/a	n/a	132,702
Total	$ 854,208	$ 569,122	12.1%	$ 8,002,487
For the year ended December 31, 2007				
Established New England	$ 127,596	$ 81,860	2.6%	$ 851,473
Metro NY/NJ	141,424	97,860	4.7%	903,347
Mid-Atlantic/Midwest	119,817	75,517	6.5%	741,691
Pacific Northwest	28,294	19,671	16.1%	237,464
Northern California	144,052	104,670	12.5%	1,239,407
Southern California	56,091	40,219	5.9%	349,719
Total Established (2)	617,274	419,797	7.1%	4,323,101
Other Stabilized	47,821	30,324	n/a	356,038
Development / Redevelopment	95,426	57,314	n/a	2,171,207
Land Held for Future Development	n/a	n/a	n/a	288,423
Non-allocated (3)	6,142	n/a	n/a	47,793
Total	$ 766,663	$ 507,435	14.1%	$ 7,186,562
For the year ended December 31, 2006				
Established New England	$ 84,572	$ 55,410	3.0%	$ 564,627
Metro NY/NJ	106,251	73,840	7.4%	617,609
Mid-Atlantic/Midwest	105,740	65,269	14.3%	678,737
Pacific Northwest	28,202	19,025	13.9%	263,245
Northern California	134,525	94,196	12.0%	1,251,531
Southern California	57,632	41,115	9.3%	374,605
Total Established (2)	516,922	348,855	9.7%	3,750,354
Other Stabilized	88,546	55,337	n/a	876,127
Development / Redevelopment	65,914	40,580	n/a	1,259,469
Land Held for Future Development	n/a	n/a	n/a	202,314
Non-allocated (3)	6,259	n/a	n/a	42,437
Total	$ 677,641	$ 444,772	11.7%	$ 6,130,701

(1) Does not include gross real estate assets held for sale of $0, $370,178 and $484,891 as of December 31, 2008, 2007 and 2006, respectively.

(2) Gross real estate for the Company's established communities includes capitalized additions of approximately $15,534, $13,851 and $21,289 in 2008, 2007 and 2006, respectively.

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

10. Stock-Based Compensation Plans

The Company has a stock incentive plan (the "1994 Plan"), which was amended and restated on December 8, 2004, and amended on February 9, 2006, December 6, 2006 and September 19, 2007. Individuals who are eligible to participate in the 1994 Plan include officers, other associates, outside directors and other key persons of the Company and its subsidiaries who are responsible for or contribute to the management, growth or profitability of the Company and its subsidiaries. The 1994 Plan authorizes (i) the grant of stock options that qualify as incentive stock options ("ISOs") under Section 422 of the Internal Revenue Code, (ii) the grant of stock options that do not so qualify, (iii) grants of shares of restricted and unrestricted common stock, (iv) grants of deferred stock awards, (v) performance share awards entitling the recipient to acquire shares of common stock and (vi) dividend equivalent rights.

Shares of common stock of 1,744,159, 2,160,738 and 1,791,861 were available for future option or restricted stock grant awards under the 1994 Plan as of December 31, 2008, 2007 and 2006, respectively. Annually on January 1st, the maximum number available for issuance under the 1994 Plan is increased by up to 1.00% of the total number of shares of common stock and DownREIT units actually outstanding on such date. Notwithstanding the foregoing, the maximum number of shares of stock for which ISOs may be issued under the 1994 Plan shall not exceed 2,500,000 and no awards shall be granted under the 1994 Plan after May 11, 2011. Options and restricted stock granted under the 1994 Plan vest and expire over varying periods, as determined by the Compensation Committee of the Board of Directors.

Under the 1995 Equity Incentive Plan (the "Avalon 1995 Incentive Plan"), a maximum number of 3,315,054 shares of common stock were issuable, plus any shares of common stock represented by awards under Avalon's 1993 Stock Option and Incentive Plan (the "Avalon 1993 Plan") that were forfeited, canceled, reacquired by Avalon, satisfied without the issuance of common stock or otherwise terminated (other than by exercise). Options granted to officers, non-employee directors and associates under the Avalon 1995 Incentive Plan generally vested over a three-year term, expire ten years from the date of grant and are exercisable at the market price on the date of grant. As of June 4, 1998, options and other awards ceased to be granted under the Avalon 1993 Plan or the Avalon 1995 Incentive Plan. Accordingly, there were no options to purchase shares of common stock available for grant under the Avalon 1995 Incentive Plan or the Avalon 1993 Plan at December 31, 2008, 2007 or 2006.

Pursuant to the terms of the 1994 Plan, because the Special Dividend was an extraordinary dividend, the exercise price and number of options underlying the awards were adjusted so that option holders would be neither advantaged nor disadvantaged as a result of the shares issued under the Special Dividend.

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

	1994 Plan shares	Weighted average exercise price per share	Avalon 1995 and Avalon 1993 Plan shares	Weighted average exercise price per share
Options Outstanding, December 31, 2005	2,229,778	$ 51.40	26,624	$ 37.09
Exercised	(592,308)	50.09	(22,384)	37.15
Granted	867,113	99.28	—	—
Forfeited	(17,344)	79.72	—	—
Options Outstanding, December 31, 2006	2,487,239	$ 69.65	4,240	$ 36.81
Exercised	(471,024)	56.57	(3,472)	36.86
Granted	344,429	147.39	—	—
Forfeited	(38,929)	110.28	—	—
Options Outstanding, December 31, 2007	2,321,715	$ 83.15	768	$ 36.61
Exercised	(154,523)	46.15	(768)	36.61
Granted	401,212	89.06	—	—
Forfeited	(23,413)	112.51	—	—
Special Dividend Option Adjustment (1)	78,144	N/A	—	—
Options Outstanding, December 31, 2008	2,623,135	$ 83.49	—	N/A
Options Exercisable:				
December 31, 2006	1,041,360	$ 47.99	4,240	$ 36.81
December 31, 2007	1,230,428	$ 60.84	768	$ 36.61
December 31, 2008 (1)	1,711,508	$ 72.97	—	N/A

(1) In accordance with the applicable equity award plan documents, the number and exercise price of outstanding awards have been adjusted as a result of the special dividend to maintain their value.

The following summarizes the exercise prices and contractual lives of options outstanding as of December 31, 2008:

Number of Options	Range - Exercise Price	Weighted Average Remaining Contractual Term (in years)
163,190	30.00 - 39.99	1.7
420,678	40.00 - 49.99	3.6
499,331	60.00 - 69.99	6.2
1,030	70.00 - 79.99	6.5
416,040	80.00 - 89.99	8.0
781,171	90.00 - 99.99	7.1
6,698	100.00 - 109.99	7.4
5,152	110.00 - 119.99	8.5
329,845	140.00 - 149.99	8.1
2,623,135		

Options outstanding under the 1994 Plan at December 31, 2008 had no intrinsic value. Options exercisable at December 31, 2008 under the 1994 plan had a weighted average contractual life of 6.43 years and no intrinsic value. The intrinsic value of options exercised during 2008, 2007 and 2006 was $8,565, $17,895 and $49,440, respectively.

The cost related to stock-based employee compensation for employee stock options included in the determination of net income is based on estimated forfeitures for the given year. Estimated forfeitures are adjusted to reflect actual forfeitures at the end of the vesting period. The following table summarizes the weighted average fair value of employee stock options for the periods shown and the associated assumptions used to calculate the value:

	2008	2007	2006
Weighted average fair value per share	$ 9.91	$21.83	$11.47
Life of options (in years)	7.0	7.0	7.0
Dividend yield	5.5%	4.0%	5.0%
Volatility	22.17%	17.32%	17.61%
Risk-free interest rate	3.09%	4.73%	4.55%

At December 31, 2008 and 2007, the Company had 207,070 and 200,940 outstanding unvested shares granted under restricted stock awards. The Company issued 130,325 shares of restricted stock valued at $11,646 as part of its stock-based compensation plan during the year ended December 31, 2008. Compensation cost is recognized over the requisite service period, which varies, but does not exceed five years. The fair value of restricted stock is the closing stock price on the date of the grant. Provisions of SFAS No. 123(R) require the Company to recognize compensation cost taking into consideration retirement eligibility. The cost related to stock-based compensation for restricted stock included in the determination of net income is based on actual forfeitures for the given year. Restricted stock awards typically vest over a five-year period with the exception of accelerated vesting provisions. Restricted stock vesting during the year ended December 31, 2008 totaled 122,063 shares and had fair values ranging from $50.04 to $147.75 per share. The total fair value of shares vested was $10,668, $8,590 and $7,655 for the years ended December 31, 2008, 2007 and 2006, respectively.

Total employee stock-based compensation cost recognized in income was $17,268, $13,502 and $10,095 for the years ended December 31, 2008, 2007 and 2006, respectively, and total capitalized stock-based compensation cost was $6,499, $5,106 and $4,014 for the years ended December 31, 2008, 2007 and 2006, respectively. At December 31, 2008, there was a total of $3,819 and $8,797 in unrecognized compensation cost for unvested stock options and unvested restricted stock, respectively, which does not include estimated forfeitures. The unrecognized compensation cost for unvested stock options and restricted stock is expected to be recognized over a weighted average period of 1.54 years and 2.36 years, respectively.

Deferred Stock Performance Plan

The Company's Board of Directors and its Compensation Committee approved a multiyear performance plan ("the 2008 Performance Plan"). On June 1, 2008, awards in connection with this plan with an estimated compensation cost of $8,958 were granted to senior management and other selected officers ("2008 Performance Plan Awards"). The 2008 Performance Plan awards are initially in the form of deferred stock awards, with no dividend rights, granted under the Company's 1994 Plan. These deferred stock awards will be forfeited in their entirety unless the Company's total return to shareholders, consisting of stock price appreciation plus cumulative dividends without reinvestment or compounding (the "Actual TRS"), over the measurement period exceeds both (i) an Absolute TRS Target and (ii) a Relative TRS Target. The measurement period of the 2008 Performance Plan began on June 1, 2008 with a starting common stock price equal to the average closing price of the Company's common stock on the twenty trading days prior to June 1, 2008. The measurement period will end on May 31, 2011, again using a twenty-day average closing price. The measurement period will end earlier upon a change in control of the Company.

The "Absolute TRS Target" that must be exceeded during the measurement period is a 32% total return performance (or a pro rated amount in the event the measurement period is less than three years due to a change in control). The "Relative TRS Target" that must be exceeded is the total return performance (stock price appreciation plus cumulative dividends without reinvestment or compounding) during the measurement period of the Financial Times and the London Stock Exchange (FTSE) NAREIT Apartment Index. If the Actual TRS exceeds both the Absolute TRS Target and the Relative TRS Target, the total funding pool will equal 10% of the simple average of (i) the excess shareholder value created by the Actual TRS exceeding the Absolute TRS Target and (ii) the excess

shareholder value created by the Actual TRS exceeding the Relative TRS Target, provided that in no event will the total funding pool exceed $60 million.

Each participating officer's 2008 Performance Plan award is designated as a specified "Participation Percentage" in the 2008 Performance Plan. If both TRS targets are exceeded at the end of the measurement period, then each participating officer will earn deferred stock awards having a total value (based on the closing price of the Company's common stock on the last day of the measurement period) equal to that officer's participation percentage multiplied by the total funding pool. The total funding pool will under no circumstance exceed $60 million. Any unearned deferred stock awards (i.e., deferred stock awards in excess of the number of awards having a value equal to that officer's participation percentage in the total funding pool) will be forfeited. Earned deferred stock awards will convert into vested unrestricted common stock (50%), and unvested restricted common stock with a one-year vesting period (50%), subject to earlier forfeiture or acceleration under certain circumstances. Dividends will be paid on both the unrestricted common stock and the restricted common stock. As of December 31, 2008, the Company has reserved 633,179 shares within the 1994 Plan relating to deferred stock awards under the 2008 Performance Plan.

The Company will recognize compensation expense for the 2008 Performance Plan over the three year measurement period for the 50% of each award which vests at the end of the measurement period. For the remaining 50% of each award, the Company will recognize compensation expense over the four year period which includes the measurement period as well as the one-year vesting period subsequent to the end of the measurement period. The recognition of compensation cost will take into account actual forfeitures as well as retirement eligibility. The Company used a Monte Carlo model to assess the compensation cost associated with the 2008 Performance Plan. As of December 31, 2008, the estimated compensation cost was derived using the following assumptions: baseline share value of $102.16, dividend yield of 3.53%, estimated volatility figures over the life of the plan using 50% historical volatility and 50% implied volatility and risk free rates over the life of the plan ranging from 2.13% to 2.97%, resulting in an estimated fair value per share of $14.15. During the year ended December 31, 2008, the components of total stock-based compensation that the Company recognized for the 2008 Performance Plan was compensation expense of $1,013 recognized in earnings and capitalized stock-based compensation costs of $582.

Employee Stock Purchase Plan

In October 1996, the Company adopted the 1996 Non-Qualified Employee Stock Purchase Plan (as amended, the "ESPP"). Initially 1,000,000 shares of common stock were reserved for issuance under this plan. There are currently 772,275 shares remaining available for issuance under the plan. Full-time employees of the Company generally are eligible to participate in the ESPP if, as of the last day of the applicable election period, they have been employed by the Company for at least one month. All other employees of the Company are eligible to participate provided that, as of the applicable election period they have been employed by the Company for 12 months. Under the ESPP, eligible employees are permitted to acquire shares of the Company's common stock through payroll deductions, subject to maximum purchase limitations. The purchase period is a period of seven months beginning each April 1 and ending each October 30. The purchase price for common stock purchased under the plan is 85% of the lesser of the fair market value of the Company's common stock on the first day of the applicable purchase period or the last day of the applicable purchase period. The offering dates, purchase dates and duration of purchase periods may be changed, if the change is announced prior to the beginning of the affected date or purchase period. The Company issued 8,460 shares, 8,577 shares and 10,830 shares and recognized compensation expense of $90, $158 and $173 under the ESPP for the years ended December 31, 2008, 2007 and 2006, respectively. The Company accounts for transactions under the ESPP using the fair value method prescribed under SFAS No. 123(R), as further discussed in Note 1, "Organization and Significant Accounting Policies."

11. Fair Value of Financial Instruments

Cash and cash equivalent balances are held with various financial institutions within principal protected accounts. The Company monitors credit ratings of these financial institutions and the concentration of cash and cash equivalent balances with any one financial institution and believes the likelihood of realizing material losses related to cash and cash equivalent balances is remote.

The valuation of financial instruments whose face amount does not approximate fair value is determined using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of each instrument. This analysis reflects the contractual terms of the instrument, including the period to maturity, and uses observable market-based inputs, including interest rate curves. To comply with the provisions of SFAS No. 157, the Company incorporates credit valuation adjustments to appropriately reflect its own nonperformance risk in the fair value measurements of our bond indebtedness and notes payable. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

- Cash equivalents, rents receivable, accounts and construction payable and accrued expenses, and other liabilities are carried at their face amounts, which reasonably approximate their fair values.
- Bond indebtedness and notes payable with an aggregate outstanding par amount of approximately $3,676,000 and $3,160,500 had an estimated aggregate fair value of $3,612,130 and $3,220,330 at December 31, 2008 and 2007, respectively.

The Company reports all derivative instruments at fair value in accordance with SFAS No. 133, as amended. See Note 5, "Derivative Instruments and Hedging Activities," and Note 13, "Fair Value Measurements," for further discussion.

12. Related Party Arrangements

Unconsolidated Entities

The Company manages unconsolidated real estate entities for which it receives asset management, property management, development and redevelopment fee revenue. From these entities, the Company received fees of $6,568, $6,142 and $6,259 in the years ended December 31, 2008, 2007 and 2006, respectively. These fees are included in management, development and other fees on the accompanying Consolidated Statements of Operations and Other Comprehensive Income.

Director Compensation

Directors of the Company who are also employees receive no additional compensation for their services as a director. Following each annual meeting of stockholders starting with the 2006 annual meeting, non-employee directors receive (i) a number of shares of restricted stock (or deferred stock awards) having a value of $100 and (ii) a cash payment of $40, payable in quarterly installments of $10. After September 20, 2007, the cash payment increased to $50, payable in quarterly installments of $12.5. The value of the restricted stock or deferred stock award increased to $125 following the 2008 annual meeting. The number of shares of restricted stock (or deferred stock awards) is calculated based on the closing price on the day of the award. Non-employee directors may elect to receive all or a portion of cash payments in the form of a deferred stock award. In addition, the Lead Independent Director receives an annual fee of $30 payable in equal monthly installments of $2.5.

The Company recorded non-employee director compensation expense relating to the restricted stock grants and deferred stock awards in the amount of $2,170, $855 and $1,013 for the years ended December 31, 2008, 2007 and 2006, respectively as a component of general and administrative expense. Deferred compensation relating to these restricted stock grants and deferred stock awards was $137 and $766 on December 31, 2008 and December 31, 2007, respectively. Compensation expense during 2008 includes additional expense associated primarily with the accelerated award vesting for directors.

13. Fair Value Measurements

As a basis for applying a market-based approach in fair value measurements, SFAS No. 157 establishes a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity and the reporting entity's own assumptions about market participant assumptions.

Derivative Financial Instruments

Currently, the Company uses interest rate swap and interest rate cap agreements to manage its interest rate risk. The valuation of these instruments is determined using widely accepted valuation techniques including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the

derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities.

To comply with the provisions of SFAS No. 157, the Company incorporates credit valuation adjustments to appropriately reflect both its own nonperformance risk and the respective counterparty's nonperformance risk in the fair value measurements. In adjusting the fair value of its derivative contracts for the effect of nonperformance risk, the Company has considered the impact of its net position with a given counterparty, as well as any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees.

Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with its derivatives utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default by itself and its counterparties. However, as of December 31, 2008, the Company has assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and has determined it is not significant. As a result, the Company has determined that its derivative valuations are classified in Level 2 of the fair value hierarchy. See Note 5, "Derivative Instruments and Hedging Activities," for derivative values and Note 11, "Fair Value of Financial Instruments," for all other financial instruments of the Company at December 31, 2008.

Other Financial Instruments

In conjunction with a joint venture agreement, the Company provided our joint venture partner with a redemption option (the "Put"). This Put allows our partner to require the Company to purchase their interest in the investment at the future fair market value, payable in cash or, at the Company's option, common equity shares of the Company. Consistent with the guidance in EITF Topic D-98, "Classification and Measurement of Redeemable Securities," we classify our obligation under this Put as a component of minority interest at fair value, with a corresponding offset for changes in the fair value of the Put recorded in accumulated earnings less dividends. The fair value of the Put is based on the fair market value of the net assets of the joint venture. The Company calculates the fair value of the Put based on unobservable inputs considering the assumptions that market participants would make in pricing this obligation. Accordingly, the valuation of the Put is classified in Level 3 of the fair value hierarchy. At December 31, 2008, the fair value of the Put was $7,723, which represents an unrealized decrease in the fair value of this obligation of $11,443 for the year ended December 31, 2008.

14. Quarterly Financial Information (Unaudited)

The following summary represents the quarterly results of operations for the years ended December 31, 2008 and 2007:

	For the three months ended			
	3-31-08	6-30-08	9-30-08	12-31-08
Total revenue (1)	$204,172	$211,191	$218,492	$220,353
Income from continuing operations(1)(3)	$ 43,635	$ 48,088	$ 48,177	$ (25,523)
Income from discontinued operations(1)	$ 4,814	$ 79,246	$185,404	$ 27,645
Net income available to common stockholders	$ 46,274	$125,159	$231,406	$ (1,806)
Net income per common share — basic(2)	$ 0.60	$ 1.63	$ 3.01	$ (0.02)
Net income per common share — diluted (2)	$ 0.60	$ 1.61	$ 2.98	$ (0.02)

	For the three months ended			
	3-31-07	6-30-07	9-30-07	12-31-07
Total revenue (1)	$181,452	$188,128	$196,531	$200,552
Income from continuing operations(1)	$ 41,490	$ 45,064	$ 45,684	$ 98,946
Income from discontinued operations(1)	$ 5,030	$ 5,988	$ 83,085	$ 32,873
Net income available to common stockholders	$ 44,345	$ 48,877	$126,594	$129,644
Net income per common share — basic(2)	$ 0.57	$ 0.62	$ 1.60	$ 1.66
Net income per common share — diluted (2)	$ 0.56	$ 0.61	$ 1.58	$ 1.65

(1) Amounts may not equal previously reported results due to reclassification between income from continuing operations and income from discontinued operations.

(2) Amounts may not equal full year results due to rounding.

(3) Income from continuing operations for the fourth quarter of 2008 includes an impairment charge of approximately $57,899 associated with the Company's planned reduction in development activity.

15. Subsequent Events

In January 2009, the Company made a cash tender offer for any and all of its 7.5% unsecured notes due August 2009 and December 2010. The Company purchased $37,438 of its $150,000, 7.5% unsecured notes due August 2009 at par. In addition, the Company purchased $64,423 of its $200,000, 7.5% unsecured notes due December 2010 at a discount price of 98% of face value, for approximately $63,135, representing a yield to maturity of 8.66%. The Company will report a gain of approximately $1,062 in the first quarter of 2009 in conjunction with this purchase activity. All of the notes purchased in the tender offer were cancelled. The Company had previously acquired and cancelled an aggregate of $10,000 of the 7.5% unsecured notes due in August 2009.

Also in January 2009, under the Special Dividend, the Company issued 2,626,823 shares of its common stock.

In February 2009, the Company purchased its joint venture partners' interest in a consolidated subsidiary which owns Avalon at Grosvenor Station for $4,400. The joint venture was formed to develop, own and operate Avalon at Grosvenor Station, a 497 apartment-home community located in Bethesda, Maryland. Avalon at Grosvenor Station is subsequently a wholly owned community and will continue to be consolidated for financial reporting purposes.

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	Initial Cost			Total Cost						
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Current Communities										
Avalon at Lexington	2,124	12,599	1,738	2,124	14,337	16,461	7,067	9,394	11,665	1994
Avalon Oaks	2,129	18,656	490	2,129	19,146	21,275	6,704	14,571	16,940	1999
Avalon Summit	1,743	14,670	1,281	1,743	15,951	17,694	7,005	10,689	—	1986/1996
Avalon Essex	5,230	16,303	423	5,230	16,726	21,956	5,282	16,674	—	2000
Avalon at Faxon Park	1,292	14,001	591	1,292	14,592	15,884	5,594	10,290	—	1998
Avalon at Prudential Center	25,811	104,399	27,085	25,811	131,484	157,295	43,897	113,398	—	1968/1998
Avalon Oaks West	3,303	13,467	104	3,303	13,571	16,874	3,431	13,443	16,795	2002
Avalon Orchards	2,975	18,037	339	2,975	18,376	21,351	4,505	16,846	19,322	2002
Avalon at Flanders Hill	3,572	33,504	488	3,572	33,992	37,564	7,697	29,867	19,735	2003
Avalon at Newton Highlands	11,038	45,527	250	11,038	45,777	56,815	8,719	48,096	34,945	2003
Avalon at The Pinehills I	3,623	16,292	69	3,623	16,361	19,984	2,557	17,427	—	2004
Avalon at Crane Brook	12,381	42,298	145	12,381	42,443	54,824	6,675	48,149	31,530	2004
Essex Place	4,643	19,007	10,915	4,643	29,922	34,565	3,105	31,460	—	2004
Avalon at Bedford Center	4,258	20,547	—	4,258	20,547	24,805	2,232	22,573	16,361	2005
Avalon Chestnut Hill	14,572	45,781	—	14,572	45,781	60,353	3,507	56,846	41,834	2007
Avalon Shrewsbury	5,147	30,608	6	5,147	30,614	35,761	2,389	33,372	—	2007
Avalon Danvers	7,002	78,548	—	7,002	78,548	85,550	3,313	82,237	—	2006
Avalon Woburn	20,631	62,351	4	20,631	62,355	82,986	3,775	79,211	—	2007
Avalon at Lexington Hills	8,659	77,692	—	8,659	77,692	86,351	2,492	83,859	—	2007
Avalon Acton	13,124	50,561	—	13,124	50,561	63,685	1,266	62,419	45,000	2007
Avalon Sharon	4,735	25,276	—	4,735	25,276	30,011	465	29,546	—	2007
Avalon at Center Place	—	26,816	2,438	—	29,254	29,254	11,908	17,346	—	1991/1997
Avalon Gates	4,414	31,268	1,902	4,414	33,170	37,584	13,235	24,349	—	1997
Avalon Glen	5,956	23,993	2,602	5,956	26,595	32,551	13,494	19,057	—	1991
Avalon Springs	2,116	14,664	496	2,116	15,160	17,276	6,176	11,100	—	1996
Avalon Valley	2,277	23,781	339	2,277	24,120	26,397	8,152	18,245	—	1999
Avalon Orange	2,108	19,983	6	2,108	19,989	22,097	2,737	19,360	—	2005
Avalon on Stamford Harbor	10,836	51,989	106	10,836	52,095	62,931	12,143	50,788	—	2003
Avalon New Canaan	4,835	19,485	59	4,835	19,544	24,379	4,609	19,770	—	2002
Avalon at Greyrock Place	13,819	56,499	526	13,819	57,025	70,844	12,789	58,055	62,400	2002
Avalon Danbury	4,905	30,581	48	4,905	30,629	35,534	3,751	31,783	—	2005
Avalon Darien	6,922	34,594	82	6,922	34,676	41,598	6,326	35,272	51,749	2004
Avalon Milford I	8,746	22,699	57	8,746	22,756	31,502	3,603	27,899	—	2004
Avalon Huntington	3,146	20,810	—	3,146	20,810	23,956	72	23,884	—	2008
Avalon Commons	4,679	28,509	880	4,679	29,389	34,068	11,453	22,615	55,100	1997
Avalon Towers	3,118	12,709	5,655	3,118	18,364	21,482	7,504	13,978	—	1990/1995
Avalon Court	9,228	50,021	940	9,228	50,961	60,189	17,601	42,588	—	1997/2000
Avalon at Glen Cove South	7,871	59,969	125	7,871	60,094	67,965	9,388	58,577	—	2004
Avalon Pines I	6,029	41,053	(206)	6,029	40,847	46,876	5,614	41,262	—	2005
Avalon at Glen Cove North	2,577	37,336	—	2,577	37,336	39,913	2,135	37,778	—	2007
Avalon Pines II	2,877	21,878	—	2,877	21,878	24,755	2,096	22,659	—	2006
Avalon Cove	8,760	82,453	2,248	8,760	84,701	93,461	34,242	59,219	—	1997
Avalon at Edgewater	14,529	60,240	586	14,529	60,826	75,355	15,604	59,751	—	2002

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	Initial Cost			Total Cost						
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon at Florham Park	6,647	34,906	561	6,647	35,467	42,114	10,306	31,808	—	2001
Avalon Lyndhurst	18,620	62,358	—	18,620	62,358	80,978	3,790	77,188	—	2006
Avalon Run East	1,579	14,668	215	1,579	14,883	16,462	6,205	10,257	—	1996
Avalon Watch	5,585	22,394	2,217	5,585	24,611	30,196	13,186	17,010	—	1988
Avalon at Freehold	4,116	30,514	180	4,116	30,694	34,810	7,765	27,045	—	2002
Avalon Run East II	6,765	45,377	59	6,765	45,436	52,201	6,665	45,536	—	2003
Avalon Run	13,071	45,818	1,374	13,071	47,192	60,263	3,696	56,567	—	1994
Avalon at Tinton Falls	7,939	32,579	—	7,939	32,579	40,518	541	39,977	—	2007
Avalon Gardens	8,428	45,660	1,492	8,428	47,152	55,580	17,888	37,692	—	1998
Avalon Green	1,820	10,525	1,606	1,820	12,131	13,951	5,320	8,631	—	1995
Avalon Willow	6,207	40,791	572	6,207	41,363	47,570	13,206	34,364	—	2000
The Avalon	2,889	28,324	331	2,889	28,655	31,544	9,374	22,170	—	1999
Avalon on the Sound	—	116,231	1,029	—	117,260	117,260	27,190	90,070	—	2001
Avalon Riverview I	—	94,166	532	—	94,698	94,698	21,514	73,184	—	2002
Avalon Bowery Place I	18,575	72,900	741	18,575	73,641	92,216	5,683	86,533	93,800	2006
Avalon Riverview North	—	173,788	—	—	173,788	173,788	6,920	166,868	—	2007
Avalon on the Sound East	—	179,477	—	—	179,477	179,477	7,537	171,940	—	2007
Avalon Bowery Place II	9,104	46,425	94	9,104	46,519	55,623	1,928	53,695	48,500	2007
Avalon at Fairway Hills I, II & III	8,612	34,432	9,644	8,612	44,076	52,688	18,424	34,264	—	1987/1996
Avalon Symphony Woods (SGlen)	1,594	6,384	3,728	1,594	10,112	11,706	4,490	7,216	9,780	1986
Avalon Symphony Woods (SGate)	7,207	29,151	2,424	7,207	31,575	38,782	2,150	36,632	—	1986/2006
Avalon at Foxhall	6,848	27,614	10,532	6,848	38,146	44,994	16,599	28,395	—	1982
Avalon at Gallery Place I	8,800	39,731	514	8,800	40,245	49,045	8,128	40,917	—	2003
Avalon at Decoverly	6,157	24,800	1,885	6,157	26,685	32,842	12,118	20,724	—	1991/1995
Avalon Fields I & II	4,047	18,553	201	4,047	18,754	22,801	7,964	14,837	9,988	1998
Avalon Knoll	1,412	5,673	1,915	1,412	7,588	9,000	4,531	4,469	—	1985
Avalon at Rock Spring	—	81,796	544	—	82,340	82,340	16,925	65,415	—	2003
Avalon at Grosvenor Station	29,151	52,940	90	29,151	53,030	82,181	9,580	72,601	—	2004
Avalon at Traville	14,360	55,400	254	14,360	55,654	70,014	9,674	60,340	—	2004
Avalon at Decoverly II	5,708	24,886	—	5,708	24,886	30,594	1,947	28,647	—	2007
Avalon Fairlakes	6,096	24,400	7,376	6,096	31,776	37,872	10,892	26,980	—	1989/1996
Avalon at Ballston — Washington Towers	7,291	29,177	2,747	7,291	31,924	39,215	15,683	23,532	—	1990
Avalon at Cameron Court	10,292	32,930	902	10,292	33,832	44,124	12,644	31,480	94,572	1998
Avalon at Providence Park	2,152	8,907	815	2,152	9,722	11,874	3,945	7,929	—	1988/1997
Avalon Crescent	13,851	43,397	667	13,851	44,064	57,915	17,587	40,328	110,600	1996
Avalon at Arlington Square	22,041	90,296	864	22,041	91,160	113,201	23,737	89,464	170,125	2001
Avalon at Danada Farms	7,535	31,299	1,196	7,535	32,495	40,030	11,986	28,044	—	1997
Avalon at Stratford Green	4,326	17,569	343	4,326	17,912	22,238	6,757	15,481	—	1997
Avalon Arlington Heights	9,728	39,661	7,558	9,728	47,219	56,947	12,313	44,634	—	1987/2000
Avalon Redmond Place	4,558	18,368	8,956	4,558	27,324	31,882	8,671	23,211	—	1991/1997
Avalon at Bear Creek	6,786	27,641	1,431	6,786	29,072	35,858	10,253	25,605	—	1998
Avalon Bellevue	6,664	24,119	183	6,664	24,302	30,966	6,990	23,976	—	2001
Avalon RockMeadow	4,777	19,742	474	4,777	20,216	24,993	6,060	18,933	—	2000
Avalon WildReed	4,253	18,676	167	4,253	18,843	23,096	5,634	17,462	—	2000

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	Initial Cost			Total Cost						
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon HighGrove	7,569	32,041	269	7,569	32,310	39,879	9,238	30,641	—	2000
Avalon ParcSquare	3,789	15,146	581	3,789	15,727	19,516	4,719	14,797	—	2000
Avalon Brandemoor	8,630	36,679	362	8,630	37,041	45,671	10,179	35,492	—	2001
Avalon Belltown	5,644	12,733	122	5,644	12,855	18,499	3,523	14,976	—	2001
Avalon Meydenbauer	12,654	76,465	—	12,654	76,465	89,119	1,634	87,485	—	2008
Avalon Fremont	10,746	43,399	2,794	10,746	46,193	56,939	17,179	39,760	—	1994
Avalon Dublin	5,276	19,642	3,448	5,276	23,090	28,366	8,375	19,991	—	1989/1997
Avalon Pleasanton	11,610	46,552	4,843	11,610	51,395	63,005	19,652	43,353	—	1988/1994
Avalon at Union Square	4,249	16,820	1,669	4,249	18,489	22,738	7,070	15,668	—	1973/1996
Waterford	11,324	45,717	5,149	11,324	50,866	62,190	19,629	42,561	33,100	1985/1986
Avalon at Willow Creek	6,581	26,583	3,329	6,581	29,912	36,493	11,458	25,035	—	1985/1994
Avalon at Dublin Station I	10,058	74,211	—	10,058	74,211	84,269	2,151	82,118	—	2006
Avalon at Cedar Ridge	4,230	9,659	13,645	4,230	23,304	27,534	8,550	18,984	—	1972/1997
Avalon at Nob Hill	5,403	21,567	1,221	5,403	22,788	28,191	8,401	19,790	20,800	1990/1995
Crowne Ridge	5,982	16,885	10,233	5,982	27,118	33,100	10,587	22,513	—	1973/1996
Avalon Foster City	7,852	31,445	4,871	7,852	36,316	44,168	12,884	31,284	—	1973/1994
Avalon Towers by the Bay	9,155	57,631	263	9,155	57,894	67,049	18,475	48,574	—	1999
Avalon Pacifica	6,125	24,796	1,439	6,125	26,235	32,360	9,746	22,614	17,600	1971/1995
Avalon Sunset Towers	3,561	21,321	3,997	3,561	25,318	28,879	9,892	18,987	—	1961/1996
Avalon at Diamond Heights	4,726	19,130	3,823	4,726	22,953	27,679	7,884	19,795	—	1972/1994
Avalon at Mission Bay North	13,814	78,452	670	13,814	79,122	92,936	16,173	76,763	—	2003
Avalon Campbell	11,830	47,828	875	11,830	48,703	60,533	17,628	42,905	38,800	1995
CountryBrook	9,384	38,791	4,576	9,384	43,367	52,751	14,843	37,908	14,680	1985/1996
Avalon at River Oaks	8,904	35,121	983	8,904	36,104	45,008	13,034	31,974	—	1990/1996
Avalon at Parkside	7,406	29,823	1,098	7,406	30,921	38,327	11,417	26,910	—	1991/1996
Avalon on the Alameda	6,119	50,230	556	6,119	50,786	56,905	17,287	39,618	—	1999
Avalon Rosewalk	15,814	62,028	2,021	15,814	64,049	79,863	22,735	57,128	—	1997/1999
Avalon Silicon Valley	20,713	99,573	3,030	20,713	102,603	123,316	37,224	86,092	150,000	1997
Avalon Mountain View	9,755	39,393	7,032	9,755	46,425	56,180	15,558	40,622	18,300	1986
Avalon at Creekside	6,546	26,301	10,624	6,546	36,925	43,471	13,002	30,469	—	1962/1997
Avalon at Cahill Park	4,760	47,600	347	4,760	47,947	52,707	10,954	41,753	—	2002
Avalon Towers on the Peninsula	9,560	56,136	57	9,560	56,193	65,753	13,570	52,183	—	2002
Countrybrook II	3,534	14,256	101	3,534	14,357	17,891	714	17,177	—	2007
Avalon Newport	1,975	3,814	4,628	1,975	8,442	10,417	3,141	7,276	—	1956/1996
Avalon Mission Viejo	2,517	9,257	2,321	2,517	11,578	14,095	4,524	9,571	7,635	1984/1996
Avalon at South Coast	4,709	16,063	5,258	4,709	21,321	26,030	8,201	17,829	—	1973/1996
Avalon Santa Margarita	4,607	16,911	3,010	4,607	19,921	24,528	7,524	17,004	—	1990/1997
Avalon at Pacific Bay	4,871	19,745	8,299	4,871	28,044	32,915	10,153	22,762	—	1971/1997
Avalon Warner Place	7,885	44,714	—	7,885	44,714	52,599	850	51,749	—	2007
Avalon at Mission Bay	9,922	40,633	16,254	9,922	56,887	66,809	20,068	46,741	—	1969/1997
Avalon at Mission Ridge	2,710	10,924	8,999	2,710	19,923	22,633	7,518	15,115	—	1960/1997
Avalon at Cortez Hill	2,768	20,134	11,844	2,768	31,978	34,746	11,484	23,262	—	1973/1998
Avalon Fashion Valley	19,627	44,014	—	19,627	44,014	63,641	238	63,403	—	2008
Avalon at Media Center	22,483	28,104	26,290	22,483	54,394	76,877	19,064	57,813	—	1961/1997

AVALONBAY COMMUNITIES, INC.
REAL ESTATE AND ACCUMULATED DEPRECIATION
December 31, 2008
(Dollars in thousands)

	Initial Cost			Total Cost						
	Land	Building / Construction in Progress & Improvements	Costs Subsequent to Acquisition / Construction	Land	Building / Construction in Progress & Improvements	Total	Accumulated Depreciation	Total Cost, Net of Accumulated Depreciation	Encumbrances	Year of Completion / Acquisition
Avalon Woodland Hills	23,828	40,372	26,810	23,828	67,182	91,010	19,117	71,893	—	1989/1997
Avalon at Warner Center	7,045	12,986	7,282	7,045	20,268	27,313	8,314	18,999	—	1979/1998
Avalon Glendale	—	41,434	46	—	41,480	41,480	7,858	33,622	—	2003
The Promenade	14,052	56,827	6,793	14,052	63,620	77,672	12,917	64,755	30,142	1988/2002
Avalon Camarillo	8,469	39,741	—	8,469	39,741	48,210	3,689	44,521	—	2006
Avalon Wilshire	5,452	41,076	204	5,452	41,280	46,732	2,234	44,498	—	2007
Avalon Encino	12,834	48,183	—	12,834	48,183	61,017	189	60,828	—	2008
	1,032,388	5,264,784	361,294	1,032,388	5,626,079	6,658,467	1,323,153	5,335,314	1,291,798	
Development Communities										
Avalon Anaheim	2,663	89,366	—	2,663	89,366	92,029	21	92,008	—	N/A
Avalon Union City	—	97,057	—	—	97,057	97,057	—	97,057	—	N/A
Avalon Jamboree Village	—	55,581	—	—	55,581	55,581	—	55,581	—	N/A
Avalon at Mission Bay North III	—	109,420	—	—	109,420	109,420	—	109,420	—	N/A
Avalon Walnut Creek	—	36,591	—	—	36,591	36,591	—	36,591	137,500	N/A
Avalon Norwalk	—	20,238	—	—	20,238	20,238	—	20,238	—	N/A
Avalon at Hingham Shipyard	4,204	46,578	—	4,204	46,578	50,782	155	50,627	—	N/A
Avalon Northborough I	—	9,225	—	—	9,225	9,225	—	9,225	—	N/A
Avalon Blue Hills	—	29,519	—	—	29,519	29,519	—	29,519	—	N/A
Avalon White Plains	3,578	127,793	—	3,578	127,793	131,371	244	131,127	—	N/A
Avalon Morningside Park	—	105,801	—	—	105,801	105,801	696	105,105	100,000	N/A
Avalon Charles Pond	—	38,674	—	—	38,674	38,674	—	38,674	—	N/A
Avalon Fort Greene	—	143,887	—	—	143,887	143,887	—	143,887	—	N/A
Avalon Towers Bellevue	—	13,425	—	—	13,425	13,425	—	13,425	—	N/A
	10,445	923,155	—	10,445	923,155	933,600	1,116	932,484	237,500	
Land held for development	239,456	—	—	239,456	—	239,456	—	239,456	18,194	
Corporate Overhead	108,623	31,052	31,289	108,623	62,341	170,964	28,475	142,489	2,126,965	
	$1,390,912	$ 6,218,992	$ 392,583	$1,390,912	$ 6,611,575	$8,002,487	$ 1,352,744	$ 6,649,743	$ 3,674,457	

AVALONBAY COMMUNITIES, INC.
REAL ESTATE AND ACCUMULATED DEPRECIATION
December 31, 2008
(Dollars in thousands)

Amounts include real estate assets held for sale.

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

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

The aggregate cost of total real estate for federal income tax purposes was approximately $7,733,000 at December 31, 2008.

The changes in total real estate assets for the years ended December 31, 2008, 2007 and 2006 are as follows:

	Years ended December 31,		
	2008	2007	2006
Balance, beginning of period	$ 7,556,740	$ 6,615,593	$ 5,940,146
Acquisitions, construction costs and improvements	757,835	1,097,959	825,981
Dispositions, including impairment loss on planned dispositions	(312,088)	(156,812)	(150,534)
Balance, end of period	$ 8,002,487	$ 7,556,740	$ 6,615,593

The changes in accumulated depreciation for the years ended December 31, 2008, 2007 and 2006, are as follows:

	Years ended December 31,		
	2008	2007	2006
Balance, beginning of period	$ 1,259,558	$ 1,105,231	$ 960,821
Depreciation, including discontinued operations	199,452	180,697	164,128
Dispositions	(106,266)	(26,370)	(19,718)
Balance, end of period	$ 1,352,744	$ 1,259,558	$ 1,105,231

EXHIBIT 3(ii).1

AMENDED AND RESTATED BYLAWS

OF

AVALONBAY COMMUNITIES, INC.

February 13, 2003

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

MEETINGS OF STOCKHOLDERS

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

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

1.03 MATTERS TO BE CONSIDERED AT ANNUAL MEETING.

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

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

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

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

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

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

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

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

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

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

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

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

1.04 SPECIAL MEETINGS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

required to elect a Director.

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

1.10 CONDUCT OF MEETINGS.

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

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

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

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

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

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

demand that voting be by ballot.

ARTICLE II

DIRECTORS

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

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

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

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

2.04 NOMINATION OF DIRECTORS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

COMMITTEES

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

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

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

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

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

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

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

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

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

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

ARTICLE IV

OFFICERS

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

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

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

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

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

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

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

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

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

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

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

4.09 SECRETARY.

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

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

4.10 TREASURER AND CHIEF FINANCIAL OFFICER.

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

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

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

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

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

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

ARTICLE V

SHARES OF STOCK

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

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

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

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

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

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

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

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

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

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

5.07 CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE.

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

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

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

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

ARTICLE VI

DIVIDENDS AND DISTRIBUTIONS

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

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

ARTICLE VII

INDEMNIFICATION

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

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

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

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

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

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

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

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

ARTICLE VIII

NOTICES

8.01 NOTICES. Unless otherwise provided in these Bylaws, whenever

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

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

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

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

ARTICLE IX

MISCELLANEOUS

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

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

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

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

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

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

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

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

9.07 LOANS.

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

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

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

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

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

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

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

ARTICLE X

AMENDMENT OF BYLAWS

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

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

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

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

/s/ Edward M. Schulman

Edward M. Schulman

AvalonBay Communities, Inc.

Medium-Term Notes

Due Nine Months Or More From Date Of Issue

Amended & Restated Distribution Agreement

August 6, 2003

Banc Of America Securities LLC
Citigroup Global Markets Inc.
Fleet Securities, Inc.
J.P. Morgan Securities Inc.
Lehman Brothers Inc.

Morgan Stanley & Co. Incorporated
Wachovia Capital Markets, llc.

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AVALONBAY COMMUNITIES INC.

MEDIUM-TERM NOTES

DUE NINE MONTHS OR MORE FROM DATE OF ISSUE

AMENDED AND RESTATED DISTRIBUTION AGREEMENT

August 6, 2003

Banc of America Securities LLC
100 No. Tryon Street, 7th Floor
Charlotte, NC 28255

Citigroup Global Markets Inc.
Medium-Term Note Department
388 Greenwich Street
New York, NY 10013

Fleet Securities, Inc.
100 Federal Street, MADE 10012H
Boston, MA 02110

J.P. Morgan Securities Inc.
270 Park Avenue, 7th Floor
New York, NY 10017
Attention: Transaction Execution Group

Lehman Brothers Inc.
745 Seventh Avenue
New York, NY 10019
Attention: Fixed Income Syndicate/Medium Term Note Desk

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Wachovia Capital Markets, LLC
301 So. College Street, DC-8
One Wachovia Center
Charlotte, NC 28288

Ladies and Gentlemen:

AvalonBay Communities, Inc., a Maryland corporation (the "Company"), confirms its agreement with Banc of America Securities LLC, Citigroup Global Markets Inc., Fleet Securities, Inc., J.P. Morgan Securities Inc., Lehman Brothers Inc., Morgan Stanley & Co. Incorporated, and Wachovia Capital Markets, LLC, (each, an "Agent" and collectively, the

"Agents"), with respect to the issue and sale from time to time by the Company of its Medium-Term Notes Due Nine Months or More From Date of Issue (the "Notes"), as follows:

Capitalized terms used but not otherwise defined herein shall have the meanings given to those terms in the Prospectus (as defined herein).

1. Description of Notes. The Company proposes to issue the Notes under that certain Indenture, dated as of January 16, 1998 (the "Original Indenture"), as supplemented by that certain First Supplemental Indenture, dated as of January 20, 1998, that certain Second Supplemental Indenture, dated as of July 7, 1998, and that certain Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 (collectively and together with the Original Indenture and any additional indentures supplemental thereto entered into after the date hereof, the "Indenture") between the Company and US Bank, National Association (as successor to State Street Bank and Trust Company), as trustee (the "Trustee"). As of the date of this agreement (this "Distribution Agreement"), the Company has authorized the issuance and sale of up to U.S. $750,000,000 aggregate initial offering price (or its equivalent, based upon the applicable exchange rate at the time of issuance, in such foreign or composite currencies as the Company shall designate at the time of issuance) of Notes to or through the Agents pursuant to the terms of this Distribution Agreement, as such amount may be reduced by the aggregate initial offering price of any other debt securities issued by the Company, whether within or without the United States, pursuant to the registration statement referred to below. It is understood, however, that the Company may from time to time authorize the issuance of additional Notes and that such additional Notes may be sold to or through the Agents or through or to other agents pursuant to the terms of this Distribution Agreement, all as though the issuance of such Notes were authorized as of the date hereof.

This Distribution Agreement provides both for the sale of Notes by the Company to one or more Agents as principal for resale to investors and other purchasers and for the sale of Notes by the Company directly to investors (as may from time to time be agreed to by the Company and the applicable Agent), in which case the applicable Agent will act as an agent of the Company in soliciting offers for the purchase of Notes.

The Company has filed with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-103755) for the registration of debt securities, including the Notes, under the Securities Act of 1933, as amended (the "Securities Act"), and the offering thereof from time to time in accordance with Rule 430A or Rule 415 of the rules and regulations of the Commission thereunder (the "Securities Act Rules and Regulations"). Such registration statement has been declared effective by the Commission. Such registration statement (and any further registration statements which may be filed by the Company for the purpose of registering additional Notes and in connection with which this Distribution Agreement is included or incorporated by reference as an exhibit) and the prospectus constituting a part thereof (including in each case the information, if any, deemed to be part thereof pursuant to Rule 430A(b) of the Securities Act Rules and Regulations), and any prospectus supplement and pricing supplement relating to the Notes, including all documents incorporated therein by reference, as from time to time amended or supplemented by the filing of documents pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or the Securities Act or otherwise, is referred to herein as the "Registration Statement." A

prospectus supplement (the "Prospectus Supplement") setting forth the terms of the offer of the Notes contemplated by this Distribution Agreement, and additional information concerning the Company has been or will be prepared and will be filed by the Company pursuant to Rule 424(b) of the Securities Act Rules and Regulations, on or before the second business day after it is first used in connection with the offer and sale of Notes under this Distribution Agreement (or such earlier time as may be required by the Securities Act Rules and Regulations). The final form of prospectus included in the Registration Statement, as supplemented by the Prospectus Supplement (including any supplement to the Prospectus that sets forth the purchase price, interest rate or formula, maturity date and other terms of a particular issue of Notes and all documents incorporated therein by reference (each, a "Pricing Supplement")), is referred to herein as the "Prospectus," except that if any revised prospectus, whether or not such revised prospectus is required to be filed by the Company pursuant to Rule 424(b) of the Securities Act Rules and Regulations, shall be provided to the Agents by the Company for use in connection with the offer and sale of any of the Notes under this Distribution Agreement, the term "Prospectus" shall refer to such revised prospectus from and after the time such documents are first provided to the Agents for such use. If the Company elects to rely on Rule 434 promulgated pursuant to the Securities Act, all references to the Prospectus shall be deemed to include, without limitation, the form of prospectus and the term sheet, taken together, provided to the Agents by the Company in reliance on such Rule 434. Any registration statement (including any supplement thereto or information which is deemed part thereof) filed by the Company under Rule 462(b) of the Securities Act Rules and Regulations (a "Rule 462(b) Registration Statement") shall be deemed to be part of the Registration Statement. Any prospectus (including any amendment or supplement thereto or information which is deemed part thereof) included in the Rule 462(b) Registration Statement shall be deemed to be part of the Prospectus. For purposes of this Distribution Agreement, all references to the Registration Statement, the Prospectus, any preliminary prospectus or any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to its Electronic Data Gathering Analysis and Retrieval System (EDGAR), and such copy shall be identical (except to the extent permitted by Regulation S-T) to any Prospectus delivered to any Agent for use in connection with the offering of the Notes by the Company.

2. Appointment as Agent.

(a) *Appointment*. Subject to the terms and conditions stated herein and subject to the reservation by the Company of the right to solicit, sell or accept offers for Notes directly on its own behalf, the Company hereby appoints the Agents as its exclusive agents (except as described below), for the purpose of soliciting and receiving offers to purchase Notes from the Company by others and, on the basis of the representations and warranties herein contained, but subject to the terms and conditions herein set forth, each Agent agrees to use reasonable efforts to solicit and receive offers to purchase Notes upon terms acceptable to the Company at such times and in such amounts as the Company shall from time to time specify. The Company agrees that Notes will be sold exclusively to or through the Agents except as otherwise described below. The Company may accept offers to purchase Notes through an agent other than an Agent (and, in connection therewith, may respond to inquiries and requests for information from any such agents), provided that (i) the Company and such agent shall have executed an agreement with respect to such purchases having terms and conditions (including, without limitation, commission rates) with respect to such purchases substantially the same as

the terms and conditions that would apply to such purchases under this Distribution Agreement if such agent were an Agent (which may be accomplished by incorporating by reference in such agreement the terms and conditions of this Distribution Agreement) and (ii) the Company shall provide the Agents with a copy of such agreement promptly following the execution thereof.

(b) *Sale of Notes*. The Company shall not sell or approve the solicitation of offers for the purchase of Notes in excess of the amount which shall be authorized by the Company from time to time or in excess of the aggregate initial offering price of Notes registered pursuant to the Registration Statement. The Agents shall have no responsibility for maintaining records with respect to the aggregate initial offering price of Notes sold, or of otherwise monitoring the availability of Notes for sale, under the Registration Statement.

(c) *Purchases as Principal*. The Agents shall not have any obligation to purchase Notes from the Company as principal, but one or more Agents may agree from time to time to purchase Notes as principal for resale to investors and other purchasers determined by such Agent or Agents. Any such purchase of Notes by an Agent or Agents as principal shall be made in accordance with Section 4(a) hereof.

(d) *Solicitations as Agent*. If agreed upon by an Agent and the Company, such Agent, acting solely as agent for the Company and not as principal, will solicit offers for the purchase of Notes. Such Agent will communicate to the Company, orally, each offer to purchase Notes solicited by it on an agency basis, other than those offers rejected by such Agent. Such Agent shall have the right, in its discretion reasonably exercised, to reject any proposed purchase of Notes, in whole or in part, and any such rejection shall not be deemed a breach of its agreement contained herein. The Company shall have the right to withdraw, cancel or modify any offer hereunder without notice and the sole right to accept offers to purchase the Notes and may reject any such offer in whole or in part and any such rejection shall not be deemed a breach of its agreements contained herein. Such Agent shall make reasonable efforts to assist the Company in obtaining performance by each purchaser whose offer to purchase Notes has been solicited by it and accepted by the Company. Such Agent shall not have any liability to the Company in the event that any such purchase is not consummated for any reason. If the Company shall default on its obligation to deliver Notes to a purchaser whose offer it has accepted, the Company shall (i) hold such Agent harmless against any loss, claim or damage arising from or as a result of such default by the Company and (ii) notwithstanding such default, pay to such Agent any commission to which it would otherwise be entitled.

(e) *Reliance*. The Company and the Agents agree that any Notes purchased by one or more Agents as principal shall be purchased, and any Notes the placement of which an Agent arranges as agent shall be placed by such Agent, in reliance on the representations, warranties, covenants and agreements of the Company contained herein and on the terms and conditions and in the manner provided herein.

3. Representations and Warranties of the Company. The Company represents and warrants to and agrees with each Agent as of the date hereof, as of the date of each acceptance by the Company of an offer for the purchase of Notes (whether to an Agent as principal or through an Agent as agent), as of the date of each delivery of Notes (whether to an Agent as principal or through an Agent as agent (each a "Delivery Date")) (the date of each such

delivery to an Agent as principal being hereafter referred to as a "Settlement Date"), and as of any time that the Registration Statement or the Prospectus shall be amended or supplemented (it being understood that such representations, warranties and agreements shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented to each such time) as follows:

(a) *Effectiveness of Registration Statement; Filing of Prospectus.* The Company has filed with the Commission a registration statement on Form S-3 (File No. 333-103755) for the registration of debt securities, including the Notes, under the Securities Act, and the offering thereof from time to time in accordance with Rule 430A or Rule 415 of the Securities Act Rules and Regulations. Such registration statement has been declared effective by the Commission. The Prospectus Supplement setting forth the terms of the offer of the Notes contemplated by this Distribution Agreement, and additional information concerning the Company has been or will be prepared and will be filed by the Company pursuant to Rule 424(b) of the Securities Act Rules and Regulations, on or before the second business day after it is first used in connection with the offer and sale of Notes under this Distribution Agreement (or such earlier time as may be required by the Securities Act Rules and Regulations).

(b) *Compliance with Securities Act*. Each part of the Registration Statement, when such part became or becomes effective, and the Prospectus and any amendment or supplement to such Registration Statement or such Prospectus, on the date of filing thereof with the Commission and as of the date hereof, complied or will comply in all material respects with the requirements of the Securities Act and the Securities Act Rules and Regulations; the Indenture, on the date of filing thereof with the Commission and as of the date hereof complied or will comply in all material respects with the requirements of the Trust Indenture Act of 1939, as amended, and the rules and regulations of the Commission thereunder (the "TIA"); each part of the Registration Statement, when such part became or becomes effective did not or will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission and as of the date hereof did not or will not include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; except that the foregoing shall not apply to (i) that part of the Registration Statement which constitutes the Statement of Eligibility and Qualification under the TIA and (ii) statements in, or omissions from, any such document in reliance upon, and in conformity with, information concerning the Agents that was furnished to the Company by the Agents specifically for use in the preparation thereof. The Company acknowledges that the only information furnished to the Company by the Agents on or before the date hereof specifically for inclusion in the Registration Statement or the Prospectus is the information set forth in Schedule I hereto.

(c) *Incorporated Documents.* The documents incorporated by reference in the Registration Statement, the Prospectus and any amendment or supplement to such Registration Statement or such Prospectus, when they became or become effective under the Securities Act or were or are filed with the Commission under the Exchange Act, as the case may be, conformed or will conform in all material respects with the requirements of the Securities Act, the Securities

Act Rules and Regulations, the Exchange Act and the rules and regulations of the Commission thereunder (the "Exchange Act Rules and Regulations"), as applicable.

(d) *Organization, Power and Authority of Company.* The Company has been duly organized and is validly existing as a corporation in good standing under the laws of the State of Maryland with the power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and otherwise to conduct its business as described in the Registration Statement and Prospectus. The Company is duly licensed or qualified to do business and in good standing in each jurisdiction in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary except where the failure to be so qualified, considering all such cases in the aggregate, will not have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries (as hereinafter defined), taken as a whole.

(e) *Organization, Power and Authority and Capitalization of Subsidiaries.* As of the date of this Agreement, the only subsidiaries (as defined in the Securities Act Rules and Regulations) of the Company are the entities listed on Schedule II, attached hereto. Each of the Company's subsidiaries is an entity duly organized or formed, as the case may be, and, in the case of each such subsidiary that is a corporation, limited partnership or limited liability company (each a "Subsidiary" and, collectively, the "Subsidiaries) is validly existing and in good standing under the laws of its respective jurisdiction of organization or incorporation. Each of the Company's subsidiaries has full power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and otherwise to conduct its business as described in the Registration Statement and the Prospectus. Each of the Subsidiaries is duly licensed or qualified to do business in good standing as a corporation, limited partnership or limited liability company, as the case may be, in all jurisdictions in which the nature of the activities conducted by it or the character of the assets owned or leased by it makes such licensing or qualification necessary except where the failure to be so qualified, considering all such cases in the aggregate, will not have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its Subsidiaries, taken as a whole. Except for the stock or other interests in the subsidiaries and as disclosed in the Registration Statement, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, trust, association or other entity. Complete and correct copies of the charter of the Company, as amended through the date hereof (collectively, the "Charter"), and the bylaws of the Company, as amended through the date hereof (the "Bylaws"), and the charter documents of each of its subsidiaries and all amendments thereto have been delivered to counsel for the Agents. Except as otherwise described in the Registration Statement or the Prospectus, or as described in Schedule II, all of the issued and outstanding capital stock of each corporate Subsidiary of the Company has been duly authorized and will be, as of the Closing Date, validly issued, fully paid and non-assessable and owned by the Company.

(f) *Capital Stock Matters.* The outstanding securities of the Company, including the outstanding shares of common stock, $0.01 par value (the "Common Stock"), and the outstanding shares of each series of preferred stock (the "Preferred Stock") have been duly

authorized and are validly issued, fully paid and nonassessable by the Company and conform to the description thereof in the Prospectus. Except as set forth in the Registration Statement or the Prospectus, the Company does not have outstanding any option to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or any contracts or commitments to issue or sell, any of its securities or any shares of capital stock of any subsidiary or any such warrants, convertible securities or obligations, except for shares of Common Stock to be issued to certain employees in connection with the deferment of income, shares of Common Stock issuable pursuant to awards granted or to be granted under the Company's 1994 Stock Incentive Plan, as amended and restated, shares of Common Stock issuable under the Company's 1996 Non-Qualified Employee Stock Purchase Plan, shares of Common Stock issuable under the Company's Dividend Reinvestment and Stock Purchase Plan and shares of Common Stock issuable upon redemption or conversion of units of limited partnership interests.

(g) *Financial Statements.* The financial statements and schedules included or incorporated by reference in the Registration Statement and the Prospectus set forth fairly the financial condition of the respective entity or entities presented as of the dates indicated and the results of operations and changes in financial position for the periods therein specified in conformity with generally accepted accounting principles consistently applied throughout the periods involved (except as otherwise stated therein and except to the extent that Avalon Properties, Inc. applied different principles than the Company prior to its merger with and into the Company and except, in the case of interim periods, for the notes thereto and normal year-end adjustment). The pro forma financial statements of the Company included in the Registration Statement and the Prospectus comply in all material respects with the applicable requirements of Rule 11-02 of Regulation S-X of the Commission and the pro forma adjustments have been properly applied to the historical amounts in the compilation of such statements. No other financial statements (or schedules) of the Company or any predecessor of the Company are required by the Securities Act or the Securities Act Rules and Regulations to be included in the Registration Statement or the Prospectus. Ernst & Young LLP (together with any other nationally recognized accounting firm that the Company may from time to time engage, the "Accountants"), who have reported on the financial statements and schedules which are audited, are independent accountants with respect to the Company as required by the Securities Act and the Securities Act Rules and Regulations. The statements included in the Registration Statement with respect to the Accountants pursuant to Rule 509 of Regulation S-K of the Securities Act Rules and Regulations are true and correct in all material respects.

(h) *Company's Internal Accounting System.* The Company maintains a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets and financial and corporate books and records is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(i) *Notes.* The Notes are as of the date hereof duly authorized by the Company for issuance and sale pursuant to this Distribution Agreement and the Indenture; and

when duly authenticated and delivered by the Trustee in accordance with the terms of the Indenture (assuming the due authorization, execution and delivery of the Indenture by the Trustee), against payment of the consideration therefor, the Notes will be valid and legally binding obligations of the Company entitled to the benefit of the Indenture and will be enforceable against the Company in accordance with their terms, subject, as to enforcement, to (i) applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), (iii) the discretion of the court before which any proceeding therefor may be brought, (iv) requirements that a claim with respect to any Notes payable in a foreign or composite currency (or a foreign or composite currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law and (v) governmental authority to limit, delay or prohibit the making of payments outside the United States (collectively, the "Enforceability Limitations") and authorization of the Notes did not, and the execution, delivery and performance of the Notes will not, constitute a breach or violation of, or a default under, or conflict with, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, or result in the creation or imposition of any lien, charge or encumbrance upon the Communities or any of the other assets of the Company or any of its subsidiaries pursuant to the terms or provisions of, the Charter or Bylaws of the Company, the articles or certificate of incorporation or bylaws or partnership agreement or operating agreement of any of the Company's subsidiaries or any Contract (as defined herein) or any judgment, ruling, decree, order, law, statute, rule or regulation of any court or other governmental agency or body applicable to the Communities or the business or properties of the Company or any of its subsidiaries, except as disclosed in the Prospectus or except for such instances as, individually or in the aggregate, do not involve a material risk to the business, properties, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole; the Indenture has been duly qualified under the TIA and prior to the issuance of the Notes will be duly authorized, executed and delivered by the Company, and assuming due authorization, execution and delivery thereof by the Trustee, will constitute a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by the Enforceability Limitations; the Notes and the Indenture will conform in all material respects to the statements relating thereto contained in the Prospectus; and the Notes are, in all material respects, in the form contemplated by the Indenture. Upon payment of the purchase price and delivery of the Notes in accordance with this Distribution Agreement, each of the purchasers thereof will receive good, valid and marketable title to such Notes, free and clear of all liens, charges and encumbrances.

(j) *Distribution Agreement and Indenture.* The Company has the corporate power and authority to enter into this Distribution Agreement, the Indenture, the Notes and each Terms Agreement (as defined herein). This Distribution Agreement and the Indenture have been duly authorized, executed and delivered by the Company and constitute valid and binding agreements of the Company, enforceable against the Company in accordance with the terms hereof and thereof, except to the extent that enforcement thereof may be limited by the Enforceability Limitations. The execution, delivery and the performance of this Distribution Agreement, the Indenture and each Written Terms Agreement (as defined herein) and the entry into, and the performance of, each non-written Terms Agreement and the consummation of the transactions contemplated herein and therein did not and will not constitute a breach or violation

of, or a default under, or conflict with, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, or result in the creation or imposition of any lien, charge or encumbrance upon the Communities or any of the other assets of the Company or any of its subsidiaries pursuant to the terms or provisions of, the Charter or Bylaws of the Company, the articles or certificate of incorporation or bylaws or partnership agreement or operating agreement of any of the Company's subsidiaries or any material contract, lease or other instrument to which the Company or any of its subsidiaries is a party or by which any of their property may be bound or any judgment, ruling, decree, order, law, statute, rule or regulation of any court or other governmental agency or body applicable to the Communities or the business or properties of the Company or any of its subsidiaries, except as disclosed in the Prospectus or except for such instances as, individually or in the aggregate, do not involve a material risk to the business, properties, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole.

(k) *Rating.* At the time of each Settlement Date, the Notes will be rated at least Baa1 by Moody's Investors Service, Inc. ("Moody's") and at least BBB+ by Standard & Poor's Ratings Service ("S&P" and, together with Moody's, the "Rating Agencies"), or such other rating as to which the Company shall have most recently notified the Agents pursuant to Section 5(b)(iv) hereof.

(l) *No Material Adverse Change*. Except as contemplated in the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement and the Prospectus, the Company and its subsidiaries, taken as a whole, have not incurred any liabilities or obligations, direct or contingent, or entered into any transactions, not in the ordinary course of business, that are material to the Company and its subsidiaries taken as a whole, and there has not been any material change in the capital stock, short-term debt or long-term debt of the Company, or any material adverse change, or any development involving a prospective material adverse change, in the condition (financial or other), business, prospects, net worth or results of operations of the Company and its subsidiaries taken as a whole.

(m) *Company Not an Investment Company*. The Company is not an "investment company" or an entity "controlled" by an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended (the "1940 Act").

(n) *No Material Actions or Proceedings.* Except as set forth in the Registration Statement and the Prospectus, there is no pending or, to the knowledge of the Company, threatened any action, suit or proceeding against or affecting the Company or any of its subsidiaries or any of their respective directors, partners or officers in their capacity as such, or any of the Current Communities, the Development Communities or the Redevelopment Communities (each as defined in the Prospectus and collectively, the "Communities") before or by any Federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding might, individually or in the aggregate, have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole.

(o) *Filing and Enforceability of Contracts.* There are no contracts or documents of a character required to be described in the Prospectus or to be filed as exhibits to the Registration Statement by the Securities Act or the Securities Act Rules and Regulations that have not been so described or filed (the "Contracts"). All Contracts executed and delivered on or before the date hereof to which the Company or any subsidiary of the Company is a party have been duly authorized, executed and delivered by the Company or such subsidiary and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute valid and binding agreements of the other parties thereto, enforceable against such parties in accordance with the terms thereof, subject to the Enforceability Limitations.

(p) *Compliance With Law.* Each of the Company and its subsidiaries has complied in all material respects with all laws, regulations and orders applicable to it or their respective businesses and properties where the failure to comply would, individually or in the aggregate, have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole; neither the Company nor any of its subsidiaries is, and upon consummation of each sale of a Note, none of them will be, in default under any Contract, the violation of which would individually or in the aggregate have a material adverse effect on the Company and its subsidiaries taken as a whole, and no other party under any such Contract to which the Company or any of its subsidiaries is a party is, to the knowledge of the Company, in default in any material respect thereunder; the Company is not in violation of its Charter or Bylaws; except as disclosed in the Prospectus, the Company and each of its subsidiaries have or, upon each Delivery Date, will have all governmental licenses (including, without limitation, a California real estate brokerage license and a California general contractor's license, if applicable), permits, consents, orders, approvals and other authorizations required to carry on its business as contemplated in the Prospectus, and none of them has received any notice of proceedings relating to the revocation or modification of any such governmental license, permit, consent, order, approval or other authorization which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole.

(q) *No Further Consents Required*. No consent, approval, authorization or order of, or filing with, any court or governmental agency or body is required for the consummation of the transactions contemplated by this Distribution Agreement and the Indenture in connection with the issuance or sale of the Notes by the Company, except such as may be required under the Securities Act, the Exchange Act, the TIA or state securities or blue sky laws; and the Company has full power and authority to authorize, issue and sell the Notes as contemplated by this Distribution Agreement and the Indenture, free of any preemptive or similar rights.

(r) *Title to Properties.* The Company, or its subsidiaries, as applicable, has good and marketable title to the Communities, and the Communities are not subject to any liens or encumbrances except for monetary liens as set forth in the Prospectus or the Registration Statement, non-delinquent property taxes, utility easements and other immaterial non-monetary liens or encumbrances of record. All liens, charges, encumbrances, claims or restrictions on or affecting the Communities which are required to be disclosed in the Prospectus are disclosed

therein. Except as is disclosed in the Registration Statement or the Prospectus and except as would not, in the aggregate, have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole, (i) each of the Company and each of its subsidiaries has valid, subsisting and enforceable leases with its tenants for the properties described in the Prospectus as leased by it, (ii) no tenant under any of the leases pursuant to which the Company or any subsidiary leases its properties has an option or right of first refusal to purchase the premises demised under such lease, (iii) the use and occupancy of each of the properties of the Company and its subsidiaries complies in all material respects with all applicable codes and zoning laws and regulations, (iv) the Company has no knowledge of any pending or threatened condemnation or zoning change that will in any material respect affect the size of, use of, improvements of, construction on, or access to any of the properties of the Company or its subsidiaries, and (v) the Company has no knowledge of any pending or threatened proceeding or action that will in any manner affect the size of, use of, improvements on, construction on, or access to any of the properties of the Company or its subsidiaries.

(s) *Mortgages; Community Matters.* Except as disclosed in the Registration Statement, the mortgages and deeds of trust encumbering the Communities are not convertible nor will the Company or any of its subsidiaries hold a participating interest therein and such mortgages and deeds of trust are not cross-defaulted or cross-collateralized to any property not to be owned directly or indirectly by the Company. To the knowledge of the Company (i) the present use and occupancy of each of the Communities complies with all applicable codes and zoning laws and regulations, if any, except for such failures to comply which would not individually or in the aggregate have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries taken as a whole; and (ii) there is no pending or, to the Company's knowledge, threatened condemnation, zoning change, environmental or other proceeding or action that will in any material respect affect the size of, use of, improvements on, construction on, or access to the Communities, except for such proceedings or actions that would not individually or in the aggregate have a material adverse effect on the condition, financial or otherwise, or on the earnings, business affairs or business prospects of the Company and its subsidiaries taken as a whole.

(t) *Title Insurance.* Title insurance in favor of the mortgagee, the Company or its Subsidiaries is maintained with respect to each of the Communities, in an amount at least equal to the greater of (i) the cost of acquisition of such property and (ii) the cost of construction by the Company and its subsidiaries of the improvements located on such property (measured at the time of such construction), except, in each case, where the failure to maintain such title insurance would not have a material adverse effect on the condition, financial or otherwise, or the earnings, business affairs or business prospects of the Company and its subsidiaries taken as a whole.

(u) *Accuracy of Company's Statements.* No statement, representation, warranty or covenant made by the Company in this Distribution Agreement or made in any certificate or document required by this Distribution Agreement to be delivered to the Agents was or will be, when made, inaccurate, untrue or incorrect.

(v) *No Price Stabilization or Manipulation.* Except as stated in the Prospectus, neither the Company nor any of its directors, officers or controlling persons has taken, nor will it take, directly or indirectly, any action designed to or that might reasonably be expected to cause or result in stabilization or manipulation of the price of the Notes to facilitate the sale or resale of the Notes.

(w) *No Labor Disputes*. No labor dispute with the employees of the Company or any subsidiary exists or, to the knowledge of the Company after due inquiry and investigation, is threatened, which, in either case, would have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole.

(x) *No Unlawful Contributions.* Neither the Company nor any of its subsidiaries nor, to the Company's knowledge, any employee or agent of the Company of any subsidiary has made any payment of funds of the Company or any subsidiary or received or retained any funds in violation of any law, rule or regulation or of a character required to be disclosed in the Prospectus which has not been so disclosed.

(y) *Compliance With Environmental Laws.* As of each Delivery Date the Company, and each of its subsidiaries (i) will be in compliance in all material respects with any and all applicable foreign, Federal, state and local laws and regulations relating to the protection of human health and safety, the Hazardous Materials (as defined below), or hazardous or toxic wastes, pollutants or contaminants (the "Environmental Laws"); (ii) will have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses; and (iii) will be in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals are otherwise disclosed in the Prospectus or would not, individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries taken as a whole.

(z) *Hazardous Materials*.

(i) None of the Company or any partnership or other subsidiary that owns a Community (each a "Partnership") has at any time, and, to the best knowledge of the Company after due inquiry and investigation, no other party has, at any time, handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or be pumped, poured, emitted, emptied, discharged, released, injected, dumped, transferred or otherwise disposed of or dealt with, Hazardous Materials (as hereinafter defined) on, to, above under, in, into or from the Communities, except as disclosed in the environmental reports previously delivered to the Agents or referred to in the Prospectus, or such as would not individually or in the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole. Neither the Company nor its subsidiaries intends to use the Communities or any subsequently acquired properties described in the Prospectus for the purpose of handling, burying, storing, retaining, refining, transporting, processing, manufacturing, generating, producing, spilling, seeping, leaking, escaping, leaching,

pumping, pouring, emitting, emptying, discharging, releasing, injecting, dumping, transferring or otherwise disposing of or dealing with Hazardous Materials, except for the use, storage and transportation of small quantities of substances that are regularly used as office supplies, household cleaning supplies, gardening supplies, or pool maintenance supplies in compliance with applicable Environmental Laws and in accordance with prudent business practices and good hazardous materials storage and handling practices.

(ii) None of the Company or the Partnerships, to the best knowledge of the Company after due inquiry and investigation, knows of any seepage, leak, escape, leach, discharge, injection, release, emission, spill, pumping, pouring, emptying or dumping of Hazardous Materials into waters on, under or adjacent to the Communities or onto lands from which such hazardous or toxic waste or substances might seep, flow or drain into such waters, except as disclosed in the environmental reports previously delivered to the Agents or referred to in the Prospectus or such as would not individually or in the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole.

(iii) None of the Company or the Partnerships to the best knowledge of the Company after due inquiry and investigation, has received notice of, or has knowledge of any occurrence or circumstance which, with notice or passage of time or both, would give rise to, any claim under or pursuant to any Environmental Law pertaining to Hazardous Materials, hazardous or toxic waste or substances on or originating from the Communities arising out of the conduct of any such party, including, without limitation, pursuant to any Environmental Law, except as disclosed in the environmental reports previously delivered to the Agents or referred to in the Prospectus or such as would not individually or in the aggregate have a material adverse effect on the Company and its subsidiaries, taken as a whole.

As used herein, "Hazardous Material" shall include, without limitation, any flammable materials or explosives, petroleum or petroleum-based products, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials, asbestos or any material as defined by any Federal, state or local environmental law, ordinance, rule, or regulation including, without limitation, Environmental Laws, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("CERCLA"), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 9601, et seq.), and in the regulations adopted and publications promulgated pursuant to each of the foregoing or by any Federal, state or local governmental authority having or claiming jurisdiction over the Communities as described in the Prospectus.

(aa) *Periodic Review of Costs of Environmental Compliance.* In the ordinary course of its business, each of the Company and the Partnerships conducts a periodic review of the effect of Environmental Laws on its business, operations and properties in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for investigation, clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such review

and on the basis of the reviews conducted by the Company in connection with the Communities, the Company has reasonably concluded that such associated costs and liabilities would not individually or in the aggregate, have a material adverse effect on the Company and its subsidiaries taken as a whole.

(bb) *Property and Casualty Insurance.* The Company and its subsidiaries maintain property and casualty insurance (other than earthquake insurance) in favor of the Company and its subsidiaries with respect to each of the Communities, in an amount and on such terms as is reasonable for businesses of the type proposed to be conducted by the Company and its subsidiaries. The Company maintains earthquake insurance on the Communities to the extent described in the Prospectus. Neither the Company nor any subsidiary has received from any insurance company notice of any material defects or deficiencies affecting the insurability of any of the Communities (other than with respect to seismic activities).

(cc) *REIT Status.* The Company has elected to be taxed as a REIT under the Code and will use its best efforts to continue to be organized and will continue to operate in a manner so as to qualify as a "real estate investment trust" ("REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code"), unless the Board of Directors determines that it is no longer in the best interest of the Company to continue to be so qualified.

(dd) *No Plan Assets.* Neither the assets of the Company nor its subsidiaries constitute, nor will such assets, as of the Closing Date, constitute, "plan assets" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(ee) *Distribution of Offering Materials*. The Company has not distributed and, prior to the later to occur of (i) the Closing Date and (ii) completion of the distribution of the Notes, will not distribute any offering material in connection with the offering and sale of the Notes other than the Registration Statement, the Prospectus or other materials, if any, permitted by the Securities Act.

(ff) *Form S-3 Eligibility.* The Company satisfies all conditions and requirements for the use of a Registration Statement on Form S-3 under the Securities Act and the Securities Act Rules and Regulations.

4. Purchases as Principal; Solicitations as Agent.

(a) *Purchases as Principal*. If so agreed by one or more of the Agents and the Company in each instance, Notes may be purchased by such Agent or Agents as principal. An Agent's commitment to purchase Notes as principal shall be deemed to have been made on the basis of the representations and warranties of the Company herein contained and shall be subject to the terms and conditions herein set forth. In addition, in connection with each such sale, the Company and such Agent or Agents will enter into a supplemental agreement (a "Terms Agreement") that will provide for the terms of the sale of such Notes to, and the purchase thereof by, such Agent or Agents (which terms, unless otherwise agreed, shall, to the extent applicable, include those terms specified in Exhibit A hereto). Each Terms Agreement shall take the form of either (i) an oral agreement between such Agent or Agents and the Company, with written

confirmation prepared by such Agent or Agents and mailed to the Company, or (ii) a written agreement between such Agent or Agents and the Company (a "Written Terms Agreement"). Unless the context otherwise requires, references herein to this "Distribution Agreement" shall include the applicable Terms Agreement of one or more Agents to purchase Notes from the Company as principal. Each purchase of Notes, unless otherwise agreed, shall be at a discount from the principal amount of each such Note equivalent to the applicable commission set forth in Schedule III hereto. The Agents may engage the services of any other broker or dealer in connection with the resale of the Notes purchased by them as principal and may allow any portion of the discount received in connection with such purchases from the Company to such brokers and dealers. At the time of each purchase of Notes by one or more Agents as principal, the Company and such Agent or Agents shall agree in the Terms Agreement whether any stand-off provision (as referred to in Section 5(r) hereof) or any officers' certificate, opinion of counsel or comfort letter (as referred to in Sections 8(b), 8(c) and 8(d) hereof) will be required. If the Company and two or more Agents enter into an agreement pursuant to which such Agents agree to purchase Notes from the Company as principal and one or more of such Agents shall fail at the Settlement Date to purchase the Notes which it or they are obligated to purchase (the "Defaulted Notes"), then the nondefaulting Agents shall have the right, within 24 hours thereafter, to make arrangements for one of them or one or more other Agents or underwriters to purchase all, but not less than all, of the Defaulted Notes in such amounts as may be agreed upon and upon the terms herein set forth; provided, however, that if such arrangements shall not have been completed within such 24-hour period, then:

(i) if the aggregate principal amount of Defaulted Notes does not exceed 10% of the aggregate principal amount of Notes to be so purchased by all of such Agents on the Settlement Date, the nondefaulting Agents shall be obligated, severally and not jointly, to purchase the full amount thereof in the proportions that their respective initial underwriting obligations bear to the underwriting obligations of all nondefaulting Agents; or

(ii) if the aggregate principal amount of Defaulted Notes exceeds 10% of the aggregate principal amount of Notes to be so purchased by all of such Agents on the Settlement Date, such agreement shall terminate without liability on the part of any nondefaulting Agent.

No action taken pursuant to this paragraph shall relieve any defaulting Agent from liability in respect of its default. In the event of any such default which does not result in a termination of such agreement, either the nondefaulting Agents or the Company shall have the right to postpone the Settlement Date for a period not exceeding seven days in order to effect any required changes in the Registration Statement or the Prospectus or in any other documents or arrangements.

Unless otherwise specified in a Terms Agreement, if an Agent or Agents are purchasing Notes as principal, it or they, as the case may be, may resell such Notes to other dealers. Any such sales may be at a discount, which shall not exceed the amount set forth in the Prospectus Supplement relating to such Notes.

(b) *Solicitations as Agent*. On the basis of the representations and warranties herein contained, but subject to the terms and conditions herein set forth, when agreed by the Company and an Agent, such Agent, as an agent of the Company, will use its reasonable efforts to solicit offers to purchase the Notes upon the terms and conditions set forth herein and in the Prospectus. The Agents are not authorized to appoint sub-agents with respect to Notes sold through them as agents. All Notes sold through an Agent as agent will be sold at 100% of their principal amount unless otherwise agreed to by the Company and such Agent.

The Company reserves the right, in its sole discretion, to suspend solicitation of offers for the purchase of Notes through an Agent, as agent, commencing at any time for any period of time or permanently. As soon as practicable, but not later than one business day, after receipt of instructions from the Company, such Agent will suspend solicitation of offers for the purchase of Notes from the Company until such time as the Company has advised such Agent that such solicitation may be resumed. During the period of time that such solicitation is suspended, the Company shall not be required to deliver, or cause to be delivered, any opinions, letters, or certificates in accordance with Section 8 hereof; provided that if the Registration Statement or Prospectus is amended or supplemented during the period of suspension (other than by an amendment or supplement providing solely for a change in the interest rates, redemption provisions, amortization schedules or maturities offered for the Notes or for a change that the Agents deem to be immaterial), no Agent shall be required to resume soliciting offers to purchase Notes until the Company have delivered, or cause to be delivered, such opinions, letters and certificates in accordance with Section 8 hereof or as such Agent may reasonably request.

Upon settlement, the Company agrees to pay to each Agent, as consideration for the sale of each Note resulting from a solicitation made or an offer to purchase received by such Agent, a commission, in the form of a discount from the purchase price of such Note equal to the applicable percentage of the principal amount of such Note as set forth in Schedule III hereto.

(c) *Administrative Procedures*. The purchase price, interest rate or formula, maturity date and other terms of the Notes (as applicable) specified in Exhibit A hereto shall be agreed upon by the Company and the applicable Agent or Agents and specified in a Pricing Supplement to the Prospectus to be prepared by the Company in connection with each sale of Notes. Except as otherwise specified in the applicable Pricing Supplement, the Notes will be issued in denominations of U.S. $1,000 or any larger amount that is an integral multiple of U.S. $1,000. Administrative procedures with respect to the issuance and sale of Notes shall be agreed upon from time to time by the Company, the Agents and the Trustee (the "Procedures"), and initially such Procedures shall be as set forth in Exhibit B hereto. The Agents and the Company agree to perform, and the Company agrees to cause the Trustee to agree to perform, their respective duties and obligations specifically provided to be performed by them in the Procedures.

(d) *Agents' Obligations Several and Not Joint*. The Company acknowledges that the obligations of the Agents under this Agreement are several and not joint.

5. Covenants of the Company. The Company covenants and agrees with the Agents as follows:

(a) *Amendments and Supplements.* During the period in which a prospectus relating to the Notes is required to be delivered under the Securities Act, the Company shall (i) notify the Agents promptly of the time when any subsequent amendment to the Registration Statement has become effective or any supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information, (ii) prepare and file with the Commission, promptly upon your request, any amendments or supplements to the Registration Statement or Prospectus that, in your opinion, may be necessary or advisable in connection with your distribution of the Notes, and (iii) file no amendment or supplement to the Registration Statement or Prospectus (other than any document required to be filed under the Exchange Act that upon filing is deemed to be incorporated by reference therein) to which the Agents or your counsel shall reasonably object by notice to the Company after having been furnished a copy a reasonable time prior to the filing.

(b) *Notification Upon Certain Events.* The Company shall advise you, promptly after it receives notice or otherwise learns, (i) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement, (ii) of the suspension of the qualification or registration of the Notes for offering or sale in any jurisdiction, (iii) of the initiation or threatening (in writing) of any proceeding for any such purpose or (iv) of any change in the rating assigned by the Rating Agencies or any other "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act, to any debt securities (including the Notes) of the Company, or the public announcement by any nationally recognized statistical rating organization that it has under surveillance or review, with possible negative implications, its rating of any such debt securities, or the withdrawal by any nationally recognized statistical rating organization of its rating of such debt securities; and the Company will promptly use its best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such a stop order should be issued.

(c) *Compliance With Securities Laws.* The Company shall comply with all requirements imposed upon it by the Securities Act, the Securities Act Rules and Regulations, the Exchange Act, the Exchange Act Rules and Regulations and the TIA as from time to time in force, so far as is necessary to permit the continuance of sales of, or dealings in, the Notes as contemplated by the provisions hereof and the Prospectus. If during such period any event occurs as a result of which, in the opinion of counsel to the Agents, the Registration Statement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances then existing, not misleading, or if during such period it is necessary to amend or supplement the Registration Statement or Prospectus to comply with the Securities Act, the Company will promptly notify the Agents and will amend or supplement the Registration Statement or Prospectus (at the expense of the Company) so as to correct such statement or omission or effect such compliance.

(d) *Copies of Offering Documents.* The Company shall furnish to the Agents copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement and the

Prospectus that are filed with the Commission during the period in which a prospectus relating to the Notes is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as available and in such quantities as the Agents may from time to time reasonably request.

(e) *Copies of Securities Filings and Distributions.* The Company shall furnish the Agents with copies of filings of the Company under the Securities Act and Exchange Act and with all other financial statements and reports it distributes generally to the holders of any class of its capital stock during the period of five years commencing on the date upon which the Prospectus Supplement is filed pursuant to Rule 424(b) of the Securities Act Rules and Regulations.

(f) *Earnings Statements.* The Company shall make generally available to its security holders and to the Agents as soon as practicable after each sale of Notes, earning statements (which need not be audited) that satisfy the provisions of Section 11(a) of the Securities Act and the Securities Act Rules and Regulations (including, without limitation, Rule 158 of the Securities Act Rules and Regulations) with respect to each sale of Notes.

(g) *Payment of Expenses.* The Company shall pay, or reimburse if paid by you, whether or not the transactions contemplated by this Distribution Agreement are consummated or this Distribution Agreement is terminated, all costs and expenses incident to the performance of the obligations of the Company under this Distribution Agreement, including but not limited to costs and expenses of or relating to (i) the preparation, printing and filing of the Registration Statement and exhibits thereto, the Prospectus and any amendment or supplement to the Registration Statement or the Prospectus, (ii) the word processing and reproduction of the Indenture and the Notes and the delivery of the Notes, (iii) the costs incurred by the Company in furnishing (including costs of shipping, mailing and courier) such copies of the Registration Statement, the Prospectus and all amendments and supplements thereto, as may be requested for use in connection with the offering and sale of the Notes by the Agents or by dealers to whom Notes may be sold, (iv) the filing fees and the fees and expenses of counsel to the Agents in connection with any filings required to be made with the National Association of Securities Dealers or its subsidiary NASD Regulation Inc., (iv) any registration or qualification of the Notes for offer and sale under the securities or blue sky laws of such jurisdictions designated by you, including the reasonable fees, disbursements and other charges of your counsel in connection therewith, and the preparation of any blue sky or legal investment memoranda, (iv) the fees charged by each of the Rating Agencies for the rating of the Notes at the request of the Company, (v) counsel (including local and special counsel) to the Company and any surveyors, engineers, appraisers, photographers, accountants and other professionals engaged by the Company, (vi) the transfer agent for the Notes, (vii) the costs and expenses of the Trustee under the Indenture, (viii) Ernst & Young LLP or such other nationally-recognized accountants as may be engaged by the Company in connection with the offering of the Notes (the "Accountants") and (ix) the reasonable fees and disbursements of counsel to the Agents incurred in connection with the establishment of the program relating to the Notes and incurred from time to time in connection with the transactions contemplated hereby.

(h) *Blue Sky Qualification.* The Company shall qualify the notes for offering and sale under the applicable securities laws and real estate syndication laws of such states and other jurisdictions of the United States or Canada as the Agents may designate, and will maintain such qualifications in effect for as long as may be required for the distribution of the Notes; *provided, however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation in any jurisdiction in which it is not so qualified. The Company will file such statements and reports as may be required by the laws of each jurisdiction in which the Notes have been qualified as above provided. The Company will promptly advise the Agents of the receipt by the Company of any notification with respect to the suspension of the qualification of the Notes for sale in any such state or jurisdiction or the initiating or threatening of any proceeding for such purpose.

(i) *No Price Stabilization or Manipulation.* The Company shall not take, at any time, directly or indirectly, other than in connection with this Distribution Agreement, any action designed to stabilize, or which might reasonably be expected to cause or result in, or which has constituted or which might reasonably be expected to constitute the stabilization of, the price of the Notes.

(j) *Rating Agency Matters.* The Company shall take all reasonable action necessary to enable the Rating Agencies to provide their respective credit ratings of the Notes.

(k) *Establishing Terms of Notes*. The Company shall execute and deliver a Supplemental Indenture or officer's certificate, as applicable, designating the Notes as the debt securities to be offered, and establishing the applicable terms and provisions of each Note in accordance with the provisions of the Indenture and any applicable Terms Agreement.

(l) *Use of Proceeds.* The Company shall apply the net proceeds to the Company from the sale of the Notes by the Company as set forth under the caption "Use of Proceeds" in the Prospectus.

(m) *Preparation of Pricing Supplements.* The Company shall prepare, with respect to any Notes to be sold to or through an Agent or Agents pursuant to this Distribution Agreement, a Pricing Supplement with respect to such Notes in a form previously approved by such Agent or Agents. The Company will deliver such Pricing Supplement no later than 11:00 a.m., New York City time, on the business day following the date of the Company's acceptance of the offer for the purchase of such Notes and will file such Pricing Supplement pursuant to Rule 424(b)(3) under the Securities Act not later than the close of business of the Commission on the fifth business day after the date on which such Pricing Supplement is first used.

(n) *Unaudited Financial Information.* The Company shall furnish to the Agents, within two business days following the date on which such information is first released to the general public, interim financial statement information related to the Company with respect to each of the first three quarters of any fiscal year and preliminary financial statement information with respect to any fiscal year; and the Company shall cause the Prospectus to be amended or supplemented to include or incorporate by reference financial information with respect thereto and corresponding information for the comparable period of the preceding fiscal year, as well as such other information and explanations as shall be necessary for an

understanding thereof and as shall be required by the Securities Act or the Securities Act Rules and Regulations.

(o) *Audited Financial Information*. The Company shall furnish to the Agents, within two business days following the date on which such information is first released to the general public, financial information included in or derived from the audited financial statements of the Company for the preceding fiscal year; and the Company shall cause the Registration Statement and the Prospectus to be amended, whether by the filing of documents pursuant to the Exchange Act or the Securities Act or otherwise, to include or incorporate by reference such audited financial statements and the report or reports, and consent or consents to such inclusion or incorporation by reference, of the independent accountants with respect thereto, as well as such other information and explanations as shall be necessary for an understanding of such financial statements and as shall be required by the Securities Act or the Securities Act Rules and Regulations.

(p) *REIT Status.* Unless the Board of Directors of the Company determines in its reasonable business judgment and pursuant the Charter that continued qualification as a "real estate investment trust" under the Code is not in the Company's best interest, the Company will use its best efforts to, and will continue to meet the requirements to, qualify as a "real estate investment trust" under the Code.

(q) *Market Stand-Off Pending Settlement.* Between the date of any Terms Agreement and the Settlement Date with respect to such Terms Agreement, the Company will not, without such Agent's prior consent, offer, sell, contract to sell or otherwise dispose of any debt securities of the Company substantially similar to such Notes (other than (i) the Notes that are to be sold pursuant to such Terms Agreement, (ii) Notes previously agreed to be sold by the Company, and (iii) commercial paper and short-term bank loans issued in the ordinary course of business (collectively, the "Market Stand-Off Exceptions")), except as may otherwise be provided in such Terms Agreement.

(r) *Market Stand-Off Generally.* If requested by any Agent in connection with a purchase by it of Notes as principal in accordance with Section 4(a) hereof, the Company shall cause such transaction to be subject to the terms of such market stand-off provision as shall be agreed upon by the Company and such Agent at the time of such agreement to purchase Notes as principal.

6. Conditions of Agents' Obligations at the Closing. The obligations of the Agents to purchase Notes as principal and to solicit offers for the purchase of Notes as agent of the Company, and the obligations of any purchasers of the Notes sold through an Agent as agent, shall be subject to the accuracy of the representations and warranties of the Company herein, to the accuracy of the statements of the officers of the Company made in any certificate furnished pursuant to the provisions hereof, to the performance and observance by the Company of all of its covenants and agreements contained herein and to the following additional conditions precedent:

(a) *Opinion of Company Counsel.* On the Commencement Date and, if called for by any Terms Agreement, on the corresponding Settlement Date, the relevant Agents shall

have received the opinion of Goodwin Procter llp, counsel for the Company, dated the date of its delivery, to the effect set forth in Exhibit C.

(b) Opinion of Company Tax Counsel. On the Commencement Date and, if called for by any Terms Agreement, on the corresponding Settlement Date, the relevant Agents shall have received the opinion of Goodwin Procter llp, tax counsel to the Company, dated the date of its delivery, to the effect that, subject to the assumptions and qualifications historically included by such counsel in opinions rendered in recent public offerings by AvalonBay Communities, Inc., commencing with the taxable year ending December 31, 1994, the form of organization of the Company and its operations are such as to enable the Company to qualify as a "real estate investment trust" under the applicable provisions of the Code.

(c) *Opinion of Counsel to the Agents.* On the Commencement Date and, if called for by any Terms Agreement, on the corresponding Settlement Date, the relevant Agents shall have received from O'Melveny & Myers llp, counsel to the Agents, such opinion or opinions, dated the date of its delivery, with respect to the organization of each of the Company, the validity of the Indenture, the Notes, the Registration Statement, the Prospectus and other related matters as the Agents reasonably may request, and such counsel shall have received such documents and information as they request to enable them to pass upon such matters.

(d) *Comfort Letter.* On the Commencement Date and, if called for by any Terms Agreement, on the corresponding Settlement Date, the relevant Agents shall have received a letter from the Accountants, dated the date of its delivery, containing information of the type ordinarily included in accountants' "comfort letters" delivered according to *Statement of Auditing Standards No. 72* (or any successor bulletin) published by the American Institute of Certified Public Accountants, including, without limitation, statements to the effect that:

(i) They are independent public accountants with respect to the Company and the Subsidiaries within the meaning of the Securities Act and the Securities Act Rules and Regulations, and no information concerning their relationship with or interest in either of the Company is required by Item 10 of the Registration Statement.

(ii) In their opinion, the financial statements and supporting schedules examined by them and included or incorporated by reference in the Registration Statement and Prospectus and audited by them and covered by their opinions therein comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Securities Act Rules and Regulations with respect to registration statements on Form S-3 and the Exchange Act and the Exchange Act Rules and Regulations.

(iii) They have performed limited procedures, not constituting an audit, including a reading of the latest available unaudited interim consolidated financial statements of the Company, a reading of the minute books of the Company, inquiries of certain officials of the Company who have responsibility for financial and accounting matters and such other inquiries and procedures as may be specified in such letter, and on the basis of such limited review and procedures nothing came to their attention that caused them to believe that:

(A) the unaudited financial statements of the Company included in the Registration Statement, or incorporated by reference therein, do not comply as to form in all material respects with the applicable accounting requirements of the Securities Act and the Securities Act Rules and Regulations and the Exchange Act and the Exchange Act Rules and Regulations, or material modifications are required for them to be presented in conformity with generally accepted accounting principles;

(B) the operating data and balance sheet data included or incorporated by reference in the Prospectus were not determined on a basis substantially consistent with that used in determining the corresponding amounts in the audited financial statements included or incorporated by reference in the Registration Statement;

(C) the pro forma financial information included or incorporated by reference in the Registration Statement was not determined on a basis substantially consistent with that of the audited financial statements included or incorporated by reference in the Registration Statement; or

(D) at a specified date not more than five days prior to the date hereof, there had been any change in the capital stock of the Company or the Subsidiaries, or any increase in the debt of the Company or the Subsidiaries or any decrease in the net assets of the Company or the Subsidiaries, as compared with the amounts shown in the most recent consolidated balance sheet of the Company and the Subsidiaries, included in the Registration Statement or incorporated by reference therein, or, during the period from the date of the most recent consolidated statement of operations included in the Registration Statement or incorporated by reference therein to a specified date not more than five days prior to the date hereof, there were any decreases, as compared with the corresponding period in the preceding year, in revenues, net income or funds from operations of the Company and the Subsidiaries, except in all instances for changes, increases or decreases which the Registration Statement and the Prospectus disclose have occurred or may occur.

(iv) In addition to the examination referred to in their report included in the Registration Statement and the Prospectus and the limited procedures referred to in clause (iii) above, they have carried out certain other specified procedures, not constituting an audit, with respect to certain amounts, percentages and financial information which are included in the Registration Statement and the Prospectus and which are specified by the Agents, and have found such amounts, percentages and financial information to be in agreement with the relevant accounting, financial and other records of the Company and the Subsidiaries identified in such letter.

(e) *Officers' Certificate.* On the Commencement Date and, if called for by any Terms Agreement, on the corresponding Settlement Date, the Agents shall have received from the Company a certificate, dated the date of its delivery, signed by each of the Chief

Executive Officer and the Chief Financial Officer of the Company, in form and substance satisfactory to the Agents, to the effect that:

(i) No stop order suspending the effectiveness of the Registration Statement has been issued and, to the best of such officers' information and belief, no proceeding for that purpose is pending or threatened by the Commission;

(ii) No order suspending the effectiveness of the Registration Statement or the qualification or registration of the Notes under the securities or Blue Sky laws of any jurisdiction is in effect and, to the best of such officers' information and belief, no proceeding for such purpose is pending before or threatened or contemplated by the Commission or the authorities of any such jurisdiction;

(iii) Any request for additional information on the part of the staff of the Commission or any such authorities has been complied with to the satisfaction of the staff of the Commission or such authorities;

(iv) Each signer of such certificate has carefully examined the Registration Statement and the Prospectus (including any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus) and (A) as of the date of such certificate, such documents, taken together, are true and correct in all material respects and do not omit to state a material fact required to be stated therein or necessary in order to make the statements therein not untrue or misleading and (B) no event has occurred as a result of which it is necessary to amend or supplement the Prospectus in order (1) to make the statements therein not untrue or misleading in any material respect or (2) to otherwise comply with the disclosure requirements of Form S-3. There has been no document required to be filed under the Exchange Act and the Exchange Act Rules and Regulations that upon such filing would be deemed to be incorporated by reference into the Prospectus that has not been so filed;

(v) Each of the representations and warranties of the Company contained in this Distribution Agreement was, when originally made, and is, at the time such certificate is delivered, true and correct in all material respects;

(vi) Each of the covenants required to be performed by the Company herein on or prior to the delivery of such certificate has been duly, timely and fully performed in all material respects, and each condition herein required to be complied with by the Company on or prior to the date of such certificate has been duly, timely and fully complied with, in all material respects; and

(vii) Subsequent to the latter of the execution and delivery of the Distribution Agreement and the date of the most recent Terms Agreement through the date of such certificate, there has not occurred any downgrading in the rating accorded the Notes or any other debt securities of the Company by any Rating Agency nor has any notice been given to the Company of (A) any intended or potential downgrading by any Rating Agency in such securities, or (B) any review or possible change by any Rating

Agency that does not indicate a stable, positive or improving rating accorded such securities.

(f) *No Stop Orders or Unmet Commission Requests.* (i) No stop order suspending the effectiveness of the Registration Statement shall have been issued and no proceedings for that purpose shall be pending or threatened by the Commission, (ii) no order suspending the effectiveness of the Registration Statement or the qualification or registration of the Notes under the securities or Blue Sky laws of any jurisdiction shall be in effect and no proceeding for such purpose shall be pending before or threatened or contemplated by the Commission or the authorities of any such jurisdiction, (iii) any request for additional information on the part of the staff of the Commission or any such authorities shall have been complied with to the satisfaction of the staff of the Commission or such authorities, and (iv) after the date hereof no amendment or supplement to the Registration Statement or the Prospectus (other than any document required to be filed under the Exchange Act that upon filing is deemed to be incorporated by reference therein) shall have been filed unless a copy thereof was first submitted to the Agents and the Agents did not object thereto in good faith.

(g) *No Material Adverse Change.* Since the respective dates as of which information is given in the Registration Statement and the Prospectus, (i) there shall not have been a material adverse change in the general affairs, business, business prospects, properties, management, condition (financial or otherwise) or results of operations of the Company and its subsidiaries, taken as a whole, whether or not arising from transactions in the ordinary course of business, in each case other than as set forth in or contemplated by the Registration Statement and the Prospectus, (ii) there shall not have been any material change on a consolidated basis, in the equity capitalization or long-term debt of the Company, or any adverse change in the rating assigned to any securities of the Company, in each case other than as set forth in or contemplated by the Registration Statement and the Prospectus, and (iii) neither the Company nor any of its subsidiaries shall have sustained any material loss or interference with its business or properties from fire, explosion, flood or other casualty, whether or not covered by insurance, or from any labor dispute or any court or legislative or other governmental action, order or decree, which is not set forth in the Registration Statement and the Prospectus, if in the judgment of the Agents any such development makes it impracticable or inadvisable to offer or deliver the Notes on the terms and in the manner contemplated in the Prospectus.

(h) *No Material Litigation Commenced.* Since the respective dates as of which information is given in the Registration Statement and the Prospectus, there shall have been no litigation or other proceeding instituted against the Company or any of its subsidiaries or any of their respective officers or directors in their capacities as such, before or by any Federal, state or local court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, in which litigation or proceeding an unfavorable ruling, decision or finding would materially and adversely affect the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole.

(i) *Accuracy of Representations and Warranties; Observance of Covenants.* At each Delivery Date, each of the representations and warranties of the Company contained herein shall be true and correct in all material respects, as if made at such Delivery Date, and all

covenants and agreements contained herein to be performed on the part of the Company and all conditions contained herein to be fulfilled or complied with by the Company at or prior to such Delivery Date, shall have been duly performed, fulfilled or complied with.

(j) *Blue Sky Qualification.* The Notes shall be qualified for sale in the jurisdictions designated pursuant to Section 5(h), each such qualification shall be in effect and not subject to any stop order or other proceeding.

(k) *Other Documents.* On the Commencement Date and on each Delivery Date, counsel to the Agents shall have been furnished with such other documents and opinions as such counsel may reasonably require for the purpose of enabling such counsel to pass upon the issuance and sale of Notes as herein contemplated and related proceedings, or in order to evidence the accuracy and completeness of any of the representations and warranties, or the fulfillment of any of the conditions, herein contained; and all proceedings taken by the Company in connection with the issuance and sale of Notes as herein contemplated shall be satisfactory in form and substance to the Agents and to counsel to the Agents.

(l) *Special Conditions for Agents' Purchases as Principal.* The obligations of the Agents to purchase Notes as principal will be subject to the following further conditions: (i) the rating assigned by each of the Rating Agencies, or any other nationally recognized securities rating agency, to any debt securities of the Company as of the date of the agreement to purchase Notes as principal shall not have been lowered and no such rating agency shall have publicly announced that it has under surveillance or review, with possible negative implications, its ratings of any debt securities of the Company since that date and (ii) there shall not have come to the attention of any Agent any facts that would cause such Agent to believe that the Prospectus, at the time it was required to be delivered to a purchaser of the Notes, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at such time, not misleading.

The documents required to be delivered by this Section 6 as a condition precedent to each Agent's obligation to begin soliciting offers to purchase Notes as an agent of the Company were originally delivered to the Agents at the San Francisco office of O'Melveny & Myers llp, counsel for the Agents, on December 21, 1998. The date of delivery of such documents is referred to herein as the "Commencement Date."

All such opinions, certificates, letters and other documents will be in compliance with the provisions hereof only if they are reasonably satisfactory in form and substance to the Agents and their counsel. The Company will furnish the Agents with such conformed copies of such opinions, certificates, letters and other documents as the Agents shall reasonably request.

If any condition specified in this Section 6 shall not have been fulfilled when and as required to be fulfilled, this Distribution Agreement may be terminated by any Agent in accordance with Section 13 below (such termination to be effective only with respect to such Agent) and any such termination shall be without liability of any party to any other party, except that the covenant regarding provision of an earnings statement set forth in Section 5(f) hereof, the indemnity and contribution agreements set forth in Section 9 hereof, the provisions concerning payment of expenses under Section 10 hereof, the provisions concerning the

representations, warranties and agreements to survive delivery of Section 11 hereof, the provisions relating to parties set forth in Section 15 and the provisions relating to governing law set forth in Section 16 hereof shall remain in effect.

7. Delivery of and Payment for Notes Sold through the Agents. Delivery of Notes sold through any Agent as agent shall be made by the Company to such Agent for the account of any purchaser only against payment therefor in immediately available funds. In the event that a purchaser shall fail either to accept delivery of or to make payment for a Note on the date fixed for settlement, such Agent shall promptly notify the Company and deliver such Note to the Company and, if such Agent has theretofore paid the Company for such Note, the Company will promptly return such funds to such Agent unless the failure arose from the gross negligence or willful misconduct of such Agent or from a default by such Agent in the performance of its obligations hereunder. If such failure occurred for any reason other than the gross negligence or willful misconduct of such Agent or from a default by such Agent in the performance of its obligations hereunder, the Company will reimburse such Agent on an equitable basis for its loss of the use of the funds for the period such funds were credited to the Company's account.

8. Additional Covenants of the Company. The Company covenants and agrees with the Agents that:

(a) *Reaffirmation of Representations and Warranties*. Each acceptance by the Company of an offer for the purchase of Notes (whether to an Agent as principal or through an Agent as agent), and each delivery of Notes (whether to an Agent as principal or through an Agent as agent), shall be deemed to be an affirmation that the representations and warranties of the Company contained in this Distribution Agreement and in the most recent certificate (for each type of certificate) theretofore delivered to any Agent pursuant hereto (and if the applicable Agent has not received a copy of such certificate, one shall be supplied) are true and correct in all material respects at the time of such acceptance or sale, as the case may be, and an undertaking that such representations and warranties will be true and correct at the time of delivery to such Agent or to the purchaser, as the case may be, of the Note or Notes relating to such acceptance or sale, as the case may be, as though made at and as of each such time (and it is understood that such representations and warranties shall relate to the Registration Statement and Prospectus as amended and supplemented to each such time).

(b) *Subsequent Delivery of Certificates*. Upon the written request of any Agent within 45 days of the Company's filing with the Commission of any Quarterly Report on Form 10-Q or Annual Report on Form 10-K incorporated by reference into the Prospectus, and otherwise only (i) as may be required in connection with a sale pursuant to Section 4(a) or (ii) at such times as may be reasonably requested by an Agent following the occurrence of any event that such Agent reasonably considers to be a material adverse change to the business, prospects, properties, financial position or results of operations of the Company and its subsidiaries, taken as a whole, the Company shall furnish or cause to be furnished to the Agents forthwith a certificate, dated the date of filing with the Commission of such document, the date of such sale or the date requested by such Agent, as applicable, in form reasonably satisfactory to such Agent, to the effect that the statements contained in the certificate referred to in Section 6(e) hereof which were last furnished to the Agents are true and correct at the time of such filing, as though

made at and as of such time (except that such statements shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to such time) or, in lieu of such certificate, a certificate substantially similar to the certificate referred to in Section 6(e) hereof, modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such certificate.

(c) *Subsequent Delivery of Legal Opinions*. Upon the written request of any Agent within 45 days of the Company's filing with the Commission of any Quarterly Report on Form 10-Q or Annual Report on Form 10-K incorporated by reference into the Prospectus, and otherwise only (i) as may be required in connection with a sale pursuant to Section 4(a) or (ii) at such times as may be reasonably requested by an Agent following the occurrence of any event that such Agent reasonably considers to be material adverse change to the business, prospects, properties, financial position or results of operations of the Company taken as a whole, the Company shall furnish or cause to be furnished forthwith, and in any case promptly upon request, to the Agents and to counsel to the Agents the written opinions of counsel to the Company, dated the date of filing with the Commission of such document, the date of such sale or the date requested by such Agent, as applicable, to the effect of the opinions and statements referred to in Sections 6(a)and 6(b) and in form and substance reasonably satisfactory to the Agents, which opinions may include such reductions or limitations as shall be reasonably satisfactory to the Agents, and shall be modified, as necessary, to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion or, in lieu of such opinion, counsel last furnishing such opinion to the Agents may furnish the Agents with a letter substantially to the effect that the Agents may rely on such last opinion to the same extent as though it were dated the date of such letter authorizing reliance (except that statements in such last opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such letter authorizing reliance).

(d) *Subsequent Delivery of Comfort Letters*. Upon the written request of any Agent within 45 days of the Company's filing with the Commission of any Quarterly Report on Form 10-Q or Annual Report on Form 10-K incorporated by reference into the Prospectus, and otherwise only (i) as may be required in connection with a sale pursuant to Section 4(a) or (ii) at such times as may be reasonably requested by an Agent following the occurrence of any event that such Agent reasonably believes may have caused a material adverse change to the financial position or results of operations of the Company and its consolidated subsidiaries, taken as a whole, the Company shall cause the Accountants forthwith to furnish the Agents a letter, dated the date of the filing of such document with the Commission, the date of such sale or the date requested by such Agent, as applicable, in form and substance reasonably satisfactory to the Agents, substantially similar to the portions of the letter referred to in clauses (i) and (ii) of Section 6(d) hereof (but modified to relate to the Registration Statement and Prospectus as amended and supplemented to the date of such letter) and substantially similar to the portions of the letter referred to in clauses (iii) and (iv) of said Section 6(d) with such changes as may be necessary to reflect changes in the financial statements and other information derived from the accounting records of the Company.

9. Indemnification and Contribution.

(a) *Indemnification of the Agents by the Company.* The Company will indemnify and hold harmless the Agents and their directors, officers, employees and agents and each person, if any, who controls any Agent within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, liabilities, expenses and damages (including, but not limited to, any and all investigative, legal and other expenses reasonably incurred in connection with, and any and all amounts paid in settlement of, any action, suit or proceeding between any of the indemnified parties and any indemnifying parties or between any indemnified party and any third party, or otherwise, or any claim asserted), as and when incurred, to which an Agent, or any such person, may become subject under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, liabilities, expenses or damages arise out of or are based on (i) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, the Registration Statement or the Prospectus or any amendment or supplement to the Registration Statement or the Prospectus or in any documents filed under the Exchange Act and deemed to be incorporated by reference into the Prospectus, or in any application or other document executed by or on behalf of the Company or based on written information furnished by or on behalf of the Company filed in any jurisdiction in order to qualify the Notes under the securities laws thereof or filed with the Commission, (ii) the omission or alleged omission to state in such document a material fact required to be stated in it or necessary to make the statements in it not misleading or (iii) any act or failure to act or any alleged act or failure to act by an Agent in connection with, or relating in any manner to, the Notes or the offering contemplated hereby, and which is included as part of or referred to in any loss, claim, liability, expense or damage arising out of or based upon matters covered by clause (i) or (ii) above (*provided* that the Company shall not be liable under this clause (iii) to the extent it is finally judicially determined by a court of competent jurisdiction that such loss, claim, liability, expense or damage resulted directly from any such acts or failures to act undertaken or omitted to be taken by an Agent through gross negligence or willful misconduct); *provided* that the Company will not be liable to the extent that such loss, claim, liability, expense or damage arises from the sale of the Notes to any person by an Agent and is based on an untrue statement or omission or alleged untrue statement or omission made in reliance on and in conformity with information relating to an Agent furnished in writing to the Company by such Agent expressly for inclusion in the Registration Statement, any preliminary prospectus or the Prospectus.

(b) *Indemnification of the Company and its Directors, Certain Officers and Control Persons by the Agents.* The Agents will indemnify and hold harmless the Company and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, each director of the Company and each officer of the Company who signs the Registration Statement to the same extent as the foregoing indemnity from the Company to the each Agent, but only insofar as losses, claims, liabilities, expenses or damages arise out of or are based on any untrue statement or omission or alleged untrue statement or omission made in reliance on and in conformity with information relating to an Agent furnished in writing to the Company by such Agent expressly for use in the Registration Statement, any preliminary prospectus or the Prospectus. This indemnity will be in addition to any liability that an Agent might otherwise have; *provided, however*, that in no case shall an Agent be liable or responsible for any amount in excess of the total discount or

commission received by such Agent in connection with the offering of the Notes that were the subject of the claim for indemnification.

(c) *Procedures.* Any party that proposes to assert the right to be indemnified under this Section 9 will, promptly after receipt of notice of commencement of any action against such party in respect of which a claim is to be made against an indemnifying party or parties under this Section 9, notify each such indemnifying party of the commencement of such action, enclosing a copy of all papers served, but the omission so to notify such indemnifying party will not relieve it from any liability that it may have to any indemnified party under the foregoing provisions of this Section 9 unless, and only to the extent that, such omission results in the forfeiture of substantive rights or defenses by the indemnifying party. If any such action is brought against any indemnified party and it notifies the indemnifying party of its commencement, the indemnifying party will be entitled to participate in and, to the extent that it elects by delivering written notice to the indemnified party promptly after receiving notice of the commencement of the action from the indemnified party, jointly with any other indemnifying party similarly notified, to assume the defense of the action, with counsel satisfactory to the indemnified party, and after notice from the indemnifying party to the indemnified party of its election to assume the defense, the indemnifying party will not be liable to the indemnified party for any legal or other expenses except as provided below and except for the reasonable costs of investigation subsequently incurred by the indemnified party in connection with the defense. The indemnified party will have the right to employ its own counsel in any such action, but the fees, expenses and other charges of such counsel will be at the expense of such indemnified party unless (i) the employment of counsel by the indemnified party has been authorized in writing by the indemnifying party, (ii) the indemnified party has reasonably concluded (based on advice of counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, (iii) a conflict or potential conflict exists (based on advice of counsel to the indemnified party) between the indemnified party and the indemnifying party (in which case the indemnifying party will not have the right to direct the defense of such action on behalf of the indemnified party) or (iv) the indemnifying party has not in fact employed counsel to assume the defense of such action within a reasonable time after receiving notice of the commencement of the action, in each of which cases the reasonable fees, disbursements and other charges of counsel will be at the expense of the indemnifying party or parties. It is understood that the indemnifying party or parties shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements and other charges of more than one separate firm admitted to practice in such jurisdiction at any time for all such indemnified party or parties. All such fees, disbursements and other charges will be reimbursed by the indemnifying party promptly as they are incurred. An indemnifying party will not be liable for any settlement of any action or claim effected without its written consent (which consent will not be unreasonably withheld). No indemnifying party shall, without the prior written consent of each indemnified party, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding relating to the matters contemplated by this Section 9 (whether or not any indemnified party is a party thereto), unless such settlement, compromise or consent includes a unconditional release of each indemnified party from all liability arising or that may arise out of such claim, action or proceeding.

(d) *Contribution.* In order to provide for just and equitable contribution in circumstances in which the indemnification provided for in the foregoing paragraphs of this Section 9 is applicable in accordance with its terms but for any reason is held to be unavailable from the Company or the Agents, the Company and any applicable Agent will contribute to the total losses, claims, liabilities, expenses and damages (including any investigative, legal and other expenses reasonably incurred in connection with, and any amount paid in settlement of, any action, suit or proceeding or any claim asserted, but after deducting any contribution received by the Company from persons other than an Agent, such as persons who control the Company within the meaning of the Securities Act and officers of the Company who signed the Registration Statement, who also may be liable for contribution) to which the Company and any applicable Agent may be subject in such proportion as shall be appropriate to reflect the relative benefits received by the Company on the one hand and any applicable Agent on the other. The relative benefits received by the Company on the one hand and any applicable Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the offering of any Notes (before deducting expenses) received by the Company bear to the total commissions received by applicable Agent or Agents. If, but only if, the allocation provided by the foregoing sentence is not permitted by applicable law, the allocation of contribution shall be made in such proportion as is appropriate to reflect not only the relative benefits referred to in the foregoing sentence but also the relative fault of the Company, on the one hand, and any applicable Agent, on the other, with respect to the statements or omissions which resulted in such loss, claim, liability, expense or damage, or action in respect thereof, as well as any other relevant equitable considerations with respect to such offering. Such relative fault shall be determined by reference to whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or an Agent, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by an indemnified party as a result of the loss, claim, liability, expense or damage, or action in respect thereof, referred to above in this Section 9(d) shall be deemed to include, for purpose of this Section 9(d), any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 9(d), no Agent shall be required to contribute any amount in excess of the commissions and other compensation received by such Agent and no person found guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 9(d), any person who controls a party to this Distribution Agreement within the meaning of the Securities Act will have the same rights to contribution as that party, and each officer of the Company who signed the Registration Statement will have the same rights to contribution as the Company, subject in each case to the provisions hereof. Any party entitled to contribution, promptly after receipt of notice of commencement of any action against such party in respect of which a claim for contribution may be made under this Section 9(d), will notify any such party or parties from whom contribution may be sought but the omission so to notify will not relieve the party or parties from whom contribution may be sought from any other obligation it or they may have under this Section 9(d). No party will be liable for contribution with respect to any action or claim settled without its written consent (which consent will not be unreasonably withheld).

(e) *Survival of Indemnity and Contribution Provisions.* The indemnity and contribution agreements contained in this Section 9 and the representations and warranties of the Company contained in this Distribution Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by an Agent or on its behalf, (ii) acceptance of any of the Notes and payment therefore or (iii) any termination of this Distribution Agreement.

10. Reimbursement of Agents' Expenses. If the Company shall fail to perform any agreement on its part to be performed hereunder, or if any condition of the Agents' obligations hereunder required to be fulfilled by the Company is not fulfilled, the Company will reimburse any applicable Agent for all reasonable out-of-pocket expenses (including fees and disbursements of counsel) incurred by such Agent in connection with this Distribution Agreement, and upon demand the Company shall pay the full amount thereof to such Agent. If this Distribution Agreement is terminated pursuant to Section 13 by reason of the default of any Agent, the Company shall not be obligated to reimburse such Agent on account of those expenses.

11. Representations and Agreements to Survive Delivery. All representations, warranties and agreements contained in this Distribution Agreement or in certificates of officers of the Company submitted pursuant hereto shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of any Agent or any con-trolling person of such Agent, or by or on behalf of the Company or of any of its Subsidiaries, and shall survive each delivery of and payment for any of the Notes.

12. Role of Agents. In acting under this Agreement and in connection with the sale of any Notes by the Company (other than Notes sold to an Agent as principal), each Agent is acting solely as agent of the Company and does not assume any obligation towards or relationship of agency or trust with any purchaser of Notes. An Agent shall make reasonable efforts to assist the Company in obtaining performance by each purchaser whose offer to purchase Notes has been solicited by such Agent and accepted by the Company, but such Agent shall not have any liability to the Company in the event any such purchase is not consummated for any reason. If the Company shall default in its obligations to deliver Notes to a purchaser whose offer it has accepted, the Company shall hold the relevant Agent harmless against any loss, claim, damage or liability arising from or as a result of such default and shall, in particular, pay to such Agent the commission it would have received had such sale been consummated.

13. Termination. The Company shall have the right to terminate this Distribution Agreement with respect to any or all of the Agents at any time by giving notice hereunder to the Agents as hereinafter specified. Each Agent shall have the right by giving notice as hereinafter specified to terminate this Distribution Agreement and/or any Terms Agreement hereunder at any time, provided that if such termination would occur on or after the date of such Terms Agreement and prior to the Settlement Date with respect to such Terms Agreement, any Agent may terminate this Distribution Agreement and such Terms Agreement only if (i) the Company shall have failed, refused or been unable, at any time, to perform any agreement on its part to be performed hereunder, (ii) any other condition of the Agents' obligations hereunder is not fulfilled when due, (iii) the rating assigned by either of the Rating Agencies to the Company or the Notes as of or subsequent to the date of this Distribution Agreement shall have been lowered since that date or if either of the Rating Agencies shall have publicly announced that it has under

surveillance or review for the purpose of considering lowering such rating, its rating of the Company or the Notes, (iv) trading in any of the equity securities of the Company shall have been suspended by the Commission, the NASD, by an exchange that lists such equity securities or by the Nasdaq Stock Market, (v) trading in securities generally on the New York Stock Exchange or the Nasdaq Stock Market shall have been suspended or limited or minimum or maximum prices shall have been generally established on such exchange or over the counter market, or additional material governmental restrictions, not in force on the date of this Agreement, shall have been imposed upon trading in securities generally by such exchange or by order of the Commission or the NASD or any court or other governmental authority, (vi) a general banking moratorium shall have been declared by either Federal or New York State authorities, (vii) any material adverse change in the financial or securities markets in the United States or in political, financial or economic conditions in the United States or any outbreak or material escalation of hostilities or declaration by the United States of a national emergency or war or other calamity or crisis shall have occurred the effect of any of which is such as to make it, in the sole judgment of the Agents, impracticable or inadvisable to market the Shares on the terms and in the manner contemplated by the Prospectus, or (viii) if there shall have come to the attention of the Agents any facts that would cause them to believe that the Prospectus, at the time it was required to be delivered to a purchaser of Notes, included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in light of the circumstances existing at the time of such delivery, not misleading. Any such termination notice shall be effective only with respect to such Agent. As used in this Section 13, the term "Prospectus" means the Prospectus in the form first provided to the Agents for use in confirming sales of the related Notes. In the event of any such termination, neither party will have any liability to the other party hereto, except that (i) an Agent shall be entitled to any commission earned in accordance with the third paragraph of Section 4(b) hereof, (ii) if at the time of termination (a) such Agent shall own any Notes purchased by it as principal with the intention of reselling them or (b) an offer to purchase any of the Notes has been accepted by the Company but the time of delivery to the purchaser or his agent of the Note or Notes relating thereto has not occurred, the covenants set forth in Sections 5 and 8 hereof shall remain in effect until such Notes are so resold or delivered, as the case may be, and (iii) the covenant set forth in Section 5(f) hereof, the provisions of Section 10 hereof, the indemnity and contribution agreements set forth in Section 9 hereof, and the provisions of Sections 11, 15 and 16 hereof shall remain in effect.

14. Notices. All notices or communications hereunder shall be in writing and shall be mailed, delivered or telecopied and confirmed (a) if to the Company, to:

AvalonBay Communities, Inc.
2900 Eisenhower Avenue, Suite 300
Alexandria, Virginia 22314
Attention: Thomas J. Sargeant
Telephone: 703-317-4635
Telecopy: 703-329-0060

with a copy to:

Goodwin Procter llp
Exchange Place
53 State Street
Boston, Massachusetts 02109-2881
Attention: Gilbert G. Menna, P.C.
Telephone: 617-570-1433
Telecopy: 617-523-1231

(b) and if to the Agents to:

Banc of America Securities LLC
100 N. Tryon Street, 7th Floor
Charlotte, NC 28255
Mail Code: NC 1007-07-01
Telecopy: (704) 388-9939

Citigroup Global Markets Inc.
Medium-Term Note Department
388 Greenwich Street
New York, NY 10013
Telephone: (212) 816-5831
Telecopy: (212) 816-0949

Fleet Securities, Inc.
100 Federal Street, MADE 10012H
Boston, MA 02110
Attention: John Crees
Telephone: (617) 434-5983
Telecopy: (617) 434-8702

J.P. Morgan Securities Inc.
270 Park Avenue, 7th Floor
New York, NY 10017
Attention: Transaction Execution Group
Telephone: (212) 834-5710
Telecopy: (212) 834-6702

Lehman Brothers Inc.
745 Seventh Avenue
New York, NY 10019
Attention: Fixed Income Syndicate/Medium Term Notes Desk
Telephone: (212) 526-9664
Telecopy: (212) 526-0943

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036
Attention: Legal Department
Telephone: (212) 761-4000
Telecopy: (212) 761-0783

Wachovia Capital Markets, LLC
301 So. College Street, DC-8
One Wachovia Center
Charlotte, NC 28288
Attention: Corporate Syndicate Desk
Telephone: (704) 383-7727
Telecopy: (704) 383-9165

with a copy to:

O'Melveny & Myers llp
275 Battery Street, Suite 2600
San Francisco, CA 94111-3305
Attention: Peter T. Healy, Esq.
Telephone: (415) 984-8833
Telecopy: (415) 984-8701

Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036
Attention: Debt Syndicate Desk
Telephone: (212) 761-2000

Any party to this Distribution Agreement may change such address for notices by sending to the other parties to this Distribution Agreement written notice of a new address for such purpose.

15. Parties. This Distribution Agreement shall inure to the benefit of and be binding upon the Agents and the Company and their respective successors. Nothing expressed or mentioned in this Distribution Agreement is intended, or shall be construed, to give any person, firm or corporation, other than the parties hereto and their respective successors and the controlling persons and officers and directors referred to in Section 9 hereof and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Distribution Agreement or any provision herein contained. This Distribution Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and respective successors and said controlling persons and officers and directors and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Notes shall be deemed to be a successor by reason merely of such purchase.

16. Governing Law. **THIS DISTRIBUTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE.**

17. Counterparts. This Distribution Agreement may be executed in one or more counterparts, signature pages may be detached from such separately executed counterparts and reattached to other counterparts and, in each such case, the executed counterparts hereof shall constitute a single instrument. Signature pages may be delivered by telecopy.

18. Enforceability. In case any provision of this Distribution Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. Waiver of Rights to Trial by Jury. The Company and the Agents each hereby irrevocably waive any right they may have to a trial by jury in respect of any claim based upon or arising out of this Distribution Agreement or the transactions contemplated hereby.

20. Amendments and Modifications. This Distribution Agreement may not be amended or otherwise modified or any provision hereof waived except by an instrument in writing signed by the Agents and the Company.

[Signature page follows]

If the foregoing correctly sets forth the understanding between the Company and the several Agents, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the several Agents.

AvalonBay Communities, Inc.

By: /s/ Thomas J. Sargeant
Name: Thomas J. Sargeant
Title: Executive Vice President and Chief Executive Officer

ACCEPTED as of the date first above written:

Banc of America Securities LLC

By: /s/ Lily Chang
Name: Lily Chang
Title: Principal

Citigroup Global Markets Inc.

By: /s/ Douglas Sesler
Name: Douglas Sesler
Title: Managing Director

Fleet Securities, Inc.

By: /s/ John Crees
Name: John Crees
Title: Managing Director

J.P. Morgan Securities Inc.

By: /s/ Carl J. Mehldau, Jr.
Name: Carl J. Mehldau, Jr.
Title: Vice President

Lehman Brothers Inc.

By: /s/ Martin Goldberg
Name: Martin Goldberg
Title: Senior Vice President

MORGAN STANLEY & CO. INCORPORATED

By: /s/ Michael Fusco
Name: Michael Fusco
Title: Executive Director

Wachovia Capital Markets, LLC

By: /s/ William Ingram
Name: William Ingram
Title: Managing Director

EXHIBIT A

Terms of Notes

The following terms, if applicable, shall be agreed to by an Agent or Agents and the Company in connection with each sale of Notes:

Principal Amount: $____ Issue Price (Public Offering Price): ____%
Net Proceeds to Issuer: $____ Agents' Discount Commission: ____%
Stated Maturity Date: ____ Interest Rate: ____%
Original Issue Date: ____ CUSIP: ____
Interest Payment Dates: ____ and ____ First Interest Payment Date: ____

Redemption:

- o The Notes cannot be redeemed prior to the Stated Maturity Date at the option of the issuer.
- o The Notes may be redeemed prior to the Stated Maturity Date at the option of the issuer.
  Initial Redemption Date:
  Initial Redemption Percentage/Redemption Price:
  Annual Redemption Percentage Reduction:

Optional Repayment:

- o The Notes cannot be required to be repaid prior to the Stated Maturity Date at the option of the Holder of the Notes.
- o The Notes can be repaid prior to the Stated Maturity Date at the option of the Holder of the Notes.
  Optional Repayment Dates:
  Repayment Price: ____%

Currency:

Specified Currency:
(If other than U.S. Dollars, see attached)
Minimum Denominations:
(Applicable only if Specified Currency is other than U.S. Dollars)

Original Issue Discount ("OID"): o Yes o No
Total Amount of OID:
Yield to Maturity:
Initial Accrual Period:

Form: o Book-Entry o Certificated

Agent:
- o Banc of America Securities LLC
- o Citigroup Global Markets Inc.
- o Fleet Securities, Inc.
- o J.P. Morgan Securities Inc.
- o Lehman Brothers Inc.
- o Morgan Stanley & Co. Incorporated
- o Wachovia Capital Markets, LLC
- o Other (names):

Agent acting in the capacity as indicated below:

o Agent o Principal

If as Principal:

o The Notes are being offered at varying prices related to prevailing market prices at the time of resale.

o The Notes are being offered at a fixed initial public offering price of ____% of principal amount.

If as Agent:

The Notes are being offered at a fixed initial public offering price of __% of Principal Amount.

Exchange Rate Agent:

Additional/Other Terms:

Also, in connection with the purchase of Notes by an Agent as principal, agreement as to whether the following will be required:

o Officers' Certificate pursuant to Section 8(b) of the Distribution Agreement.

o Legal Opinions of Company Counsel pursuant to Section 8(c) of the Distribution Agreement.

o Legal Opinion of Agents Counsel pursuant to Section 6(c) of the Distribution Agreement.

o Comfort Letter pursuant to Section 8(d) of the Distribution Agreement.

o Stand-off Agreement pursuant to Section 5(r) of the Distribution Agreement.

EXHIBIT B

Administrative Procedures Agreement

AVALONBAY COMMUNITIES, INC.
MEDIUM-TERM NOTE PROGRAM

ADMINISTRATIVE PROCEDURES

The Medium-Term Notes Due Nine Months or More from Date of Issue (the "Notes") are to be offered on a continuous basis by AvalonBay Communities, Inc., a Maryland corporation (the "Issuer"). Banc of America Securities LLC, Citigroup Global Markets Inc., Fleet Securities, Inc., J.P. Morgan Securities Inc., Lehman Brothers Inc., Morgan Stanley & Co. Incorporated, and Wachovia Capital Markets, LLC, (the "Agents"), have each agreed to use their best efforts to solicit purchases of the Notes. The Issuer reserves the right to sell Notes directly or indirectly on its own behalf to investors (other than broker-dealers). The Agents will not be obligated to, but may from time to time, purchase Notes as principal for their own account. The Notes are being sold pursuant to a Distribution Agreement dated August 6, 2003 (the "Agency Agreement"), among the Issuer, and the Agents, and will be issued pursuant to an indenture dated as of January 16, 1998 and all indentures supplemental thereto, including that certain First Supplemental Indenture, dated as of January 20, 1998, that certain Second Supplemental Indenture, dated as of July 7, 1998, and that certain Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 (collectively, the "Indenture"), between the Issuer and US Bank, National Association (as successor to State Street Bank and Trust Company), as Trustee (the "Trustee"). Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Agency Agreement. The Notes have been registered under the Securities Act of 1933, as amended (the "Act").

Each Note will be represented by either a Global Security (as defined in the Indenture), such Global Security, for purposes hereof either a global note (a "Global Note") or a master note (a "Master Note"), registered in the name of a nominee of The Depository Trust Company, as Depositary ("DTC") (a "Book-Entry Note"), or a certificate issued in definitive form (a "Certificated Note"). It is currently contemplated that both Notes that bear interest at a fixed rate (a "Fixed Rate Note") and Notes that bear interest at a variable rate (a "Floating Rate Note") and that are denominated and payable in U.S. dollars may be issued as Book-Entry Notes.

Administrative procedures and specific terms of the offering are explained below. The Issuer will advise the Agents in writing of those persons handling administrative responsibilities with whom the Agents are to communicate regarding offers to purchase Notes and the details of their delivery. Administrative procedures may be modified from time to time as reflected in the applicable Pricing Supplement (as defined below) or elsewhere.

PART I

ADMINISTRATIVE PROCEDURES FOR CERTIFICATED NOTES AND GENERALLY APPLICABLE ADMINISTRATIVE PROCEDURES

Issue/Authentication Date:	Each Note shall be dated as of the date of its authentication by the Trustee or an agent designated by the Issuer for such purpose (the "Designated Agent"). Each Note will also bear an original issue date (the "Issue Date") which, with respect to any Note (or portion thereof), shall mean the date of its original issuance (i.e., the settlement date) and shall be specified therein. The issue date will remain the same for all Notes subsequently issued upon transfer, exchange or substitution of an original Note regardless of their dates of authentication.
Maturities:	Each Note shall mature on a Business Day, selected by the purchaser and agreed to by the Issuer, which shall be nine months or more from the date of issue.
Price to Public:	Each Note shall be issued at 100% of principal amount unless otherwise specified in a supplement to the Prospectus (a "Pricing Supplement").
Denominations:	The denominations of the Notes shall be $1,000 and integral multiples of $1,000 in excess thereof. (Any Notes denominated other than in U.S. dollars will be issuable in denominations as set forth in such Notes.)
Registration:	Notes shall be issued only in fully registered form.
Minimum Purchase:	The minimum aggregate amount of Notes denominated and payable in U.S. dollars which may be offered to any purchaser will be $1,000.
Interest:	General. Each Note shall bear interest in accordance with its terms, as described in the Prospectus Supplement (as defined in the Agency Agreement), as supplemented by the applicable Pricing Supplement.
Calculation of Interest:	Interest on Fixed Rate Notes and interest rates on Floating Rate Notes will be determined as set forth in the form of Notes. With respect to Floating Rate Notes, the Calculation Agent shall determine the interest rate for each Interest Reset Date and communicate such interest rate to the Issuer, and the Issuer will promptly notify the Trustee, or the

Designated Agent, and the Paying Agent of each such determination.

Payments of Interest and Principal:

All interest payments (excluding interest payments made at maturity) will be made by check mailed to the person entitled thereto; *provided, however,* that if a holder of one or more Notes of like tenor and terms with an aggregate principal amount equal to or greater than U.S. $10,000,000 (or the equivalent thereof in foreign currencies or currency units) shall designate in writing to the Paying Agent at its corporate trust office in The City of New York on or prior to the Regular Record Date relating to the Interest Payment Date an appropriate account with a bank, the Paying Agent will, subject to applicable laws and regulations and until it receives notice to the contrary, make such payment and all succeeding payments to such person by wire transfer to the designated account. If a payment cannot be made by wire transfer because the information received by the Paying Agent is incomplete, a notice will be mailed to the holder at its registered address requesting such information. Upon presentation of the relevant Note, the Trustee, or the Designated Agent, (or any duly appointed Paying Agent) will pay in immediately available funds the principal amount of such Note at maturity and accrued interest, if any, due at maturity; *provided* that the Note is presented to the Trustee, or the Designated Agent, (or any such Paying Agent) to make payments in accordance with its normal procedures. The Issuer will provide the Trustee, or the Designated Agent, (and any such Paying Agent) with funds available for such purpose. Notes presented to the Trustee, or the Designated Agent, at maturity for payment will be canceled and destroyed by the Trustee, or the Designated Agent, and a certificate of destruction will be delivered to the Issuer. On the fifth Business Day (as defined below) immediately preceding each interest payment date, the Trustee, or the Designated Agent, will furnish to the Issuer a statement showing the total amount of the interest payments to be made on such interest payment date. The Trustee, or the Designated Agent, will provide monthly to the Issuer a list of the principal and interest to be paid on Notes maturing in the next succeeding six months. The Trustee, or the Designated Agent, will assume required by law.

Acceptance of Offers

The Agents will promptly advise the Issuer of each reasonable offer to purchase Notes received by it, other than those rejected by the Agents. The Agents may, in their discretion reasonably exercised, without notice to the Issuer, reject any offer received by it, in whole or in part. The Issuer will have the right to withdraw, cancel or modify such offer without notice and will have the sole right to accept offers to purchase Notes and may reject any such offer, in whole or in part. If the Issuer rejects an offer, the Issuer will promptly notify the Agents.

Settlement:

All offers accepted by the Issuer will be settled on the third Business Day next succeeding the date of acceptance unless otherwise agreed by any purchaser, the Agents and the Issuer. The settlement date shall be specified upon receipt of an offer. Prior to 3:00 p.m., New York City time, on the business day prior to the settlement date, the Issuer will instruct the Trustee, or the Designated Agent, to authenticate and deliver the Notes pursuant to the terms communicated by the Presenting Agent (as defined below) pursuant to the next succeeding section no later than 2:15 p.m., New York City time, on that day.

Details for Settlement

For each offer accepted by the Issuer, the Agent who presented the offer (the "Presenting Agent") shall communicate to the Issuer, Attention: Thomas J. Sargeant, CFO (Fax No.: (703) 329-0060) who will provide a copy to the Trustee, Attention: Ward Spooner (Fax No.: (212) 361-6153) and the Designated Agent, if any, by facsimile transmission or other acceptable means the following information (the "Purchase Information"):

- Exact name in which the Note or Notes are to be registered ("registered owner").
- Exact address of registered owner.
- Taxpayer identification number of registered owner.
- Principal amount of each Note to be delivered to the registered owner.
- Specified Currency and, if other than U.S. dollar, denominations.

- In the case of a Fixed Rate Note, the interest rate or, in the case of a Floating Rate Note, the interest rate formula, the Initial Interest Rate (if known at such time), Index Maturity, Interest Reset Period, Interest Reset Dates, Spread or Spread Multiplier (if any), minimum interest rate (if any) and maximum interest rate (if any).

- Interest Payment Period and Interest Payment Dates.

- Maturity Date of Notes.

- Issue Price of Notes.

- Settlement date for Notes.

- Presenting Agent's commission (to be paid in the form of a discount from the proceeds remitted to the Issuer upon settlement).

- Redemption provisions, if any.

- Repayment provisions, if any.

- Original issue discount provisions, if any.

- In the case of Currency Indexed Notes, the above-listed information, as applicable and the Base Exchange Rate(s), Base Interest Rate and Indexed Currencies.

- In the case of Dual Currency Notes, the above listed information, as applicable, and the Optional Payment Currency, Designated Exchange Rate and Option Election Dates.

The issue date of, and the settlement date for, Notes will be the same. Before accepting any offer to purchase Notes to be settled in less than three days, the Issuer shall verify that the Trustee, or the Designated Agent, will have adequate time to prepare and authenticate the Notes. Prior to preparing the Notes for delivery, the Trustee, or the Designated Agent, will confirm the Purchase Information by telephone with the Presenting Agent and the Issuer.

Confirmation: For each accepted offer, the Presenting Agent will issue a confirmation, in writing, telephonically or through any other commonly used method of communication to the purchaser and a confirmation to the Issuer, Attention: Thomas J. Sargeant, CFO (Fax No.: (703) 329-0060).

Note Deliveries and Cash Payment: Upon the receipt of appropriate documentation and instructions from the Issuer and verification thereof, the Trustee, or the Designated Agent, will cause the Notes to be prepared and authenticated and hold the Notes for delivery against payment.

The Trustee, or the Designated Agent, will deliver the Notes, in accordance with instructions from the Issuer, to the Presenting Agent, as the Issuer's agent, for the benefit of the purchaser only against payment in immediately available funds in an amount equal to the face amount of the Notes less the Presenting Agent's commission plus any premium or less any discount; *provided, however*, that the Trustee, or the Designated Agent, may deliver Notes to the Presenting Agent against receipt therefor and, later the same day, receipt of such funds in such amount. Upon receipt of such payment, the Trustee, or the Designated Agent, shall pay promptly an amount equal thereto to the Issuer in immediately available funds by wire transfer to the following account of the Issuer**:**

Bank Name:	Bank of America
Account Name:	AvalonBay Communities, Inc. Concentration Account
Account Number:	3752291106
ABA Number:	111000012

The Presenting Agent, as the Issuer's agent, will deliver the Notes (with the written confirmation provided for above) to the purchaser thereof against payment by such purchaser in immediately available funds. Delivery of any confirmation or Note will be made in compliance with "Delivery of Prospectus" below.

Failure of Purchaser: In the event that a purchaser shall fail to accept delivery of and make payment for a Note on the settlement date, the Presenting Agent will notify the Trustee or the Designated Agent and the Issuer, by telephone, confirmed in writing. If the Note has been delivered to the Presenting Agent, as the Issuer's agent, the Presenting Agent shall return such Note

to the Trustee, or the Designated Agent. If funds have been advanced for the purchase of such Note, the Trustee, or the Designated Agent, will, immediately upon receipt of such Note contact the Issuer to the attention of Thomas J. Sargeant, CFO (Fax No.: (703) 329-0060) advising the Issuer of such failure. At such time, the Issuer will refund the payment previously made by the Presenting Agent in immediately available funds. Such payments will be made on the settlement date, if possible, and in any event not later than the business day following the settlement date. If such failure shall have occurred for any reason other than the failure of the Presenting Agent to provide the Purchase Information to the Issuer or to provide a confirmation to the purchaser, the Issuer will reimburse the Presenting Agent on an equitable basis for its loss of the use of funds during the period when they were credited to the account of the Issuer.

Immediately upon receipt of the Note in respect of which the failure occurred, the Trustee, or the Designated Agent, will cause the Security Registrar to make appropriate entries to reflect the fact that the Note was never issued and will destroy the Note.

Procedure for Rate Changes:

The Issuer and the Agents will discuss from time to time the price of, and the rates to be borne by, the Notes that may be sold as a result of the solicitation of offers by the Agent. Once an Agent has recorded any indication of interest in Notes upon certain terms, and communicated with the Issuer, if the Issuer plans to accept an offer to purchase Notes upon such terms, it will prepare a Pricing Supplement to the Prospectus, as then amended or supplemented, reflecting the terms of such Notes and will arrange to transmit such Pricing Supplement to the Commission for filing in accordance with and within the time prescribed by the applicable paragraph of Rule 424(b) under the Act. The Issuer will supply at least two copies of the Prospectus as then amended or supplemented, and bearing such Pricing Supplement, to the Presenting Agent. The Issuer shall use its reasonable best efforts to send such Pricing Supplement by telecopy or overnight express (for delivery by the close of business on the applicable trade date, but in no event later than 11:00 a.m. New York City time, on the Business Day following the applicable trade date) to the Presenting Agent and the Trustee at the

following applicable address:

If to: to both:	Banc of America Securities LLC Continuously Offered Products 100 No. Tryon Street Charlotte, NC 28255 Mail Code: NC 1007-07-01 Telecopy Number: (704) 388-9939[1] and Syndicate Operations 100 North Tryon Street Charlotte, NC 28255 Mail Code: NC 1007-07-01 Telecopy Number: (704) 388-9212[2]
if to: to:	Citigroup Global Markets Inc. Attention: Annabelle Avila Brooklyn Army Terminal 140 58th Street, 8th Floor Brooklyn, NY 11220 Telephone Number: (718) 765-6725 Telecopy Number: (718) 765-6734
if to: to:	Fleet Securities, Inc. Attention: John Crees 100 Federal Street MADE 10012H Boston, MA 02110 Telephone Number: (617) 434-5983 Telecopy Number: (617) 434-8702
if to: to:	J.P. Morgan Securities Inc. Attention: Medium-Term Note Desk 270 Park Avenue, 8th Floor New York, NY 10017 Telephone Number: (212) 834-4421 Telecopy Number: (212) 834-6081[3]
if to: to:	Lehman Brothers Inc. Attention: Fixed Income Syndicate/

[1] Please send by telecopy rather than mail.

[2] Please send by telecopy rather than mail.

[3] Please send by telecopy with original to follow by mail.

Medium Term Notes Desk
745 Seventh Avenue
New York, NY 10019
Telephone Number: (212) 526-9664
Telecopy Number: (212) 526-0943

with a copy to:

ADP Prospectus Services
For Lehman Brothers Inc.
Attention: Client Services Desk
1155 Long Island Avenue
Edgewood, NY 11717
Telecopy Number: (631) 254-7268

if to: Morgan Stanley & Co. Incorporated
to: Attention: Legal Department
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-4000
Telecopy Number: (212) 761-0783

with a copy to:

Morgan Stanley & Co. Incorporated
Attention: Debt Syndicate Desk
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-2000

if to: Wachovia Capital Markets, LLC
to: Attention: Corporate Syndicate Desk
301 South College St., DC-8
One Wachovia Center
Charlotte, NC 28288
Telephone Number: 704-383-7727
Telecopy Number: 704-383-9165

if to: US Bank, National Association (the Trustee)
to: Attention: Ward Spooner
100 Wall Street
New York, NY 10005
Telephone Number: (212) 361-6175
Telecopy Number: (212) 361-6153

and to: the Designated Agent, if any.

For record keeping purposes, one copy of such Pricing Supplement shall also be mailed to:

O'Melveny & Myers LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111-3305
Attention: Peter T. Healy, Esq.
Telecopy Number: (415) 984-8701

and

Goodwin Procter LLp
Exchange Place
53 State Street
Boston, MA 02109-2281
Attention: Gilbert G. Menna, P.C.
Telephone Number: (617) 570-1433
Telecopy Number: (617) 523-1231

In each instance that a Pricing Supplement is prepared, the Presenting Agent will provide a copy of such Pricing Supplement to each investor or purchaser of the relevant Notes or its agent. Pursuant to Rule 434 of the Securities Act of 1933, as amended, the Pricing Supplement may be delivered separately from the Prospectus. No settlements with respect to Notes upon such terms may occur prior to such transmitting and such Agent will not, prior to such transmitting, mail confirmations to customers who have offered to purchase Notes upon such terms. After such transmitting, sales, mailing of confirmations and settlements may occur with respect to Notes upon such terms, subject to the provisions of "Delivery of Prospectus" below.

Outdated Pricing Supplements and copies of the Prospectus to which they are attached (other than those retained for files), will be destroyed.

Suspension of Solicitation; Amendment or Supplement: As provided in the Agency Agreement, the Issuer may suspend solicitation of purchases at any time and, upon receipt of notice from the Issuer, the Agents will, as promptly as practicable, but in no event later than one business day following such notice, suspend solicitation until such time as the Issuer has advised them that

solicitation of purchases may be resumed. If the Agents receive the notice from the Issuer contemplated by Section 4(b) of the Agency Agreement, they will promptly suspend solicitation and will only resume solicitation as provided in the Agency Agreement. If the Issuer decides to amend or supplement the Registration Statement or the Prospectus relating to the Notes, it will promptly advise the Agents and will furnish the Agents with the proposed amendment or supplement in accordance with the terms of the Agency Agreement. The Issuer will promptly file or mail to the Commission for filing such amendment or supplement, provide the Agents with copies of any such amendment or supplement, confirm to the Agents that such amendment or supplement has been filed with the Commission and advise the Agents that solicitation may be resumed. Any such suspension shall not affect the Issuer's obligations under the Agency Agreement; and in the event that at the time the Issuer suspends solicitation of purchases there shall be any offers already accepted by the Issuer outstanding for settlement, the Issuer will have the sole responsibility for fulfilling such obligations; the Agents will make reasonable efforts to assist the Issuer to fulfill such obligations, but the Agents will not be obligated to fulfill such obligations. The Issuer will in addition promptly advise the Agents and the Trustee, or the Designated Agent, if such offers are not to be settled and if copies of the Prospectus as in effect at the time of the suspension may not be delivered in connection with the settlement of such offers.

Delivery of Prospectus:

A copy of the Prospectus, as most recently amended or supplemented on the date of delivery thereof (except as provided below), must be delivered to a purchaser prior to or together with the earlier of delivery of (i) the written confirmation provided for above, and (ii) any Note purchased by such purchaser at the following address:

If to: Banc of America Securities LLC
to both: Continuously Offered Products
100 No. Tryon Street
Charlotte, NC 28255
Mail Code: NC 1007-07-01
Telecopy Number: (704) 388-9939[4]

[4] Please send by telecopy rather than mail.

and

Syndicate Operations
100 North Tryon Street
Charlotte, NC 28255
Mail Code: NC 1007-07-01
Telecopy Number: (704) 388-9212[5]

if to: Citigroup Global Markets Inc.
to: Attention: Annabelle Avila
Brooklyn Army Terminal
140 58th Street, 8th Floor
Brooklyn, NY 11220
Telephone Number: (718) 765-6725
Telecopy Number: (718) 765-6734

if to: Fleet Securities, Inc.
to: Attention: John Crees
100 Federal Street MADE 10012H
Boston, MA 02110
Telephone Number: (617) 434-5983
Telecopy Number: (617) 434-8702

if to: J.P. Morgan Securities Inc.
to: Attention: Medium-Term Note Desk
270 Park Avenue, 8th Floor
New York, NY 10017
Telephone Number: (212) 834-4421
Telecopy Number: (212) 834-6081[6]

if to: Lehman Brothers Inc.
to: Attention: Fixed Income Syndicate/
Medium Term Notes Desk
745 Seventh Avenue
New York, NY 10019
Telephone Number: (212) 526-9664
Telecopy Number: (212) 526-0943

with a copy to:

ADP Prospectus Services
For Lehman Brothers Inc.

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[5] Please send by telecopy rather than mail.

[6] Please send by telecopy with original to follow by mail.

Attention: Client Services Desk
1155 Long Island Avenue
Edgewood, NY 11717
Telecopy Number: (631) 254-7268

if to: Morgan Stanley & Co. Incorporated
to: Attention: Legal Department
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-4000
Telecopy Number: (212) 761-0783

with a copy to:

Morgan Stanley & Co. Incorporated
Attention: Debt Syndicate Desk
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-2000

if to: Wachovia Capital Markets, LLC
to: Attention: Corporate Syndicate Desk
301 South College St., DC-8
One Wachovia Center
Charlotte, NC 28288
Telephone Number: 704-383-7727
Telecopy Number: 704-383-9165

if to: US Bank, National Association (the Trustee)
to: Attention: Ward Spooner
100 Wall Street
New York, NY 10005
Telephone Number: (212) 361-6175
Telecopy Number: (212) 361-6153

and to: the Designated Agent, if any.

For record keeping purposes, one copy of such Pricing Supplement shall also be mailed to:

O'Melveny & Myers LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111-3305
Attention: Peter T. Healy, Esq.
Telecopy Number: (415) 984-8701

and

Goodwin Procter llp
Exchange Place
53 State Street
Boston, MA 02109-2281
Attention: Gilbert G. Menna, P.C.
Telephone Number: (617) 570-1433
Telecopy Number: (617) 523-1231

The Issuer shall ensure that the Presenting Agent receives copies of the Prospectus and each amendment or supplement thereto (including appropriate Pricing Supplements) in such quantities and within such time limits as will enable the Presenting Agent to deliver such confirmation or Note to a purchaser as contemplated by these procedures and in compliance with the preceding sentence. If, since the date of acceptance of a purchaser's offer, the Prospectus shall have been supplemented solely to reflect any sale of Notes on terms different from those agreed to between the Issuer and such purchaser or a change in posted rates not applicable to such purchaser, such purchaser shall not receive the Prospectus as supplemented by such new supplement, but shall receive the Prospectus as supplemented to reflect the terms of the Notes being purchased by such purchaser and otherwise as most recently amended or supplemented on the date of delivery of the Prospectus.

Authenticity of Signatures:

The Issuer will cause the Trustee, or the Designated Agent, to furnish the Agent from time to time with the specimen signatures of each of the officers, employees or agents of the Trustee, or the Designated Agent, who have been authorized by the Trustee, or the Designated Agent, respectively, to authenticate Notes, but the Agent will have no obligation or liability to the Issuer or the Trustee, or the Designated Agent, in respect of the authenticity of the signature of any officer, employee or agent of the Issuer or the Trustee, or the Designated Agent, on any Note.

Advertising Cost:	The Issuer and the Company will determine with the Agent the amount of advertising that may be appropriate in offering the Notes.
Business Day:	"Business Day" means any day (other than a Saturday, Sunday or legal holiday) on which banking institutions in The City of New York are open for business (and, (i) with respect to LIBOR Notes which is also a day on which dealings in the Specified Currency, or if no currency is so specified, in deposits in U.S. dollars, are transacted in the London interbank market, and (ii) with respect to Notes denominated in a Specified Currency other than U.S. dollars, on which banking institutions in the principal financial center of the country of the Specified Currency are open for business).

PART II

ADMINISTRATIVE PROCEDURES FOR GLOBAL NOTE METHOD OF BOOK-ENTRY NOTES

The following explains the administrative procedures for the Global Note method of the DTC book-entry system. Any reference to "Book-Entry Notes" in this Part II refers to the Global Note method (for a discussion of the Master Note method of the DTC book-entry system, see Part III below). Certain generally applicable administrative procedures are set forth in Part I above (See "Issue/Authentication Date," "Price to Public," "Minimum Purchase," "Authenticity of Signatures," "Advertising Cost," and "Business Day"). In connection with the qualification of the Book-Entry Notes for eligibility in the book-entry system maintained by DTC, the Trustee will perform the custodial, document control and administrative functions described below, in accordance with its respective obligations under a Letter of Representations (the "Letter") from the Issuer and the Trustee to DTC dated December 21, 1998, and a Medium-Term Note Certificate Agreement between the Trustee and DTC and its obligations as a participant in DTC, including DTC's Same-Day Funds Settlement System ("SDFS"). Both Fixed and Floating Rate Notes denominated and payable in U.S. dollars may be issued in book-entry form. Single and Multi-Indexed Notes may also be issued in book-entry form.

Issuance:

On any date of settlement (as defined under "Settlement" below) for one or more Book-Entry Notes, the Issuer will issue a single global security in fully registered form without coupons (a "Global Note") representing up to $150,000,000 principal amount of all such Notes that have the same Stated Maturity, redemption provisions, if any, repayment provisions, if any, Interest Payment Dates, Original Issue Date, original issue discount provisions, if any, and, in the case of Fixed Rate Notes, interest rate, or in the case of Floating Rate Notes, interest rate formula, initial interest rate, Index Maturity, Interest Reset Period, Interest Reset Dates, Spread or Spread Multiplier (if any), minimum interest rate (if any) and maximum interest rate (if any) and, in the case of Fixed Rate Notes or Floating Rate Notes that are also Currency Indexed Notes, Specified Currency, Indexed Currency, Face Amount and Base Exchange Rate and the Base Interest Rate, if any, or that are also other Indexed Notes, the same terms (all of the foregoing are collectively referred to as the "Terms"). Each Global Note will be dated and issued as of the date of its settlement date, which will be (i) with respect to an original Global Note (or any portion thereof), its original issue date, and (ii) following a consolidation of Global Notes, the most recent Interest Payment Date to which interest has been paid or duly provided for on the predecessor Global Notes, regardless of the date of authentication of such subsequently

issued Global Note. Each Book-Entry Note will be deemed to have been dated and issued as of the settlement date, which date shall be the Original Issue Date. No Global Note will represent any Certificated Note.

Identification Numbers: The Issuer has arranged with the CUSIP Service Bureau of Standard & Poor's Ratings Services (the "CUSIP Service Bureau") for the reservation of a series of CUSIP numbers consisting of approximately 900 CUSIP numbers relating to Book-Entry Notes. The Trustee, the Issuer and DTC have obtained from the CUSIP Service Bureau a written list of such reserved CUSIP numbers. The Trustee will assign CUSIP numbers to Global Notes as described below under Settlement Procedure "B". DTC will notify the CUSIP Service Bureau periodically of the CUSIP numbers that the Trustee has assigned to Global Notes. The Trustee will notify the Issuer at any time when fewer than 100 of the reserved CUSIP numbers remain unassigned to Global Notes, and, if it deems necessary, the Issuer will reserve additional CUSIP numbers for assignment to Global Notes representing Book Entry Notes. Upon obtaining such additional CUSIP numbers, the Issuer shall deliver a list of such additional CUSIP numbers to the Trustee and DTC.

Registration: Each Global Note will be issued only in fully registered form without coupons. Each Global Note will be registered in the name of Cede & Co., as nominee for DTC, on the Securities Register maintained under the Indenture. The beneficial owner of a Book-Entry Note (or one or more indirect participants in DTC designated by such owner) will designate one or more participants in DTC (with respect to such Note, the "Participants") to act as agent or agents for such owner in connection with the book-entry system maintained by DTC, and DTC will record in book-entry form, in accordance with instructions provided by such Participants, a credit balance with respect to such Note in the account of such Participants. The ownership interest of such beneficial owner in such Note will be recorded through the records of such Participants or through the separate records of such Participants and one or more indirect participants in DTC.

Transfers: Transfers of a Book-Entry Note will be accomplished by book entries made by DTC and, in turn, by Participants (and, in certain cases, one or more indirect participants in DTC acting on behalf of beneficial transferors and transferees of such

Note).

Exchanges: The Trustee may deliver to DTC and the CUSIP Service Bureau at any time a written notice of consolidation (a copy of which shall be attached to the Global Note resulting from such consolidation) specifying (i) the CUSIP numbers set forth on two or more outstanding Global Notes that represent Book-Entry Notes having the same Terms and for which interest has been paid to the same date, (ii) a date, occurring at least thirty days after such written notice is delivered and at least thirty days before the next Interest Payment Date for such Book-Entry Notes, on which such Global Notes shall be exchanged for a single replacement Global Note and (iii) a new CUSIP number to be assigned to such replacement Global Note. Upon receipt of such a notice, DTC will send to its Participants (including the Trustee) a written reorganization notice to the effect that such exchange will occur on such date. Prior to the specified exchange date, the Trustee will deliver to the CUSIP Service Bureau a written notice setting forth such exchange date and the new CUSIP number and stating that, as of such exchange date, the CUSIP numbers of the Global Notes to be exchanged will no longer be valid. On the specified exchange date, the Trustee will exchange such Global Notes for a single Global Note bearing the new CUSIP number and a new Original Issue Date and the CUSIP numbers of the exchanged Global Notes will, in accordance with CUSIP Service Bureau procedures, be canceled and not immediately reassigned. Notwithstanding the foregoing, if the Global Notes to be exchanged exceed $150,000,000 in aggregate principal amount, one Global Note will be authenticated and issued to represent each $150,000,000 of principal amount of the exchanged Global Notes and an additional Global Note will be authenticated and issued to represent any remaining principal amount of such Global Notes (see “Denominations” below).

Maturities: Each Book-Entry Note will mature on a Business Day nine months or more from the settlement date for such Note.

Notice of Repayment Terms: With respect to each Book-Entry Note that is repayable at the option of the Holder, the Trustee will furnish DTC on the settlement date pertaining to such Book-Entry Note a notice setting forth the terms of such repayment option. Such terms shall include the start date and end dates of the first exercise period, the purchase date following such exercise period, the frequency that such exercise periods occur (*e.g.*, quarterly,

semiannually, annually, etc.) and if the repayment option expires before maturity, the same information (except frequency) concerning the last exercise period. It is understood that the exercise period shall be at least 15 calendar days long and that the purchase date shall be at least seven calendar days after the last day of the exercise period.

Redemption and Repayment: The Trustee will comply with the terms of the Letter with regard to redemptions and repayments of the Notes. If a Global Note is to be redeemed or repaid in part, the Trustee will exchange such Global Note for two Global Notes, one of which shall represent the portion of the Global Note being redeemed or repaid and shall be canceled immediately after issuance and the other of which shall represent the remaining portion of such Global Note and shall bear the CUSIP number of the surrendered Global Note.

Denominations: Book Entry Notes will be issued in principal amounts of $1,000 or any amount in excess thereof that is an integral multiple of $1,000. Global Notes will be denominated in principal amounts not in excess of $150,000,000. If one or more Book Entry Notes having an aggregate principal amount in excess of $150,000,000 would, but for the preceding sentence, be represented by a single Global Note, then one Global Note will be issued to represent each $150,000,000 principal amount of such Book-Entry Note or Notes and an additional Global Note will be issued to represent any remaining principal amount of such Book-Entry Note or Notes. In such a case, each of the Global Notes representing such Book-Entry Note or Notes shall be assigned the same CUSIP number.

Interest: General. Interest on each Book-Entry Note will begin to accrue from the Original Issue Date of the Global Note representing such Note or from the most recent date to which interest has been paid, as the case may be, in accordance with the terms of the Note, as described in the Prospectus Supplement (as defined in the Agency Agreement), as supplemented by the applicable Pricing Supplement. Standard & Poor's Ratings Services will use the information received in the pending deposit message described under the Settlement Procedure "C" below in order to include the amount of any interest payable and certain other information regarding the related Global Note in the appropriate weekly bond report published by Standard & Poor's Ratings Services.

Notice of Interest Payment and Regular Record Dates:	On the first Business Day of January, April, July and October of each year, the Trustee will deliver to the Issuer and DTC a written list of Regular Record Dates and Interest Payment Dates that will occur with respect to Book-Entry Notes during the six-month period beginning on such first Business Day. Promptly after each Interest Determination Date or Calculation Date, as applicable (as defined in or pursuant to the applicable Note) for Floating Rate Notes, the Issuer, upon receiving notice thereof, will notify Standard & Poor's Ratings Services of the interest rate determined on such Interest Determination Date or Calculation Date, as applicable.
Calculation of Interest:	Interest on Fixed Rate Book-Entry Notes (including interest for partial periods) and interest rates on Floating Rate Book-Entry Notes will be determined as set forth in the form of Notes. With respect to Floating Rate Book-Entry Notes, the Calculation Agent shall determine the interest for each Interest Reset Date and communicate such interest rate to the Issuer and the Issuer will promptly notify the Trustee and the Paying Agent of each such determination.
Payments of Principal and Interest:	Promptly after each Regular Record Date, the Trustee will deliver to the Issuer and DTC a written notice specifying by CUSIP number the amount of interest to be paid on each Global Note on the following Interest Payment Date (other than an Interest Payment Date coinciding with maturity) and the total of such amounts. The Issuer will confirm with the Trustee the amount payable on each Global Note on such Interest Payment Date. DTC will confirm the amount payable on each Global Note on such Interest Payment Date by reference to the daily or weekly bond reports published by Standard & Poor's Ratings Services. The Issuer will pay to the Trustee, as paying agent, the total amount of interest due on such Interest Payment Date (other than at maturity), and the Trustee will pay such amount to DTC at the times and in the manner set forth below under "Manner of Payment".
Payments at Maturity:	On or about the first Business Day of each month, the Trustee will deliver to the Issuer and DTC a written list of principal and interest to be paid on each Global Note maturing either at Stated Maturity or on a Redemption or Repayment Date in the following month. The Issuer, the Trustee and DTC will confirm the amounts of such principal and interest payments with respect to each such Global Note on or about the fifth Business Day preceding the maturity of such Global Note. The Issuer will pay to the Trustee, as paying agent, the

principal amount of such Global Note, together with interest due at such maturity. The Trustee will pay such amounts to DTC at the times and in the manner set forth below under "Manner of Payment." Promptly after payment to DTC of the principal and interest due at the maturity of such Global Note, the Trustee will cancel and destroy such Global Note in accordance with the terms of the Indenture and deliver a certificate of destruction to the Issuer.

Manner of Payment: The total amount of any principal and interest due on Global Notes on any Interest Payment Date or at maturity shall be paid by the Issuer to the Trustee in funds available for use by the Trustee as of 9:30 A.M. (New York City time), or as soon as practicable thereafter on such date. The Issuer will confirm instructions regarding payment in writing to the Trustee. Prior to 10:00 A.M. (New York City time) on each Maturity Date or as soon as possible thereafter, following receipt of such funds from the Issuer, the Trustee will pay by separate wire transfer (using Fedwire message entry instructions in a form previously specified by DTC) to an account at the Federal Reserve Bank of New York previously specified by DTC, in funds available for immediate use by DTC, each payment of principal (together with interest thereon) due on Global Notes on any Maturity Date. On each Interest Payment Date, interest payments shall be made to DTC in same-day funds in accordance with existing arrangements between the Trustee and DTC. Thereafter, on each such date, DTC will pay, in accordance with its SDFS operating procedures then in effect, such amounts in funds available for immediate use to the respective Participants in whose names the Book-Entry Notes represented by such Global Notes are recorded in the book-entry system maintained by DTC. Neither the Issuer nor the Trustee shall have any direct responsibility or liability for the payment by DTC to such Participants of the principal of and interest on the Book-Entry Notes.

Withholding Taxes: The amount of any taxes required under applicable law to be withheld from any interest payment on a Book-Entry Note will be determined and withheld by the Participant, indirect participant in DTC or other Person responsible for forwarding payments and materials directly to the beneficial owner of such Note.

Acceptance of Offers: Each Agent will promptly advise the Issuer of each reasonable offer to purchase Notes received by it, other than those rejected by such Agent. Each Agent may, in its discretion

reasonably exercised, without notice to the Issuer, reject any offer received by it, in whole or in part. The Issuer will have the right to withdraw, cancel or modify such offer without notice and will have the sole right to accept offers to purchase Notes and may reject any such offer, in whole or in part. If the Issuer rejects an offer, the Issuer will promptly notify such Agent.

Settlement: The receipt by the Issuer of immediately available funds in payment for a Book-Entry Note and the authentication and issuance of the Global Note or Global Notes representing such Note shall constitute "settlement" with respect to such Note. All orders accepted by the Issuer will be settled on the third Business Day from the date of the sale pursuant to the timetable for settlement set forth below unless the Issuer and the purchaser agree to settlement on another day which shall be no earlier than the next Business Day.

Settlement Procedures: Settlement Procedures with regard to each Book-Entry Note sold by the For Issuer through an Agent as agent, shall be as follows:

For each offer accepted by the Issuer, the Presenting Agent shall communicate to the Issuer, Attention: Thomas J. Sargeant, CFO (Fax No.: (703) 329-0060), who will provide a copy to the Trustee, Attention: Ward Spooner (Fax No.: (212) 361-6153) and the Designated Agent, if any, by facsimile transmission or other acceptable means, the information set forth below:

- Principal amount.
- Maturity Date of Notes.
- In the case of a Fixed Rate Book-Entry Note, the interest rate or, in the case of a Floating Rate Book-Entry Note, the Interest Rate Formula, the Initial Interest Rate (if known at such time), Index Maturity, Interest Reset Period, Interest Reset Dates, Spread or Spread Multiplier (if any), Minimum Interest Rate (if any) and Maximum Interest Rate (if any).
- Interest Payment Period and Interest Payment Dates.
- Redemption provisions, if any.

- Repayment provisions, if any.
- Settlement date (Original Issue Date).
- Price to public of the Note (expressed as a percentage).
- Agent's commission (to be paid in the form of a discount from the proceeds remitted to the Issuer upon settlement).
- Original issue discount provisions if any.
- In the case of Currency Indexed Notes, the above-listed information, as applicable, and the Base Exchange Rate(s), Base Interest Rate and Indexed Currencies.
- In the case of Dual Currency Notes, the above-listed information, as applicable, and the Optional Payment Currency, Designated Exchange Rate and Optional Election Dates.

Net proceeds to the Issuer.

The Trustee will confirm the information set forth in Settlement Procedure "A" above by telephone with such Agent and the Issuer.

The Trustee will assign a CUSIP number to the Global Note representing such Note and will telephone the Issuer and advise the Issuer of such CUSIP number. The Trustee will enter a pending deposit message through DTC's Participant Terminal System, providing the following settlement information to DTC (which shall route such information to Standard & Poor's Ratings Services) and the Presenting Agent:

- The applicable information set forth in Settlement Procedure "A".
- Identification as a Fixed Rate Book-Entry Note or a Floating Rate Book-Entry Note.
- Initial Interest Payment Date for such Note, number of days by which such date succeeds the related DTC Record Date (which, in the case of Floating Rate Notes which reset daily or weekly shall be the date five

calendar days immediately preceding the applicable Interest Payment Date and in the case of all other Notes shall be the Regular Record Date as defined in the Note), the amount of interest payable on such Interest Payment Date per $1,000 principal amount of Notes at Maturity, and amount of interest payable per $1,000 principal amount of Notes in the case of Fixed Rate Notes.

- CUSIP number of the Global Note representing such Note.

- Whether such Global Note will represent any other Book-Entry Note (to the extent known at such time).

To the extent the Issuer has not already done so, the Issuer will deliver to the Trustee a Pricing Supplement in a form that has been approved by the Issuer and the Agents. The Issuer will also deliver to the Trustee a Global Note representing such Note.

The Trustee will complete and authenticate the Global Note representing such Note.

DTC will credit such Note to the Trustee's participant account at DTC.

The Trustee will enter an SDFS deliver order through DTC's Participant Terminal System instructing DTC to (i) debit such Note to the Trustee's participant account and credit such Note to such Agent's participant account and (ii) debit such Agent's settlement account and credit the Trustee's settlement account for an amount equal to the price of such Note less such Agent's commission. The entry of such a deliver order shall constitute a representation and warranty by the Trustee to DTC that (i) the Global Note representing such Book-Entry Note has been executed, delivered and authenticated and (ii) the Trustee is holding such Global Note pursuant to the relevant Medium-Term Note Certificate Agreement between the Trustee and DTC.

An Agent will enter an SDFS deliver order through DTC's Participant Terminal System instructing DTC (i) to debit such Note to such Agent's participant account and credit such Note to the participant accounts of the Participants with respect to such Note and (ii) to debit the settlement accounts of such

Participants and credit the settlement account of such Agent for an amount equal to the price of such Note.

Transfers of funds in accordance with SDFS deliver orders described in Settlement Procedures "G" and "H" will be settled in accordance with SDFS operating procedures in effect on the settlement date.

The Trustee, upon confirming receipt of such funds in accordance with Settlement Procedure "G," will wire transfer to the following account of the Issuer:

Bank Name:	Bank of America
Account Name	AvalonBay Communities, Inc. Concentration Account
Account Number:	3752291106
ABA Number:	111000012

in funds available for immediate use, the amount transferred to the Trustee in accordance with Settlement Procedure "G."

An Agent will confirm the purchase of such Note to the purchaser either by transmitting to the Participants with respect to such Note a confirmation order or orders through DTC's institutional delivery system or by mailing a written confirmation to such purchaser.

Settlement Procedure Timetable:

For orders of Book-Entry Notes solicited by the Agent, as agent, and accepted by the Issuer for settlement on the first Business Day after the sale date, Settlement Procedures "A" through "K" set forth above shall be completed as soon as possible but not later than the respective times (New York City time) set forth below:

Settlement	Procedure Time
A	11:00 a.m. on the sale date
B	12:00 noon on the sale date
C	2:00 p.m. on the sale date
D	3:00 p.m. on the day before settlement
E	9:00 a.m. on settlement date
F	10:00 a.m. on settlement date
G-H	2:00 p.m. on settlement date
I	4:45 p.m. on settlement date
J-K	5:00 p.m. on settlement date

If a sale is to be settled two Business Days after the sale date,

Settlement Procedures “A,” “B” and “C” shall be completed as soon as practicable but not later than 11:00 a.m., 12:00 noon and 2:00 p.m., as the case may be, on the first Business Day after the sale date.

If a sale is to be settled more than two Business Days after the sale date, Settlement Procedure “A” shall be completed as soon as practicable but no later than 11:00 a.m. on the first Business Day after the sale date and Settlement Procedures “B” and “C” shall be completed as soon as practicable but no later than 12:00 noon and 2:00 p.m., as the case may be, on the second Business Day before the settlement date. If the initial interest rate for a Floating Rate Book-Entry Note has not been determined at the time that Settlement Procedure “A” is completed, Settlement Procedures “B” and “C” shall be completed as soon as such rate has been determined but not later than 12:00 noon and 2:00 p.m., respectively, on the Business Day before the settlement date. Settlement Procedure “I” is subject to extension in accordance with any extension of Fedwire closing deadlines and in the other events specified in the SDFS operating procedures in effect on the settlement date.

If settlement of a Book-Entry Note is rescheduled or canceled, the Trustee, upon receipt of notice from the Issuer, will deliver to DTC, through DTC’s Participant Terminal System, a cancellation message to such effect by no later than 2:00 p.m. on the Business Day immediately preceding the scheduled settlement date.

Failure to Settle:

If an Agent or Trustee fails to enter an SDFS deliver order with respect to a Book-Entry Note pursuant to Settlement Procedure “G,” the Trustee may deliver to DTC, through DTC’s Participant Terminal System, as soon as practicable, a withdrawal message instructing DTC to debit such Note to the Trustee’s participant account. DTC will process the withdrawal message, provided that the Trustee’s participant account contains a principal amount of the Global Note representing such Note that is at least equal to the principal amount to be debited. If a withdrawal message is processed with respect to all the Book-Entry Notes represented by a Global Note, the Trustee will mark such Global Note “canceled”, make appropriate entries in its records and send such canceled Global Note to the Issuer. The CUSIP number assigned to such Global Note shall, in accordance with CUSIP Service Bureau procedures, be canceled and not immediately

reassigned. If a withdrawal message is processed with respect to one or more, but not all, of the Book-Entry Notes represented by a Global Note, the Trustee will exchange such Global Note for two Global Notes, one of which shall represent such Book-Entry Note or Notes and shall be canceled immediately after issuance and the other of which shall represent the remaining Book-Entry Notes previously represented by the surrendered Global Note and shall bear the CUSIP number of the surrendered Global Note.

If the purchase price for any Book-Entry Note is not timely paid to the Participants with respect to such Note by the beneficial purchaser thereof (or a person, including an indirect participant in DTC, acting on behalf of such purchaser), such Participants and, in turn, the Presenting Agent may enter SDFS deliver orders through DTC's Participant Terminal system reversing the orders entered pursuant to Settlement Procedures "G" and "H," respectively. Thereafter, the Trustee will deliver the withdrawal message and take the applicable related actions described in the preceding paragraph. If such failure shall have occurred for any reason other than the failure of the Presenting Agent to provide the Purchase Information to the Issuer or to provide a confirmation to the purchaser, the Issuer will reimburse the Presenting Agent on an equitable basis for its loss of the use of funds during the period when they were credited to the account of the Issuer.

Notwithstanding the foregoing, upon any failure to settle with respect to a Book-Entry Note, DTC may take any actions in accordance with its SDFS operating procedures then in effect. In the event of a failure to settle with respect to one or more, but not all, of the Book-Entry Notes to have been represented by a Global Note, the Trustee will provide, in accordance with Settlement Procedures "D" and "E," for the authentication and issuance of a Global Note representing the other Book-Entry Notes to have been represented by such Global Note and will make appropriate entries in its records.

Procedure for Rate Changes:

The Issuer and each Agent will discuss from time to time the price of, and the rates to be borne by, the Notes that may be sold as a result of the solicitation of offers by any Agent. Once an Agent has recorded any indication of interest in Notes upon certain terms, and communicated with the Issuer, if the Issuer plans to accept an offer to purchase Notes upon such terms, it will prepare a Pricing Supplement to the Prospectus, as then amended or supplemented, reflecting the terms of such

Notes and will arrange to transmit such Pricing Supplement to the Commission for filing in accordance with and within the time prescribed by the applicable paragraph of Rule 424(b) under the Act. The Issuer will supply at least two copies of the Prospectus as then amended or supplemented, and bearing such Pricing Supplement, to the Presenting Agent. The Issuer shall use its reasonable best efforts to send such Pricing Supplement by telecopy or overnight express (for delivery by the close of business on the applicable trade date, but in no event later than 11:00 a.m. New York City time, on the Business Day following the applicable trade date) to the Presenting Agent and the Trustee at the following applicable address:

If to: to both:	Banc of America Securities LLC Continuously Offered Products 100 No. Tryon Street Charlotte, NC 28255 Mail Code: NC 1007-07-01 Telecopy Number: (704) 388-9939[7]
	and
	Syndicate Operations 100 North Tryon Street Charlotte, NC 28255 Mail Code: NC 1007-07-01 Telecopy Number: (704) 388-9212[8]
if to: to:	Citigroup Global Markets Inc. Attention: Annabelle Avila Brooklyn Army Terminal 140 58th Street, 8th Floor Brooklyn, NY 11220 Telephone Number: (718) 765-6725 Telecopy Number: (718) 765-6734
if to: to:	Fleet Securities, Inc. Attention: John Crees 100 Federal Street MADE 10012H Boston, MA 02110 Telephone Number: (617) 434-5983

[7] Please send by telecopy rather than mail.

[8] Please send by telecopy rather than mail.

	Telecopy Number: (617) 434-8702
if to: to:	J.P. Morgan Securities Inc. Attention: Medium-Term Note Desk 270 Park Avenue, 8th Floor New York, NY 10017 Telephone Number: (212) 834-4421 Telecopy Number: (212) 834-6081[9]
if to: to:	Lehman Brothers Inc. Attention: Fixed Income Syndicate/ Medium Term Notes Desk 745 Seventh Avenue New York, NY 10019 Telephone Number: (212) 526-9664 Telecopy Number: (212) 526-0943 with a copy to: ADP Prospectus Services For Lehman Brothers Inc. Attention: Client Services Desk 1155 Long Island Avenue Edgewood, NY 11717 Telecopy Number: (631) 254-7268
if to: to:	Morgan Stanley & Co. Incorporated Attention: Legal Department 1585 Broadway New York, NY 10036 Telephone Number: (212) 761-4000 Telecopy Number: (212) 761-0783 with a copy to: Morgan Stanley & Co. Incorporated Attention: Debt Syndicate Desk 1585 Broadway New York, NY 10036 Telephone Number: (212) 761-2000
if to: to:	Wachovia Capital Markets, LLC Attention: Corporate Syndicate Desk 301 South College St., DC-8

[9] Please send by telecopy with original to follow by mail.

One Wachovia Center
Charlotte, NC 28288
Telephone Number: 704-383-7727
Telecopy Number: 704-383-9165

if to: US Bank, National Association (the Trustee)
to: Attention: Ward Spooner
100 Wall Street
New York, NY 10005
Telephone Number: (212) 361-6175
Telecopy Number: (212) 361-6153

and to: the Designated Agent, if any.

For record keeping purposes, one copy of such Pricing Supplement shall also be mailed to:

O'Melveny & Myers LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111-3305
Attention: Peter T. Healy, Esq.
Telecopy Number: (415) 984-8701

and

Goodwin Procter llp
Exchange Place
53 State Street
Boston, MA 02109-2281
Attention: Gilbert G. Menna, P.C.
Telephone Number: (617) 570-1433
Telecopy Number: (617) 523-1231

In each instance that a Pricing Supplement is prepared, the Presenting Agent will provide a copy of such Pricing Supplement to each investor or purchaser of the relevant Notes or its agent. Pursuant to Rule 434 of the Securities Act of 1933, as amended, the Pricing Supplement may be delivered separately from the Prospectus. No settlements with respect to Notes upon such terms may occur prior to such transmitting and such Agent will not, prior to such transmitting, mail confirmations to customers who have offered to purchase Notes upon such terms. After such transmitting, sales, mailing of confirmations and settlements may occur with respect to Notes upon such terms, subject to the provisions of "Delivery of Prospectus" below. Outdated Stickers, and copies of the

Prospectus to which they are attached (other than those retained for files), will be destroyed.

Suspension of Solicitation; Amendment or Supplement:

As provided in the Agency Agreement, the Issuer may suspend solicitation of purchase at any time, and, upon receipt of notice from the Issuer, the Agents will as promptly as practicable, but in no event later than one Business Day following such notice, suspend solicitation until such time as the Issuer has advised them that solicitation of purchases may be resumed.

If the Agents receive the notice from the Issuer contemplated by Section 4(b) of the Agency Agreement, they will promptly suspend solicitation and will only resume solicitation as provided in the Agency Agreement. If the Issuer decides to amend or supplement the Registration Statement or the Prospectus relating to the Notes, it will promptly advise the Agents and will furnish the Agents with the proposed amendment or supplement in accordance with the terms of the Agency Agreement. The Issuer will promptly file or mail to the Commission for filing such amendment or supplement, provide the Agents with copies of any such amendment or supplement, confirm to the Agents that such amendment or supplement has been filed with the Commission and advise the Agents that solicitation may be resumed. Any such suspension shall not affect the Issuer's obligations under the Agency Agreement; and in the event that at the time the Issuer suspends solicitation of purchases there shall be any offers already accepted by the Issuer outstanding for settlement, the Issuer will have the sole responsibility for fulfilling such obligations; the Agents will make reasonable efforts to assist the Issuer to fulfill such obligations, but the Agents will not be obligated to fulfill such obligations. The Issuer will in addition promptly advise the Agents and the Trustee if such offers are not to be settled and if copies of the Prospectus as in effect at the time of the suspension may not be delivered in connection with the settlement of such offers.

Delivery of Prospectus:

A copy of the Prospectus, as most recently amended or supplemented on the date of delivery thereof (except as provided below), must be delivered to a purchaser prior to or together with the earlier of delivery of (i) the written confirmation provided for above, and (ii) any Note purchased by such purchaser at the following address:

If to: to both:	Banc of America Securities LLC Continuously Offered Products 100 No. Tryon Street Charlotte, NC 28255 Mail Code: NC 1007-07-01 Telecopy Number: (704) 388-9939[10] and Syndicate Operations 100 North Tryon Street Charlotte, NC 28255 Mail Code: NC 1007-07-01 Telecopy Number: (704) 388-9212[11]
if to: to:	Citigroup Global Markets Inc. Attention: Annabelle Avila Brooklyn Army Terminal 140 58th Street, 8th Floor Brooklyn, NY 11220 Telephone Number: (718) 765-6725 Telecopy Number: (718) 765-6734
if to: to:	Fleet Securities, Inc. Attention: John Crees 100 Federal Street MADE 10012H Boston, MA 02110 Telephone Number: (617) 434-5983 Telecopy Number: (617) 434-8702
if to: to:	J.P. Morgan Securities Inc. Attention: Medium-Term Note Desk 270 Park Avenue, 8th Floor New York, NY 10017 Telephone Number: (212) 834-4421 Telecopy Number: (212) 834-6081[12]
if to: to:	Lehman Brothers Inc. Attention: Fixed Income Syndicate/ Medium Term Notes Desk 745 Seventh Avenue

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[10] Please send by telecopy rather than mail.

[11] Please send by telecopy rather than mail.

[12] Please send by telecopy with original to follow by mail.

New York, NY 10019
Telephone Number: (212) 526-9664
Telecopy Number: (212) 526-0943

with a copy to:

ADP Prospectus Services
For Lehman Brothers Inc.
Attention: Client Services Desk
1155 Long Island Avenue
Edgewood, NY 11717
Telecopy Number: (631) 254-7268

if to: Morgan Stanley & Co. Incorporated
to: Attention: Legal Department
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-4000
Telecopy Number: (212) 761-0783

with a copy to:

Morgan Stanley & Co. Incorporated
Attention: Debt Syndicate Desk
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-2000

if to: Wachovia Capital Markets, LLC
to: Attention: Corporate Syndicate Desk
301 South College St., DC-8
One Wachovia Center
Charlotte, NC 28288
Telephone Number: 704-383-7727
Telecopy Number: 704-383-9165

if to: US Bank, National Association (the Trustee)
to: Attention: Ward Spooner
100 Wall Street
New York, New York 10005
Telephone Number: (212) 361-6175
Telecopy Number: (212) 361-6153

and to: the Designated Agent, if any.

For record keeping purposes, one copy of such Pricing Supplement shall also be mailed to:

O'Melveny & Myers LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111-3305
Attention: Peter T. Healy, Esq.
Telecopy Number: (415) 984-8701

and

Goodwin Procter llp
Exchange Place
53 State Street
Boston, MA 02109-2281
Attention: Gilbert G. Menna, P.C.
Telephone Number: (617) 570-1433
Telecopy Number: (617) 523-1231

The Issuer shall ensure that the Presenting Agent receives copies of the Prospectus and each amendment or supplement thereto (including appropriate Pricing Supplements) in such quantities and within such time limits as will enable the Presenting Agent to deliver such confirmation or Note to a purchaser as contemplated by these procedures and in compliance with the preceding sentence. If, since the date of acceptance of a purchaser's offer, the Prospectus shall have been supplemented solely to reflect any sale of Notes on terms different from those agreed to between the Issuer and such purchaser or a change in posted rates not applicable to such purchaser, such purchaser shall not receive the Prospectus as supplemented by such new supplement, but shall receive the Prospectus as supplemented to reflect the terms of the Notes being purchased by such purchaser and otherwise as most recently amended or supplemented on the date of delivery of the Prospectus.

PART III

ADMINISTRATIVE PROCEDURES FOR MASTER NOTE METHOD OF BOOK-ENTRY NOTES

The following explains the administrative procedures for the Master Note method of the DTC book-entry system. Any reference to "Book-Entry Notes" in this Part III refers to the Master Note method (for a discussion of the Global Note method of the book-entry system, see Part II above). (Certain generally applicable administrative procedures are set forth in Part I above. See "Issue/Authentication Date," "Price to Public," "Minimum Purchase," "Authenticity of Signatures," "Advertising Cost," and "Business Day"). In connection with the qualification of the Book-Entry Notes for eligibility in the book-entry system maintained by DTC, the Trustee will perform the custodial, document control and administrative functions described below, in accordance with its respective obligations under a Letter of Representations (the "Letter") from the Issuer and the Trustee to DTC dated as of December 21, 1998, and a Medium-Term Note Certificate Agreement between the Trustee and DTC and its obligations as a participant in DTC, including DTC's Same-Day Funds Settlement System ("SDFS"). Both Fixed and Floating Rate Notes denominated and payable in U.S. dollars may be issued in book-entry form. Single and Multi-Indexed Notes may also be issued in book-entry form.

Issuance:

On or before any date of settlement (as defined under "Settlement" below) for one or more Book-Entry Notes represented by one or more Master Notes, the Issuer will deliver one or more Pricing Supplements (with a Prospectus and a Prospectus Supplement attached thereto unless previously delivered to the Trustee) to the Trustee identifying each issue of Book-Entry Notes that have the same Stated Maturity, redemption provisions, if any, Interest Payment Dates, Original Issue Date, original issue discount provisions, if any, and, in the case of Fixed Rate Notes, interest rate, or, in case of Floating Rate Notes, interest rate formula, initial interest rate, Index Maturity, Interest Reset Period, Interest Reset Dates, Spread or Spread Multiplier (if any), minimum interest rate (if any) and maximum interest rate (if any) and, in the case of Fixed Rate Notes or Floating Rate Notes that are also Currency Indexed Notes, Specified Currency, Indexed Currency, Face Amount and Base Exchange Rate and the Base Interest Rate, if any, or that are also Other Indexed Notes, the same terms (all of the foregoing are collectively referred to as the "Terms"). Each Pricing Supplement shall be accompanied by a letter from the

Issuer (i) advising the Trustee that as of the date of such letter, the Issuer has issued Notes pursuant to the Indenture having the Terms specified in such Pricing Supplement, (ii) confirming that such Notes are debt obligations of the Issuer referred to and evidenced by the Master Note registered in the name of Cede & Co., as nominee for DTC and (iii) requesting the Trustee to make an appropriate entry identifying such debt obligations on the records of the Issuer maintained by the Trustee. Each Book-Entry Note will be deemed to have been dated and issued as of the settlement date, which date shall be the Original Issue Date. No Master Note will represent any Certificated Note.

Identification Numbers:

The Issuer has arranged with the CUSIP Service Bureau of Standard & Poor's Ratings Services (the "CUSIP Service Bureau") for the reservation of a series of CUSIP numbers, consisting of approximately 900 CUSIP numbers relating to Book-Entry Notes. The Trustee, the Issuer and DTC have obtained from the CUSIP Service Bureau a written list of such reserved CUSIP numbers. The Trustee will assign CUSIP numbers to each issue of Book-Entry Notes identified by a Pricing Supplement as described below under Settlement Procedure "B." DTC will notify the CUSIP Service Bureau periodically of the CUSIP numbers that the Trustee has assigned to each issue of Book-Entry Notes. The Trustee will notify the Issuer at any time when fewer than 100 of the reserved CUSIP numbers remain unassigned to issue of Book-Entry Notes, and, if it deems necessary, the Issuer will reserve additional CUSIP numbers for assignment to issues of Book-Entry Notes. Upon obtaining such additional CUSIP numbers, the Issuer shall deliver a list of such additional CUSIP numbers to the Trustee and DTC.

Registration: The Master Note representing the Book-Entry Notes will be issued only in fully registered form without coupons. The Master Note will be registered in the name of Cede & Co., as nominee for DTC, on the Securities Register maintained under the Indenture. The beneficial owner of a Book-Entry Note (or one or more indirect participants in DTC designated by such owner) will designate one or more direct participants in DTC (with respect to such Book-Entry Note, the "Participants") to act as agent or agents for such owner in connection with the book-entry system maintained by DTC, and DTC will record in book-entry form, in accordance with instructions provided by such Participants, a credit balance with respect to such Note in the account of such Participants. The ownership interest of such beneficial owner in such Book-Entry Note will be recorded through the records of such Participants or through the separate records of such Participants and one or more indirect participants in DTC.

Transfers: Transfers of a Book-Entry Note will be accomplished by book entries made by DTC and, in turn, by Participants (and, in certain cases, one or more indirect participants in DTC) acting on behalf of beneficial transferors and transferees of such Note.

Exchanges: The Trustee may deliver to DTC and the CUSIP Service Bureau at any time a written notice of consolidation specifying (i) the CUSIP numbers set forth on two or more Pricing Supplements that identify issues of Book-Entry Notes having the same Terms and for which interest has been paid to the same date, (ii) a date, occurring at least thirty days after such written notice is delivered and at least thirty days before the next Interest Payment Date for such issues of Book-Entry Notes, and (iii) a new CUSIP number to be assigned to such issues of Book-Entry Notes having the same terms. Upon receipt of such a notice, DTC will send to its Participants (including the Trustee) a written reorganization notice to the effect that such exchange will occur on such date. Prior to the specified exchange date, the Trustee will deliver to the CUSIP Service Bureau a written notice setting forth such exchange date and the new CUSIP number and

stating that, as of such exchange date, the CUSIP numbers of the relevant issues of Book-Entry Notes will no longer be valid. On the specified exchange date, the CUSIP numbers of the relevant issues of Book-Entry Notes will, in accordance with CUSIP Service Bureau procedures, be canceled and not immediately reassigned.

Maturities: Each Issue of Book-Entry Notes will mature on a Business Day nine months or more from the settlement date for such issue of Book-Entry Notes.

Notice of Repayment: With respect to each Book-Entry Note that is repayable at the option of the Holder the Trustee will furnish DTC on the settlement date pertaining to such Book-Entry Note a notice setting forth the terms of such repayment option. Such terms shall include the start date and end dates of the first exercise period, the purchase date following such exercise period, the frequency that such exercise periods occur (*e.g.*., quarterly, semiannually, annually, etc.) and if the repayment option expires before maturity, the same information (except frequency) concerning the last exercise period. It is understood that the exercise period shall be at least 15 calendar days long and that the purchase date shall be at least seven calendar days after the last day of the exercise period.

Redemption and Repayment: The Trustee will comply with the terms of the Letter with regard to redemptions and repayments of the Notes. If an issue of Book-Entry Notes is to be redeemed or repaid in part, the Trustee will make appropriate entries in its records to reflect the remaining portion of such issue of Book Entry Notes, which portion shall bear the same CUSIP number as prior to the redemption or repayment, as the case may be.

Denominations: Book-Entry Notes will be issued in principal amounts of $1,000 or any amount in excess thereof that is an integral multiple of $1,000.

Interest:	General. Interest on each Book-Entry Note will begin to accrue from the Original Issue Date of an issue of Book-Entry Notes or from the most recent date to which interest has been paid, as the case may be, and will be calculated and paid in the manner described in the Prospectus Supplement (as defined in the Agency Agreement), as supplemented by the applicable Pricing Supplement. Standard & Poor's Ratings Services will use the information received in the pending deposit message described under the Settlement Procedure "C" below in order to include the amount of any interest payable and certain other information regarding the related issue of Book-Entry Notes in the appropriate weekly bond report published by Standard & Poor's Ratings Services.
Notice of Interest Payment and Regular Record Dates:	On the first Business Day of January, April, July and October of each year, the Trustee will deliver to the Issuer and DTC a written list of Regular Record Dates and Interest Payment Dates that will occur with respect to Book-Entry Notes during the six-month period beginning on such first Business Day. Promptly after each Interest Determination Date or Calculation Date, as applicable (as set forth in the Prospectus Supplement, as supplemented by the applicable Pricing Supplement and pursuant to the applicable Note) for Floating Rate Notes, the Issuer, upon receiving notice thereof, will notify Standard & Poor's Ratings Services of the interest rate determined on such Interest Determination Date or Calculation Date, as applicable.
Calculation of Interest:	Interest on Fixed Rate Book-Entry Notes (including interest for partial periods) and interest rates on Floating Rate Book-Entry Notes will be determined as set forth in the Prospectus Supplement, as supplemented by the applicable Pricing Supplement, and pursuant to the applicable form of Notes. With respect to Floating Rate Book-Entry Notes, the Calculation Agent shall determine the interest for each Interest Reset Date and communicate such interest rate to the Issuer and the Issuer will promptly notify the Trustee and the Paying Agent of each such determination.

Payments of Principal and Payment of Interest Only Interest:	Promptly after each Regular Record Date, the Trustee will deliver to the Issuer and DTC a written notice specifying by CUSIP number the amount of interest to be paid on each issue of Book-entry Notes on the following Interest Payment Date (other than an Interest Payment Date coinciding with maturity) and the total of such amounts. The Issuer will confirm with the Trustee the amount payable on each issue of Book-Entry Notes on such Interest Payment Date. DTC will confirm the amount payable on each issue of Book-Entry Notes on such Interest Payment Date by reference to the daily or weekly bond reports published by Standard & Poor's Ratings Services. The Issuer will pay to the Trustee, as paying agent, the total amount of interest due on such Interest Payment Date (other than the maturity), and the Trustee will pay such amount to DTC at the times and in the manner set forth below under "Manner of Payment."
Payments at Maturity:	On or about the first Business Day of each month, the Trustee will deliver to the Issuer and DTC a written list of principal and interest to be paid on each issue of Book-Entry Notes represented by a single CUSIP number maturing either at Stated Maturity or on a Redemption or Repayment Date in the following month. The Issuer, the Trustee and DTC will confirm the amounts of such principal and interest payments with respect to each such issue of Book-Entry Notes on or about the fifth Business Day preceding the maturity of such issue of Book-Entry Notes. The Issuer will pay to the Trustee, as paying agent, the principal amount of each issue of Book-Entry Notes identified by a single CUSIP number, together with interest due at such maturity. The Trustee will pay such amounts to DTC at the times and in the manner set forth below under "Manner of Payment". Promptly after payment to DTC of the principal and interest due at the maturity of each issue of Book-Entry Notes, the Trustee will reduce the principal amount of the Master Note representing the issue of Book-Entry Notes and so advise the Issuer.

Manner of Payment:	The total amount of any principal and interest due on each issue of Book-Entry Notes identified by a single CUSIP number on any Interest Payment Date or at maturity shall be paid by the Issuer to the Trustee in funds available for use by the Trustee as of 9:30 A.M. (New York City time), or as soon as practicable thereafter on such date. The Issuer will confirm instructions regarding payment in writing to the Trustee. Prior to 10:00 A.M. (New York City time) on each Maturity Date or as soon as possible thereafter, following receipt of such funds from the Issuer, the Trustee will pay by separate wire transfer (using Fedwire message entry instructions in a form previously specified by DTC) to an account at the Federal Reserve Bank of New York previously specified by DTC, in funds available for immediate use by DTC, each payment of principal (together with interest thereon) due on each issue of Book-Entry Notes on any Maturity Date. On each Interest Payment Date, interest payments shall be made to DTC in same-day funds in accordance with existing arrangements between the Trustee and DTC. Thereafter, on each such date, DTC will pay, in accordance with its SDFS operating procedures then in effect, such amounts in funds available for immediate use to the respective Participants in whose names the Book-Entry represented by the Master Note are recorded in the book-entry system maintained by DTC. Neither the Issuer nor the Trustee shall have any direct responsibility or liability for the payment by DTC to such Participants of the principal of and interest on the Book-Entry Notes.
Withholding Taxes:	The amount of any taxes required under applicable law to be withheld from any interest payment on a Book-Entry Note will be determined and withheld by the Participant, indirect participant in DTC or other Person responsible for forwarding payments and materials directly to the beneficial owner of such Note.

Acceptance of Offers:	Each Agent will promptly advise the Issuer of each reasonable offer to purchase Notes received by it, other than those rejected by the Agent. Such Agent may, in its discretion reasonably exercised, without notice to the Issuer, reject any offer received by it, in whole or in part. The Issuer will have the sole right to accept offers to purchase Notes and may reject any such offer, in whole or in part. If the Issuer rejects an offer, the Issuer will promptly notify such Agent.
Settlement:	The receipt by the Issuer of immediately available funds in payment for a Book-Entry Note and receipt by the Trustee of a property completed by the Trustee of a properly completed Pricing Supplement shall constitute "settlement" with respect to such Book-Entry Note. All orders accepted by the Issuer will be settled on the third Business Day from the date of the sale pursuant to the timetable for settlement set forth below unless the Issuer and the purchaser agree to settlement on another day which shall be no earlier than the next Business Day.
Settlement Procedures:	Settlement Procedures with regard to each Book-Entry Note sold by the Issuer through an Agent as agent, shall be as follows: For each offer accepted by the Issuer, the Presenting Agent shall communicate to the Issuer, Attention: Thomas J. Sargeant, CFO (Fax No.: (703) 329-0060) who will provide a copy to the Trustee, Attention: Ward Spooner (Fax No.: (212) 361-6153) and the Designated Agent, if any, by facsimile transmission or other acceptable means, the information set forth below: • Principal amount. • Maturity Date of Notes.

- In the case of a Fixed Rate Book-Entry Note, the interest rate or, in the case of a Floating Rate Book-Entry Note, the interest rate formula, the Initial Interest Rate (if known at such time), Index Maturity, Interest Reset Period, Interest Reset Dates, Spread or Spread Multiplier (if any), minimum interest rate (if any) and maximum interest rate (if any).

- Interest Payment Period and Interest Payment Dates.

- Redemption provisions, if any.

- Repayment provisions, if any.

- Settlement date (Original Issue Date).

- Price to public of the Note (expressed as a percentage).

- Agent's commission (to be paid in the form of a discount from the proceeds remitted to the Issuer upon settlement).

- Original issue discount provisions if any.

- In the case of Currency Indexed Notes, the above-listed information, as applicable, and the Base Exchange Rate(s), Base Interest Rate and Indexed Currencies.

- In the case of Dual Currency Notes, the above-listed information, as applicable, and the Optional Payment Currency, Designated Exchange Rate and Optional Election Dates.

- Net proceeds to the Issuer.

The Trustee will confirm the information set forth in Settlement Procedure "A" above by telephone with such Agent and the Issuer.

The Trustee will assign a CUSIP number to the issue of Book-Entry Notes and will telephone the Issuer and notify the Issuer of such CUSIP number. The Trustee will enter a pending deposit message through DTC's Participant Terminal System, providing the following settlement information to DTC (which shall route such information to Standard & Poor's Ratings Services) and the Presenting Agent:

- The applicable information set forth in Settlement Procedure "A."
- Identification as a Fixed Rate Book-Entry Note or a Floating Rate Book-Entry Note.
- Initial Interest Payment Date for each issue of Book-Entry Notes of days by which such date succeeds the related DTC Record Date (which, in the case of Floating Rate Notes which reset daily or weekly shall be the date five calendar days immediately preceding the applicable Interest Payment Date and in the case of all other Notes shall be the Regular Record Date as defined in the Prospectus Supplement), the amount of interest payable on such Interest Payment Date per $1,000 principal amount of Notes at Maturity, and amount of interest payable per $1,000 principal amount of Notes in the case of Fixed Rate Notes.
- CUSIP number of the such issue of Book-Entry Notes.
- Whether such CUSIP number will identify any other issue of Book-Entry Notes (to the extent known at such time).

To the extent the Issuer has not already done so, the Issuer will deliver to the Trustee a Pricing Supplement in a form that has been approved by the Issuer and the Agents and a letter advising of the relevant Issuance.

DTC will credit such Book-Entry Notes to the Trustee's participant account at DTC.

The Trustee will enter an SDFS deliver order through DTC's Participant Terminal System instructing DTC to (i) debit such Book-Entry Notes to the Trustee's participant account and credit such Book-Entry Notes to such Agent's participant account and (ii) debit such Agent's settlement account and credit the Trustee's settlement account for an amount equal to the price of such Book-Entry Notes less such Agent's commission. The entry of such a deliver order shall constitute a representation and warranty by the Trustee to DTC that (i) such Book-Entry Notes have been executed, delivered and authenticated and (ii) the Trustee is holding the Master Note representing such Book-Entry Notes pursuant to the relevant Medium-Term Note Certificate Agreement between the Trustee and DTC.

An Agent will enter an SDFS deliver order through DTC's Participant Terminal System instructing DTC (i) to debit such Note to such Agent's participant account and credit such Note to the participant accounts of the Participants with respect to such Note and (ii) to debit the settlement accounts of such Participants and credit the settlement account of such Agent for an amount equal to the price of such Note.

Transfers of funds in accordance with SDFS deliver orders described in Settlement Procedures "F" and "G" will be settled in accordance with SDFS operating procedures in effect on the settlement date.

The Trustee, upon confirming receipt of such funds in accordance with Settlement Procedure "F," will wire transfer to the following account of the Issuer:

Bank Name:	Bank of America
Account Name:	AvalonBay Communities, Inc.
Account Number:	Concentration Account
ABA Number:	3752291106
	111000012

in funds available for immediate use, the amount transferred to the Trustee in accordance with Settlement Procedure "F."

An Agent will confirm the purchase of such Note to the purchaser either by transmitting to the Participants with respect to such Note a confirmation order or orders through DTC's institutional delivery system or by mailing a written confirmation to such purchaser.

Settlement Procedures Timetable:

For orders of Book-Entry Notes solicited by an Agent, as agent, and accepted by the Issuer for settlement on the first Business Day after the sale date, Settlement Procedures "A" through "J" set forth above shall be completed as soon as possible but not later than the respective times (New York City time) set forth below:

Settlement Procedure	Time
A	11:00 a.m. on the sale date
B	12:00 noon on the sale date
C	2:00 p.m. on the sale date
D	3:00 p.m. on the day before settlement
E	9:00 a.m. on settlement date
F-G	2:00 p.m. on settlement date
H	4:45 p.m. on settlement date
I-J	5:00 p.m. on settlement date

If a sale is to be settled two Business Days after the sale date, Settlement Procedure "A," "B" and "C" shall be completed as soon as practicable but not later than 11:00 a.m., 12:00 noon and 2:00 p.m., as the case may be, on the first Business Day after the sale date.

If a sale is to be settled more than two Business Days after the sale date, Settlement Procedure "A" shall be completed as soon as practicable but no later than 11:00 a.m. on the first Business Day after the sale date and Settlement Procedures "B" and "C" shall be completed as soon as practicable but no later than 12:00 noon and 2:00 p.m., as the case may be, on the second Business Day before the settlement date. If the initial interest rate for a Floating Rate Book-Entry Note has not been determined at the time that Settlement Procedure "A" is completed, Settlement Procedures "B" and "C" shall be completed as soon as such rate has been determined but not later than 12:00 noon and 2:00 p.m., respectively, on the Business Day before the settlement date. Settlement Procedure "H" is subject to extension in accordance with any extension of Fedwire closing deadlines and in the other events specified in the SDFS operating procedures in effect on the settlement date.

If settlement of a Book-Entry Note is rescheduled or canceled, the Trustee, upon receipt of notice from the Issuer, will deliver to DTC, through DTC's Participant Terminal System, a cancellation message to such effect by no later than 2:00 p.m. on the Business Day immediately preceding the scheduled settlement date.

Failure to Settle:

If an Agent or Trustee fails to enter an SDFS deliver order with respect to a Book-Entry Note pursuant to Settlement Procedure "F," the Trustee may deliver to DTC, through DTC's Participant Terminal System, as soon as practicable, a withdrawal message instructing DTC to debit such note to the Trustee's participant account. DTC will process the withdrawal message, provided that the Trustee's participant account contains a principal amount of Book-Entry Notes represented by the Master Note that is at least equal to the principal amount to be debited. If a withdrawal message is processed with respect to all the Book-Entry Notes identified by a single CUSIP number, the Trustee will advise the Issuer and will make appropriate entries in its records. The CUSIP number assigned to such issue of Book-Entry Notes shall, in accordance with CUSIP Service Bureau procedures, be canceled and not immediately reassigned. If a

withdrawal message is processed with respect to one or more, but not all, of the issue of Book-Entry Notes identified by a single CUSIP number, the Trustee will advise the Issuer and will make appropriate entries in its records.

If the purchase price for any Book-Entry Note is not timely paid to the Participants with respect to such Note by the beneficial purchaser thereof (or a person, including an indirect participant in DTC, acting on behalf of such purchaser), such Participants and, in turn, the Presenting Agent may enter SDFS deliver orders through DTC's Participant Terminal system reversing the orders entered pursuant to Settlement Procedures "F" and "G," respectively. Thereafter, the Trustee will deliver the withdrawal message and take the applicable related actions described in the preceding paragraph. If such failure shall have occurred for any reason other than the failure by the Presenting Agent to provide the Purchase Information to the Issuer or to provide a confirmation to the purchaser, the Issuer will reimburse the Presenting Agent on an equitable basis for its loss of the use of the funds during the period when they were credited to the account of the Issuer.

Notwithstanding the foregoing, upon any failure to settle with respect to a Book-Entry Note, DTC may take any actions in accordance with its SDFS operating procedures then in effect.

Periodic Statements from the Trustee:

Periodically, the Trustee will send to the Issuer a statement setting forth the principal amount of Book-Entry Notes outstanding as of that date and setting forth a brief description of any sales of Book-Entry Notes of which the Issuer has advised the Trustee but which have not yet been settled.

Procedure for Rate Changes:	The Issuer and each Agent will discuss from time to time the price of, and the rates to be borne by, the Notes that may be sold as a result of the solicitation of offers by any Agent. Once an Agent has recorded any indication of interest in Notes upon certain terms, and communicated with the Issuer, if the Issuer plans to accept an offer to purchase Notes upon such terms, it will prepare a Pricing Supplement to the Prospectus, as then amended or supplemented, reflecting the terms of such Notes and will arrange to transmit such Pricing Supplement to the Commission for filing in accordance with and within the time prescribed by the applicable paragraph of Rule 424(b) under the Act. The Issuer will supply at least two copies of the Prospectus as then amended or supplemented, and bearing such Pricing Supplement, to the Presenting Agent. No settlements with respect to Notes upon such terms may occur prior to such transmitting and such Agent will not, prior to such transmitting, mail confirmations to customers who have offered to purchase Notes upon such terms. After such transmitting, sales and mailing of confirmations and settlements may occur with respect to Notes upon such terms, subject to the provisions of "Delivery of Prospectus" below. Outdated Stickers, and copies of the Prospectus to which they are attached (other than those retained for files), will be destroyed.
Suspension of Solicitation; Amendment or Supplement:	As provided in the Agency Agreement, the Issuer may suspend solicitation of purchase at any time, and, upon receipt of notice from the Issuer, the Agents will as promptly as practicable, but in no event later than one Business Day following such notice, suspend solicitation until such time as the Issuer has advised them that solicitation of purchases may be resumed.

If the Agents receive the notice from the Issuer contemplated by Section 4(b) of the Agency Agreement, they will promptly suspend solicitation and will only resume solicitation as provided in the Agency Agreement. If the Issuer decides to amend or supplement the Registration Statement or the Prospectus relating to the Notes, it will promptly advise the Agents and will furnish the Agents with the proposed amendment or supplement in accordance with the terms of the Agency Agreement. The Issuer will promptly file or mail to the Commission for filing such amendment or supplement, provide the Agents with copies of any such amendment or supplement, confirm to the Agents that such amendment or supplement has been filed with the Commission and advise the Agents that solicitation may be resumed. Any such suspension shall not affect the Issuer's obligations under the Agency Agreement; and in the event that at the time the Issuer suspends solicitation of purchases there shall be any offers already accepted by the Issuer outstanding for settlement, the Issuer will have the sole responsibility for fulfilling such obligations; the Agents will make reasonable efforts to assist the Issuer to fulfill such obligations, but the Agents will not be obligated to fulfill such obligations. The Issuer will in addition promptly advise the Agents and the Trustee if such offers are not to be settled and if copies of the Prospectus as in effect at the time of the suspension may not be delivered in connection with the settlement of such offers.

Delivery of Prospectus:

A copy of the Prospectus, as most recently amended or supplemented on the date of delivery thereof (except as provided below), must be delivered to a purchaser prior to or together with the earlier of delivery of (i) the written confirmation provided for above, and (ii) any Note purchased by such purchaser at the following address:

If to: Banc of America Securities LLC
to both: Attn: Continuously Offered Products
100 No. Tryon Street
Charlotte, NC 28255
Mail Code: NC 1007-07-01

Telecopy Number: (704) 388-9939[13]

and

Syndicate Operations
100 No. Tryon Street
Charlotte, NC 28255
Mail Code: NC 1007-07-01
Telecopy Number: (704) 388-92122[14]

if to: Citigroup Global Markets Inc.
to: Attention: Annabelle Avila
Brooklyn Army Terminal
140 58th Street, 8th Floor
Brooklyn, NY 11220
Telephone Number: (718) 765-6725
Telecopy Number: (718) 765-6734

if to: Fleet Securities, Inc.
to: Attention: John Crees
100 Federal Street MADE 10012H
Boston, MA 02110
Telephone Number: (617) 434-5983
Telecopy Number: (617) 434-8702

if to: J.P. Morgan Securities Inc.
to: Attention: Medium-Term Note Desk
270 Park Avenue, 8th Floor
New York, NY 10017
Telephone Number: (212) 834-4421
Telecopy Number: (212) 834-60813[15]

if to: Lehman Brothers Inc.
to: Attention: Fixed Income Syndicate/
Medium Term Notes Desk
745 Seventh Avenue
New York, NY 10019
Telephone Number: (212) 526-9664
Telecopy Number: (212) 526-0943

[13] Please send by telecopy rather than mail.

[14] Please send by telecopy rather than mail.

[15] Please send by telecopy with original to follow by mail.

with a copy to:

ADP Prospectus Services
For Lehman Brothers Inc.
Attention: Client Services Desk
1155 Long Island Avenue
Edgewood, NY 11717
Telecopy Number: (631) 254-7268

if to: Morgan Stanley & Co. Incorporated
to: Attention: Legal Department
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-4000
Telecopy Number: (212) 761-0783

with a copy to:

Morgan Stanley & Co. Incorporated
Attention: Debt Syndicate Desk
1585 Broadway
New York, NY 10036
Telephone Number: (212) 761-2000

if to: Wachovia Capital Markets, LLC
to: Attention: Corporate Syndicate Desk
301 South College St., DC-8
One Wachovia Center
Charlotte, NC 28288
Telephone Number: 704-383-7727
Telecopy Number: 704-383-9165

if to: US Bank, National Association (the Trustee)
to: Attention: Ward Spooner
100 Wall Street
New York, New York 10005
Telephone Number: (212) 361-6175
Telecopy Number: (212) 361-6153

and to: the Designated Agent, if any.

For record keeping purposes, one copy of such Pricing Supplement shall also be mailed to:

O'Melveny & Myers LLP
275 Battery Street, Suite 2600
San Francisco, CA 94111-3305
Attention: Peter T. Healy, Esq.
Telecopy Number: (415) 984-8701

and

Goodwin Procter LLP
Exchange Place
53 State Street
Boston, MA 02109-2281
Attention: Gilbert G. Menna, P.C.
Telephone Number: (617) 570-1433
Telecopy Number: (617) 523-1231

The Issuer shall ensure that the Presenting Agent receives copies of the Prospectus and each amendment or supplement thereto (including appropriate Pricing Supplements) in such quantities and within such time limits as will enable the Presenting Agent to deliver such confirmation or Note to a purchaser as contemplated by these procedures and in compliance with the preceding sentence. If, since the date of acceptance of a purchaser's offer, the Prospectus shall have been supplemented solely to reflect any sale of Notes on terms different from those agreed to between the Issuer and such purchaser or a change in posted rates not applicable to such purchaser, such purchaser shall not receive the Prospectus as supplemented by such new supplement, but shall receive the Prospectus as supplemented to reflect the terms of the Notes being purchased by such purchaser and otherwise as most recently amended or supplemented on the date of delivery of the Prospectus.

EXHIBIT C

Form of Opinion of
Counsel to the Company

In rendering the following opinion, counsel may rely, to the extent they deem such reliance proper, on the opinions (in form and substance reasonably satisfactory to counsel to the Agents) of other counsel reasonably acceptable to counsel to the Agents as to matters governed by the laws of jurisdictions other than the United States, and as to matters of fact, upon certificates of officers of the Company and of government officials; *provided* that counsel to the Company shall state that the opinion of any such other counsel is in form satisfactory to counsel to the Company and, in the opinion of counsel to the company, counsel to the Company and the Agents are justified in relying on such opinions of other counsel. Copies of all such opinions and certificates shall be furnished to counsel to the Agents.

* * * *

1. The Registration Statement has been declared effective under the 1933 Act. The Prospectus Supplement has been filed with the Commission pursuant to Rule 424(b) under the 1933 Act. To our knowledge (based solely on an oral confirmation of a member of the Commission's staff), no stop order suspending the effectiveness of the Registration Statement has been issued under the 1933 Act and no proceeding for that purpose has been instituted or threatened by the Commission.

2. Each part of the Registration Statement, when such part became effective, and the Prospectus, on the date of filing thereof with the Commission and as of the date hereof, complied as to form in all material respects with the requirements of the 1933 Act and the rules and regulations thereunder (other than (i) the financial statements and supporting schedules and other financial and statistical information and data included therein or omitted therefrom, and (ii) any documents incorporated by reference into the Registration Statement, as to which we express no opinion) it being understood that, in passing upon compliance as to the form of the Registration Statement, we assume that the statements made therein are correct and complete.

3. The descriptions in the Registration Statement (other than the documents incorporated by reference) and the Prospectus of statutes are accurate in all material respects and fairly present the information required to be disclosed therein. We do not know of any statutes or legal or governmental proceedings required to be described in the Prospectus that are not described as required, or of any contracts or documents of a character required to be described in the Registration Statement or Prospectus or to be filed as exhibits to the Registration Statement that are not so described or filed.

4. The Company is not and, after giving effect to the offering and sale of the Notes and the application of the proceeds therefrom as described in the Prospectus, will

not be an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

5. The Company is a corporation validly existing and in good standing under the laws of the State of Maryland with corporate power under its organizational documents and the applicable statutory law necessary to conduct its business as described in the Registration Statement and the Prospectus.

6. Each of the Subsidiaries that owns a Current Community or Development Community (as such terms are defined in the Company's Quarterly Report on Form 10-Q for the quarterly period ended , 200 , filed with the Commission on , 200) is a corporation, limited partnership, or limited liability company, as the case may be, that has corporate or other power under its organizational documents and the applicable statutory law necessary to conduct its business as described in the Registration Statement and the Prospectus.

7. Subject to the completion of the exchange of the common stock of Avalon Properties, Inc. ("Avalon") for the Common Stock of the Company in connection with the merger of Avalon with and into the Company as of June 4, 1998 (the "Merger"), all of the outstanding shares of Common Stock and Preferred Stock identified in the Prospectus that were issued in (a) the Merger and (b) offerings for cash registered under the 1933 Act and sold to underwriters or through agents in transactions in which we acted as counsel for the Company, have been duly authorized and are validly issued, fully paid and nonassessable and conform to the description thereof in the Prospectus.

8. The Notes are in substantially the forms annexed to the Amended and Restated Third Supplemental Indenture as Exhibit A or Exhibit B thereto. The issuance of the Notes has been duly authorized by the Company and, assuming (i) the due execution of the Notes on behalf of the Company, (ii) the due authentication of the Notes by the Trustee in accordance with the terms of the Indenture, and (iii) the delivery of the Notes and payment therefor in full by the purchasers of the Notes, (A) the Notes will be valid and binding obligations of the Company entitled to the benefits provided by the Indenture and enforceable against the Company in accordance with their terms, subject, as to enforcement, to (i) applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or law), (iii) the discretion of the court before which any proceeding therefor may be brought, (iv) requirements that a claim with respect to any Notes payable in a foreign or composite currency (or a foreign or composite currency judgment in respect of such claim) be converted into U.S. dollars at a rate of exchange prevailing on a date determined pursuant to applicable law and (v) governmental authority to limit, delay or prohibit the making of payments outside the United States (collectively, the "Enforceability Limitations"), and (B) the Indenture and the Notes conform in all material respects to the descriptions thereof in the Registration Statement and the Prospectus.

9. The Company has full corporate power and authority to enter into the Indenture. The Indenture has been duly authorized, executed and delivered by the

Company and constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, subject to the Enforceability Limitations.

10. The Indenture has been duly qualified under the Trust Indenture Act of 1939, as amended (the "TIA").

11. The Company has full corporate power and authority to enter into the Distribution Agreement, the Terms Agreement and each Appointment Agreement, and each of the Distribution Agreement, the Terms Agreement and each Appointment Agreement has been duly authorized, executed and delivered by the Company. The execution, delivery and performance of the Indenture, the Distribution Agreement, the Terms Agreement and the Appointment Agreements and the issuance and sale of the Notes on the terms contemplated in the Distribution Agreement and the Terms Agreement will not (alone or with the giving of notice or the passage of time or both) (A) to our knowledge, result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company or any of the Subsidiaries, pursuant to the terms or provisions of any Contract (i) which we have prepared or negotiated on behalf of the Company and (ii) to which any of the Subsidiaries is a party or by or pursuant to which any of them or their respective properties is bound, affected or financed or (B) result in a breach or violation of any of the terms or provisions of, or constitute a default or result in the acceleration of any obligation under, (i) the Charter or Bylaws of the Company, (ii) the articles or certificate of incorporation, bylaws, limited partnership agreements or other organizational documents of any of the Subsidiaries, (iii) to our knowledge, any Contract to which the Company or any of the Subsidiaries is a party or by or pursuant to which any of them or their respective properties is bound, affected or financed or (iv) any statute, rule or regulation or judgment, ruling, decree or order, known to us, of any court or other governmental agency or body applicable to the business or properties of the Company or any of the Subsidiaries (except that we express no opinion as to the securities or "Blue Sky" laws of any jurisdiction other than the United States), in each case where such violation or default, individually or in the aggregate, might have a material adverse effect on the business, properties, business prospects, condition (financial or otherwise) or results of operations of the Company and the Subsidiaries taken as a whole.

12. To our knowledge, no consent, approval, authorization or order of, or filing with, any court or governmental agency or body is required in connection with the issuance or sale of the Notes by the Company, except (i) such as have been obtained under the 1933 Act, the Securities Exchange Act of 1934, as amended, or the TIA, or (ii) such as may be required under state securities laws or the bylaws or rules of the NASD in connection with the purchase and distribution of the Notes through or by the Agents.

The limitations inherent in the independent verification of factual matters and the character of determinations involved in the registration process are such that we are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of the statements contained in or incorporated by reference into the Registration Statement or the Prospectus and we make no representation that we have

independently verified the accuracy, completeness or fairness of such statements. Without limiting the foregoing, we assume no responsibility for, and have not independently verified, the accuracy, completeness or fairness of the financial statements or notes thereto, financial schedules and other financial and statistical data contained in or incorporated by reference into the Registration Statement, and we have not examined the accounting, financial or statistical records from which such statements and notes, schedules and data are derived. However, in the course of our acting as counsel to the Company in connection with the preparation of the Registration Statement and the Prospectus and the public offering of the Notes, we have conferred with representatives of the Company, independent accountants for the Company, your representatives and representatives of O'Melveny & Myers LLP, your counsel, during which conferences and conversations the contents of the Registration Statement and the Prospectus and related matters were discussed. In addition, we reviewed certain documents made available to us by the Company or otherwise in our possession.

Based on our participation in the above-mentioned conferences and conversations, our review of the documents described above and our understanding of applicable law, we advise you that:

(a) No facts have come to our attention which cause us to believe that the Registration Statement (excluding the financial statements and notes thereto, financial schedules and other financial or statistical information and data included therein or omitted therefrom and the Trustee's Statement of Eligibility and Qualification on Form T-1 (the "Form T-1"), as to which we express no opinion), at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(b) No facts have come to our attention which cause us to believe that the Prospectus (excluding the financial statements and notes thereto, financial schedules and other financial or statistical information and data included therein or omitted therefrom and the Form T-1, as to which we express no opinion), as of its date or the date hereof, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Such opinion shall also state that it is being rendered to the agents at the request of the Company and shall authorize the reliance of O'Melveny & Myers LLP with respect to matters governed by the MGCL for the sole purpose of rendering their opinion to the Agents under the Distribution Agreement.

SCHEDULE I

Information in the Prospectus

Furnished by any Agent

The following information appearing in the prospectus supplement relating to the Notes, if any, and the Prospectus has been furnished by the Agents in writing specifically for use in the preparation of such preliminary prospectus and the Prospectus:

1. The names of the Agents on the front and back covers.

2. The following information under the caption "Supplemental Plan of Distribution:"

a. the names of the Agents;

b. the information regarding transactions among the Company and the Agents and/or affiliates of the Agents (it being understood that each Agent has supplied only the information relating to such Agent and its affiliates); and

c. the information concerning stabilization and other syndicate activities in which the Agents may engage.

SCHEDULE III

Commissions

As compensation for the services of an Agent hereunder, the Company shall pay such Agent, on a discount basis, a commission for the sale of each Note equal to the principal amount of such Note multiplied by the appropriate percentage set forth below:

MATURITY RANGES	PERCENT OF PRINCIPAL AMOUNT
From 9 months to less than 1 year	.125%
From 1 year to less than 18 months	.150%
From 18 months to less than 2 years	.200%
From 2 years to less than 3 years	.250%
From 3 years to less than 4 years	.350%
From 4 years to less than 5 years	.450%
From 5 years to less than 6 years	.500%
From 6 years to less than 7 years	.550%
From 7 years to less than 10 years	.600%
From 10 years to less than 15 years	.625%
From 15 years to less than 20 years	.700%
From 20 years to 30 years	.750%
Greater than 30 years	*

* As agreed to by the Company and such Agent at the time of sale.

Exhibit 10.5

FORM OF AMENDMENT
TO
ENDORSEMENT SPLIT DOLLAR LIFE INSURANCE AGREEMENT

The Endorsement Split Dollar Life Insurance Agreement (the "Agreement") entered into as of _____ by and between AvalonBay Communities, Inc., a Maryland corporation (the "Company"), and _____ (the "Insured"), as previously amended, is hereby further amended as follows:

1. The Agreement is amended and restated as follows:

INTRODUCTION

The Insured is a valuable employee of the Company. The Company wishes to continue this employment relationship and, as inducement thereto, is willing to participate with the Insured in the payment of premiums on certain life insurance policies as an additional form of compensation for the Insured's services as an employee of the Company. This Agreement is intended to qualify as a life insurance employee benefit plan as described in Revenue Ruling 64-328.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. GENERAL DEFINITIONS

The following terms shall have the meanings specified:

1.1 "Company" means AvalonBay Communities, Inc., or any successor thereto.

1.2 "Insured" means the Employee.

1.3 "Insurer(s)" means the insurance company or companies listed on Attachment I hereto.

1.4 "Policy" or "Policies" means the insurance policy or policies listed on Attachment I, issued on the life of the Insured by the Insurer(s), together with any supplementary contracts to such policies issued by the Insurer(s).

1.5 "Employment Agreement" means the Employment Agreement made as of _____ between the Company and the Insured, as amended from time to time.

ARTICLE 2. PREMIUMS

2.1 Premium Payments. During the term of this Agreement, each annual premium on each Policy shall be paid as follows:

2.1.1. Insured's Portion. During the term of this Agreement the Insured shall be obligated to pay a portion of each premium equal to the current term rate for the Insured's age multiplied by the Insured's then current interest in the death benefit of such Policy. The "current term rate" shall mean the lesser of the Insurer's term insurance rate or the PS 58 rate, as specified in Revenue Rulings 64-328 and 66-110, or any subsequently issued applicable authority. The Insured shall pay the Insured's portion of the premium through payroll deduction. After the Insured ceases to be employed by the Company, if this Agreement remains in effect, the Insured shall pay the Insured's portion of the premium by personal check or cash.

2.1.2. Company's Portion. During the term of this Agreement the Company shall pay any additional premium amounts not paid by the Insured that are required to meet the Company's premium obligations to the Insured under the Plan. **Notwithstanding the foregoing, if the Insured is terminated by the Company for Cause (as defined in the Employment Agreement) or the Insured resigns voluntarily and such resignation is not considered a Constructive Termination Without Cause (as defined in the Employment Agreement), the Company shall cease to pay any additional premiums on behalf of the Insured and shall withdraw from the cash surrender value of the Policy an amount equal to the lesser of the aggregate premiums paid by the Company under the Policy or the cash surrender value. The Insured may choose to pay future premiums on his own or arrange for the Policy to be reduced to a fully paid-up Policy. No transfer of the Policy shall be made to the Insured until such time as provided in Article 4.**

2.2 Timing. The Insured's portion of the premium and the Company's portion of the premium shall be remitted to the Insurer before expiration of the grace period.

ARTICLE 3. POLICY OWNERSHIP AND INSURED'S BENEFITS

3.1 Company's Interest. The Company shall be the sole and exclusive owner of each Policy and the direct beneficiary of an amount of the death proceeds of each Policy equal to the aggregate premiums paid by the Company under the Policy.

3.2 Insured's Interest. The Insured shall have the right, during the term of this Agreement, to designate and change direct and contingent beneficiaries (and to elect and change a payment plan for such beneficiaries) with respect to the amount of the death proceeds of each

Policy in excess of that payable to the Company pursuant to Section 3.1. **Apart from this right, the Insured shall have no current access to the Policy while this Agreement is in force.**

ARTICLE 4. TERMINATION OF AGREEMENT

~~This Agreement shall terminate 30 days after the earliest to occur of the following: (i) Insured's termination of employment by the Company for Cause (as defined in the Employment Agreement), (ii) the Insured's voluntary termination of employment which is not due to a Constructive Termination Without Cause (as defined in the Employment Agreement), or (iii) the payment of the full premiums due under the Policy for the Policy's 15th year (i.e., the payment due in 2017).~~

This Agreement shall terminate in 2017, after the premium due date in such year.

Upon termination of the Policy, **except as otherwise provided in Section 2.1.2,** the Company shall first withdraw from the cash surrender value in the Policy an amount equal to the lesser of the aggregate premiums paid by the Company under the Policy or the cash surrender value in the Policy.~~, and~~ The Company shall then transfer the ownership of the Policy to the Insured (subject to the payment of any required withholding taxes.~~); provided, however, that in the event of termination under clause (i) or (ii), transfer of the Policy to the Insured may not occur earlier than six months after the Insured's termination of employment with the Company.~~ Upon the transfer of the policy to the Insured, the Company's rights hereunder shall terminate. In the event the Agreement is terminated under any other circumstances, the Insured's rights hereunder shall terminate.

ARTICLE 5. INSURER(S)

Each Insurer shall be bound only by the provisions of and endorsements on its Policy, and any payments made or actions taken by it in accordance therewith shall fully discharge it from all claims, suits and demands of all persons. The Insurer shall in no way be bound by or be deemed to have notice of the provisions of this Agreement.

ARTICLE 6. MISCELLANEOUS

6.1 Termination/Amendment. The Company and the Insured may amend or terminate this Agreement by mutual consent. Any amendment shall be in writing and shall be filed with the Agreement.

6.2 Transferability. ~~The Insured shall have the right to assign any part or all of the Insured's interests in each Policy and this Agreement to any person, entity or trust by execution of a written assignment delivered to the Company and the Insurer.~~ **The Insured may not assign any part of his interest in each Policy and this Agreement to anyone.** The Company may also assign its rights in each Policy and in this Agreement.

6.3 Binding Effect. This Agreement shall bind the Insured, his heirs, executors, administrators and transferees, and the Company and its successors and any Policy beneficiary.

2. Attachment I and Attachment II to the Agreement are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, this Amendment is entered into this _____ day of _____, 2008.

AVALONBAY COMMUNITIES, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

_____
Insured

Exhibit 10.9

THIRD AMENDMENT
TO
EMPLOYMENT AGREEMENT

The Employment Agreement (the "Agreement") made as of the 1st day of July, 2003 by and between AvalonBay Communities, Inc., a Maryland corporation (the "Company"), and Thomas J. Sargeant ("Executive"), as previously amended, is hereby further amended as follows (new language is bold and underlined and deleted language is struck through):

1. Section 3(b) of the Agreement is hereby amended by deleting the last sentence thereof and substituting the following in lieu thereof:

"Any Cash Bonuses **for a fiscal year** hereunder shall be paid as a lump sum ~~no later than 75 days~~ after the end of the ~~Company's preceding~~ fiscal year **but not later than March 14 after the end of the fiscal year**."

2. Section 7(c)(i)(b)(A) of the Agreement is hereby amended to read as follows:

"The Company may defer the determination of the Cash Bonus and the restricted stock portion of the LT Equity Bonus until such bonuses in respect of such year are determined for other officers, and at such time the amounts to be used for determining Executive's pro rata bonuses shall be a percentage of his target Cash Bonus and a percentage of his target number of restricted shares with such percentages being equal to the average of the percentages that apply to the Cash Bonus and restricted shares, respectively, of other officers ranked Senior Vice President or higher, **but in no event shall such Cash Bonus and the restricted stock portion of the LT Equity Bonus be paid to Executive later than March 14 of the calendar year following the calendar year that includes the Date of Termination**; and"

3. The first sentence of Section 7(c)(iii) of the Agreement is hereby amended to read as follows:

"In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i) and subject to Executive first entering into a separation agreement, including a general release of all claims, in a form reasonably acceptable to the Company ('Separation Agreement') **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the later of the effective date of said Separation Agreement or~~ 31 days

following the Date of Termination, an amount equal to two times Covered Average Compensation."

4. Section 7(c)(iv) of the Agreement is hereby amended to read as follows:

"(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), subject to Executive entering into a Separation Agreement **within 21 days of the Date of Termination, pay to Executive, in one lump sum 31 days following the Date of Termination, an amount equal to Covered Average Compensation. The Company shall also, subject to the Executive entering into a Separation Agreement**, commencing upon the Date of Termination,

~~(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of Termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;~~

~~(B)~~(A) Continue, without cost to Executive, benefits comparable to the medical benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

~~(C)~~(B) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms; and

~~(D)~~(C) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination, then, until that date that is 24 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other

employment), reimburse Executive for an amount equal to the difference between (i) the monthly premiums for such disability policy, less (ii) such amount as may be paid, prior the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by the Company prior to the Date of Termination; and

~~(E)~~(D) Continue to pay the premiums due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) in accordance with, and to the extent required by, the provisions of the Split Dollar Agreement between the Company and Executive."

5. The first sentence of Section 7(c)(v) of the Agreement is hereby amended to read as follows:

"In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the later of the effective date of a Separation Agreement or~~31 days following the Date of Termination, an amount equal to three times Covered Average Compensation."

6. The second sentence of Section 7(d)(ii) of the Agreement is hereby amended to read as follows:

"The initial Partial Gross-Up Payment, if any, as determined pursuant to this 7(d)(ii), shall be paid to ~~the Executive within five days of the receipt of the Accounting Firm's determination~~ **the appropriate tax authorities as withholding taxes on behalf of Executive at such time or times when each Excise Tax payment is due**."

7. The following section shall be inserted as a new Section 7(i) to the Agreement:

"**(i) Section 409A.**

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of Executive's 'separation from service' within the meaning of Section 409A of the Code, the Company determines that Executive is a 'specified employee' within the meaning

of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that Executive becomes entitled to under this Agreement would be considered deferred compensation subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided prior to the date that is the earlier of (A) six months and one day after Executive's separation from service, or (B) Executive's death. Any such delayed cash payment shall earn interest at an annual rate equal to the applicable federal short-term rate published by the Internal Revenue Service for the month in which separation from service occurs, from the date of separation from service until the payment date.

(b) The right to reimbursement or in-kind benefits under this Agreement is not subject to liquidation or exchange for another benefit and does not affect the expenses eligible for reimbursement, or in-kind benefits, to be provided in any other taxable year.

(c) The reimbursement of expenses under this Agreement will be made on or before the last day of Executive's taxable year following the taxable year in which the expense was incurred.

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409(A)-1(h). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party."

8. Except as amended herein, the Agreement is hereby confirmed in all other respects.

IN WITNESS WHEREOF, this Amendment is entered into this 14th day of December, 2008.

AVALONBAY COMMUNITIES, INC.

By: /s/ Charlene Rothkopf
Name: Charlene Rothkopf
Title: EVP-Human Resources

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: SVP, General Counsel & Secretary

/s/ Thomas J. Sargeant
Executive

EXHIBIT 10.10

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 10th day of January, 2003 (the "Effective Date") by and between Bryce Blair ("Executive") and AvalonBay Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and the Company have previously entered into an employment agreement dated as of March 9, 1998 (as amended, the "Prior Agreement"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the Effective Date indicated above, to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. The Company hereby agrees to employ Executive, and Executive hereby agrees to remain in the employ of the Company subject to the terms and conditions of this Agreement for the period commencing on the Effective Date and terminating on November 30, 2006 (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional two year periods measured from December 1, 2006 (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other at least 180 days prior to, but not more than 270 days prior to, the expiration of the Original Term or any Renewal Term. Notwithstanding the foregoing, upon a Change in Control, the Employment Period shall be extended automatically to three years from the date of such Change in Control (but only if such date is later than the then current expiration date). (The period of Executive's employment hereunder within the Original Term and any Renewal Terms is herein referred to as the "Employment Period.")

2. Employment Duties.

(a) During the Employment Period, Executive shall serve as the Chief Executive Officer and President of the Company. In this capacity, Executive shall have such duties, authorities and responsibilities commensurate with the duties, authorities and responsibilities of persons in similar capacities in similarly sized companies, and such other duties and responsibilities as the Board of Directors of the Company (the "Board") shall designate that are consistent with Executive's position as Chief Executive Officer and President of the Company. Executive shall report exclusively to the Board. In addition to Chief Executive Officer and President, Executive currently serves as Chairman of the Board. The appointment by the Board of Directors, from among the independent directors, of a "lead director" with certain defined duties or oversight responsibilities that are of a type that may traditionally be performed by a "chairman of the board" and that overlap with current duties or oversight responsibilities of Executive in his role as Chairman of the Board, shall not be a violation of this Agreement provided the role of such lead director is consistent with the proviso in Section 7(b)(4)(ix) (definition of "Constructive Termination without Cause").

(b) Executive agrees to his employment as described in this Section 2 and agrees to devote substantially all of his working time and efforts to the performance of his duties under this Agreement; provided that nothing in this Section 2(b) shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board as an officer or director of, or advisor to, any other entity or organization that is not a customer or material service provider to the Company or a Competing Enterprise, as defined in Section 8, so long as such participation does not interfere with the performance of Executive's duties hereunder, whether or not such entity or organization is engaged in religious, charitable or other community or non-profit activities, (ii) investing in any entity or organization which is not a customer or material service provider to the Company or a Competing Enterprise, so long as such investment does not interfere with the performance of Executive's duties hereunder, or (iii) delivering lectures or fulfilling speaking engagements so long as such lectures or engagements do not interfere with the performance of Executive's duties hereunder. The Company consents to Executive's status as a "former partner" with a current financial interest in certain projects of Trammell Crow Residential ("TCR"), and such activity shall not be treated as a Competing Enterprise.

(c) In performing his duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in Alexandria, Virginia (or, if such headquarters office shall move, to a headquarters office of the Company that is within 50 miles of Alexandria, Virginia). The Company acknowledges that Executive's principal residence is currently in Massachusetts, and it shall not be a violation of this agreement for Executive to maintain a principal residence in Massachusetts and to utilize

on a regular basis the Company's current Quincy, Massachusetts office (or a successor Massachusetts office within 50 miles of Quincy, Massachusetts or other office facilities provided by the Company in or near Quincy, Massachusetts). The Company agrees to reimburse Executive for travel to and from the Alexandria office from Massachusetts and for reasonable related lodging, including, at the Company's option, at a nearby community owned by the Company.

(d) Breach by either party of any of his or its respective obligations under this Section 2 shall be deemed a material breach of that party's obligations hereunder.

3. Compensation/Benefits. In consideration of Executive's services hereunder, the Company shall provide Executive the following:

(a) Base Salary. During the Employment Period, the Executive shall receive an annual rate of base salary ("Base Salary") in an amount not less than $543,490. Executive's Base Salary will be reviewed by the Company annually and may be adjusted upward (but not downward) at such time. Base Salary shall be payable in accordance with the Company's normal business practices, but in no event less frequently than monthly.

(b) Bonuses. Commencing at the close of each fiscal year during the Employment Period, the Company shall review the performance of the Company and of Executive during the prior fiscal year, and the Company may provide Executive with additional compensation in the form of a cash bonus ("Cash Bonus") and in the form of long term equity incentives such as stock options and restricted stock grants ("LT Equity Bonus") if the Board, or any compensation committee thereof, in its discretion, determines that the performance of the Company and Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. Any Cash Bonuses hereunder shall be paid as a lump sum not later than 75 days after the end of the Company's preceding fiscal year.

(c) Medical and Disability Insurance/Physical. During the Employment Period, the Company shall provide (i) to Executive and Executive's immediate family a comprehensive policy of health insurance in accordance with the Company's general practice applicable to officers (including payment of all or a portion of the premiums due thereon) and (ii) to Executive a disability policy in accordance with the Company's general practice applicable to officers (including payment of all or a portion of the premiums due thereon) (the "Base Disability Policy") and a supplemental disability policy (the "Supplemental Policy") providing for coverage mutually reasonably acceptable to the Company and Executive. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company (but not including any related travel expense), by the physician or medical group of Executive's choosing.

(d) Split Dollar Life Insurance. Subject to Section 12(b), during the Employment Period, the Company shall keep in force and pay the premiums on the split-dollar life insurance policy referenced in the Split Dollar Insurance Agreement between the Company (or Avalon Properties, Inc., a predecessor) and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. Executive agrees to submit to such medical examinations as may be required in order to maintain such policy of insurance.

(e) Vacations. Executive shall be entitled to reasonable paid vacations during the Employment Period in accordance with the then regular procedures of the Company governing officers.

(f) Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office in each of the Alexandria, Virginia and Quincy, Massachusetts offices (or in successor offices or office facilities as permitted hereunder) commensurate with his title and duties.

(g) Annual Allowance. The Company will provide the Executive with an annual allowance of up to $10,000 per year (the "Allowance"). The Executive may draw on the Allowance for expenses incurred in his discretion for items such as country club membership, financial counseling or tax preparation. Payment of the Allowance shall be subject to substantiation of expenses in accordance with the Company's policies in effect from time to time for executive officers of the Company. Unused portions of the Allowance shall be forfeited (i.e., not carried over from year to year or paid out in cash). For purposes of this Section 3(g), a new year shall be deemed to commence on each January 1. Payments under this annual allowance will not be grossed up to reflect any income taxes that may be due thereon. Executive shall be entitled to a full Allowance for 2002.

(h) Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period in accordance with the Company's current practices but in no event less than Executive's current monthly car allowance.

(i) Other Benefits. During the Employment Period, the Company shall provide to Executive such other benefits, excluding severance benefits, but including the right to participate in such retirement or pension plans, as are made generally available to officers of the Company from time to time. Executive shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service prior to the Effective Date with Avalon Properties, Inc. and its affiliates ("Avalon"), and Trammell Crow Residential ("TCR") under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon or TCR, provided that no such crediting of service results in duplication of benefits.

(j) Total Compensation. The Company acknowledges that the Executive's Cash Bonus and LT Equity Bonus awarded to the Executive by the Board or Compensation Committee of the Board in its discretion from time to time, are a material part of total compensation for the Executive. The Company will endeavor to provide Executive with a reasonable bonus program (which program will provide for a reasonable Cash Bonus and/or reasonable LT Equity Bonus on an annual basis to compensate Executive for the achievement by the Company and/or Executive of reasonable goals and objectives) such that the Executive's total compensation, in light of the Company's performance and his performance and service as CEO and President and Chairman of the Board, is reasonable under the circumstances and reasonable relative to the Cash Bonuses and LT Equity Bonuses awarded other officers of the Company. The Company shall not be in breach of this provision unless it can be demonstrated that the Company acted in bad faith in determining whether to award (or the size of an award of) a Cash Bonus or LT Equity Bonus, which determination of bad faith shall specifically be made with reference to the target awards set for other officers and the actual awards paid other officers.

4. Expenses/Indemnification.

(a) During the Employment Period, the Company shall reimburse Executive for the reasonable business expenses incurred by Executive in the course of performing his duties for the Company hereunder, upon submission of invoices, vouchers or other appropriate documentation, as may be required in accordance with the policies in effect from time to time for executive employees of the Company.

(b) To the fullest extent permitted by law, the Company shall indemnify Executive with respect to any actions commenced against Executive in his capacity as an officer or director or former officer or director of the Company, or any affiliate thereof for which he may render service in such capacity, whether by or on behalf of the Company, its shareholders or third parties, and the Company shall advance to Executive on a timely basis an amount equal to the reasonable fees and expenses incurred in defending such actions, after receipt of an itemized request for such advance, and an undertaking from Executive to repay the amount of such advance, with interest at a reasonable rate from the date of the request, as determined by the Company, if it shall ultimately be determined that he is not entitled to be indemnified against such expenses. The Company agrees that it shall use reasonable best efforts to secure and maintain officers' and directors' liability insurance that shall include coverage with respect to Executive.

5. Employer's Authority/Policies.

(a) General. Executive agrees to observe and comply with the rules and regulations of the Company as adopted by its Board respecting the performance of his duties and to carry out and perform orders, directions and policies communicated to him from time to time by the Board.

(b) Ethics Policies. Executive agrees to comply with and be bound by the Ethics Policies of the Company, as reflected in the attachment at Annex A hereto and made a part hereof. Executive agrees to comply with and be bound by the Company's insider trading policies and procedures that are generally applicable to employees and/or senior officers.

(c) SEC Certifications. Executive's duties shall include taking such actions as are necessary so that Executive is in a position to give, and does give, all certifications that a Chief Executive Officer, under federal law or regulations, is required to give with the submission by the Company of reports or other filings to the Securities and Exchange Commission ("SEC filings"), provided, however, that Executive shall not have violated this Agreement if Executive is not in a position to give or does not give any such certification because (i) Executive determines that he cannot make such certification truthfully or with sufficient certainty due to the existence of conditions or information, or the inability to confirm such conditions or information, and (ii) the existence of such conditions or information or the inability to confirm such conditions or information, or the failure to have properly reported in an SEC filing in a timely and appropriate fashion such conditions or information,

was in each case not due to the gross negligence or willful misconduct of Executive while serving in his capacity as Chief Executive Officer.

6. Records/Nondisclosure/Company Policies.

(a) General. All records, manuals, financial statements and similar documents obtained, reviewed or compiled by Executive in the course of the performance by him of services for the Company, whether or not confidential information or trade secrets, shall be the exclusive property of the Company. Executive shall have no rights in such documents upon any termination of this Agreement.

(b) Nondisclosure Agreement. Without limitation of the Company's rights under Section 6(a), Executive agrees to abide by and be bound by the Nondisclosure Agreement of the Company executed by Executive and the Company as reflected in the attachment at Annex B and made a part hereof.

7. Termination; Severance and Related Matters.

(a) At-Will Employment. Executive's employment hereunder is "at will" and, therefore, may be terminated at any time, with or without Cause, at the option of the Company, subject only to the severance obligations under this Section 7. Upon any termination hereunder, the Employment Period shall expire.

(b) Definitions. For purposes of this Section 7, the following terms shall have the indicated definitions:

(1) Cause. "Cause" shall mean:

(i) Executive is convicted of or enters a plea of nolo contendere to an act which is defined as a felony under any federal, state or local law, not based upon a traffic violation, which conviction or plea has or can be expected to have, in the good faith opinion of the Board, a material adverse impact on the business or reputation of the Company;

(ii) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;

(iii) a breach by Executive of his fiduciary duties under Maryland law as an officer; or material breach by Executive of any rule, regulation, policy or procedure, the Company (including, without limitation, as described in Section 5 hereof);

(iv) Executive's commission of any one or more acts of gross negligence or willful misconduct which in the good faith opinion of the Board has resulted in material harm to the business or reputation of the Company; or

(v) default by Executive in the performance of his material duties under this Agreement, without correction of such action within 15 days of written notice thereof.

Notwithstanding the foregoing, no termination of Executive's employment by the Company shall be treated as for Cause or be effective until and unless all of the steps described in subparagraphs (A) through (C) below have been complied with:

(A) Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

(B) The Board has voted (at a meeting of the Board duly called and held as to which termination of Executive is an agenda item) to terminate Executive for Cause after Executive has been given notice of the particular acts or circumstances which are the basis for the termination for Cause and has been afforded at least 20 days notice of the meeting and an opportunity to present his position in writing; and

(C) The Board has given a Notice of Termination to Executive within 20 days after such Board meeting.

The Company may suspend Executive with pay at any time during the period commencing with the giving of notice to Executive under clause (A) above

until final Notice of Termination is given under clause (C) above. Upon the giving of notice as provided in clause (C) above, no further payments shall be due Executive except as provided in Section 7(c)(vi).

(2) Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

(i) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities having the right to vote generally in an election of the Company's Board of Directors ("Voting Securities"), other than as a result of (A) an acquisition of securities directly from the Company or any Subsidiary or (B) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (A), (B) and (C) of subparagraph (iii) of this Section 7(b)(2) are satisfied; or

(ii) Individuals who, as of the Effective Date, constitute the Company's Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the date hereof (excluding, for this purpose, (A) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (B) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation, involving an unrelated entity and occurring during the Employment Period), whose election or nomination for election by the Company's shareholders was approved by a vote of at least a majority of the persons then comprising Incumbent Directors shall for purposes of this Agreement be considered an Incumbent Director; or

(iii) Consummation of a reorganization, merger or consolidation of the Company, unless, following such reorganization, merger or consolidation, (A) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (B) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of

common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (C) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(v) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, other than to a

corporation, with respect to which following such sale, lease, exchange or other disposition (A) more than 50% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (B) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (C) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board of Directors providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of this Agreement solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change in Control" shall be deemed to have occurred for purposes of this Agreement.

(3) Complete Change in Control. A "Complete Change in Control" shall mean that a Change in Control has occurred, after modifying the definition of "Change in Control" by deleting clause (i) from Section 7(b)(2) of this Agreement.

(4) Constructive Termination Without Cause. "Constructive Termination Without Cause" shall mean a termination of Executive's employment initiated by Executive not later than 12 months following the occurrence (not including any time during which an arbitration proceeding referenced below is pending), without Executive's prior written consent, of one or more of the following events (or the latest to occur in a series of events), and effected after giving the Company not less than 10 working days' written notice of the specific act or acts relied upon and right to cure:

(i) a material adverse change in the functions, duties or responsibilities of Executive's position which would reduce the level, importance or scope of such position, except in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause;

(ii) any material breach by the Company of this Agreement;

(iii) any purported termination of Executive's employment for Cause by the Company which does not comply with the terms of Section 7(b)(1) of this Agreement;

(iv) the failure of the Company to obtain an agreement, satisfactory to the Executive, from any successor or assign of the Company, to assume and agree to perform this Agreement, as contemplated in Section 10 of this Agreement;

(v) the failure by the Company to continue in effect any compensation plan in which Executive participates immediately prior to a Change in Control which is material to Executive's total compensation, unless comparable alternative arrangements (embodied in ongoing substitute or alternative plans) have been implemented with respect to such plans, or the failure by the Company to continue Executive's participation therein (or in such substitute or alternative plans) on a basis not materially less favorable, in terms of the amount of benefits provided and the level of Executive's participation relative to other participants, as existed during the

last completed fiscal year of the Company prior to the Change in Control;

(vi) (a) the relocation of the Company's Alexandria, Virginia headquarters to a new location more than 50 miles away from Alexandria, Virginia or the failure to locate Executive's own office at the Alexandria office or at a successor office which is not more than 50 miles away from Alexandria, Virginia or (b) the relocation of the Company's Quincy, Massachusetts offices to a new location more than 50 miles away from Quincy, Massachusetts unless other office facilities, which need not be a formal office of the Company, in or near the Quincy, Massachusetts area are made available by the Company for Executive's use;

(vii) any voluntary termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company if such Complete Change in Control occurs during the Employment Period;

(viii) the failure of the Board to take action as may be necessary to re-elect Executive to the Board, provided, however, that it will not be a Constructive Termination Without Cause if Executive shall fail to be re-elected by the stockholders, or if the Board's failure to take action is in connection with the termination of Executive's employment for Disability, Cause, as a result of Executive's death or by Executive other than for a Constructive Termination Without Cause; or

(ix) the failure of the Board of Directors, following each annual meeting of stockholders, to re-appoint Executive as Chairman of the Board or to maintain such appointment, provided, however, that it shall not be a Constructive Termination without Cause if the Board fails to appoint Executive as Chairman of the Board (or removes such title) and instead appoints a non-executive Chairman of the Board if

(a) there is a law, rule or regulation, or a listing requirement of the New York Stock Exchange, that provides that the Chairman and CEO shall not be the same person, or

(b) the Board, in its good faith judgment following a shareholder vote, or in its good faith judgment in light of then evolving and well-publicized standards of good corporate governance, determines that it is in the best interest of the Company that Executive not serve as Chairman and that a non-executive Chairman be appointed,

provided further, however, that in such event,

(x) the non-executive Chairman shall not serve in a full time or executive capacity, and

(y) Executive shall continue to report directly and exclusively to the full Board and not to the non-executive Chairman, and (without limiting the Board's or any Board committee's right to meet or confer with any individual officer and to take actions as are customary for a Board of Directors and consistent with its fiduciary duties) all other officers shall continue to report directly or indirectly to Executive.

In addition, under no circumstances will a Constructive Termination without Cause be deemed to occur solely on account of the appointment by the Board of Directors, and public announcement thereof, of a "lead independent director" so long as the same limitations as apply immediately above in the case of a non-executive Chairman apply to such lead independent director.

Notwithstanding the foregoing, a Constructive Termination Without Cause shall not be treated as having occurred unless Executive has given a final Notice of Termination delivered after expiration of the Company's cure period. Executive or the Company may, at any time after the expiration of the Company's cure period and either prior to or up until three months after giving a final Notice of Termination, commence an arbitration proceeding to determine the question of whether, taking into account the actions complained of and any efforts made by the Company to cure such actions, a termination by Executive of his employment should be treated as a Constructive Termination Without

Cause for purposes of this Agreement. If the Executive or the Company commences such a proceeding prior to delivery by Executive of a final Notice of Termination, the commencement of such a proceeding shall be without prejudice to either party and Executive's and the Company's rights and obligations under this Agreement shall continue unaffected unless and until the arbitrator has determined such question in the affirmative, or, if earlier, the date on which Executive or the Company has delivered a Notice of Termination in accordance with the provisions of this Agreement.

(5) Covered Average Compensation. "Covered Average Compensation" shall mean the sum of Executive's Covered Compensation as calculated for the calendar year in which the Date of Termination occurs and for each of the two preceding calendar years, divided by three.

(6) Covered Compensation. "Covered Compensation," for any calendar year, shall mean an amount equal to the sum of (i) Executive's Base Salary for the calendar year, (ii) the cash bonus actually earned by Executive with respect to such calendar year, and (iii) the value of all stock and other equity-based compensation awards made to Executive during such calendar year. In the event that the Company has or hereafter makes any special, mid-year or other non-routine grant of equity outside of the Company's recurring annual equity compensation programs, the value of any such mid-year, special, or additional equity based compensation shall not be included in clause (iii) of the preceding sentence and therefore shall not be included in the calculation of

Covered Compensation or Covered Average Compensation, and the value of such equity shall have no impact on any cash payments made under Section 7(c) of the Agreement.

Covered Compensation shall be calculated according to the following rules:

(A) In valuing awards for purposes of clause (iii) above, all such awards shall be treated as if fully vested when granted, stock grants shall be valued by reference to the fair market value on the date of grant of the Company's common stock, par value $.01 per share and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors. Reference is made to Section 7(c)(vii) for further clarification regarding this matter.

(B) In determining the cash bonus actually paid with respect to a calendar year, if no cash bonus has been paid with respect to the calendar year in which the Date of Termination occurs, the cash bonus paid with respect to the immediately preceding calendar year shall be assumed to have been paid in each of the current and immediately preceding calendar years, and if no cash bonus has been paid by the Date of Termination with respect to the immediately preceding calendar year, the cash bonus paid with respect to the second preceding calendar year shall be assumed to have been paid in all three of the calendar years taken into account in determining Covered Average Compensation.

(C) If (i) any cash bonus paid with respect to the current or immediately preceding calendar year was paid within three months of Executive's Date of Termination, (ii) such cash bonus is lower than the last cash bonus paid more than three months from the Date of Termination, and (iii) it is determined that the Board acted in bad faith in setting such cash bonus (which determination of bad faith shall specifically be made with reference to the target cash bonuses set for other officers and the actual cash bonuses paid other officers), then in such event any such cash bonus paid within three months of the Date of Termination shall be disregarded and the last cash bonus paid more than three months from the Date of Termination shall be substituted for each cash bonus so disregarded.

(D) In determining the amount of stock and other equity-based compensation awards made during a calendar year during the averaging period, rules similar to those set forth in subparagraphs (B) and (C) of this Section 7(b)(6) shall be followed.

(7) Disability. "Disability" shall mean Executive has been determined to be disabled and to qualify for long-term disability benefits under the long-term disability insurance policy obtained pursuant to Section 3(c) of this Agreement.

(c) Rights Upon Termination.

(i) Payment of Benefits Earned Through Date of Termination. Upon any termination of Executive's employment during the Employment Period, Executive, or his estate, shall in all events be paid (I) all accrued but unpaid Base Salary and (II) (except in the case of a termination by the Company for Cause or a voluntary termination by Executive which is not due to a Constructive Termination Without Cause, in either of which cases this clause (II) shall not apply) a pro rata portion of the Executive's Cash

Bonus and LT Equity Bonus. For purposes of fulfilling the requirements of clause (II) of the prior sentence, the following shall apply:

(a) In all events, any stock options issued will be issued prior to Executive's Date of Termination so that such stock options are employee stock options. Such stock options shall have an exercise price equal to the closing price of the Company's stock on the date of grant of such options, and such options shall expire one year after the date of grant.

(b) The Company and Executive shall work in good faith to determine an appropriate Cash Bonus and LT Equity Bonus for the year in which the Date of Termination occurs. Such determination shall be based in good faith on an evaluation of Executive's and the Company's performance. If the Company and Executive cannot agree on appropriate amounts, then:

(A) The Company may defer the determination of the Cash Bonus and the restricted stock portion of the LT Equity Bonus until such bonuses in respect of such year are determined for other officers, and at such time the amounts to be used for determining Executive's pro rata bonuses shall be a percentage of his target Cash Bonus and a percentage of his target number of restricted shares with such percentages being equal to the average of the percentages that apply to the Cash Bonus and restricted shares, respectively, of other officers ranked Senior Vice President or higher; and

(B) The Company may grant to Executive a number of stock options based on the assumption that the percentage of the target number of options Executive would have received in respect of the year in which the Date of Termination occurs would equal the average of the percentage realization applied to options granted with respect to the prior three calendar years.

(c) Once the determination in the preceding paragraph is made, the pro rata portion of such amounts shall equal such amounts multiplied by a fraction, the numerator of which is the number of days from January 1 to the Date of Termination in the year of termination and the denominator of which is 365.

Executive shall also retain all such rights with respect to vested equity-based awards as are provided under the circumstances under the applicable grant or award agreement, and shall be entitled to all other benefits which are provided under the circumstances in accordance with the provisions of the Company's generally applicable employee benefit plans, practices and policies, other than severance plans.

(ii) Death. In the event of Executive's death during the Employment Period, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), take whatever action is necessary to cause all of Executive's unvested equity-based awards to become fully vested as of the date of death and, in the case of equity-based awards which have an exercise schedule, to become fully exercisable and continue to be exercisable for a period of (a) two years following death (or such greater exercise period as may be provided in the applicable award agreement for awards that are vested and exercisable at the time of death) or (b) if less, the end of the original term of the options.

(iii) Disability. In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i) and subject to Executive first entering into a separation agreement, including a general release of all claims, in a form reasonably acceptable to the Company ("Separation Agreement"), pay to Executive, in one lump sum, no later than the later of the effective date of said Separation Agreement or 31 days following the Date of Termination, an amount equal to two times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination and subject to Executive entering into a Separation Agreement:

(A) Continue, without cost to Executive, benefits comparable to the medical benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Subject to Section 12(b), continue to pay, or reimburse Executive, for all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; provided, that the Company's obligations under this Section 7(c)(iii)(B) are contingent on Executive's timely payment of the premiums then due or thereafter payable on the term portion of said split-dollar insurance policy; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(D) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination then, until that date that is 24 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the monthly premiums for such disability policy, less (ii) such amount as may be paid, prior to the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by Company prior to the Date of Termination.

(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), commencing upon the Date of Termination:

(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of Termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;

(B) Continue, without cost to Executive, benefits comparable to the medical benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms;

(D) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination then, until that date that is 24 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the monthly premiums for such disability policy, less (ii) such amount as may be paid, prior to the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by Company prior to the Date of Termination; and

(E) Subject to Section 12(b), continue to pay, or reimburse Executive for, all premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) for so long as such payments are due; provided, that the Company's obligations under this Section 7(c)(iv)(E) are contingent on Executive's timely payment of the premiums then due or thereafter payable on the term portion of said split-dollar insurance policy.

(v) Termination Without Cause; Constructive Termination Without Cause. In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), pay to Executive, in one lump sum no later than 31 days following the Date of Termination, an amount equal to three times Covered Average Compensation. The Company shall also, commencing upon the Date of Termination:

(A) Continue, without cost to Executive, benefits comparable to the medical benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) for a period of 36 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment;

(B) Subject to Section 12(b), continue to pay, or reimburse Executive, for so long as such payments are due, all premiums then due or payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d); provided, that the Company's obligations under this Section 7(c)(v)(B) are contingent on Executive's timely payment of the premiums then due or thereafter payable on the term portion of said split-dollar insurance policy.; and

(C) Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms.

(D) If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination then, until that date that is 36 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the premium for such disability policy, less (ii) such amount as may be paid, prior to the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by Company prior to the Date of Termination.

(vi) Termination for Cause; Voluntary Resignation. In the event Executive's employment terminates during the Employment Period other than in connection with a termination meeting the conditions of subparagraphs (ii), (iii), (iv) or (v) of this Section 7(c), Executive shall receive the amounts set forth in Section 7(c)(i) in full satisfaction of all of his entitlements from the Company. All equity-based awards not vested as of the Date of Termination shall

terminate (unless otherwise provided in the applicable award agreement) and Executive shall have no further entitlements with respect thereto.

(vii) Clarification Regarding Treatment of Options and Restricted Stock. The stock option and restricted stock agreements (the "Equity Award Agreements") that Executive has or may receive may contain language regarding the effect of a termination of Executive's employment under certain circumstances.

(A) Notwithstanding such language in the Equity Award Agreements, for so long as this Agreement is in effect, the Company will be obligated, if the terms of this Agreement are more favorable in this regard than the terms of the Equity Award Agreements, to take the actions required under Sections 7(c)(ii), 7(c)(iii)(C), 7(c)(iv)(C) and 7(c)(v)(C) hereof upon the happening of the circumstances described therein. Those sections provide that in certain situations the Company will cause the Executive to become vested as of the Date of Termination in all or certain equity-based awards, and that such equity-based awards will thereafter be subject to the provisions of the applicable Equity Award Agreement as it applies to vested awards upon a termination. For purposes of clarification, although an option grant may vest in accordance with these above-referenced Sections, such option will thereafter be exercisable only for so long as the related option agreement provides, except that the Compensation Committee of the Board of Directors may, in its sole discretion, elect to extend the expiration date of such option. For example, in general Executive's option agreements granted prior to the date hereof provide that (in the absence of an extension by the Compensation Committee) upon a termination of employment for any reason other than death, disability, retirement or cause, any vested options will only be exercisable for three months from the date of termination or, if earlier, the expiration date of the option.

(B) Notwithstanding the definition of "Cause" which may appear in the Equity Award Agreements, for so long as this Agreement is in effect (X) any "for Cause" termination must be in compliance with the terms of this Agreement, including the definition of "Cause" set forth herein, and (Y) only in the event of a "for Cause" termination that meets both the definition in this Agreement and the definition in the Equity Award Agreement will the disposition of options and restricted stock under such Equity Award Agreement be treated in the manner described in such Equity Award Agreement in the case of a termination "for Cause."

(C) For purposes of Section 7(b)(6)(A), the value of any option may be determined by the Compensation Committee of the Board at any time after its grant date by setting such value at the value determined by a nationally recognized accounting firm or employee benefits compensation firm, selected by such Committee, that calculates such value in accordance with a Black-Scholes formula or variations thereof using such parameters and procedures (including, without limitation, parameters and procedures used to measure the historical volatility of the Company's common stock as of the relevant grant date) as the Compensation Committee and/or such firm deems reasonably appropriate. In all events, if the parameters used for valuing any option for purposes of Section 7(b)(6)(A) are the same as the parameters used for valuing any other options for purposes of disclosure or inclusion in the Company's financial statements or financial statement footnotes, then such parameters shall be deemed reasonable.

(D) During the Employment Period any stock options issued to Executive shall provide that if Executive's employment is terminated in any manner which gives rise to an obligation under this Agreement (or any successor Agreement or other severance arrangement) to cause the acceleration of vesting of stock options, then in such event such stock options shall not expire until one year after the Date of Termination (or, if earlier, the expiration of their original term). The Company represents that the stock options awarded to Executive in February 2002 have a provision to the same effect. This covenant of the Company shall not apply to any stock options issued prior to 2002 or to any stock options issued after the expiration of the Employment Period.

(d) Additional Benefits.

(i) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of Executive, whether paid or payable or distributed or distributable (1) pursuant to the terms of Section 7 of this Agreement, (2) pursuant to or in connection with any compensatory or employee benefit plan, agreement or arrangement, including but not limited to any stock options, restricted or unrestricted stock grants issued to or for the benefit of Executive and forgiveness of any loans by the Company to Executive or (3) otherwise (collectively, "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), and any interest or penalties are incurred by Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then Executive shall be entitled to receive an additional payment from the Company (a "Partial Gross-Up Payment"), such that the net amount retained by Executive, before accrual or payment of any Federal, state or local income tax or

employment tax, but after accrual or payment of the Excise Tax attributable to the Partial Gross-Up Payment, is equal to the Excise Tax on the Severance Payments.

(ii) Subject to the provisions of Section 7(d)(iii), all determinations required to be made under this Section 7, including whether a Partial Gross-Up Payment is required and the amount of such Partial Gross-Up Payment, shall be made by a nationally recognized accounting firm reasonably mutually acceptable to Executive and the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and Executive as soon as practicable after the Date of Termination, if applicable. The initial Partial Gross-Up Payment, if any, as determined pursuant to this Section 7(d)(ii), shall be paid to Executive within five days of the receipt of the Accounting Firm's determination. If the Accounting Firm determines that no Excise Tax is payable by Executive, the Company shall furnish Executive with an opinion of counsel that failure to report the Excise Tax on Executive's applicable federal income tax return would not result in the imposition of a negligence or similar penalty. Any determination by the Accounting Firm shall be binding upon the Company and Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Partial Gross-Up Payments which will not have been made by the Company should have been made (an "Underpayment"). In the event that the Company exhausts its remedies pursuant to Section 7(d)(iii) and Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred, consistent with the calculations required to be made hereunder, and any such Underpayment, and any interest and penalties imposed on the Underpayment and required to be paid by Executive in connection with the proceedings described in Section 7(d)(iii), and any related legal and accounting expenses, shall be promptly paid by the Company to or for the benefit of Executive.

(iii) Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Partial Gross-Up Payment. Such notification shall be given as soon as practicable but no later than 10 business days after Executive acquires actual knowledge of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which he gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies Executive in writing prior to the expiration of such period that it desires to contest such claim, Executive shall:

(A) give the Company any information reasonably requested by the Company relating to such claim,

(B) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney selected by the Company,

(C) cooperate with the Company in good faith in order effectively to contest such claim, and

(D) permit the Company to participate in any proceedings relating to such claim; provided, however that the Company shall bear and pay

directly all costs and expenses attributable to the failure to pay the Excise Tax (including related additional interest and penalties) incurred in connection with such contest and shall indemnify and hold Executive harmless, for any Excise Tax up to an amount not exceeding the Partial Gross-Up Payment, including interest and penalties with respect thereto, imposed as a result of such representation, and payment of related legal and accounting costs and expenses (the "Indemnification Limit"). Without limitation on the foregoing provisions of this Section 7(d)(iii), the Company shall control all proceedings taken in connection with such contest and, at its sole option may pursue or forego any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs Executive to pay such claim and sue for a refund, the Company shall advance so much of the amount of such payment as does not exceed the Excise Tax, and related interest and penalties, to Executive on an interest-free basis and shall indemnify and hold Executive harmless, from any related legal and accounting costs and expenses, and from any Excise Tax, including related interest or penalties imposed with respect to such advance or with respect to any imputed income with respect to such advance up to an amount not exceeding the Indemnification Limit; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Partial Gross-Up Payment would be payable hereunder and Executive shall be entitled to settle or contest, as the case may be, any other issues raised by the Internal Revenue Service or any other taxing authority.

(iv) If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), Executive becomes entitled to receive any refund with respect to such claim, Executive shall (subject to the Company's complying with the requirements of Section 7(d)(iii)) promptly pay to the Company so much of such refund (together with any interest paid or credited thereon after taxes applicable thereto) (the "Refund") as is equal to (A) if the Company advanced or paid the entire amount required to be so advanced or paid pursuant to Section 7(d)(iii) hereof (the "Required Section 7(d) Advance"), the aggregate amount advanced or paid by the Company pursuant to this Section 7(d) less the portion of such amount advanced to Executive to reimburse him for related legal and accounting costs, or (B) if the Company advanced or paid less than the Required Section 7(d) Advance, so much of the aggregate amount so advanced or paid by the Company pursuant to this Section 7(d) as is equal to the difference, if any, between (C) the amount refunded to Executive with respect to such claim and (D) the sum of the portion of the Required Section 7(d) Advance that was paid by Executive and not paid or advanced by the Company plus Executive's related legal and accounting fees, as applicable. If, after the receipt by Executive of an amount advanced by the Company pursuant to Section 7(d)(iii), a determination is made that Executive shall not be entitled to any refund with respect to such claim and the Company does not notify Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount

of such advance shall offset, to the extent thereof, the amount of Partial Gross-Up Payment required to be paid.

(e) Notice of Termination. Notice of non-renewal of this Agreement pursuant to Section 1 hereof or of any termination of Executive's employment (other than by reason of death) shall be communicated by written notice (a "Notice of Termination") from one party hereto to the other party hereto in accordance with this Section 7 and Section 9.

(f) Date of Termination. "Date of Termination," with respect to any termination of Executive's employment during the Employment Period, shall mean (i) if Executive's employment is terminated for Disability, 30 days after Notice of Termination is given (provided that Executive shall not have returned to the full-time performance of Executive's duties during such 30 day period), (ii) if Executive's employment is terminated for Cause, the date on which a Notice of Termination is given which complies with the requirements of Section 7(b)(1) hereof, and (iii) if Executive's employment is terminated for any other reason, the date specified in the Notice of Termination. In the case of a termination by the Company other than for Cause, the Date of Termination shall not be less than 30 days after the Notice of Termination is given. In the case of a termination by Executive, the Date of Termination shall not be less than 15 days from the date such Notice of Termination is given. Notwithstanding the foregoing, in the event that Executive gives a Notice of Termination to the Company, the Company may unilaterally accelerate the Date of Termination and such acceleration shall not result in the termination being treated as a termination without Cause. Upon any termination of his employment, Executive will concurrently resign his membership as a director and/or officer of the Company and all subsidiaries of the Company, to the extent applicable.

(g) No Mitigation. The Company agrees that, if Executive's employment by the Company is terminated during the term of this Agreement, Executive is not required to seek other employment, or to attempt in any way to reduce any amounts payable to Executive by the Company pursuant to Section 7(d)(i) hereof. Further, the amount of any payment provided for in this Agreement shall not be reduced by any compensation earned by Executive as the result of employment by another employer, by retirement benefits, or, except for amounts then due and payable in accordance with the terms of any promissory notes given by Executive in favor of the Company, by offset against any amount claimed to be owed by Executive to the Company or otherwise.

(h) Nature of Payments. The amounts due under this Section 7 are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty. Such amounts are in full satisfaction of all claims Executive may have in respect of his employment by the Company or its affiliates and are provided as the sole and exclusive benefits to be provided to Executive, his estate, or his beneficiaries in respect of his termination of employment from the Company or its affiliates.

8. Non-Competition; Non-Solicitation; Specific Enforcement.

(a) Non-Competition. Because Executive's services to the Company are special and because Executive has access to the Company's confidential information, Executive covenants and agrees that, during the Employment Period and, for a period of one year following the Date of Termination by the Company for Cause or Disability, or a termination by Executive (other than a Constructive Termination Without Cause) prior to a Change in Control, Executive shall not, without the prior written consent of the Board of Directors, become associated with, or engage in any "Restricted Activities" with respect to any "Competing Enterprise," as such terms are hereinafter defined, whether as an officer, employee, principal, partner, agent, consultant, independent contractor or shareholder. "Competing Enterprise," for purposes of this Agreement, shall mean any person, corporation, partnership, venture or other entity which is engaged in the business of managing, owning, leasing or joint venturing multifamily rental real estate within 30 miles of multifamily rental real estate owned or under management by the Company or its affiliates. "Restricted

Activities," for purposes of this Agreement, shall mean executive, managerial, directorial, administrative, strategic, business development or supervisory responsibilities and activities relating to all aspects of multifamily rental real estate ownership, management, multifamily rental real estate franchising, and multifamily rental real estate joint-venturing.

(b) Non-Solicitation. During the Employment Period, and for a period of one year following the Date of Termination, Executive shall not, without the prior written consent of the Company, except in the course of carrying out his duties hereunder, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates.

(c) Specific Enforcement. Executive and the Company agree that the

restrictions, prohibitions and other provisions of this Section 8 are reasonable, fair and equitable in scope, terms, and duration, are necessary to protect the legitimate business interests of the Company and are a material inducement to the Company to enter into this Agreement. Should a decision be made by a court of competent jurisdiction that the character, duration or geographical scope of the provisions of this Section 8 is unreasonable, the parties intend and agree that this Agreement shall be construed by the court in such a manner as to impose all of those restrictions on Executive's conduct that are reasonable in light of the circumstances and as are necessary to assure to the Company the benefits of this Agreement. The Company and Executive further agree that the services to be rendered under this Agreement by Executive are special, unique and of extraordinary character, and that in the event of the breach by Executive of the terms and conditions of this Agreement or if Executive, without the prior consent of the Board of Directors, shall take any action in violation of this Section 8, the Company will suffer irreparable harm for which there is no adequate remedy at law. Accordingly, Executive hereby consents to the entry of a temporary restraining order or ex parte injunction, in addition to any other remedies available at law or in equity, to enforce the provisions hereof. Any proceeding or action seeking equitable relief for violation of this Section 8 must be commenced in the federal or state courts, in either case in Massachusetts. Executive and the Company irrevocably and unconditionally submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of and venue in such courts.

9. Notice. Any notice required or permitted hereunder shall be in writing and shall be deemed sufficient when given by hand or by nationally recognized overnight courier or by Express, registered or certified mail, postage prepaid, return receipt requested, and addressed, if to the Company at 2900 Eisenhower Avenue, Suite 300, Alexandria, VA 22303, Attention: Chief Financial Officer (with a second copy, sent by the same means and to the same address, Attention: General Counsel), and if to Executive at the address set forth in the Company's records (or to such other address as may be provided by notice).

10. Miscellaneous. This Agreement, together with Annex A and Annex B and the Split Dollar Insurance Agreement and any Equity Award Agreements now or hereafter in effect, constitutes the entire agreement between the parties concerning the subjects hereof and supersedes any and all prior agreements or understandings, including, without limitation, any plan or agreement providing benefits in the nature of severance, but excluding benefits provided under other Company plans or agreements, except to the extent this Agreement provides greater rights than are provided under such other plans or agreements. As of the Effective Date, this Agreement supersedes the Prior Agreement which will have not further force or effect. This Agreement may not be assigned by Executive without the prior written consent of the Company, and may be assigned by the Company and shall be binding upon, and inure to the benefit of, the Company's successors and assigns. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that

the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise. Headings herein are for convenience of reference only and shall not define, limit or interpret the contents hereof.

11. Amendment. This Agreement may be amended, modified or supplemented by the mutual consent of the parties in writing, but no oral amendment, modification or supplement shall be effective. No waiver by either party of any breach by the other party of any condition or provision contained in this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same or any prior or subsequent time. Any waiver must be in writing and signed by Executive or an authorized officer of the Company, as the case may be.

12. Severability.

(a) General. The provisions of this Agreement are severable. The invalidity of any provision shall not affect the validity of any other provision, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) Split-Dollar Insurance Policy. If at any time, including as a result of the Sarbanes-Oxley Act of 2002, the Company is not permitted to make premium payments pursuant to the split-dollar insurance policy arrangement contemplated in any provision of this Agreement, then such provision (but only insofar as it pertains to the split-dollar insurance policy) shall be

ineffective and unenforceable, provided, however, that if the Company provides to any other officer a program or arrangement that is intended to be a replacement or substitute for the split-dollar insurance policy arrangements in effect at the beginning of 2002 (a "Substitute Arrangement"), then the Substitute Arrangement shall also be provided to Executive and references herein to a split-dollar insurance policy (including requirements to maintain such policy following termination of employment under certain circumstances) shall be read as references to the Substitute Arrangement.

13. Resolution of Disputes.

(a) Procedures and Scope of Arbitration. Except for any controversy or claim seeking equitable relief pursuant to Section 8 of this Agreement, all controversies and claims arising under or in connection with this Agreement or relating to the interpretation, breach or enforcement thereof and all other disputes between the parties, shall be resolved by expedited, binding arbitration, to be held in Massachusetts in accordance with the applicable rules of the American Arbitration Association governing employment disputes (the "National Rules"). In any proceeding relating to the amount owed to Executive in connection with his termination of employment, it is the contemplation of the parties that the only remedy that the arbitrator may award in such a proceeding is an amount equal to the termination payments, if any, required to be provided under the applicable provisions of Section 7(c) and, if applicable, Section 7(d) hereof, to the extent not previously paid, plus the costs of arbitration and Executive's reasonable attorneys fees and expenses as provided below. Any award made by such arbitrator shall be final, binding and conclusive on the parties for all purposes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Attorneys Fees.

(i) Reimbursement After Executive Prevails. Except as otherwise provided in this paragraph, each party shall pay the cost of his or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of Executive in such proceeding, all of his reasonable attorneys fees and

expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to Executive by the Company within five days of the entry of the award. Any award of reasonable attorneys' fees shall take into account any offer of the Company, such that an award of attorneys' fees to the Executive may be limited or eliminated to the extent that the final decision in favor of the Executive does not represent a material increase in value over the offer that was made by the Company during the course of such proceeding. However, any elimination or limitation on attorneys' fees shall only apply to those attorneys' fees incurred after the offer by the Company.

(ii) Reimbursement in Actions to Stay, Enjoin or Collect. In any case where the Company or any other person seeks to stay or enjoin the commencement or continuation of an arbitration proceeding, whether before or after an award has been made, or where Executive seeks recovery of amounts due after an award has been made, or where the Company brings any proceeding challenging or contesting the award, all of Executive's reasonable attorneys fees and expenses incurred in connection therewith shall be promptly reimbursed by the Company to Executive, within five days of presentation of an itemized request for reimbursement, regardless of whether Executive prevails, regardless of the forum in which such proceeding is brought, and regardless of whether a Change in Control has occurred.

(iii) Reimbursement After a Change in Control. Without limitation on the foregoing, solely in a proceeding commenced by the Company or by Executive after a Change in Control has occurred, the Company shall advance to Executive, within five days of presentation of an itemized request for reimbursement, all of Executive's legal fees and expenses incurred in connection therewith, regardless of the forum in which such proceeding was commenced, subject to delivery of an undertaking by Executive to reimburse the Company for such advance if he does not prevail in such proceeding (unless such fees are to be reimbursed regardless of whether Executive prevails as provided in clause (ii) above).

14. Survivorship. The provisions of Sections 4(b), 6, 8(a) (to the extent described below), 8(b) and 13 of this Agreement shall survive Executive's termination of employment. Other provisions of this Agreement shall survive any termination of Executive's employment to the extent necessary to the intended preservation of each party's respective rights and obligations. The provisions

of Section 8(a) shall in no event apply if Executive's employment terminates for any reason after the expiration of the Employment Period (for clarification, this means that if Executive's employment terminates on or prior to the expiration of the Original Term or any later Renewal Term then the one year post-termination non-compete set forth in Section 8(a) will apply if the termination is for one of the reasons set forth in Section 8(a)).

15. Board Action. Where an action called for under this Agreement is required to be taken by the Board of Directors, such action shall be taken by the vote of not less than a majority of the members other than Executive then on the Board and authorized to vote on the matter.

16. Withholding. All amounts required to be paid by the Company shall be subject to reduction in order to comply with applicable federal, state and local tax withholding requirements.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The execution of this Agreement may be by actual or facsimile signature.

18. Governing Law. This Agreement shall be construed and regulated in all respects under the laws of the State of Maryland.

IN WITNESS WHEREOF, this Agreement is entered into as of the date and year first above written.

AVALONBAY COMMUNITIES, INC.

By: /s/ Charlene Rothkopf

Name: Charlene Rothkopf
Title: Senior Vice President - Human Resources

By: /s/ Edward M. Schulman

Name: Edward M. Schulman
Title: Vice President - General Counsel

EXECUTIVE

/s/ Bryce Blair

Bryce Blair

Acknowledgment:

/s/ Lance R. Primis
- ---
Lance R. Primis,
Chairman of Compensation Committee
of the Board of Directors

Exhibit 10.12

THIRD AMENDMENT
TO
EMPLOYMENT AGREEMENT

The Employment Agreement (the "Agreement") made as of the 10th day of January, 2003 by and between AvalonBay Communities, Inc., a Maryland corporation (the "Company"), and Bryce Blair ("Executive"), as previously amended, is hereby further amended as follows (new language is bold and underlined and deleted language is struck through):

1. The last sentence of Section 3(b) of the Agreement is hereby amended to read as follows:

"Any Cash Bonuses **for a fiscal year** hereunder shall be paid as a lump sum ~~not later than 75 days~~ after the end of the ~~Company's preceding~~ fiscal year **but not later than March 14 after the end of the fiscal year**."

2. Section 7(c)(i)(b)(A) of the Agreement is hereby amended to read as follows:

"The Company may defer the determination of the Cash Bonus and the restricted stock portion of the LT Equity Bonus until such bonuses in respect of such year are determined for other officers, and at such time the amounts to be used for determining Executive's pro rata bonuses shall be a percentage of his target Cash Bonus and a percentage of his target number of restricted shares with such percentages being equal to the average of the percentages that apply to the Cash Bonus and restricted shares, respectively, of other officers' ranked Senior Vice President or higher, ~~and~~ **but in no event shall such Cash Bonus and the restricted stock portion of the LT Equity Bonus be paid to Executive later than March 14 of the calendar year following the calendar year that includes the Date of Termination; and**"

3. The first sentence of Section 7(c)(iii) of the Agreement is hereby amended to read as follows:

"In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i) and subject to Executive first entering into a separation agreement, including a general release of all claims, in a form reasonably acceptable to the Company ('Separation Agreement') **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the effective date of said Separation Agreement or~~ 31 days following

the Date of Termination, an amount equal to two times Covered Average Compensation."

4. Section 7(c)(iv) of the Agreement is hereby amended to read as follows:

"(iv) Non-Renewal. In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), **pay to Executive, in one lump sum 31 days following the Date of Termination, an amount equal to Covered Average Compensation. The Company shall also,** commencing upon the Date of Termination,

~~(A) Pay to Executive, for 12 consecutive months, commencing with the first day of the month immediately following the Date of termination, a monthly amount equal to the result obtained by dividing Covered Average Compensation by twelve;~~

~~(B)~~**(A)** Continue, without cost to Executive, benefits comparable to the medical benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) for a period of 24 months following the Date of Termination or until such earlier date as Executive obtains comparable benefits through other employment; and

~~(C)~~**(B)** Take whatever action is necessary to cause Executive to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and be entitled to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and to retain such grants and awards to the same extent as if they were vested upon termination of employment in accordance with their terms; **and**

~~(D)~~**(C)** If Executive obtains a disability policy on commercially reasonable terms with the same or similar coverage as provided by the Company in the Base Disability Policy and the Supplemental Policy prior to the Date of Termination, then, until that date that is 24 months following the Date of Termination (or, if earlier, until Executive obtains comparable benefits through other employment), reimburse Executive for an amount equal to the difference between (i) the monthly premiums for such disability policy, less (ii) such amount as may be paid, prior

the Date of Termination, by Executive in respect of a portion of the premiums on the Base Disability Policy provided by the Company prior to the Date of Termination; and

~~(E)~~**(D)** Continue to pay the premiums then due or thereafter payable on the whole-life portion of the split-dollar insurance policy referenced under Section 3(d) in accordance with, and to the extent required by, the provisions of the Split Dollar Agreement between the Company and Executive."

5. It is noted that Section 7(c)(v) is not amended.

6. The second sentence of Section 7(d)(ii) of the Agreement is hereby amended to read as follows:

"The initial Partial Gross-Up Payment, if any, as determined pursuant to this 7(d)(ii), shall be paid to the Executive within five days of the receipt of the Accounting Firm's determination **appropriate tax authorities as withholding taxes on behalf of Executive at such time or times when each Excise Tax payment is due**."

7. The following section shall be inserted as a new Section 7(i) to the Agreement:

"**(i) Section 409A.**

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of Executive's 'separation from service' within the meaning of Section 409A of the Code, the Company determines that Executive is a 'specified employee' within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that Executive becomes entitled to under this Agreement would be considered deferred compensation subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided prior to the date that is the earlier of (A) six months and one day after Executive's separation from service, or (B) Executive's death. Any such delayed cash payment shall earn interest at an annual rate equal to the applicable federal short-term rate published by the Internal Revenue Service for the month in which

separation from service occurs, from the date of separation from service until the payment date.

(b) The right to reimbursement or in-kind benefits under this Agreement is not subject to liquidation or exchange for another benefit and does not affect the expenses eligible for reimbursement, or in-kind benefits, to be provided in any other taxable year.

(c) The reimbursement of expenses under this Agreement will be made on or before the last day of Executive's taxable year following the taxable year in which the expense was incurred.

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409(A)-1(h). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party."

8. Except as amended herein, the Agreement is hereby confirmed in all other respects.

IN WITNESS WHEREOF, this Amendment is entered into this 14th day of December, 2008.

AVALONBAY COMMUNITIES, INC.

By: /s/ Charlene Rothkopf
Name: Charlene Rothkopf
Title: EVP-Human Resources

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: SVP, General Counsel & Secretary

/s/ Bryce Blair
Executive

Exhibit 10.15

THIRD AMENDMENT
TO
EMPLOYMENT AGREEMENT

The Employment Agreement (the "Agreement") made as of the 26th day of February, 2001 by and between AvalonBay Communities, Inc., a Maryland corporation (the "Company"), and Timothy J. Naughton ("Executive"), as previously amended, is hereby further amended as follows (new language is bold and underlined and deleted language is struck through:

1. The last sentence of Section 3(b) of the Agreement is hereby amended to read as follows:

"Any Cash Bonuses **for a fiscal year** hereunder shall be paid as a lump sum ~~not later than 75 days~~ after the end of the ~~Company's preceding~~ fiscal year **but not later than March 14 after the end of the fiscal year**."

2. Section 7(c)(i)(b)(A) of the Agreement is hereby amended to read as follows:

"The Company may defer the determination of the Cash Bonus and the restricted stock portion of the LT Equity Bonus until such bonuses in respect of such year are determined for other officers, and at such time the amounts to be used for determining Executive's pro rata bonuses shall be a percentage of his target Cash Bonus and a percentage of his target number of restricted shares with such percentages being equal to the average of the percentages that apply to the Cash Bonus and restricted shares, respectively, of other officers ranked Senior Vice President or higher, **but in no event shall such Cash Bonus and the restricted stock portion of the LT Equity Bonus be paid to Executive later than March 14 of the calendar year following the calendar year that includes the Date of Termination**; and"

3. The first sentence of Section 7(c)(iii) of the Agreement is hereby amended to read as follows:

"In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i) and subject to Executive first entering into a separation agreement, including a general release of all claims, in a form reasonably acceptable to the Company ('Separation Agreement') ~~within 21 days of the Date of Termination~~, pay to Executive, in one lump sum, ~~no later than the later of the effective date~~31 days following the Date of

Termination, an amount equal to one times Average Covered Total Compensation."

4. The first sentence of Section 7(c)(iv) of the Agreement is hereby amended to read as follows:

"In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, and either (I) within one year after expiration of the Employment Period the Executive voluntarily terminates his employment ('Post-Expiration Resignation') or (II) within two years after expiration of the Employment Period the Executive's employment is terminated by the Company without Cause or Constructively Terminated without Cause ('Post-Expiration Termination'), then, in either such case, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, ~~for 12 consecutive months beginning with the first business day of the calendar month following the Effective Date of said Separation Agreement, a monthly amount equal to one-twelfth (1/12) of~~ **in one lump sum, 31 days following the Date of Termination, an amount equal to** the sum of one times his then applicable Base Salary plus one times Average Covered Cash Bonus Compensation."

5. The first sentence of Section 7(c)(v) of the Agreement is hereby amended to read as follows:

"In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, in either case prior to the effective time of any Change in Control of the Company or at any time after two years after a Change in Control of the Company, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the later of the Effective Date of said Separation Agreement or~~ 31 days following the Date of Termination, an amount equal to the sum of (x) two times Average Covered Base and Cash Bonus Compensation plus (y) one times Average Covered LT Equity Compensation (such sum, the 'Section 7(c)(v) Payment'); provided, however, that in the event that the Constructive Termination without Cause is a Relocation Termination, the payment shall be in an amount equal to one times Average Covered Total Compensation."

6. The first sentence of Section 7(c)(vi) of the Agreement is hereby amended to read as follows:

"In the event the Company or any successor to the Company terminates Executive's employment without Cause (or Executive's employment is Constructively Terminated without Cause) within two years following the effective time of a Change in Control of the Company, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the later of the effective date of said Separation Agreement or~~ 31 days following the Date of Termination, an amount equal to three times Average Covered Total Compensation."

7. The second sentence of Section 7(d)(ii) of the Agreement is hereby amended to read as follows:

"The initial Partial Gross-Up Payment, if any, as determined pursuant to this 7(d)(ii), shall be paid to the ~~Executive within five days of the receipt of the Accounting Firm's determination~~ **appropriate tax authorities as withholding taxes on behalf of Executive at such time or times when each Excise Tax payment is due**."

8. The following section shall be inserted as a new Section 7(i) to the Agreement:

"**(i) Section 409A.**

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of Executive's 'separation from service' within the meaning of Section 409A of the Code, the Company determines that Executive is a 'specified employee' within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that Executive becomes entitled to under this Agreement would be considered deferred compensation subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided prior to the date that is the earlier of (A) six months and one day after Executive's separation from service, or (B) Executive's death. Any such delayed cash payment shall earn interest at an annual rate equal to the applicable federal short-term rate published by the

Internal Revenue Service for the month in which separation from service occurs, from the date of separation from service until the payment date.

(b) The right to reimbursement or in-kind benefits under this Agreement is not subject to liquidation or exchange for another benefit and does not affect the expenses eligible for reimbursement, or in-kind benefits, to be provided in any other taxable year.

(c) The reimbursement of expenses under this Agreement will be made on or before the last day of Executive's taxable year following the taxable year in which the expense was incurred.

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409(A)-1(h). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party."

9. Except as amended herein, the Agreement is hereby confirmed in all other respects.

IN WITNESS WHEREOF, this Amendment is entered into this 14th day of December, 2008.

AVALONBAY COMMUNITIES, INC.

By: /s/ Charlene Rothkopf
Name: Charlene Rothkopf
Title: EVP-Human Resources

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: SVP, General Counsel & Secretary

/s/ Timothy J. Naughton
Executive

Exhibit 10.18

THIRD AMENDMENT
TO
EMPLOYMENT AGREEMENT

The Employment Agreement (the "Agreement") made as of the 10th day of September, 2001 by and between AvalonBay Communities, Inc., a Maryland corporation (the "Company"), and Leo S. Horey ("Executive"), as previously amended, is hereby further amended as follows (new language is bold and underlined and deleted language is struck through):

1. The last sentence of Section 3(b) of the Agreement is hereby amended to read as follows:

"Any Cash Bonuses **for a fiscal year** hereunder shall be paid as a lump sum ~~not later than 75 days~~ after the end of the Company's preceding fiscal year **but not later than March 14 after the end of the fiscal year**."

2. Section 7(c)(i)(b)(A) of the Agreement is hereby amended to read as follows:

"The Company may defer the determination of the Cash Bonus and the restricted stock portion of the LT Equity Bonus until such bonuses in respect of such year are determined for other officers, and at such time the amounts to be used for determining Executive's pro rata bonuses shall be a percentage of his target Cash Bonus and a percentage of his target number of restricted shares with such percentages being equal to the average of the percentages that apply to the Cash Bonus and restricted shares, respectively, of other officers ranked Senior Vice President or higher, **but in no event shall such Cash Bonus and the restricted stock portion of the LT Equity Bonus be paid to Executive later than March 14 of the calendar year following the calendar year that includes the Date of Termination;** and"

3. The first sentence of Section 7(c)(iii) of the Agreement is hereby amended to read as follows:

"In the event the Company elects to terminate Executive's employment during the Employment Period on account of Disability, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i) and subject to Executive first entering into a separation agreement, including a general release of all claims, in a form reasonably acceptable to the Company ('Separation Agreement') **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the later of the effective date of said Separation Agreement or~~ 31 days

following the Date of Termination, an amount equal to one times Average Covered Total Compensation."

4. The first sentence of Section 7(c)(iv) of the Agreement is hereby amended to read as follows:

"In the event the Company gives Executive a notice of non-renewal pursuant to Section 1 above, and either (I) within one year after expiration of the Employment Period the Executive voluntarily terminates his employment ('Post-Expiration Resignation') or (II) within two years after expiration of the Employment Period the Executive's employment is terminated by the Company without Cause or Constructively Terminated without Cause ('Post-Expiration Termination'), then, in either such case, the Company shall, in addition to paying the amounts set forth in Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, ~~for 12 consecutive months beginning with the first business day of the calendar month following the Effective Date of said Separation Agreement, a monthly amount equal to one-twelfth (1/12) of~~ **in one lump sum, 31 days following the Date of Termination, an amount equal to** the sum of one times his then applicable Base Salary plus one times Average Covered Cash Bonus Compensation."

5. The first sentence of Section 7(c)(v) of the Agreement is hereby amended to read as follows:

"In the event the Company or any successor to the Company terminates Executive's employment without Cause, or if Executive terminates his employment in a Constructive Termination without Cause, in either case prior to the effective time of any Change in Control of the Company or at any time after two years after a Change in Control of the Company, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the Effective Date of said Separation Agreement or~~ 31 days following the Date of Termination, an amount equal to the sum of (x) two times Average Covered Base and Cash Bonus Compensation plus (y) one times Average Covered LT Equity Compensation (such sum, the 'Section 7(c)(v) Payment'); provided, however, that in the event that the Constructive Termination without Cause is a Relocation Termination, the payment shall be in an amount equal to one times Average Covered Total Compensation."

6. The first sentence of Section 7(c)(vi) of the Agreement is hereby amended to read as follows:

"In the event the Company or any successor to the Company terminates Executive's employment without Cause (or Executive's employment is Constructively Terminated without Cause) within two years following the effective time of a Change in Control of the Company, the Company shall, in addition to paying the amounts provided under Section 7(c)(i), and subject to Executive first entering into a Separation Agreement **within 21 days of the Date of Termination**, pay to Executive, in one lump sum, ~~no later than the later of the effective date of said Separation Agreement or~~ 31 days following the Date of Termination, an amount equal to three times Average Covered Total Compensation, provided, however, that in the event the termination is due to a CIC Pull, then the payment shall be an amount equal to two times Average Covered Total Compensation."

7. The second sentence of Section 7(d)(ii) of the Agreement is hereby amended to read as follows:

"The initial Partial Gross-Up Payment, if any, as determined pursuant to this 7(d)(ii), shall be paid to ~~Executive within five days of the receipt of the Accounting Firm's determination~~ **the appropriate tax authorities as withholding taxes on behalf of Executive at such time or times when each Excise Tax payment is due**."

8. The following section shall be inserted as a new Section 7(i) to the Agreement:

"**(i) Section 409A.**

(a) Anything in this Agreement to the contrary notwithstanding, if at the time of Executive's 'separation from service' within the meaning of Section 409A of the Code, the Company determines that Executive is a 'specified employee' within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that Executive becomes entitled to under this Agreement would be considered deferred compensation subject to the 20 percent additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided prior to the date that is the earlier of (A) six months and one day after Executive's separation from service, or (B)

Executive's death. Any such delayed cash payment shall earn interest at an annual rate equal to the applicable federal short-term rate published by the Internal Revenue Service for the month in which separation from service occurs, from the date of separation from service until the payment date.

(b) The right to reimbursement or in-kind benefits under this Agreement is not subject to liquidation or exchange for another benefit and does not affect the expenses eligible for reimbursement, or in-kind benefits, to be provided in any other taxable year.

(c) The reimbursement of expenses under this Agreement will be made on or before the last day of Executive's taxable year following the taxable year in which the expense was incurred.

(d) The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409(A)-1(h). The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party."

9. Except as amended herein, the Agreement is hereby confirmed in all other respects.

IN WITNESS WHEREOF, this Amendment is entered into this 14th day of December, 2008.

AVALONBAY COMMUNITIES, INC.

By: /s/ Charlene Rothkopf
Name: Charlene Rothkopf
Title: EVP-Human Resources

By: /s/ Edward M. Schulman
Name: Edward M. Schulman
Title: SVP, General Counsel & Secretary

/s/ Leo S. Horey
Executive

AVALONBAY COMMUNITIES, INC.
1994 STOCK INCENTIVE PLAN

As Amended and Restated on December 8, 2004

SECTION 1. GENERAL PURPOSE OF THE PLAN; DEFINITIONS

The name of the plan is the AvalonBay Communities, Inc. 1994 Stock Incentive Plan (the "Plan"). The purpose of the Plan is to encourage and enable the officers, employees, Directors and other key persons of AvalonBay Communities, Inc. (the "Company") and its Subsidiaries upon whose judgment, initiative and efforts the Company largely depends for the successful conduct of its business to acquire a proprietary interest in the Company. It is anticipated that providing such persons with a direct stake in the Company's welfare will assure a closer identification of their interests with those of the Company, thereby stimulating their efforts on the Company's behalf and strengthening their desire to remain with the Company.

The following terms shall be defined as set forth below:

"Act" means the Securities Exchange Act of 1934, as amended.

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

"Board" means the Board of Directors of the Company.

"Cause" means, except as provided in an individual agreement or by the Committee, a vote of the Board of Directors resolving that the participant should be dismissed as a result of (i) any material breach by the participant of any agreement to which the participant and the Company are parties, (ii) any act (other than retirement) or omission to act by the participant which may have a material and adverse effect on the business of the Company or any Subsidiary or on the participant's ability to perform services for the Company or any Subsidiary, including, without limitation, the commission of any crime (other than ordinary traffic violations), or (iii) any material misconduct or neglect of duties by the participant in connection with the business or affairs of the Company or any Subsidiary.

"Change of Control" is defined in Section 16.

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

"Committee" means the Committee of the Board referred to in Section 2.

"Covered Employee" means a participant designated prior to the grant of a Qualified Performance-based Award by the Committee who is or may be a "covered employee" within the

meaning of Section 162(m)(3) of the Code in the year in which the Qualified Performance-based Award is expected to be taxable to such participant.

"Deferred Stock Award" means Awards granted pursuant to Section 7.

"Disability" means, except as provided in an individual agreement or by the Committee, an individual's inability to perform his normal required services for the Company and its Subsidiaries for a period of six consecutive months by reason of the individual's mental or physical disability, as determined by the Committee in good faith in its sole discretion.

"Dividend Equivalent Right" means Awards granted pursuant to Section 11.

"Effective Date" means the consummation of the merger contemplated by the Agreement and Plan of Merger, by and between the Company and Avalon Properties, Inc. dated as of March 9, 1998.

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

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

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

"Non-Qualified Stock Option" means any Stock Option that is not an Incentive Stock Option.

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

"Performance Cycle" means one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more performance criteria will be measured for the purpose of determining a participant's right to and the payment of a Performance Share Award, Restricted Stock Award or Deferred Stock Award.

"Performance Share Award" means Awards granted pursuant to Section 9.

"Qualified Performance-based Award*"* means any Restricted Stock Award, Deferred Stock Award or Performance Share Award that is intended to qualify as "performance-based compensation" under Section 162(m) of the Code and the regulations promulgated thereunder.

"Restricted Stock Award" mean Awards granted pursuant to Section 6.

"Retirement" means:

(a) with respect to all Awards made on or before December 8, 2004:

the employee's termination of employment with the Company and its Subsidiaries, other than for Cause, after attainment of age 55, but only if upon such termination of employment the employee has been employed in the aggregate for a period of at least 120 contiguous months by the Company, by any company of which the Company is the successor by name change or reincorporation, by Avalon Properties, Inc. or by Trammell Crow Residential, or any affiliate of any of the foregoing (a "Predecessor Company"); and

(b) with respect to all Awards made after December 8, 2004:

the termination of an Award holder's employment (and other business relationships) with the Company and its Subsidiaries, other than for Cause, following the date on which the sum of the following equals or exceeds 70 years: (i) the number of full months of the Award holder's employment and other business relationships with the Company and any predecessor Company and (ii) the Award holder's age on the date of termination; provided that:

(x) the Award holder's employment by (or other business relationships with) the Company and any Predecessor Company have continued for a period of at least 120 contiguous full months at the time of termination and, on the date of termination, the Award holder is at least 50 years old;

(y) in the case of termination of employment, the employee gives at least six months' prior written notice to the Company of his or her intention to retire; and

(z) in the case of termination of employment, the employee enters into a "Non-Compete and Non-Solicitation Agreement," as hereinafter defined, and a general release of all claims in a form that is reasonably satisfactory to the Company.

As used in the foregoing sentence, "Non-Compete and Non-Solicitation Agreement" shall mean a written agreement between the employee and the Company providing that, for a period of at least 12 months following the employee's termination of employment with the Company (A) the employee shall not, without the prior written consent of the Company, become associated with, or engage in any "Restricted Activities" with respect to any "Competing Enterprise," as such terms are hereinafter defined, whether as an officer, employee, principal, partner, agent, consultant, independent contractor or shareholder, and (B) the employee shall not, without the prior written consent of the Company, solicit or attempt to solicit for employment with or on behalf of any Competing Enterprise any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates. "Competing Enterprise," for purposes of this section, shall mean any person, corporation, partnership, venture or other entity which is engaged in the

business of managing, owning, leasing, or joint-venturing multifamily rental real estate within 30 miles of multifamily rental real estate owned or under management by the Company or its affiliates. "Restricted Activities," for purposes of this section, shall mean executive, managerial, directorial, administrative, strategic, business development or supervisory responsibilities and activities relating to any aspects of multifamily rental real estate ownership, management, multifamily rental real estate franchising, and multifamily rental real estate joint-venturing.

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

"Subsidiary" means any corporation or other entity (other than the Company) in any unbroken chain of corporations or other entities, beginning with the Company if each of the corporations or entities (other than the last corporation or entity in the unbroken chain) owns stock or other interests possessing 50% or more of the total combined voting power of all classes of stock or other interests in one of the other corporations or entities in the chain.

"Unrestricted Stock Award" means Awards granted pursuant to Section 8.

SECTION 2. ADMINISTRATION OF PLAN; COMMITTEE AUTHORITY TO SELECT PARTICIPANTS AND DETERMINE AWARDS

(a) Committee. The Plan shall be administered by all of the Non-Employee Director members of the Compensation Committee of the Board, or a committee of not less than two Non-Employee Directors performing similar functions, as appointed by the Board from time to time. Any authority granted to the Committee may also be exercised by the full Board. To the extent that any permitted action taken by the Board conflicts with action taken by the Committee, the Board action shall control.

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

(i) to select the officers, other employees, Non-Employee Directors and other key persons of the Company and its Subsidiaries to whom Awards may from time to time be granted;

(ii) to determine the time or times of grant, and the extent, if any, of Incentive Stock Options, Non-Qualified Stock Options, Restricted Stock Awards, Deferred Stock Awards, Unrestricted Stock Awards, Performance Share Awards and Dividend Equivalent Rights, or any combination of the foregoing, granted to any one or more participants;

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

(iv) to determine and modify the terms and conditions, including restrictions, not inconsistent with the terms of the Plan, of any Award, which terms and conditions may differ among individual Awards and participants, and to approve the form of written instruments evidencing the Awards;

(v) to accelerate the exercisability or vesting of all or any portion of any Award in circumstances involving a Change of Control or the death, disability or termination of employment of a Plan participant;

(vi) subject to the provisions of Section 5(a)(ii), to extend the period in which Stock Options may be exercised;

(vii) to determine whether, to what extent, and under what circumstances Stock and other amounts payable with respect to an Award shall be deferred either automatically or at the election of the participant and whether and to what extent the Company shall pay or credit amounts constituting interest (at rates determined by the Committee) or dividends or deemed dividends on such deferrals; and

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

All decisions and interpretations of the Committee shall be binding on all persons, including the Company and Plan participants.

(c) Delegation of Authority to Grant Awards. The Committee, in its discretion, may delegate to the Chief Executive Officer of the Company all or part of the Committee's authority and duties with respect to Awards, including the granting thereof, to individuals who are not subject to the reporting and other provisions of Section 16 of the Act or Covered Employees. The Committee may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the Committee's delegate or delegates that were consistent with the terms of the Plan.

(d) Indemnification. Neither the Board nor the Committee, nor any member of either or any delegatee thereof, shall be liable for any act, omission, interpretation, construction or determination made in good faith in connection with the Plan, and the members of the Board and the Committee (and any delegatee thereof) shall be entitled in all cases to indemnification and reimbursement by the Company in respect of any claim, loss, damage or expense (including, without limitation, reasonable attorneys' fees) arising or resulting therefrom to the fullest extent permitted by law and/or under any directors' and officers' liability insurance coverage which may be in effect from time to time.

SECTION 3. SHARES ISSUABLE UNDER THE PLAN; MERGERS; SUBSTITUTION

(a) Shares Issuable. The maximum number of shares of Stock reserved and available for issuance under the Plan, at any given time, shall be the difference between (I) the sum of (a) 6,576,859 shares of Stock (i.e., the number as of March 1, 2001), plus (b) upon the passing of each December 31 starting with December 31, 2001, a percentage of the total number of shares of Stock (the "Year End Outstanding Shares") actually outstanding on such date (assuming all

units of limited partnership interest in subsidiary partnerships structured as DownREITs that may, upon presentation for redemption, be exchanged for shares of Stock are so exchanged), less (II) any shares of Stock issued under the Plan prior to such time which have not been added back as described below in this Section 3(a). The percentage referred to in the prior sentence shall be determined in accordance with the following table:

If shares of Stock underlying those Options granted during the calendar year constitute the following percentage of all shares of Stock underlying all Awards (including Options) made during the calendar year:	Then the number of shares of Stock reserved and available for issuance under the Plan would be increased by adding a number of shares of Stock equal to the following percentage of the "Year End Outstanding Shares":
50.00 to 52.49%	0.48%
52.50 to 54.99	0.50
55.00 to 57.49	0.52
57.50 to 59.99	0.55
60.00 to 62.49	0.58
62.50 to 64.99	0.61
65.00 to 67.49	0.64
67.50 to 69.99	0.68
70.00 to 72.49	0.72
72.50 to 74.99	0.76
75.00 to 77.49	0.82
77.50 to 79.99	0.87
80.00 to 82.49	0.94
82.50 to 84.99	0.96
85.00% or more	1.00

For purposes of determining the percentage of all awards made under the Plan during a calendar year that were in the form of Options, only Options that have an exercise price equal to the Fair Market Value on the date of grant shall count as Options. For purposes hereof, subsidiary partnerships structured as DownREITs shall include, but not be limited to, Bay Countrybrook, L.P., Bay Pacific Northwest L.P., Avalon DownREIT V, L.P. and Avalon Ballston II, L.P.

Notwithstanding the foregoing, the maximum number of shares of Stock for which Incentive Stock Options may be issued under the Plan shall not exceed 2,500,000. Further notwithstanding the foregoing, at least 50% of all Awards granted under the Plan during any calendar year shall be in the form of Options with an exercise price not less than 100% of Fair Market Value on the date of grant. For purposes of determining the number of shares of Stock reserved and available for issuance from time to time, the shares of Stock underlying any Awards which are forfeited, canceled, reacquired by the Company, satisfied without the issuance of Stock or otherwise

terminated (other than by exercise) shall be added back to the shares of Stock available for issuance under the Plan.

Stock Options with respect to no more than 300,000 shares of Stock may be granted to any one individual participant during any one calendar year period. Shares issued under the Plan may be authorized but unissued shares or shares reacquired by the Company.

Example: To illustrate how the formula in the above table would work, assume that during calendar year 2002 the only awards made by the Company under the Stock Incentive Plan were an aggregate of 400,000 stock options and shares of restricted stock. Of these, 320,000 (or 80%) were options and 80,000 (or 20%) were restricted shares. As of December 31, 2002, assume that the Company had outstanding 67,000,000 shares of Common Stock and 1,000,000 units of limited partnership in DownREITs that may be exchanged for shares of Common Stock. Therefore, following the table above, this means that on December 31, 2002, the Company would increase the number of available shares under the Stock Incentive Plan by multiplying 68,000,000 by 0.94%, (i.e., 639,200 shares of Common Stock would be added to the number of available shares reserved under the Stock Incentive Plan).

(b) Recapitalizations. If, through or as a result of any merger, consolidation, sale of all or substantially all of the assets of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split or other similar transaction, the outstanding shares of Stock are increased or decreased or are exchanged for a different number or kind of shares or other securities of the Company, or additional shares or new or different shares or other securities of the Company or other non-cash assets are distributed with respect to such shares of Stock or other securities, the Committee shall make an appropriate or proportionate adjustment in (i) the maximum number of shares reserved for issuance under the Plan, (ii) the number of Stock Options or shares of Stock that can be granted to any one individual participant, (iii) the number and kind of shares or other securities subject to any then outstanding Awards under the Plan, and (iv) the price for each share subject to any then outstanding Stock Options under the Plan, without changing the aggregate exercise price (i.e., the exercise price multiplied by the number of Stock Options) as to which such Stock Options remain exercisable. The adjustment by the Committee shall be final, binding and conclusive. No fractional shares of Stock shall be issued under the Plan resulting from any such adjustment, but the Committee in its discretion may make a cash payment in lieu of fractional shares.

(c) Mergers. Upon consummation of a consolidation or merger or sale of all or substantially all of the assets of the Company in which outstanding shares of Stock are exchanged for securities, cash or other property of an unrelated corporation or business entity or in the event of a liquidation of the Company (in each case, a "Transaction"), the Board may, in its discretion, take any one or more of the following actions, as to outstanding Stock Options: (i) provide that such Stock Options shall be assumed, or equivalent options shall be substituted, by the acquiring or succeeding corporation (or an affiliate thereof), (ii) upon written notice to the optionees, provide that all unexercised Stock Options will terminate immediately prior to the consummation of the Transaction unless exercised by the optionee within a specified period following the date of such notice, and/or (iii) in the event of a business combination under the terms of which holders of the Stock of the Company will receive upon consummation thereof a

cash payment for each share surrendered in the business combination, make or provide for a cash payment to the optionees equal to the difference between (A) the value (as determined by the Committee) of the consideration payable per share of Stock pursuant to the business combination (the "Merger Price") times the number of shares of Stock subject to such outstanding Stock Options (to the extent then exercisable at prices not in excess of the Merger Price) and (B) the aggregate exercise price of all such outstanding Stock Options in exchange for the termination of such Stock Options. In the event Stock Options will terminate upon the consummation of the Transaction, each optionee shall be permitted, within a specified period determined by the Committee, to exercise all non-vested Stock Options, subject to the consummation of the Transaction.

(d) Substitute Awards. The Committee may grant Awards under the Plan in substitution for stock and stock based awards held by employees of another corporation who concurrently become employees of the Company or a Subsidiary as the result of a merger or consolidation of the employing corporation with the Company or a Subsidiary or the acquisition by the Company or a Subsidiary of property or stock of the employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances. Any substitute awards granted under this Plan shall not count against the share limitation set forth in Section 3(a).

SECTION 4. ELIGIBILITY

Participants in the Plan will be such full or part-time officers, other employees, Non-Employee Directors and key persons of the Company and its Subsidiaries who are responsible for or contribute to the management, growth or profitability of the Company and its Subsidiaries and who are selected from time to time by the Committee, in its sole discretion. Key persons, for purposes of this Plan, shall include consultants and prospective employees.

SECTION 5. STOCK OPTIONS

Any Stock Option granted under the Plan shall be in such form as the Committee may from time to time approve.

Stock Options granted under the Plan may be either Incentive Stock Options or Non-Qualified Stock Options. Incentive Stock Options may be granted only to employees of the Company or any Subsidiary that is a "subsidiary corporation" within the meaning of Section 424(f) of the Code. To the extent that any option does not qualify as an Incentive Stock Option, it shall constitute a Non-Qualified Stock Option.

No Awards shall be granted under the Plan after May 8, 2011.

(a) Stock Options Granted to Employees and Key Persons. The Committee in its discretion may grant Stock Options to employees and key persons of the Company or any Subsidiary. Stock Options granted to employees and key persons pursuant to this Section 5(a) shall be subject to the following terms and conditions and shall contain such additional terms and conditions, not inconsistent with the terms of the Plan, as the Committee shall deem desirable. If the Committee so determines, Stock Options may be granted in lieu of cash compensation at the

participant's election, subject to such terms and conditions as the Committee may establish, as well as in addition to other compensation.

(i) Exercise Price. The exercise price per share for the Stock covered by a Stock Option granted pursuant to this Section 5(a) shall be determined by the Committee at the time of grant but shall be not less than 100% of Fair Market Value on the date of grant (other than options granted in lieu of cash compensation). If an employee owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Subsidiary or parent corporation and an Incentive Stock Option is granted to such employee, the option price shall be not less than 110% of Fair Market Value on the grant date.

(ii) Option Term. The term of each Stock Option shall be fixed by the Committee, but no Stock Option shall be exercisable more than ten years after the date the option is granted. If an employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company or any Subsidiary or parent corporation and an Incentive Stock Option is granted to such employee, the term of such option shall be no more than five years from the date of grant.

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

(iv) Method of Exercise. Stock Options may be exercised in whole or in part, by giving written notice of exercise to the Company, specifying the number of shares to be purchased. Payment of the purchase price may be made by one or more of the following methods:

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

(B) Through the delivery (or attestation to the ownership) of shares of Stock that have been purchased by the optionee on the open market or that have been beneficially owned by the optionee for at least six months and are not then subject to restrictions under any Company plan. Such surrendered shares shall be valued at Fair Market Value on the exercise date; or

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

condition of such payment procedure. Payment instruments will be received subject to collection.

The delivery of certificates representing shares of Stock to be purchased pursuant to the exercise of a Stock Option will be contingent upon receipt from the optionee (or a purchaser acting in his stead in accordance with the provisions of the Stock Option) by the Company of the full purchase price for such shares and the fulfillment of any other requirements contained in the Stock Option or applicable provisions of laws. In the event an optionee chooses to pay the purchase price by previously-owned shares of Stock through the attestation method, the shares of Stock transferred to the optionee upon the exercise of the Stock Option shall be net of the number of shares attested to.

(v) Termination by Reason of Death. If any optionee's employment (or other business relationship) by the Company and its Subsidiaries terminates by reason of death, the Stock Option may thereafter be exercised, to the extent exercisable at the date of death, by the legal representative or legatee of the optionee, for a period of six months (or such longer period as the Committee shall specify at any time in the option, employment or other agreement) from the date of death, or until the expiration of the stated term of the Option, if earlier.

(vi) Termination by Reason of Disability.

(A) Any Stock Option held by an optionee whose employment (or other business relationship) by the Company and its Subsidiaries has terminated by reason of Disability may thereafter be exercised, to the extent it was exercisable at the time of such termination, for a period of twelve months (or such longer period as the Committee shall specify at any time in the option, employment or other agreement) from the date of such termination of employment (or other business relationship), or until the expiration of the stated term of the Option, if earlier.

(B) Except as otherwise provided by the Committee at the time of grant, the death of an optionee during a period provided in this Section 5(a)(vi) for the exercise of a Non-Qualified Stock Option shall extend such period for six months from the date of death, subject to termination on the expiration of the stated term of the Option, if earlier.

(vii) Termination by Reason of Retirement.

(A) Any Stock Option held by an optionee whose employment by (and other business relationships with) the Company and its Subsidiaries is terminated by reason of Retirement may thereafter be exercised, to the extent it was exercisable at the time of such termination (after giving effect to clause (C) immediately below), for a period of twelve months (or such other period as the Committee shall specify at any time in the option, employment or other agreement) from the date of such termination, or until the expiration of the stated term of the Option, if earlier.

(B) Except as otherwise provided by the Committee at any time, the death of an optionee during a period provided in this Section 5(a)(vii) for the exercise of

a Stock Option shall extend such period for six months from the date of death, subject to termination on the expiration of the stated term of the Option, if earlier.

(C) Any Stock Option held by an optionee whose employment by (and other business relationships with) the Company and its Subsidiaries is terminated by reason of Retirement shall be automatically vested as of the date of such termination notwithstanding that the provisions of the related stock option agreement may not provide for such automatic vesting.

(viii) Termination for Cause. If any optionee's employment (or other business relationship) by the Company and its Subsidiaries has been terminated for Cause, any Stock Option held by such optionee shall immediately terminate and be of no further force and effect; provided, however, that the Committee may, in its sole discretion, provide that such stock option can be exercised for a period of up to 30 days from the date of termination of employment (or other business relationship) or until the expiration of the stated term of the Option, if earlier.

(ix) Other Termination. Unless otherwise determined by the Committee, if an optionee's employment (or other business relationship) by the Company and its Subsidiaries terminates for any reason other than death, Disability, Retirement or for Cause, any Stock Option held by such optionee may thereafter be exercised, to the extent it was exercisable on the date of termination of employment (or other business relationship), for three months (or such longer period as the Committee shall specify at any time in the option, employment or other agreement) from the date of termination of employment (or other business relationship) or until the expiration of the stated term of the Option, if earlier.

(x) Annual Limit on Incentive Stock Options. To the extent required for "incentive stock option" treatment under Section 422 of the Code, the aggregate Fair Market Value (determined as of the time of grant) of the Stock with respect to which Incentive Stock Options granted under this Plan and any other plan of the Company or its Subsidiaries become exercisable for the first time by an optionee during any calendar year shall not exceed $100,000.

(xi) Form of Settlement. Shares of Stock issued upon exercise of a Stock Option shall be free of all restrictions under the Plan, except as otherwise provided in this Plan.

(b) Reload Options. At the discretion of the Committee, Options granted under the Plan may include a so-called "reload" feature pursuant to which an optionee exercising an option by the delivery of a number of shares of Stock in accordance with Section 5(a)(iv)(B) hereof would automatically be granted an additional Option (with an exercise price equal to the Fair Market Value of the Stock on the date the additional Option is granted and with the same expiration date as the original Option being exercised, and with such other terms as the Committee may provide) to purchase that number of shares of Stock equal to the number delivered to exercise the original Option.

(c) Non-transferability of Options. No Stock Option shall be transferable by the optionee otherwise than by will or by the laws of descent and distribution and all Stock Options shall be exercisable, during the optionee's lifetime, only by the optionee, or by the optionee's legal representative or guardian in the event of the optionee's incapacity. Notwithstanding the foregoing, the Committee may permit the optionee to transfer his Non-Qualified Stock Options to members of his immediate family, or to trusts for the benefit of such family members, or to partnerships in which such family members are the only partners, provided that the transferee agrees in writing with the Company to be bound by all of the terms and conditions of this Plan, the applicable option agreement and all insider trading rules of the Company.

SECTION 6. RESTRICTED STOCK AWARDS

(a) Nature of Restricted Stock Award. The Committee may grant Restricted Stock Awards to any participant. A Restricted Stock Award is an Award entitling the recipient to acquire, at no cost or for a purchase price determined by the Committee, shares of Stock subject to such restrictions and conditions as the Committee may determine at the time of grant ("Restricted Stock"). Conditions may be based on continuing employment (or other business relationship) and/or achievement of pre-established performance goals and objectives. In addition, a Restricted Stock Award may be granted to an employee by the Committee in lieu of a cash bonus due to such employee pursuant to any other plan of the Company. In the event of termination of employment and/or other business relationships by reason of Retirement, then in such event any Restricted Stock Awards held by the terminated Award holder on the date of termination shall be automatically vested as of the date of termination notwithstanding that the provisions of the related Restricted Stock Award may not provide for such automatic vesting.

(b) Automatic Grant of Restricted Stock to Independent Directors.

(i) Each Non-Employee Director who is serving as a Director of the Company on the fifth business day after the 2003 annual meeting of stockholders shall automatically be granted on such day 2,500 shares of Restricted Stock, and, thereafter each Non-Employee Director who is serving as a Director of the Company on the fifth business day after each annual meeting of stockholders, beginning with the 2004 annual meeting of stockholders, shall automatically be granted on such day a number of shares of Restricted Stock equal to $100,000 based upon the closing price of shares of the Company's Common Stock on the New York Stock Exchange on the Grant Date of the preceding year (such number to be rounded to the nearest whole number). By way of example it is noted that the 2003 Grant Date was May 21, 2003 and that the closing stock price on such date was $43.14, which means that on the 2004 Grant Date each Non-Employee Director will be granted 2,318 shares of Restricted Stock (i.e, $100,000/$43.14). Except as otherwise provided in the award agreement, such shares of Restricted Stock shall vest twenty percent (20%) on the date of issuance and twenty percent (20%) on each of the first four anniversaries of the date of issuance.

(ii) Each Non-Employee Director may, pursuant to the provisions of Section 7(b), elect to receive Deferred Stock instead of Restricted Stock provided in this Section 6(b).

Any Deferred Stock granted in lieu of Restricted Stock shall be subject to the same vesting requirements applicable to the Restricted Stock.

(c) Acceptance of Award. To the extent applicable, a participant who is granted a Restricted Stock Award shall have no rights with respect to such Award unless the participant shall have accepted the Award within 60 days (or such shorter time period as the Committee may specify) following the award date by making payment to the Company, if required, in cash, by certified or bank check or other instrument or form of payment acceptable to the Committee in an amount equal to the specified purchase price, if any, of the shares covered by the Award and by executing and delivering to the Company a written instrument that sets forth the terms and conditions of the Restricted Stock in such form as the Committee shall determine.

(d) Rights as a Shareholder. Upon complying with Section 6(c) above, a participant shall have all the rights of a shareholder with respect to the Restricted Stock including voting and dividend rights, subject to non-transferability restrictions and Company repurchase or forfeiture rights described in this Section 6 and subject to such other conditions contained in the written instrument evidencing the Restricted Stock Award. Unless the Committee shall otherwise determine, certificates evidencing shares of Restricted Stock shall remain in the possession of the Company until such shares are vested as provided in Section 6(f) below.

(e) Restrictions. Except as provided in an individual agreement or as otherwise determined by the Committee, shares of Restricted Stock may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of. Except as provided in an individual agreement or as otherwise determined by the Committee, in the event of termination of employment (or other business relationship) by the Company and its Subsidiaries for any reason (including death, retirement, Disability, and for Cause), the Company shall have the right, at the discretion of the Committee, to repurchase shares of Restricted Stock with respect to which conditions have not lapsed at their purchase price, or to require forfeiture of such shares to the Company if acquired at no cost, from the participant or the participant's legal representative. The Company must exercise such right of repurchase or forfeiture not later than the 90th day following such termination of employment (or other business relationship), unless otherwise specified in the written instrument evidencing the Restricted Stock Award.

(f) Vesting of Restricted Stock. The Committee at the time of grant shall specify the date or dates and/or the attainment of pre-established performance goals, objectives and other conditions on which the non-transferability of the Restricted Stock and the Company's right of repurchase or forfeiture shall lapse. Except as provided in Section 16, the vesting period for Restricted Stock shall be at least three years, except that in the case of Restricted Stock that becomes transferable and no longer subject to forfeiture upon the attainment of such pre-established performance goals, objectives and other conditions, the vesting period shall be at least one year. Subsequent to such date or dates and/or the attainment of such pre-established performance goals, objectives and other conditions, the shares on which all restrictions have lapsed shall no longer be Restricted Stock and shall be deemed "vested."

(g) Waiver, Deferral and Reinvestment of Dividends. The written instrument evidencing the Restricted Stock Award may require or permit the immediate payment, waiver, deferral or investment of dividends paid on the Restricted Stock.

SECTION 7. DEFERRED STOCK AWARDS

(a) Nature of Deferred Stock Awards. A Deferred Stock Award is an Award of phantom stock units to a participant, subject to restrictions and conditions as the Committee may determine at the time of grant. Conditions may be based on continuing employment (or other business relationship) and/or achievement of pre-established performance goals and objectives. The grant of a Deferred Stock Award is contingent on the participant executing the Deferred Stock Award agreement. The terms and conditions of each such agreement shall be determined by the Committee, and such terms and conditions may differ among individual Awards and participants. At the end of the deferral period, the Deferred Stock Award, to the extent vested, shall be paid to the participant in the form of shares of Stock. In the event of termination of employment or other business relationships by reason of Retirement, then in such event any Deferred Stock Awards held by the terminated Award holder on the date of termination shall be automatically vested as of the date of termination notwithstanding that the provisions of the related Deferred Stock Award agreement may not provide for such automatic vesting.

(b) Election to Receive Deferred Stock Awards in Lieu of Compensation. The Committee may, in its sole discretion, permit a participant, including a Non-Employee Director, to elect to receive a portion of the cash compensation or Restricted Stock Award otherwise due to such participant in the form of a Deferred Stock Award. Any such election shall be made in writing and shall be delivered to the Company no later than the date specified by the Committee and in accordance with rules and procedures established by the Committee. The Committee shall have the sole right to determine whether and under what circumstances to permit such elections and to impose such limitations and other terms and conditions thereon as the Committee deems appropriate.

(c) Rights as a Stockholder. During the deferral period, a participant shall have no rights as a stockholder; provided, however, that the participant may be credited with Dividend Equivalent Rights with respect to the phantom stock units underlying his Deferred Stock Award, subject to such terms and conditions as the Committee may determine.

(d) Restrictions. A Deferred Stock Award may not be sold, assigned, transferred, pledged or otherwise encumbered or disposed of during the deferral period.

(e) Termination. Except as may otherwise be provided by the Committee either in the Award, employment or other agreement or, subject to Section 14 below, in writing after the Award agreement is issued, a participant's right in all Deferred Stock Awards that have not vested shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

SECTION 8. UNRESTRICTED STOCK AWARDS

The Committee may, in its sole discretion, grant (or sell at a purchase price determined by the Committee) an Unrestricted Stock Award to any participant which will entitle such participant to receive shares of Stock free of any restrictions under the Plan ("Unrestricted Stock"). Unrestricted Stock Awards may be granted or sold as described in the preceding

sentence in respect of past services or other valid consideration, or in lieu of any cash compensation due to such participant.

SECTION 9. PERFORMANCE SHARE AWARDS

(a) Nature of Performance Shares. A Performance Share Award is an award entitling the recipient to acquire shares of Stock upon the attainment of specified performance goals. The Committee may make Performance Share Awards independent of or in connection with the granting of any other Award under the Plan. Performance Share Awards may be granted under the Plan to any participants, including those who qualify for awards under other performance plans of the Company. The Committee in its sole discretion shall determine whether and to whom Performance Share Awards shall be made, the performance goals applicable under each such Award, the periods during which performance is to be measured, and all other limitations and conditions applicable to the awarded Performance Shares; provided, however, that the Committee may rely on the performance goals and other standards applicable to other performance unit plans of the Company in setting the standards for Performance Share Awards under the Plan.

(b) Restrictions on Transfer. Performance Share Awards and all rights with respect to such Awards may not be sold, assigned, transferred, pledged or otherwise encumbered.

(c) Rights as a Shareholder. A participant receiving a Performance Share Award shall have the rights of a shareholder only as to shares actually received by the participant under the Plan and not with respect to shares subject to the Award but not actually received by the participant. A participant shall be entitled to receive a stock certificate evidencing the acquisition of shares of Stock under a Performance Share Award only upon satisfaction of all conditions specified in the written instrument evidencing the Performance Share Award (or in a performance plan adopted by the Committee).

(d) Termination. Except as may otherwise be provided by the Committee in the Award, employment or other agreement, a participant's rights in all Performance Share Awards shall automatically terminate upon the participant's termination of employment (or other business relationship) by the Company and its Subsidiaries for any reason (including death, Disability and for Cause).

(e) Acceleration, Waiver, Etc. At any time prior to or upon the participant's termination of employment (or other business relationship) by the Company and its Subsidiaries, the Committee may in its sole discretion accelerate, waive or, subject to Section 14, amend any or all of the goals, restrictions or conditions imposed under any Performance Share Award.

SECTION 10. QUALIFIED PERFORMANCE-BASED AWARDS TO COVERED EMPLOYEES

Notwithstanding anything to the contrary contained herein, if any Restricted Stock Award, Deferred Stock Award or Performance Share Award granted to a Covered Employee is intended to qualify as "performance-based compensation" under Section 162(m) of the Code and

the regulations promulgated thereunder (a "Performance-based Award"), such Award shall comply with the provisions set forth below:

(a) Performance Criteria. The performance criteria used in performance goals governing Performance-based Awards granted to Covered Employees may include any or all of the following: (i) the Company's return on equity, assets, capital or investment, (ii) pre-tax or after-tax profit levels of the Company or any Subsidiary, a division, an operating unit or a business segment of the Company, or any combination of the foregoing; (iii) cash flow, funds from operations or similar measure; (iv) total shareholder return; (v) changes in the market price of the Stock; (vi) market share; or (vii) earnings per share.

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

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

(d) Maximum Award Payable. The maximum Qualified Performance-based Award payable to any one Covered Employee under the Plan for a Performance Cycle is 200,000 shares of Stock (subject to adjustment as provided in Section 3(b) hereof).

SECTION 11. DIVIDEND EQUIVALENT RIGHTS

(a) Dividend Equivalent Rights. A Dividend Equivalent Right is an Award entitling the recipient to receive credits based on cash dividends that would have been paid on the shares of Stock specified in the Dividend Equivalent Right (or other award to which it relates) if such shares had been issued to and held by the recipient. A Dividend Equivalent Right may be granted hereunder to any participant as a component of another Award or as a freestanding award. The terms and conditions of Dividend Equivalent Rights shall be specified in the grant. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Stock, which may thereafter accrue additional equivalents. Any such reinvestment shall be at Fair Market Value on the date

of reinvestment or such other price as may then apply under a dividend reinvestment plan sponsored by the Company, if any. Dividend Equivalent Rights may be settled in cash or shares of Stock or a combination thereof, in a single installment or installments. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other award, and that such Dividend Equivalent Right shall expire or be forfeited or annulled under the same conditions as such other award. A Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other award.

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

(c) Termination. Except as may otherwise be provided by the Committee in the Award, employment or other agreement, a participant's rights in all Dividend Equivalent Rights or interest equivalents shall automatically terminate upon the participant's termination of employment (or cessation of business relationship) with the Company and its Subsidiaries for any reason.

SECTION 12. TAX WITHHOLDING

(a) Payment by Participant. Each participant shall, no later than the date as of which the value of an Award or of any Stock or other amounts received thereunder first becomes includable in the gross income of the participant for Federal income tax purposes, pay to the Company, or make arrangements satisfactory to the Committee regarding payment of, any Federal, state, or local taxes of any kind required by law to be withheld with respect to such income. The Company and its Subsidiaries shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the participant. The Company's obligation to deliver stock certificates to any participant (or his agent or broker) is subject to and conditioned on tax obligations being satisfied by the participant. To the extent a participant (or his agent or broker) accepts delivery of stock certificates, the participant shall be deemed to agree to indemnify the Company for any damages resulting from the participant's failure to satisfy any tax obligations.

(b) Payment in Shares. Subject to approval by the Committee, a participant may elect to have such minimum tax withholding obligation satisfied, in whole or in part, by (i) authorizing the Company to withhold from shares of Stock to be issued pursuant to any Award a number of shares with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the minimum withholding amount due, (ii) transferring to the Company shares of Stock owned by the participant with an aggregate Fair Market Value (as of the date the withholding is effected) that would satisfy the minimum withholding amount due, or (iii) in a combination of (i) and (ii).

SECTION 13. TRANSFER, LEAVE OF ABSENCE, ETC.

For purposes of the Plan, the following events shall not be deemed a termination of employment (or other business relationship):

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

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

SECTION 14. AMENDMENTS AND TERMINATION

The Board may at any time amend or discontinue the Plan and the Committee may at any time amend or cancel any outstanding Award for the purpose of satisfying changes in law or for any other lawful purpose, but no such action shall (a) adversely affect rights under any outstanding Award without the holder's written consent or (b) without the prior approval of the Company's stockholders, reduce the exercise price of or otherwise reprice, including through replacement grants, any outstanding Stock Option. To the extent required by the Code to ensure that Options that have been granted hereunder as Incentive Stock Options continue to qualify as Incentive Stock Options, Plan amendments shall be subject to approval by the Company's stockholders.

SECTION 15. STATUS OF PLAN

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

SECTION 16. CHANGE OF CONTROL PROVISIONS

Notwithstanding anything in this Plan to the contrary, upon the occurrence of a Change of Control as defined in this Section 16:

(a) Each Stock Option shall automatically become fully exercisable.

(b) Restrictions and conditions on Restricted Stock Award, Deferred Stock Awards and Performance Share Awards shall automatically be deemed waived, and the recipients of such Awards shall become entitled to receipt of the Stock subject to such Awards unless the Committee shall otherwise expressly provide at the time of grant.

(c) *"Change of Control"* shall mean the occurrence of any one or more of the following events:

(i) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Act (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, becomes the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities having the right to vote generally in an election of the Company's Board ("Voting Securities"), other than as a result of (A) an acquisition of securities directly from the Company or any Subsidiary or (B) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (A), (B) and (C) of subparagraph (iii) of this Section 16(c) are satisfied; or

(ii) Individuals who, as of the Effective Date, constitute the Company's Board (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the Effective Date (excluding, for this purpose, (A) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (B) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation, involving an unrelated entity), whose election or nomination for election by the Company's stockholders was approved by a vote of at least a majority of the persons then comprising Incumbent Directors shall for purposes of this Plan be considered an Incumbent Director;

(iii) The approval by the shareholders of a reorganization, merger or consolidation of the Company, or, if consummation of such reorganization, merger or consolidation is subject, at the time of such approval by shareholders, to the consent of any government or governmental agency, obtaining such consent (either explicitly or implicitly by consummation), unless, following such reorganization, merger or consolidation, (A) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors will beneficially own, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (B) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), will beneficially own, directly or indirectly, 30% or more of, respectively, the then outstanding shares

of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (C) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation will have been members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(v) The approval by the shareholders of the sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, or, if consummation of such sale, lease, exchange or other disposition is subject, at the time of such approval by shareholders, to the consent of any government or governmental agency, obtaining such consent (either explicitly or implicitly by consummation), other than to a corporation, with respect to which following such sale, lease, exchange or other disposition (A) more than 50% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors will beneficially own, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (B) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), will beneficially own, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (C) at least a majority of the members of the board of directors of such corporation will have been members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred for purposes of this Agreement solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend or similar transaction), then a "Change of Control" shall be deemed to have occurred for purposes of this Agreement.

SECTION 17. GENERAL PROVISIONS

(a) No Distribution; Compliance with Legal Requirements. The Committee may require each person acquiring shares pursuant to an Award to represent to and agree with the

Company in writing that such person is acquiring the shares without a view to distribution thereof.

No shares of Stock shall be issued pursuant to an Award until all applicable securities law and other legal and stock exchange requirements have been satisfied. The Committee may require the placing of such stop-orders and restrictive legends on certificates for Stock and Awards as it deems appropriate.

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

(c) Other Compensation Arrangements; No Employment Rights. Nothing contained in this Plan shall prevent the Board from adopting other or additional compensation arrangements, including trusts, subject to stockholder approval if such approval is required; and such arrangements may be either generally applicable or applicable only in specific cases. The adoption of the Plan and the grant of Awards do not confer upon any employee any right to continued employment with the Company or any Subsidiary.

(d) Trading Policy Restrictions. Option exercises and other Awards under the Plan shall be subject to such Company's insider trading policy, as in effect from time to time.

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

SECTION 18. EFFECTIVE DATE OF PLAN

This Plan was amended and restated as of March 21, 2001.

SECTION 19. GOVERNING LAW

This Plan shall be governed by Maryland law except to the extent such law is preempted by federal law.

DATE OF APPROVAL OF INITIAL PLAN BY SHAREHOLDERS:	February 15, 1994
DATE OF APPROVAL OF FIRST AMENDED AND RESTATED PLAN BY BOARD OF DIRECTORS:	August 28, 1996
DATE OF APPROVAL OF FIRST AMENDED AND RESTATED PLAN BY SHAREHOLDERS:	April 25, 1997
DATE OF APPROVAL OF SECOND AMENDED AND RESTATED PLAN BY BOARD OF DIRECTORS:	February 26, 1998
DATE OF APPROVAL OF THIRD AMENDED AND RESTATED PLAN BY BOARD OF DIRECTORS:	April 13, 1998
DATE OF APPROVAL OF THIRD AMENDED AND RESTATED PLAN BY SHAREHOLDERS:	June 4, 1998
DATE OF APPROVAL OF AMENDMENTS TO THIRD AMENDED AND RESTATED PLAN BY BOARD OF DIRECTORS:	July 24, 1998
DATE OF APPROVAL OF FOURTH AMENDED AND RESTATED PLAN BY SHAREHOLDERS:	May 8, 2001
DATE OF APPROVAL OF AMENDMENTS TO FOURTH AMENDED AND RESTATED PLAN BY BOARD OF DIRECTORS:	May 14, 2003
DATE OF APPROVAL OF FIFTH AMENDED AND RESTATED PLAN BY BOARD OF DIRECTORS	December 8, 2004

Exhibit 10.28

AVALONBAY COMMUNITIES, INC.

Officer Severance Plan

(As adopted September 9, 1999 and amended and restated November 18, 2008)

1. Purpose. AvalonBay Communities, Inc. (the "Company") considers it essential to the best interests of its stockholders to foster the continuous employment of key management personnel. The Board of Directors of the Company (the "Board") recognizes, however, that, as is the case with many publicly held corporations, the possibility of a Change in Control (as defined in Section 2 hereof) exists and that such possibility, and the uncertainty and questions which it may raise among management, may result in the departure or distraction of management personnel to the detriment of the Company and its stockholders. Therefore, the Board has determined that the AvalonBay Communities, Inc. Officer Severance Plan (the "Plan") should be adopted to reinforce and encourage the continued attention and dedication of the Covered Employees (as defined below) to their assigned duties without distraction in the face of potentially disturbing circumstances arising from the possibility of a Change in Control. The term "Covered Employee" means any officer of the Company holding the position of Vice President or higher (it being noted that any officer receiving severance payments under any other agreement or arrangement with the Company shall be subject to the limitation on benefits hereunder set forth in the last sentence of Section 4 hereof) (each, a "Covered Employee"). Nothing in this Plan shall be construed as creating an express or implied contract of employment and, except as otherwise agreed in writing between the Covered Employee and the Company or any of its subsidiaries or affiliates (together with the Company, the "Employers"), the Covered Employee shall not have any right to be retained in the employ of the Employers.

2. Change in Control. For purposes of this Plan, a "Change in Control" shall mean the occurrence of any one of the following events:

(a) Any individual, entity or group (a "Person") within the meaning of Sections 13(d) and 14(d) of the Securities Exchange Act of 1934 (the "Act") (other than the Company, any corporation, partnership, trust or other entity controlled by the Company (a "Subsidiary"), or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such Person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act) of securities of the Company representing 30% or more of the combined voting power of the Company's then outstanding securities having the right to vote generally in an election of the Company's Board of Directors ("Voting Securities"), other than as a result of (i) an acquisition of securities directly from the Company or any Subsidiary or (ii) an acquisition by any corporation pursuant to a reorganization, consolidation or merger if, following such reorganization, consolidation or merger the conditions described in clauses (i), (ii) and (iii) of subparagraph (c) of this Section 2 are satisfied; or

(b) Individuals who, as of the Effective Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason to constitute at least a majority of the Board, provided, however, that any individual becoming a director of the Company subsequent to the date hereof (excluding, for this purpose, (i) any such individual whose initial assumption of office is in connection with an actual or threatened election contest relating to the election of members of the Board of Directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors, including by reason of agreement intended to avoid or settle any such actual or threatened contest or solicitation, and (ii) any individual whose initial assumption of office is in connection with a reorganization, merger or consolidation, involving an unrelated entity and occurring after the date hereof), whose election or nomination for election by the Company's shareholders was approved by a vote of at

least a majority of the persons then comprising Incumbent Directors shall for purposes of this Plan be considered an Incumbent Director; or

(c) Consummation of a reorganization, merger or consolidation of the Company, unless, following such reorganization, merger or consolidation, (i) more than 50% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Voting Securities immediately prior to such reorganization, merger or consolidation, (ii) no Person (excluding the Company, any employee benefit plan (or related trust) of the Company, a Subsidiary or the corporation resulting from such reorganization, merger or consolidation or any subsidiary thereof, and any Person beneficially owning, immediately prior to such reorganization, merger or consolidation, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors, and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the Incumbent Board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation;

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or

(e) The sale, lease, exchange or other disposition of all or substantially all of the assets of the Company, other than to a corporation, with respect to which following such sale, lease, exchange or other disposition (i) more than 50% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners of the outstanding Voting Securities immediately prior to such sale, lease, exchange or other disposition, (ii) no Person (excluding the Company and any employee benefit plan (or related trust) of the Company or a Subsidiary or such corporation or a subsidiary thereof and any Person beneficially owning, immediately prior to such sale, lease, exchange or other disposition, directly or indirectly, 30% or more of the outstanding Voting Securities), beneficially owns, directly or indirectly, 30% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of such corporation were members of the Incumbent Board at the time of the execution of the initial agreement or action of the Board of Directors providing for such sale, lease, exchange or other disposition of assets of the Company.

Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of this Plan solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Voting Securities outstanding, increases the proportionate voting power represented by the Voting Securities beneficially owned by any Person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any Person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change in Control" shall be deemed to have occurred for purposes of this Plan.

3. Terminating Event. A "Terminating Event" shall mean the termination of employment of a Covered Employee in connection with any of the events provided in this Section 3 occurring within twenty-four (24) months following a Change in Control. In addition, notwithstanding the foregoing, in the event of the termination of employment of a Covered Employee in connection with any of the events provided in this Section 3 within six (6) months prior to the occurrence of a Change in Control (based on an event, such as a Notice of Termination, that occurred within such six (6) month period prior to a Change in Control), such termination shall, upon the occurrence

of a Change in Control, be deemed a Terminating Event under this Plan. To give effect to the prior sentence, references in Sections 3(b)(ii), (iii) and (iv) to circumstances existing "immediately prior to a Change in Control" will be interpreted to mean, in a case where the six month look-back of the prior sentence is being applied, to circumstances existing immediately prior to the change in circumstances.

(a) termination by the Employers of the employment of the Covered Employee with the Employers for any reason other than (i) for Cause or (ii) as a result of the death or disability (as determined under the Employers' then existing long-term disability coverage) of such Covered Employee. "Cause" shall mean, and shall be limited to, the occurrence of any one or more of the following events:

(i) the Covered Employee is convicted of or enters a plea of nolo contendere to an act which is defined as a felony under any federal, state or local law, not based upon a traffic violation, which conviction or plea has or can be expected to have, in the good faith opinion of the Board of Directors or the CEO, a material adverse impact on the business or reputation of the Company; or

(ii) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company; or

(iii) a breach by the Covered Employee of his fiduciary duties under Maryland law as an officer, or a material breach by the Covered Employee of any rule, regulation, policy or procedure of the Company that is generally announced or distributed to, and applies to, all employees of the Company or a subset of employees that includes the Covered Employee (including, without limitation, in all events the Company's ethics, sexual harassment and insider trading policies); or

(iv) the Covered Employee's commission of any one or more acts of gross negligence or willful misconduct which in the good faith opinion of the Board of Directors or the CEO has resulted in material harm to the business or reputation of the Company; or

(v) the deliberate or willful failure by the Covered Employee (other than by reason of the Covered Employee's physical or mental illness, incapacity or disability) to substantially perform the Covered Employee's duties with the Employers and the continuation of such failure for a period of fifteen (15) days after written notice thereof.

A Terminating Event shall not be deemed to have occurred pursuant to this Section 3(a) solely as a result of the Covered Employee being an employee of any direct or indirect successor to the business or assets of any of the Employers, rather than continuing as an employee of the Employers following a Change in Control. For purposes of clauses (iv) and (v) of this Section 3(a), no act, or failure to act, on the Covered Employee's part shall be deemed "willful" unless done, or omitted to be done, by the Covered Employee without reasonable belief that the Covered Employee's act, or failure to act, was in the best interest of the Employers; or

(b) termination by the Covered Employee of the Covered Employee's employment with the Employers for Good Reason. "Good Reason" shall mean the occurrence of any of the following events:

(i) a material adverse change in the functions, duties or responsibilities of the Covered Employee's position (other than a termination of employment for Cause) which would reduce the level, importance or scope of such position (a change in the person and/or department to whom the Covered Employee is required to report, or a change in the personnel that report to the Covered Employee, shall not by itself constitute a material adverse change in the Covered Employee's position); or

(ii) the relocation of the office at which the Covered Employee is principally located immediately prior to the Change in Control (the "Original Office") to a new location outside of the metropolitan area of the Original Office or the failure to locate the Covered Employee's own office

at the Original Office (or at the office to which such office is relocated which is within the metropolitan area of the Original Office); or

(iii) either (X) the failure by the Company to continue in effect any compensation plan or program in which the Covered Employee participates immediately prior to a Change in Control which is material to the Covered Employee's total compensation, unless comparable alternative arrangements (embodied in ongoing substitute or alternative plans or programs) have been implemented with respect to such plans or programs, or (Y) the failure by the Company to continue the Covered Employee's participation therein following a Change in Control (or in such substitute or alternative plans or programs) on a basis not materially less favorable, in terms of the amount of benefits provided and the level of the Covered Employee's participation relative to other participants, as existed during the last completed fiscal year of the Company prior to the Change in Control (the occurrence of either failure in clause (X) or (Y), a "CIC Compensation Failure"); provided, however, that in no event shall a CIC Compensation Failure have occurred if:

(A) the value of the Covered Employee's total annual compensation following a Change in Control, including, but not limited to, cash compensation (including salary and bonus), stock grants (valued using stock price less consideration paid), stock options (valued using the Black-Scholes method or a variation thereof, as determined by the Board of Directors or a compensation consultant engaged by the Board of Directors) and benefits (valued using an actuarial or similar valuation method), is at least 90% of the Covered Employee's total annual compensation in the last fiscal year prior to the Change in Control; or

(B) (I) the Covered Employee's total annual cash compensation (including salary and bonus) following a Change in Control is at least 90% of what it was in the year prior to the Change in Control, with such reasonable adjustments thereto as are necessary to give effect to performance based bonuses (with respect to which the performance criteria may reasonably be modified) and the level of performance achieved with respect thereto;

(II) the total value of the Covered Employee's annual stock grants (valued using stock price less consideration paid) following a Change in Control are at least 90% of what they were in the year prior to the Change in Control, with such reasonable adjustments thereto as are necessary to give effect to (x) performance based bonuses (with respect to which the performance criteria may reasonably be modified) and the level of performance achieved with respect thereto, and (y) to changes in the price of the Company's or the successor's stock due to market fluctuations;

(III) the Covered Employee's total annual stock option grants (measured either by (a) total value, as determined as described in the preceding paragraph (A), or (b) total "leverage potential" (i.e., the number of options granted multiplied by the exercise price, after giving effect to changes in the price of the Company's or the successor's stock due to market fluctuations)) are at least 90% of what they were in the year prior to the Change in Control, with such reasonable adjustments thereto as are necessary to give effect to performance based bonuses (with respect to which the performance criteria may reasonably be modified) and the level of performance achieved with respect thereto; and

(IV) there is not a material reduction in the Covered Employee's benefits as compared to the last fiscal year prior to the Change in Control; or

(iv) the failure by the Employers to obtain an effective agreement from any successor to assume and agree to perform this Plan.

4. Special Termination Benefits. In the event a Terminating Event occurs with respect to a Covered Employee,

(a) the Employers shall pay to the Covered Employee an amount equal to all accrued but unpaid annual base salary and all earned but unpaid cash incentive compensation earned through such Covered Employee's Date of Termination. Said amount shall be paid in one lump sum payment no later than thirty-one (31) days following the Date of Termination (as such term is defined in Section 8(b)); and

(b) if and only if such Terminating Event is not described in Section 3(b)(ii), the Employers shall pay to the Covered Employee an amount equal to the sum of the following:

(i) one times the amount of the current annual base salary of the Covered Employee, determined prior to any reductions for pre-tax contributions to a cash or deferred arrangement or a cafeteria plan; and

(ii) one times the amount of the average annual cash bonus earned by the Covered Employee with respect to the two (2) calendar years immediately prior to the Change in Control determined prior to any reductions for pre-tax contributions to a cash or deferred arrangement or a cafeteria plan (provided, however, that if the Covered Employee's tenure with the Company is such that prior to the Terminating Event the Covered Employee has earned an annual bonus only with respect to the calendar year immediately prior to the Change in Control, then such annual bonus shall be deemed to have been earned with respect to the two (2) calendar years immediately prior to the Change in Control; and, provided further, however, that if the Covered Employee's tenure with the Company is such that prior to the Terminating Event the Covered Employee has not earned an annual bonus, then the Covered Employee's target annual bonus immediately prior to the Change in Control shall be deemed to have been earned with respect to the two (2) calendar years immediately prior to the Change in Control).

Said amount shall be paid in one lump sum payment no later than thirty-one (31) days following the Date of Termination; and

(c) if and only if such Terminating Event is described in Section 3(b)(ii), the Employers shall pay to the Covered Employee an amount equal to the sum of the following:

(i) one-half times (0.5) the amount of the current annual base salary of the Covered Employee, determined prior to any reductions for pre-tax contributions to a cash or deferred arrangement or a cafeteria plan; and

(ii) one-half times (0.5) times the amount of the average annual cash bonus earned by the Covered Employee with respect to the two (2) calendar years immediately prior to the Change in Control determined prior to any reductions for pre-tax contributions to a cash or deferred arrangement or a cafeteria plan, with procedures similar to those described in Section 4(b)(ii) to determine such average.

Said amount shall be paid in one lump sum payment no later than thirty-one (31) days following the Date of Termination (as such term is defined in Section 8(b)); and

(d) the Employers shall continue to provide health, dental and life insurance (or contribute a portion of the cost thereof) to the Covered Employee, on the same terms and conditions as though the Covered Employee had remained an active employee, for eighteen (18) months after the Terminating Event or until such earlier date as the Covered Employee obtains comparable benefits through other employment (provided, however, that this clause (d) shall in no event obligate the Company to continue to fund the

premiums on any split dollar life insurance policy pursuant to arrangements that were in effect while the Covered Employee was employed); and

(e) the Employers shall take whatever action is necessary (i) to cause the Covered Employee to become vested as of the Date of Termination in all stock options, restricted stock grants, and all other equity-based awards and (ii) to be entitled (A) to exercise and continue to exercise all stock options and all other equity-based awards having an exercise schedule and (B) to retain such grants and awards, but in each case under clauses (A) and (B) such right to exercise and retain shall last only for so long as, and shall apply only to the same extent as, if such options, grants and awards had vested prior to termination of employment and their treatment following such termination were determined in accordance with the terms of the applicable stock option agreement, grant agreement or other equity award agreement and the incentive plans governing such agreements. Reference in this regard is made to the clarification set forth in Section 5; and

(f) the Employers shall provide COBRA benefits to the Covered Employee following the end of the period referred to in Section 4(d) above, such benefits to be determined as though the Covered Employee's employment had terminated at the end of such period; and

(g) notwithstanding the foregoing, if the Terminating Event occurs before the Change in Control, the special termination benefits required by this Section 4 shall be paid, or commence, as the case may be, no later than thirty-one (31) days after the consummation of the Change in Control.

Notwithstanding the foregoing, the special termination benefits required by Sections 4(b) or 4(c) shall be reduced by any amount paid or payable to the Covered Employee by the Employers under the terms of any employment agreement or other plan or arrangement providing for compensation upon such Covered Employee's termination of employment (other than payment of accrued vacation benefits and payments under any deferred compensation plan). Other benefits under this Plan shall also be reduced or eliminated to the extent provided to the Covered Employee under other agreements or arrangements. Therefore, a Covered Employee with an employment agreement or arrangement that provides greater severance benefits than those provided in this Officer Severance Program will receive no payments or benefits under this Officer Severance Program.

5. Clarification Regarding Treatment of Options and Restricted Stock. The stock option and restricted stock agreements (the "Equity Award Agreements") that the Covered Employee has or may receive may contain language regarding the effect of a termination of the Covered Employee's employment under certain circumstances. Notwithstanding such language in the Equity Award Agreements, for so long as this Plan is in effect, the Company will be obligated, if the terms of this Plan are more favorable in this regard than the terms of the Equity Award Agreements, to take the actions required under Section 4(e) hereof upon the happening of a Terminating Event. That section provides that the Company will cause the Covered Employee to become vested as of the Date of Termination in all equity-based awards, and that such equity-based awards will thereafter be subject to the provisions of the applicable Equity Award Agreement as it applies to vested awards upon a termination. For purposes of clarification, although an option grant may vest under termination circumstances described above, such option will thereafter be exercisable only for so long as the related option agreement provides, except that the Compensation Committee of the Board of Directors may, in its sole discretion, elect to extend the expiration date of such option. For example, in general the Covered Employees' option agreements provide that (in the absence of an extension by the Compensation Committee) upon a termination of employment for any reason other than death, disability, retirement or cause, any vested options will only be exercisable for three months from the date of termination or, if earlier, the expiration date of the option.

6. Additional Benefits.

(a) Anything in this Plan to the contrary notwithstanding, in the event that any compensation, payment or distribution by the Employers to or for the benefit of a Covered Employee, whether paid or payable or distributed or distributable pursuant to the terms of this Plan or otherwise, (the "Severance Payments"), would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code of 1986, as amended (the "Code"), the following provisions shall apply to such Covered Employee:

(i) If the Severance Payments, reduced by the sum of (1) the Excise Tax and (2) the total of the Federal, state, and local income and employment taxes payable by the Covered Employee on the amount of the Severance Payments which are in excess of the Threshold Amount, are greater than or equal to the Threshold Amount, the Covered Employee shall be entitled to the full benefits payable under this Plan.

(ii) If the Threshold Amount is less than (x) the Severance Payments, but greater than (y) the Severance Payments reduced by the sum of (1) the Excise Tax and (2) the total of the Federal, state, and local income and employment taxes on the amount of the Severance Payments which are in excess of the Threshold Amount, then the benefits payable under this Plan shall be reduced (but not below zero) to the extent necessary so that the maximum Severance Payments shall not exceed the Threshold Amount. In such event, the payments shall be reduced in the following order: (A) cash payments not subject to Section 409A of the Code; (B) cash payments subject to Section 409A of the Code; and (D) non-cash form of benefits. To the extent any payment is to be made over time, then the payment shall be reduced in reverse chronological order.

For the purposes of this Section 6, "Threshold Amount" shall mean three times the Covered Employee's "base amount" within the meaning of Section 280G(b)(3) of the Code and the regulations promulgated thereunder less one dollar ($1.00); and "Excise Tax" shall mean the excise tax imposed by Section 4999 of the Code, or any interest or penalties incurred by the Covered Employee with respect to such excise tax.

(b) The determination as to which of the alternative provisions of Section 6(a) shall apply to the Covered Employee shall be made by such nationally recognized accounting firm as may at that time be the Company's independent public accountants immediately prior to the Change in Control (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Employers and the Covered Employee within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Employers or the Covered Employee. For purposes of determining which of the alternative provisions of Section 6(a) shall apply, the Covered Employee shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in the state and locality of the Covered Employee's residence on the Date of Termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. Any determination by the Accounting Firm shall be binding upon the Employers and the Covered Employee.

7. Withholding. All payments made by the Employers under this Plan shall be net of any tax or other amounts required to be withheld by the Employers under applicable law.

8. Notice and Date of Termination; Etc.

(a) Notice of Termination. Any purported termination by the Employer of a Covered Employee's employment (other than by reason of death) within 24 months following a Change in Control shall be communicated by written Notice of Termination from the Employers to the Covered Employee in accordance with this Section 8. For purposes of this Plan, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Plan relied upon and the Date of Termination. Further, a Notice of Termination for Cause is required to include a written explanation as to the basis for such termination.

(b) Date of Termination. "Date of Termination," with respect to any purported termination of a Covered Employee's employment by the Employers within twenty-four (24) months after a Change in Control, shall mean the date specified in the Notice of Termination which, in the case of a termination by the Employers other than a termination for Cause (which may be effective immediately), shall not be less than 30 days after the Notice of Termination is given. Notwithstanding Section 3(a) of this Plan, in the event that a Covered Employee gives a Notice of Termination to the Employers, the Employers may unilaterally accelerate the date of termination of such Covered Employee and such acceleration shall not

constitute an independent Terminating Event for purposes of Section 3(a) of this Plan or a violation of the preceding sentence (*i.e.*, the Covered Employee will be entitled to severance payments and benefits hereunder only if such Covered Employee's Notice of Termination was with respect to a termination for Good Reason).

(c) No Mitigation. The Covered Employee is not required to seek other employment or to attempt in any way to reduce any amounts payable to the Covered Employee by the Employers under this Plan. Further, the amount of any payment provided for in this Plan shall not be reduced by any compensation earned by the Covered Employee as the result of employment by another employer, by retirement benefits, by offset against any amount claimed to be owed by the Covered Employee to the Employers, or otherwise.

9. Resolution of Disputes; Procedures and Scope of Arbitration.

(a) All controversies and claims arising under or in connection with this Plan or relating to the interpretation, breach or enforcement thereof and all other disputes between a Covered Employee and the Company, shall be resolved by expedited, binding arbitration, to be held in California or Virginia, as selected by the Covered Employee, in accordance with the applicable rules of the American Arbitration Association governing employment disputes. In any proceeding relating to the amount owed to a Covered Employee in connection with his termination of employment, it is the contemplation under this Plan that the only remedy that the arbitrator may award in such a proceeding is an amount equal to the termination payments and benefits required to be provided under the applicable provisions of Section 4 and, if applicable, Section 6 hereof, to the extent not previously paid, plus the costs of arbitration and the Covered Employee's reasonable attorneys fees and expenses as provided below. Any award made by such arbitrator shall be final, binding and conclusive on the Company and the Covered Employee for all purposes, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Except as otherwise provided in this paragraph, each party shall pay the cost of his or its own legal fees and expenses incurred in connection with an arbitration proceeding. Provided an award is made in favor of the Covered Employee in such proceeding, all of his reasonable attorneys fees and expenses incurred in pursuing or defending such proceeding shall be promptly reimbursed to the Covered Employee by the Company within five days of the entry of the award. Any award of reasonable attorneys' fees shall take into account any offer of the Company, such that an award of attorneys' fees to the Covered Employee may be limited or eliminated to the extent that the final decision in favor of the Covered Employee does not represent a material increase in value over the offer that was made by the Company during the course of such proceeding. However, any elimination or limitation on attorneys' fees shall only apply to those attorneys' fees incurred after the offer by the Company.

(c) In any case where the Company or any other person seeks to stay or enjoin the commencement or continuation of an arbitration proceeding, whether before or after an award has been made, or where a Covered Employee seeks recovery of amounts due after an award has been made, or where the Company brings any proceeding challenging or contesting the award, all of a Covered Employee's reasonable attorneys fees and expenses incurred in connection therewith shall be promptly reimbursed by the Company to the Covered Employee, within five days of presentation of an itemized request for reimbursement, regardless of whether the Covered Employee prevails and regardless of the forum in which such proceeding is brought.

10. Benefits and Burdens. This Plan shall inure to the benefit of and be binding upon the Employers and the Covered Employees, their respective successors, executors, administrators, heirs and permitted assigns. In the event of a Covered Employee's death after a Terminating Event but prior to the completion by the Employers of all payments due him under this Plan, the Employers shall continue such payments to the Covered Employee's beneficiary designated in writing to the Employers prior to his death (or to his estate, if the Covered Employee fails to make such designation).

11. Enforceability. If any portion or provision of this Plan shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Plan, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Plan shall be valid and enforceable to the fullest extent permitted by law.

12. Waiver. No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Plan, or the waiver by any party of any breach of this Plan, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

13. Notices. Any notices, requests, demands, and other communications provided for by this Plan shall be sufficient if in writing and delivered in person or sent by registered or certified mail, postage prepaid, to a Covered Employee at the last address the Covered Employee has filed in writing with the Employers, or to the Employers at their main office, attention of the Board of Directors.

14. Effect on Other Plans. Nothing in this Plan shall be construed to limit the rights of the Covered Employees under the Employers' benefit plans, programs or policies.

15. Nature of Payments; Requirement for Release, Confidentiality and Non-Solicitation Agreement. The amounts due pursuant to this Plan, except for payment of accrued base salary through the Date of Termination, are in the nature of severance payments considered to be reasonable by the Company and are not in the nature of a penalty. The Company may require, as a condition to making the payments and providing the benefits required hereby, that a Covered Employee execute and deliver to the Company a Release and a Non-Solicitation Agreement (as such terms are defined below), and may also require that the Covered Employee acknowledge in writing that he or she is resigning as an officer from the Company and as a director and officer of any subsidiary of the Company for which the Covered Employee serves in such capacity, before any amounts or benefits under this Plan are paid or provided. A "Release" shall mean a written release of all employment-related claims by Covered Employee of the Company in a form and manner reasonably satisfactory to the Company. Such Release shall in all events preserve Covered Employee's continuing rights under this Plan except with respect to any amount paid prior to or simultaneously with the execution of such Release, in which event Covered Employee shall acknowledge receipt of such amount and (if such is the case) that such amount was properly calculated and is in full satisfaction of the Company's obligation to pay such amount. "Non-Solicitation Agreement" means an agreement of Covered Employee with the Company that Covered Employee shall not, without the prior written consent of the Company for a period of one year following the Covered Employee's date of termination, solicit or attempt to solicit for employment with or on behalf of any corporation, partnership, venture or other business entity, any employee of the Company or any of its affiliates or any person who was formerly employed by the Company or any of its affiliates within the preceding six months, unless such person's employment was terminated by the Company or any of such affiliates.

16. Amendment or Termination of Plan. The Company may, upon one year's advance written notice to the Covered Employees, amend or terminate this Plan at any time or from time to time; provided, however, that, with respect to any such notice given on or prior to March 29, 2002, the amendment or termination set forth in such notice shall not, without the written consent of a Covered Employee, in any material adverse way affect the rights of such Covered Employee; and provided, further, that during the 24 months following a Change in Control no such amendment or termination shall have a material adverse effect on the rights of a Covered Employee with respect to such Change in Control.

17. Governing Law. This Plan shall be construed under and be governed in all respects by the laws of the State of Maryland.

18. Obligations of Successors. In addition to any obligations imposed by law upon any successor to the Employers, the Employers will use their best efforts to require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Employers to expressly assume and agree to perform this Plan in the same manner and to the same extent that the Employers would be required to perform if no such succession had taken place.

19. Section 409A. Anything in this Plan to the contrary notwithstanding, if at the time of the Covered Employee's "separation from service" within the meaning of Section 409A of the Code, the Company determines that the Covered Employee is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Covered Employee becomes entitled to under this Plan would be considered deferred compensation subject to the 20 percent additional tax imposed pursuant to Section 409A of the Code as a result of the application of Section 409A(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided prior to the date that is the earlier of (a) six months and one day after the Covered Employee's separation from service, or (b) the Covered Employee's death. Any such delayed cash payment shall earn interest at an annual rate equal to the applicable federal short-term rate published by the Internal Revenue Service for the month in which separation from service occurs, from the date of separation from service until the payment date. The parties intend that this Plan will be administered in accordance with Section 409A of the Code. The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409(A)-1(h).

Adopted by the Compensation Committee of the Board of Directors: as of September 9, 1999 and amended and restated on November 18, 2008, effective as of January 1, 2009.

Exhibit 10.30

Form of Addendum to NQSO Stock Option Agreement
with
Certain Officers with Employment Agreements

[In accordance with the employment agreements of Messrs. Blair, Naughton, Sargeant and Horey, the Company enters into the following addendum to all Non-Qualified Stock Option Agreements with such individuals.]

This Addendum to Stock Option Agreement is dated as of _____.

Reference is made to the following agreement (the "Unmodified Stock Option Agreement"):

Non-Qualified Stock Option Agreement between _____ ("Employee") and AvalonBay Communities, Inc. ("AvalonBay"), dated _____, with respect to _____ stock options (the "Options") having an exercise price of $_____.

Capitalized terms used herein and not defined herein have the meanings set forth in the Unmodified Stock Option Agreement.

For the convenience of AvalonBay, the Unmodified Stock Option Agreement is in a standard format commonly used by AvalonBay. However, this Addendum to Stock Option Agreement (the "Addendum") contains one or more provisions (the "Modifications") approved by the Board of Directors of AvalonBay (the "Board") that are inconsistent with the terms of the Unmodified Stock Option Agreement. The Board approved the Modifications at the time it approved the grant of the Options to Employee, and for ease of administration the Company is documenting the grant of the Options with the Modifications by entering into the Unmodified Stock Option Agreement and this Addendum.

NOW, THEREFORE, intending to be legally bound and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AvalonBay and Employee agree as follows:

If, pursuant to the terms of the Employee's Employment Agreement between the Company and Employee (the "Employment Agreement") or pursuant to the terms of a successor agreement or arrangement (other than the Unmodified Stock Option Agreement), the vesting of Employee's stock options is accelerated upon the termination of his employment, then the following shall apply: any Option then held by Employee may be exercised, to the extent exercisable on the date of termination (after giving effect to accelerated vesting), for a period of (i) in the case of termination by death of the employee, ___(___) years from the date of termination, or until the Expiration Date, if earlier, and (ii) in the case of termination for any reason other than death resulting in accelerated vesting, one (1) year from the date of termination, or until the Expiration Date, if earlier.

For clarification it is noted that the terms of the preceding paragraph will not apply if vesting of Employee's stock options is not accelerated upon a termination of employment (e.g., if he voluntarily resigns without a Constructive Termination without Cause, as defined in the Employment Agreement). In such cases, the period of time following termination in which the Options must be exercised will be determined by the

Unmodified Stock Option Agreement, which generally provides that the Options will terminate earlier than one year from the date of termination.

To the extent that any terms in the Employment Agreement are more favorable to Employee than the terms of the Unmodified Stock Option Agreement, the terms of the Employment Agreement shall govern.

Except as stated above, the terms of the Unmodified Stock Option Agreement apply in full to the Options.

AVALONBAY COMMUNITIES, INC.

By: _____

Name:
Title:

Receipt is hereby acknowledged of a copy of the Company's Plan, the Unmodified Stock Option Agreement and this Addendum. The undersigned agrees to be bound by the terms and conditions of the Plan, the Unmodified Stock Option Agreement and this Addendum.

_____

Optionee:

Address:

Exhibit 10.32

Form of Addendum to Incentive Stock Option Agreement
with
Certain Officers with Employment Agreements

[In accordance with the employment agreements of Messrs. Blair, Naughton, Sargeant and Horey, the Company enters into the following addendum to all Incentive Stock Option Agreements with such individuals.]

This Addendum to Incentive Stock Option Agreement is dated as of _____.

Reference is made to the following agreement (the "Unmodified Incentive Stock Option Agreement"):

Incentive Stock Option Agreement between _____ ("Employee") and AvalonBay Communities, Inc. ("AvalonBay"), dated _____, with respect to _____ stock options (the "Options") having an exercise price of $___.

Capitalized terms used herein and not defined herein have the meanings set forth in the Unmodified Incentive Stock Option Agreement.

For the convenience of AvalonBay, the Unmodified Incentive Stock Option Agreement is in a standard format commonly used by AvalonBay. However, this Addendum to Incentive Stock Option Agreement (the "Addendum") contains one or more provisions (the "Modifications") approved by the Board of Directors of AvalonBay (the "Board") that are inconsistent with the terms of the Unmodified Incentive Stock Option Agreement. The Board approved the Modifications at the time it approved the grant of the Options to Employee, and for ease of administration the Company is documenting the grant of the Options with the Modifications by entering into the Unmodified Incentive Stock Option Agreement and this Addendum.

NOW, THEREFORE, intending to be legally bound and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AvalonBay and Employee agree as follows:

If, pursuant to the terms of the Employee's current Employment Agreement between the Company and Employee (the "Employment Agreement") or pursuant to the terms of a successor agreement or arrangement (other than the Unmodified Incentive Stock Option Agreement), the vesting of Employee's stock options is accelerated upon the termination of his employment, then the following shall apply: any Option then held by Employee may be exercised, to the extent exercisable on the date of termination (after giving effect to accelerated vesting), for a period of (i) in the case of termination by death of the employee, ___(_) years from the date of termination, or until the Expiration Date, if earlier, and (ii) in the case of termination for any reason other than death resulting in accelerated vesting, one (1) year from the date of termination, or until the Expiration Date, if earlier.

For clarification it is noted that the terms of the preceding paragraph will not apply if vesting of Employee's stock options is not accelerated upon a termination of employment (e.g., if he voluntarily resigns without a Constructive Termination without Cause, as defined in the Employment Agreement). In such cases, the period of time following termination in which the Options must be exercised will be determined by the Unmodified Incentive Stock Option Agreement.

To the extent that any terms in the Employment Agreement are more favorable to Employee than the terms of the Unmodified Stock Option Agreement, the terms of the Employment Agreement shall govern.

Except as stated above, the terms of the Unmodified Incentive Stock Option Agreement apply in full to the Options.

AVALONBAY COMMUNITIES, INC.

By: _____

Name:
Title:

Receipt is hereby acknowledged of a copy of the Company's Plan, the Unmodified Incentive Stock Option Agreement and this Addendum. The undersigned agrees to be bound by the terms and conditions of the Plan, the Unmodified Incentive Stock Option Agreement and this Addendum.

_____

Optionee:

_____

Address:

[Form of Employee Stock Grant and Restricted Stock Agreement]

AVALONBAY COMMUNITIES, INC.
STOCK GRANT AND RESTRICTED STOCK AGREEMENT

In consideration for services rendered and to be rendered to AvalonBay Communities, Inc. (the "Company") and for other good and valuable consideration, which the Company has determined to be equal to the fair market value of the Shares, as defined below, the Company is issuing to the Employee named below contemporaneously herewith the Shares, upon the terms and conditions set forth herein and in the Restricted Stock Agreement Terms (the "Terms") which are attached hereto and incorporated herein in their entirety. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in the Terms.

Employee: _____
Award Date: _____
Vesting Commencement Date: _____
Number of Shares Granted ("Shares"): _____

Vesting Schedule: Subject to the provisions of the Terms and the discretion of the Company to accelerate the vesting schedule, the Employee's ownership interest in the Shares shall vest, and the status of the Shares as Restricted Stock and all Restrictions with respect to the Shares shall terminate, in accordance with the following schedule of events:

Vesting Event	**Shares Vested**
March 1, 200_ [Year of Grant]	[20%]
March 1, 200_ [Second Year]	[20%]
March 1, 200_ [Third Year]	[20%]
March 1, 200_ [Fourth Year]	[20%]
March 1, 200_ [Fifth Year]	[20%]
Termination of the Employee's Employment by the Company, other than for Cause	**[Total RSA]***
The death or disability of the Employee	**[Total RSA]***
The Retirement of the Employee	**[Total RSA]***
If earlier than any of the above events, a Change of Control	**[Total RSA]***

*or, if fewer, all Restricted Shares

Additional Terms/Acknowledgements: The undersigned Employee acknowledges receipt of, and understands and agrees to, this Stock Grant and Restricted Stock Agreement, including, without limitation, the Terms. Employee further acknowledges that as of the Award Date, this Stock Grant and Restricted Stock Agreement, including, without limitation, the Terms, sets forth the entire understanding between Employee and the Company regarding the stock grant described herein and supersedes all prior oral and written agreements on that subject.

AVALONBAY COMMUNITIES, INC.

By: _____
Signature

Title: _____

Date: _____

EMPLOYEE:

_____
Signature

Name (Print): _____

Date: _____

ATTACHMENT: Restricted Stock Agreement Terms

AVALONBAY COMMUNITIES, INC.

RESTRICTED STOCK AGREEMENT TERMS

ARTICLE I

DEFINITIONS

Section 1.1 - Cause

"Cause" means and shall be limited to a vote of the Board of Directors resolving that the Employee should be dismissed as a result of (i) any material breach by the Employee of any agreement to which the Employee and the Company are parties, (ii) any act (other than retirement) or omission to act by the Employee which may have a material and adverse effect on the business of the Company or any Subsidiary (as hereinafter defined) or on the Employee's ability to perform services for the Company or any Subsidiary, including, without limitation, the Employee being convicted of any crime (other than ordinary traffic violations) or (iii) any material misconduct or neglect of duties by the Employee in connection with the business or affairs of the Company or any Subsidiary.

Section 1.2 - Change of Control

"Change of Control" means the occurrence of any one of the following events:

(i) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its Subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its Subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 30% or more of either (A) the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Company's Board of Directors ("Voting Securities") or (B) the then outstanding shares of Common Stock (as hereinafter defined), in either such case other than as a result of an acquisition of securities directly from the Company; or

(ii) persons who, as of the Award Date, constitute the Company's Board of Directors (the "Incumbent Directors") cease for any reason, including, without limitation, as a result of a tender offer, proxy contest, merger, acquisition of Voting Securities or similar transaction, to constitute at least a majority of the Board of Directors, provided that any person becoming a director of the Company subsequent to the Award Date whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors shall, for purposes of this Agreement, be considered an Incumbent Director; or

(iii) the stockholders of the Company shall approve (A) any consolidation or merger of the Company or any Subsidiary where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate 30% of the voting shares of the corporation or other entity issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation or other entity, if any), (B) any sale, lease, exchange or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company or (C) any plan or proposal for the liquidation or dissolution of the Company.

Notwithstanding the foregoing, a "Change of Control" shall not be deemed to have occurred for purposes of the foregoing clause (i) solely as the result of an acquisition of securities by the Company which, by reducing the number of shares of Common Stock or other Voting Securities outstanding, increases (x) the proportionate number of shares of Common Stock beneficially owned by any person to 30% or more of the shares of Common Stock then outstanding or (y) the proportionate voting power represented by the Voting Securities beneficially owned by any

person to 30% or more of the combined voting power of all then outstanding Voting Securities; provided, however, that if any person referred to in clause (x) or (y) of this sentence shall thereafter become the beneficial owner of any additional shares of Common Stock or other Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction), then a "Change of Control" shall be deemed to have occurred for purposes of the foregoing clause (i).

Section 1.3 - Common Stock

"Common Stock" shall mean the common stock of the Company, $.01 par value.

Section 1.4 - Fair Market Value

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

Section 1.5 - Restricted Stock

"Restricted Stock" shall mean the Shares issued under this Agreement for as long as such shares are subject to the Restrictions (as hereinafter defined) imposed by this Agreement.

Section 1.6 - Restrictions

"Restrictions" shall mean the restrictions set forth in Article III of this Agreement.

Section 1.7 – Retirement

"Retirement" in accordance with the Plan shall mean:

the Employee's termination of employment with the Company and its Subsidiaries, other than for Cause, following the date on which the sum of (i) the number of full months the Employee has been employed by the Company and any Predecessor Company (as defined in the Plan) and (ii) the Employee's age on the date of termination, equals or exceeds 70 years, provided that:

(x) the Employee has been employed by the Company and any Predecessor Company for a period of at least 120 contiguous full months at the time of termination;

(y) the Employee gives at least six months' prior written notice to the Company of his intention to retire; and

(z) upon termination of employment, the Employee enters into a "Non-Compete and Non-Solicitation Agreement" (as defined in the Plan) and a general release of all claims in a form reasonably satisfactory to the Company.

Section 1.7 - Secretary

"Secretary" shall mean the secretary of the Company.

Section 1.8 - Subsidiary

"Subsidiary" means any corporation or other entity (other than the Company) in any unbroken chain of corporations or other entities, beginning with the Company if each of the corporations or entities (other than the last corporation or entity in the unbroken chain) owns stock or other interests possessing 50% or more of the economic interest or the total combined voting power of all classes of stock or other interests in one of the other corporations or entities in the chain.

ARTICLE II

RESTRICTED STOCK

Section 2.1 - Restricted Stock

Any shares of Common Stock granted pursuant to this Agreement which vest on a date other than the Award Date shall be considered Restricted Stock for purposes of this Agreement and shall be subject to the Restrictions until such time or times and except to the extent that the Employee's ownership interest in Shares vests in accordance with the Vesting Schedule set forth on the first page of this Agreement.

Section 2.2 - Escrow

The Secretary or such other escrow holder as the Company may from time to time appoint shall retain physical custody of the certificates representing Restricted Stock, including shares of Restricted Stock issued pursuant to Section 3.5, until all of the Restrictions expire or shall have been removed; provided, however, that in no event shall the Employee retain physical custody of any certificates representing Restricted Stock issued to him.

Section 2.3 - Rights as Stockholder

From and after the Award Date, the Employee shall have all the rights of a stockholder with respect to the Shares, subject to the Restrictions herein (including the provisions of Article IV), including the right to vote the Shares and to receive all dividends or other distributions paid or made with respect to the Shares unless and to the extent that the Employee's interest in Restricted Stock shall have terminated and the Restricted Stock reverts to the Company as provided in Section 3.1 of this Agreement.

ARTICLE III

RESTRICTIONS

Section 3.1 - Reversion of Restricted Stock

Except as provided in Section 2.3, this Section 3.1, and the Vesting Schedule set forth on the first page of this Agreement, the Restricted Stock shall be the property of the Company for as long as and to the extent that the Shares are Restricted Stock pursuant to Section 2.1. In the event that the Employee's employment by the Company terminates for any reason other than (a) death, (b) disability or (c) termination of the Employee's employment by the Company other than for Cause, any interest of the Employee in Shares that are Restricted Stock shall thereupon immediately terminate and all rights with respect to the Restricted Stock shall immediately revert to and unconditionally be the property of the Company; provided, however, that the Employee shall be entitled to retain any cash dividends paid before the date of such event on the Restricted Stock.

Section 3.2 - Restricted Stock Not Transferable

No Restricted Stock or any interest or right therein or part thereof shall be liable for the debts, contracts or engagements of the Employee or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law or judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect; provided, however, that the Employee may designate one or more trusts or other similar arrangements for the benefit of the Employee or members of his immediate family as the registered holders of Restricted Stock if and as long as the Employee acts as trustee or in a similar capacity with respect to such trust or arrangement. Any Restricted Stock so registered shall for all purposes hereunder be deemed to be held of record by the Employee and shall be subject to all of the terms and conditions of this Agreement, including but not limited to the Restrictions and the provisions of Article III of this Agreement.

Section 3.3 - Legend

(a) Certificates representing shares of Restricted Stock issued pursuant to this Agreement shall, until all Restrictions lapse and new certificates are issued pursuant to Section 3.4, bear the following legend:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN VESTING REQUIREMENTS AND MAY BE SUBJECT TO FORFEITURE TO AVALONBAY COMMUNITIES, INC. (THE "COMPANY") UNDER THE TERMS OF THAT CERTAIN RESTRICTED STOCK AGREEMENT BY AND BETWEEN THE COMPANY AND THE HOLDER OF THE SECURITIES. PRIOR TO VESTING OF OWNERSHIP IN THE SECURITIES, THEY MAY NOT BE, DIRECTLY OR INDIRECTLY, OFFERED, TRANSFERRED, SOLD, ASSIGNED, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNDER ANY CIRCUMSTANCES. COPIES OF THE ABOVE REFERENCED AGREEMENT ARE ON FILE AT AND MAY BE OBTAINED ON REQUEST AND WITHOUT CHARGE FROM THE OFFICES OF THE COMPANY AT 2900 EISENHOWER AVENUE, SUITE 300, ALEXANDRIA, VA 22314."

(b) Certificates representing any shares of Common Stock issued pursuant to this Agreement shall bear the following or substantially similar legend:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). NO SALE, HYPOTHECATION, TRANSFER OR OTHER DISPOSITION OF THESE SECURITIES MAY BE MADE UNLESS EITHER (A) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (B) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT."

Section 3.4 - Lapse of Restrictions

Upon the vesting of some or all of the Restricted Stock as provided in the Vesting Schedule set forth on the first page of this Agreement, and subject to the conditions to issuance set forth in Article IV, the Company shall cause new certificates to be issued with respect to such vested Shares and delivered to the Employee or his legal representative, free from the legend provided for in Section 3.3(a).

Section 3.5 - Restrictions on New Shares

In the event that the outstanding shares of the Company's Common Stock are changed into or exchanged for a different number or kind of shares or other securities of the Company, or a stock split-up or stock dividend, such new, additional or different shares or securities which are held or received by the Employee (or his designee) in his capacity as a holder of Restricted Stock shall be considered to be Restricted Stock and shall be subject to all of the terms and conditions of this Agreement, including but not limited to the Restrictions.

ARTICLE IV

MISCELLANEOUS

Section 4.1 - - Conditions to Issuance of Stock Certificates

The Company shall not be required to issue or deliver any certificate or certificates for shares of stock pursuant to this Agreement prior to fulfillment of all of the following conditions:

(a) The admission of such shares to listing on all stock exchanges on which such class of stock is then listed; and

(b) The completion of any registration or other qualification of such shares under any state or Federal law or under rulings or regulations of the Securities and Exchange Commission or of any other governmental regulatory body, which the Company shall deem necessary or advisable; and

(c) The obtaining of any approval or other clearance from any state or Federal governmental agency which the Company shall, in its absolute discretion, determine to be necessary or advisable; and

(d) The payment by the Employee of all amounts required to be withheld under federal, state and local tax laws, with respect to the issuance of Restricted Stock and/or the lapse or removal of any of the Restrictions; and

Section 4.2 - Notices

Any notice to be given under the terms of this Agreement to the Company shall be addressed to the Company in care of its Secretary, and any notice to be given to the Employee shall be addressed to him at his address as set forth in the Company's records. By a notice given pursuant to this Section 4.2, either party may hereafter designate a different address for notices to be given to it or him. Any notice which is required to be given to the Employee shall, if the Employee is then deceased, be given to the Employee's personal representative if such representative has previously informed the Company of his status and address by written notice under this Section 4.2. Any notice shall have been deemed duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid and deposited (with postage prepaid) in a post office or branch post office regularly maintained by the United States Postal Service.

Section 4.3 - Titles

Titles and captions are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 4.4 - Amendment

This Agreement may be amended only by a writing executed by the parties hereto which specifically states that it is amending this Agreement.

Section 4.5 - Tax Withholding

The Company's obligation (i) to issue or deliver to the Employee any certificate or certificates for unrestricted shares of stock or (ii) to pay to the Employee any dividends or make any distributions with respect to the Common Stock issued under this Agreement is expressly conditioned on the Company's satisfaction of its obligation, if any, to withhold taxes. The Company may, if the employee so elects in writing, withhold from any distribution made to the Employee under this Agreement shares of Common Stock valued at Fair Market Value on the date of such withholding to cover any applicable withholding and employment taxes. In lieu of withholding shares of Common Stock, the Employee may elect to pay to the Company any amounts required to be withheld in cash.

Section 4.6 - Governing Law

The laws of the State of Maryland shall govern the interpretation, validity, administration, enforcement and performance of the terms of this Agreement regardless of the law that might be applied under principles of conflicts of laws.

Section 4.7 - Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 4.8 - No Special Employment Rights

This Agreement does not, and shall not be interpreted to, create any right on the part of the Employee to continue in the employ of the Company or any subsidiary or affiliate thereof, nor to any continued compensation, prerequisites or other current or future benefits or other incidents of employment.

[End of Text]

Exhibit 10.38

AMENDMENT TO
RULES AND PROCEDURES
FOR
DIRECTORS' DEFERRED COMPENSATION PROGRAM

The following amendment to rules and procedures governing the deferral by a Non-Employee Director pursuant to Section 7(b) of the AvalonBay Communities, Inc. 1994 Stock Option and Incentive Plan, as amended and restated on December 8, 2004 and as subsequently amended (the "Plan") was adopted by the Company's Board of Directors on December 11, 2008. All capitalized terms used herein shall have the same meaning as used in the Plan unless otherwise specifically provided herein.

1. Section 6 of the Rules and Procedures is amended in its entirety to read as follows:

Payment. All vested stock units credited to a Non-Employee Director's Account shall be paid in shares of Stock to the Non-Employee Director, or his designated beneficiary (or beneficiaries) or estate, in a lump sum within 30 days after the Non-Employee Director ceases to serve on the Board; provided, however, that fractional shares shall be paid in cash. Notwithstanding the foregoing, in the event of a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company, within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, all Accounts under this deferred compensation arrangement shall become immediately payable in a lump sum.

2. Section 8 of the Rules and Procedures is amended in its entirety to read as follows:

Nontransferability of Rights. During a Non-Employee Director's lifetime, any payment under this deferred compensation arrangement shall be made only to him. No sum or other interest under this deferred compensation arrangement shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt by a Non-Employee Director or any beneficiary under this deferred compensation arrangement to do so shall be void. No interest under this deferred compensation arrangement shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of a Non-Employee Director or beneficiary entitled thereto. Notwithstanding the foregoing, the Company may make payments to an individual other than a Non-Employee Director to the extent required by a domestic relations order.

Exhibit 10.42

AVALONBAY COMMUNITIES, INC.

DEFERRED COMPENSATION PLAN

Amended and Restated Effective as of January 1, 2009

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AVALONBAY COMMUNITIES, INC.
DEFERRED COMPENSATION PLAN
Amended and Restated Effective as of January 1, 2009

The AvalonBay Communities, Inc. Deferred Compensation Plan, effective as of January 1, 1996, as amended and restated as of January 1, 1999 and as of January 1, 2004, is hereby amended and restated in its entirety as follows, effective as of January 1, 2009 to comply with Section 409A of the Code.

PURPOSE

The purpose of this Plan is to provide specified benefits to a select group of management or highly compensated Employees who contribute materially to the continued growth, development and future business success of AvalonBay Communities, Inc. This Plan shall be unfunded for tax purposes and for purposes of Title I of ERISA.

ARTICLE 1 — DEFINITIONS

For the purposes of this Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

1.1 "Annual Bonus" shall mean any compensation, in addition to Base Annual Salary, earned for services performed during the Plan Year by a Participant as an Employee under the Sponsor's annual bonus (cash incentive) plan, but excluding stock options and stock grants.

1.2 "Annual Deferral Amount" shall mean that portion of a Participant's Base Annual Salary and Annual Bonus that a Participant defers in accordance with Article 3 for any one Plan Year. In the event of a Participant's termination of employment prior to the end of a Plan Year, such year's Annual Deferral Amount shall be the actual amount withheld prior to such event.

1.3 "Base Annual Salary" shall mean the annual cash compensation included on the Federal Income Tax Form W-2 for such calendar year, excluding bonuses, commissions, overtime, fringe benefits, stock options, stock grants, relocation expenses, incentive payments, non-monetary awards, and automobile and other allowances paid to a Participant for employment services rendered (whether or not such allowances are included in the Employee's gross income). Base Annual Salary shall be calculated before reduction for compensation voluntarily deferred or contributed by the Participant pursuant to all qualified or non-qualified plans of the Sponsor and shall be calculated to include amounts not otherwise included in the Participant's gross income under Code Sections 125, 132(f), 402(e)(3), or 402(h) pursuant to plans established by the Sponsor; provided, however, that all such amounts will be included in compensation only to the extent that had there been no such plan, the amount would have been payable in cash to the Employee.

1.4 "Beneficiary" shall mean one or more persons, trusts, estates or other entities, designated in accordance with Article 7, that are entitled to receive benefits under this Plan upon the death of a Participant.

1.5 “Beneficiary Designation Form” shall mean the form established from time to time by the Retirement Planning Committee that a Participant completes, signs and returns to the Retirement Planning Committee to designate one or more Beneficiaries.

1.6 “Claimant” shall have the meaning set forth in Section 12.1.

1.7 “Code” shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.

1.8 “Compensation Committee” shall mean the Compensation Committee of the Board of Directors of the Sponsor.

1.9 “Deferral Account” shall mean (i) the sum of all of a Participant’s Annual Deferral Amounts, plus (ii) amounts credited in accordance with all the applicable crediting and debiting provisions of this Plan that relate to the Participant’s Deferral Account, less (iii) all distributions made to the Participant or his or her Beneficiary pursuant to this Plan that relate to his or her Deferral Account. The Deferral Account shall be a bookkeeping entry only and shall be utilized solely as a device for the measurement and determination of the amounts to be paid to a Participant, or his or her Beneficiary, pursuant to this Plan.

1.10 “Election Form” shall mean the form established from time to time by the Retirement Planning Committee that a Participant completes, signs and returns to the Retirement Planning Committee to make an election under the Plan.

1.11 “Employee” shall mean a person who is an employee of the Sponsor or an affiliate of the Sponsor.

1.12 “ERISA” shall mean the Employee Retirement Income Security Act of 1974, as it may be amended from time to time.

1.13 “Non-Qualified Predetermined Annuity Account” shall mean an account maintained pursuant to the terms of the Plan in effect prior to January 1, 2004. Any such account shall continue to be maintained after January 1, 2004 until such account has been distributed to a Participant pursuant to the terms hereof.

1.14 “Participant” shall mean any Employee (i) who is selected to participate in the Plan, (ii) who signs an Election Form, (iii) whose signed Election Form is accepted by the Retirement Planning Committee, and (iv) whose participation in the Plan has not terminated.

1.15 “Plan” shall mean the AvalonBay Communities, Inc. Deferred Compensation Plan, which shall be evidenced by this instrument, as it may be amended from time to time.

1.16 “Plan Year” shall mean a period beginning on January 1 of each calendar year and continuing through December 31 of such calendar year.

1.17 “Retirement,” “Retire(s)” or “Retired” shall mean, with respect to an Employee, Separation from Service with the Sponsor (or any affiliate thereof) for any reason other than death or a leave of absence, following the date on which the sum of the following equals or

exceeds 70 years: (i) the number of the Employee's Years of Service and (ii) the Employee's age upon Separation from Service, provided that the Employee is at least age 50 and has completed at least ten (10) Years of Service.

1.18 "Retirement Planning Committee" shall mean the committee described in Article 10.

1.19 "Separation from Service" or "Separates from Service" shall mean when the Participant and the Sponsor (or any affiliate thereof) reasonably anticipate that no further services would be performed by the Employee for the Sponsor (or any affiliate thereof) after a certain date or that the level of bona fide services the Participant would perform for the Sponsor (or any affiliate thereof) would permanently decrease to no more than 20 percent of the average level of bona fide services performed by the Participant for the Sponsor (or any affiliate thereof) over the immediately preceding 36-month period (or period of employment, if less than 36 months).

1.20 "Sponsor" shall mean AvalonBay Communities, Inc. and any successor to all or substantially all of the Sponsor's assets or business.

1.21 "Trust" shall mean one or more trusts, if any, established by the Sponsor in its sole discretion.

1.22 "Unforeseeable Financial Emergency" shall mean a severe financial hardship to the Participant resulting from an illness or accident of the Participant, the Participant's spouse, the Participant's dependent (as defined in Section 152 of the Code without regard to Sections 152(b)(1), (b)(2) and (d)(1)(B)), loss of the Participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.

1.23 "Years of Service" shall mean the total number of full years in which a Participant has been employed by the Sponsor (or any affiliate thereof). For purposes of this definition, a year of employment shall be a 365 day period (or 366 day period in the case of a leap year) that, for the first year of employment, commences on the Employee's date of hiring and that, for any subsequent year, commences on an anniversary of that hiring date. The Retirement Planning Committee shall make a determination as to whether any partial year of employment shall be counted as a Year of Service.

ARTICLE 2 — SELECTION, ENROLLMENT, ELIGIBILITY

2.1 Selection by Compensation Committee. Participation in the Plan shall be limited to a select group of management and highly compensated Employees of the Sponsor, as determined by the Compensation Committee in its sole discretion.

2.2 Enrollment Requirements. As a condition to participation, each selected Employee shall complete, execute and return to the Company an Election Form and a Beneficiary Designation Form, prior to the end of the Plan Year. In addition, the Retirement Planning Committee shall establish from time to time such other enrollment requirements as it determines in its sole discretion are necessary.

2.3 Eligibility; Commencement of Participation. Provided an Employee selected to participate in the Plan has met all enrollment requirements set forth in this Plan and required by the Retirement Planning Committee, including returning all required documents to the Retirement Planning Committee within the specified time period, that Employee shall commence participation in the Plan on the first day of the Plan Year following the completion of all enrollment requirements. If an Employee fails to meet all such requirements within the period required, in accordance with Section 2.2, that Employee shall not be eligible to participate in the Plan until the first day of the Plan Year following the delivery to and acceptance by the Retirement Planning Committee of the required documents.

2.4 Termination of Participation and/or Deferrals. If the Retirement Planning Committee determines in good faith that a Participant no longer qualifies as a member of a select group of management or highly compensated employees, the Retirement Planning Committee shall have the right, in its sole discretion, to prevent the Participant from making deferral elections in future Plan Years.

ARTICLE 3 — DEFERRAL COMMITMENTS/VESTING/CREDITING/TAXES

3.1 Minimum Deferrals — Annual Deferral Amount. For each Plan Year, a Participant may elect to defer, as his or her Annual Deferral Amount, an aggregate minimum of one percent (1%) of his or her Base Annual Salary. If an election is made for less than stated minimum amounts, or if no election is made, the amount deferred shall be zero.

3.2 Maximum Deferral — Base Annual Salary and Annual Bonus. For each Plan Year, a Participant may elect to defer, as his or her Annual Deferral Amount, Base Annual Salary and Annual Bonus. The maximum percentage for Base Annual Salary shall be ten percent (10%), and the maximum percentage for Annual Bonus shall be twenty-five percent (25%).

3.3 Election to Defer; Effect of Election Form.

(a) First Plan Year. In connection with a Participant's commencement of participation in the Plan, the Participant shall make an irrevocable deferral election for the Plan Year in which the Participant commences participation in the Plan, along with such other elections as the Retirement Planning Committee deems necessary or desirable under the Plan. For these elections to be valid, the Election Form must be completed and signed by the Participant, timely delivered to the Retirement Planning Committee (in accordance with Section 2.2 above) and accepted by the Retirement Planning Committee.

(b) Subsequent Plan Years. For each succeeding Plan Year, an irrevocable deferral election for that Plan Year, and such other elections as the Retirement Planning Committee deems necessary or desirable under the Plan, shall be made by timely delivering to the Retirement Planning Committee, in accordance with its rules and procedures, before the end of the Plan Year preceding the Plan Year for which the election is made, a new Election Form. If no such Election Form is timely delivered for a Plan Year, the previously elected Annual Deferral Amount shall remain in effect; provided, however, that the Retirement Planning Committee may require a Participant to re-enroll in the Plan to continue participating in the Plan

in the subsequent Plan Year. Elections to defer a percentage of Annual Bonus must be made before the end of the Plan Year preceding the Plan Year in which such Annual Bonus is earned.

3.4 Withholding of Annual Deferral Amounts. For each Plan Year, the Base Annual Salary portion of the Annual Deferral Amount shall be withheld from each regularly scheduled Base Annual Salary payroll in equal amounts, as adjusted from time to time for increases and decreases in Base Annual Salary. The Annual Bonus portion of the Annual Deferral Amount shall be withheld at the time the Annual Bonus is or otherwise would be paid to the Participant, whether or not this occurs during the Plan Year itself.

3.5 Vesting. A Participant shall at all times be 100% vested in his or her Deferral Account.

3.6 Crediting/Debiting of Deferral Accounts. In accordance with, and subject to, the rules and procedures that are established from time to time by the Retirement Planning Committee, in its sole discretion, amounts shall be credited or debited to a Participant's Deferral Account balance in accordance with the following rules:

(a) Measurement Funds. The Participant may elect one or more of the measurement funds (the "Measurement Funds"), based on certain mutual funds or other investment indices, for the purpose of crediting or debiting additional amounts to his or her Deferral Account balance. At least once each Plan Year, the Retirement Planning Committee or its delegate shall provide the Participant with a list of Measurement Funds available. As necessary, the Retirement Planning Committee may, in its sole discretion, discontinue, substitute or add a Measurement Fund.

(b) Election of Measurement Funds. A Participant, in connection with his or her initial deferral election in accordance with Section 3.3(a) above, shall elect, on the Election Form, one or more Measurement Fund(s) (as described in Section 3.6(a) above) to be used to determine the amounts to be credited or debited to his or her Deferral Account balance. The Participant may (but is not required to) subsequently elect at any time, in accordance with procedures established by the Retirement Planning Committee from time to time, to add or delete one or more Measurement Fund(s) to be used to determine the amounts to be credited or debited to his or her Deferral Account balance, or to change the portion of his or her Deferral Account balance allocated to each previously or newly elected Measurement Fund.

(c) Proportionate Allocation. In making any election described in Section 3.6(b) above, the Participant shall specify on the Election Form (or such other form of communication acceptable to the Committee), in increments of one percent (1%), the percentage of his or her Deferral Account balance to be allocated to a Measurement Fund (as if the Participant was making an investment in that Measurement Fund with that portion of his or her Deferral Account balance).

(d) Crediting or Debiting Method. The performance of each elected Measurement Fund (either positive or negative) will be based on the performance of the Measurement Funds themselves. A Participant's Deferral Account shall be credited or debited on a daily basis, if possible, based on the performance of each Measurement Fund selected by the

Participant. A Participant's Deferral Account may also be debited by its proportionate share of the Plan's administrative expense.

(e) No Actual Investment. Notwithstanding any other provision of this Plan that may be interpreted to the contrary, the Measurement Funds are to be used for measurement purposes only, and a Participant's election of any such Measurement Fund, the allocation to his or her Deferral Account thereto, the calculation of additional amounts and the crediting or debiting of such amounts to a Participant's Deferral Account shall not be considered or construed in any manner as an actual investment of his or her Deferral Account in any such Measurement Fund. In the event that the Sponsor, in its own discretion, decides to invest in any of the investments on which the Measurement Funds are based, no Participant shall have any rights in or to such investments themselves. Without limiting the foregoing, a Participant's Deferral Account balance shall at all times be a bookkeeping entry only and shall not represent any investment made on his or her behalf by the Sponsor or the Trust; the Participant shall at all times remain an unsecured creditor of the Sponsor.

3.7 FICA and Other Taxes.

(a) Annual Deferral Amounts. For each Plan Year in which an Annual Deferral Amount is being withheld from a Participant, the Sponsor shall withhold from that portion of the Participant's Base Annual Salary and Annual Bonus that is not being deferred, in a manner determined by the Sponsor, the Participant's share of FICA and other employment taxes on such Annual Deferral Amount.

(b) Distributions. The Sponsor, or the trustee of the Trust, shall withhold from any payments made to a Participant under this Plan all federal, state and local income, employment and other taxes required to be withheld by the Sponsor, or the trustee of the Trust, in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Sponsor and the trustee of the Trust.

ARTICLE 4 — DEATH BENEFIT

4.1 Death Benefit. If the Participant dies before he or she Separates from Service, the Participant's Beneficiary shall receive a death benefit equal to the Participant's Deferral Account balance calculated as of the close of business on or around the date the benefit distribution is processed, as determined by the Retirement Planning Committee in its sole discretion.

4.2 Payment of Death Benefit. The death benefit shall be paid to the Participant's Beneficiary in a lump sum payment no later than 90 days after the Participant's death.

ARTICLE 5 — TERMINATION BENEFIT

5.1 Termination Benefit. If a Participant Separates his Service with the Sponsor, the Participant shall receive his or her Deferral Account balance calculated as of the close of business on or around the date the benefit distribution is processed, as determined by the Retirement Planning Committee in its sole discretion.

5.2 Payment of Termination Benefit. The Participant shall receive his or her Deferral Account balance in a lump sum payment in the seventh month following the Participant's Separation from Service. Notwithstanding the foregoing, if a Participant Retires and such Participant has elected prior to November 22, 2008 to receive his or her Deferral Account in annual or monthly installments over a period not exceeding ten (10) years, the Plan shall honor such election if the Deferral Account balance is at least $25,000 and the Participant will be paid on an installment basis rather than in a lump sum. If the Participant dies before completion of the installment payments, the unpaid remaining Deferral Account balance shall be paid to his or her Beneficiary in a lump sum no later than 90 days after the Participant's death.

ARTICLE 6 — SHORT-TERM PAYOUTS

6.1 Short-Term Payouts. From and after January 1, 2004, the Plan shall no longer permit any Participant to elect any short-term payouts during employment.

6.2 Grandfathered Election. To the extent a Participant has previously filed an election to receive his Non-Qualified Predetermined Annuity Account at a specified time, whether in a lump sum or in annual, quarterly or monthly installments over a period not exceeding ten (10) years, the Plan shall continue to honor such elections during the Participant's employment.

6.3 Withdrawal for Unforeseeable Financial Emergencies. If a Participant experiences an Unforeseeable Financial Emergency, the Participant may petition the Retirement Planning Committee to receive a partial or full payout from the Plan. The Committee shall determine if the event meets the criteria to be an Unforeseeable Financial Emergency. If approved, the amount of the withdrawal shall not exceed the lesser of the Participant's Deferral Account balance or the amount reasonably needed to satisfy the Unforeseeable Financial Emergency and income taxes on the withdrawn amount. If, subject to the sole discretion of the Retirement Planning Committee, the petition for a withdrawal is approved, any distribution shall be made within 30 days of the date of approval. The Participant will be eligible to again participate in the Plan effective the Plan Year following the Unforeseeable Financial Emergency. The Retirement Planning Committee may permit a Participant to suspend his or her Annual Deferral Amount in the event of an Unforeseeable Financial Emergency.

ARTICLE 7 — BENEFICIARY DESIGNATION

7.1 Beneficiary. Each Participant shall have the right, at any time, to designate his or her Beneficiary(ies) (both primary as well as contingent) to receive any benefits payable under the Plan to a beneficiary upon the death of a Participant. The Beneficiary designated under this Plan may be the same as or different from the Beneficiary designation under any other plan of the Sponsor in which the Participant participates.

7.2 Beneficiary Designation; Change; Spousal Consent. A Participant shall designate his or her Beneficiary by completing and signing the Beneficiary Designation Form, and returning it to the Retirement Planning Committee or its designated agent. A Participant shall have the right to change a Beneficiary by completing, signing and otherwise complying with the terms of the Beneficiary Designation Form and the Retirement Planning Committee's rules and

procedures, as in effect from time to time. If a married Participant names someone other than his or her spouse as a Beneficiary, a spousal consent, in the form designated by the Retirement Planning Committee, must be signed by that Participant's spouse and returned to the Retirement Planning Committee. Upon the acceptance by the Retirement Planning Committee of a new Beneficiary Designation Form, all Beneficiary designations previously filed shall be canceled. The Retirement Planning Committee shall be entitled to rely on the last Beneficiary Designation Form filed by the Participant and accepted by the Retirement Planning Committee prior to his or her death.

7.3 Acknowledgment. No designation or change in designation of a Beneficiary shall be effective until received by the Retirement Planning Committee or its designated agent.

7.4 No Beneficiary Designation. If a Participant fails to designate a Beneficiary as provided in Sections 7.1, 7.2 and 7.3 above, if all designated Beneficiaries predecease the Participant or die prior to complete distribution of the Participant's benefits, or if a married Participant fails to provide a written spousal consent form, then the Participant's designated Beneficiary shall be deemed to be his or her surviving spouse. If the Participant has no surviving spouse, the benefits remaining under the Plan to be paid to a Beneficiary shall be payable to the executor or personal representative of the Participant's estate.

7.5 Doubt as to Beneficiary. If the Retirement Planning Committee has any doubt as to the proper Beneficiary to receive payments pursuant to this Plan, the Retirement Planning Committee shall have the right, exercisable in its discretion, to cause the Sponsor to withhold such payments until this matter is resolved to the Retirement Planning Committee's satisfaction.

7.6 Discharge of Obligations. The payment of benefits under the Plan to a Beneficiary shall fully and completely discharge the Sponsor and the Retirement Planning Committee from all further obligations under this Plan with respect to the Participant, and that Participant's participation in the Plan shall terminate upon such full payment of benefits.

ARTICLE 8 — LEAVE OF ABSENCE

8.1 Leave of Absence. If a Participant is authorized by the Sponsor for any reason to take an unpaid leave of absence from the employment of the Sponsor, the Participant shall continue to be considered employed by the Sponsor but the Participant shall not be permitted to make deferrals until the Participant returns to work. Upon such return, deferrals shall resume for the remaining portion of the Plan Year in which the return occurs, based on the deferral election, if any, made for that Plan Year. If no election was made for that Plan Year, no deferral shall be withheld.

ARTICLE 9 — TERMINATION, AMENDMENT OR MODIFICATION

9.1 Termination. Although the Sponsor anticipates that it will continue the Plan for an indefinite period of time, there is no guarantee that the Sponsor will continue the Plan or will not terminate the Plan at any time in the future. Accordingly, the Sponsor reserves the right to discontinue its sponsorship of the Plan and/or to terminate the Plan at any time with respect to any or all of its participating Employees. Upon the termination of the Plan with respect to the Sponsor, the affected Participants' participation in the Plan shall terminate effective as of the end

of the Plan Year in which the Plan termination occurs. Distributions shall be made to the Participants in the normal course, but the Sponsor may accelerate the distributions to the extent permitted by Section 409A of the Code and the regulations promulgated thereunder.

9.2 Amendment. The Sponsor may, at any time, amend or modify the Plan in whole or in part; provided, however, that no amendment or modification shall be effective to decrease or restrict the value of a Participant's Deferral Account balance in existence at the time the amendment or modification is made. The amendment or modification of the Plan shall not affect the right of any Participant or Beneficiary who has become entitled to the payment of benefits under the Plan as of the date of the amendment or modification to receive such payment.

9.3 Delegation to Retirement Planning Committee. The Sponsor has delegated its rights to act under Sections 9.1 and 9.2 above to the Retirement Planning Committee and the Retirement Planning Committee shall have the full power to take action under Sections 9.1 and 9.2.

9.4 Effect of Payment. The full payment of the applicable benefit under Articles 4, 5, or 6 of the Plan shall completely discharge all obligations to a Participant and his or her designated Beneficiaries under this Plan and the Participant's participation in the Plan shall terminate.

ARTICLE 10 — ADMINISTRATION

10.1 Retirement Planning Committee Duties. Except as otherwise provided in this Article 10, this Plan shall be administered by the Retirement Planning Committee of the Sponsor. The Retirement Planning Committee shall also have the discretion and authority to (i) make, amend, interpret, and enforce all appropriate rules and regulations for the administration of this Plan and (ii) decide or resolve any and all questions including interpretations of this Plan, as may arise in connection with the Plan. Any individual serving on the Retirement Planning Committee who is a Participant shall not vote or act on any matter relating solely to himself or herself. When making a determination or calculation, the Retirement Planning Committee shall be entitled to rely on information furnished by a Participant or the Sponsor.

10.2 Agents. In the administration of this Plan, the Retirement Planning Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit (including acting through a duly appointed representative) and may from time to time consult with counsel who may be counsel to, and paid by, the Sponsor.

10.3 Binding Effect of Decisions. The decision or action of the Retirement Planning Committee with respect to any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations promulgated hereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

10.4 Exculpation and Indemnity of Retirement Planning Committee. The Sponsor shall indemnify and hold harmless the members of the Retirement Planning Committee and any Employee to whom the duties of the Retirement Planning Committee may be delegated against any and all claims, losses, damages, expenses or liabilities arising from any action or failure to act with respect to this Plan, except in the case of willful misconduct or gross negligence by the

Retirement Planning Committee, any of its members, or any such Employee. By electing to enroll in the Plan, each Participant shall acknowledge that except in the case of claims for benefits, he or she shall have no right to file any claim against the Retirement Planning Committee or the Sponsor unless such claim is attributed to the willful misconduct or gross negligence of the Retirement Planning Committee, any of its members, or any Employee of the Sponsor.

10.5 Sponsor Information. To enable the Retirement Planning Committee to perform its functions, the Sponsor shall supply full and timely information to the Retirement Planning Committee, as the case may be, on all matters relating to the compensation of its Participants, the date and circumstances of the death or Separation from Service of its Participants, and such other pertinent information as the Retirement Planning Committee may reasonably require.

ARTICLE 11 — OTHER BENEFITS AND AGREEMENTS

11.1 Coordination with Other Benefits. The benefits provided for a Participant and Participant's Beneficiary under the Plan are in addition to any other benefits available to such Participant under any other plan or program for employees of the Sponsor. The Plan shall supplement and shall not supersede, modify or amend any other such plan or program except as may otherwise be expressly provided.

ARTICLE 12 — CLAIMS PROCEDURES

12.1 Presentation of Claim. Any Participant or Beneficiary of a deceased Participant (such Participant or Beneficiary being referred to below as a "Claimant") may deliver to the Retirement Planning Committee a written claim for a determination with respect to the amounts distributable to such Claimant from the Plan. If such a claim relates to the contents of a notice received by the Claimant, the claim must be made within 60 days after such notice was received by the Claimant. All other claims must be made within 180 days of the date on which the event that caused the claim to arise occurred. The claim must state with particularity the determination desired by the Claimant.

12.2 Notification of Decision. The Retirement Planning Committee shall consider a Claimant's claim within a reasonable time, and shall notify the Claimant in writing:

(a) that the Claimant's requested determination has been made, and that the claim has been allowed in full; or

(b) that the Retirement Planning Committee has reached a conclusion contrary, in whole or in part, to the Claimant's requested determination, and such notice must set forth in a manner calculated to be understood by the Claimant:

(i) the specific reason(s) for the denial of the claim, or any part of it;

(ii) specific reference(s) to pertinent provisions of the Plan upon which such denial was based;

(iii) a description of any additional material or information necessary for the Claimant to perfect the claim, and an explanation of why such material or information is necessary;

(iv) an explanation of the claim review procedure set forth in Section 13.3 below; and

(v) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA if the claim is appealed to the Retirement Planning Committee and the Retirement Planning Committee fully or partially denies the claim.

12.3 Review of a Denied Claim. Within 60 days after receiving a notice from the Retirement Planning Committee that a claim has been denied, in whole or in part, a Claimant (or the Claimant's duly authorized representative) may file with the Retirement Planning Committee a written request for a review of the denial of the claim. Thereafter, but not later than 30 days after the review procedure began, the Claimant (or the Claimant's duly authorized representative):

(a) may review pertinent documents;

(b) may submit written comments or other documents; and/or

(c) may request a hearing, which the Retirement Planning Committee, in its sole discretion, may grant.

12.4 Decision on Review. The Retirement Planning Committee shall render its decision on review promptly, and not later than 60 days after the filing of a written request for review of the denial, unless a hearing is held or other special circumstances require additional time, in which case the Retirement Planning Committee's decision must be rendered within 120 days after such date. Such decision must be written in a manner calculated to be understood by the Claimant, and it must contain:

(a) specific reasons for the decision;

(b) specific reference(s) to the pertinent Plan provisions upon which the decision was based;

(c) a statement of the Claimant's right to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the Claimant's claim for benefits; and

(d) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA.

12.5 Legal Action. A Claimant's compliance with the foregoing provisions of this Article 12 is a mandatory prerequisite to a Claimant's right to commence any legal action with respect to any claim for benefits under this Plan.

ARTICLE 13 — TRUST

13.1 Establishment of the Trust. In order to provide assets from which to fulfill the obligations of the Participants and their beneficiaries under the Plan, the Sponsor may, but shall not be required to, establish a Trust by a trust agreement with a third party, the trustee, to which the Sponsor may, in its discretion, contribute cash or other property, including securities issued by the Sponsor, to provide for the benefit payments under the Plan.

13.2 Interrelationship of the Plan and the Trust. The provisions of the Plan shall govern the rights of a Participant to receive distributions pursuant to the Plan. The provisions of the Trust shall govern the rights of the Sponsor, Participants and the creditors of the Sponsor to the assets transferred to the Trust. The Sponsor shall at all times remain liable to carry out its obligations under the Plan, subject to any limitation imposed by bankruptcy laws.

13.3 Distributions From the Trust. The Sponsor's obligations under the Plan may be satisfied with Trust assets distributed pursuant to the terms of the Trust, and any such distribution shall reduce the Sponsor's obligations under this Plan.

ARTICLE 14 — MISCELLANEOUS

14.1 Status of Plan. The Plan is intended to be a plan that is not qualified within the meaning of Code Section 401(a) and that "is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees" within the meaning of ERISA Sections 201(2), 301(a)(3) and 401(a)(1). The Plan is also intended to comply with the requirements of Section 409A of the Code. The Plan shall be administered and interpreted to the extent possible in a manner consistent with that intent.

14.2 Unsecured General Creditor. Participants and their Beneficiaries, heirs, successors and assigns shall have no legal or equitable rights, interests or claims in any property or assets of the Sponsor. For purposes of the payment of benefits under this Plan, any and all of the Sponsor's assets shall be, and remain, the general, unpledged unrestricted assets of the Sponsor. The Sponsor's obligation under the Plan shall be merely that of an unfunded and unsecured promise to pay money in the future.

14.3 Sponsor's Liability. The Sponsor's liability for the payment of benefits shall be defined only by the Plan. The Sponsor shall have no obligation to a Participant under the Plan except as expressly provided in the Plan.

14.4 Nonassignability. Neither a Participant nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise encumber, transfer, hypothecate, alienate or convey in advance of actual receipt, the amounts, if any, payable hereunder, or any part thereof, which are, and all rights to which are expressly declared to be, unassignable and non-transferable. No part of the amounts payable shall, prior to actual payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, separate maintenance owed by a Participant or any other person, be transferable by operation of law in the event of a Participant's or any other person's bankruptcy

or insolvency. Notwithstanding the foregoing, assets can be assigned to an individual other than a Participant to the extent necessary to fulfill a domestic relations order.

14.5 Not a Contract of Employment. The terms and conditions of this Plan shall not be deemed to constitute a contract of employment between the Sponsor and the Participant. Such employment is hereby acknowledged to be an "at will" employment relationship that can be terminated at any time for any reason, or no reason, with or without cause, and with or without notice, unless expressly provided in a written employment agreement. Nothing in this Plan shall be deemed to give a Participant the right to be retained in the service of the Sponsor, as an Employee, or to interfere with the right of the Sponsor to discipline or discharge the Participant at any time.

14.6 Furnishing Information. A Participant or his or her Beneficiary will cooperate with the Retirement Planning Committee by furnishing any and all information requested by the Retirement Planning Committee and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder.

14.7 Terms. Whenever any words are used herein in the masculine, they shall be construed as though they were in the feminine in all cases where they would so apply; and whenever any words are used herein in the singular or in the plural, they shall be construed as though they were used in the plural or the singular, as the case may be, in all cases where they would so apply.

14.8 Captions. The captions of the articles, sections and paragraphs of this Plan are for convenience only and shall not control or affect the meaning or construction of any of its provisions.

14.9 Governing Law. Subject to ERISA, the provisions of this Plan shall be construed and interpreted according to the internal laws of the State of Maryland without regard to its conflicts of laws principles.

14.10 Notice. Any notice or filing required or permitted to be given to the Retirement Planning Committee under this Plan shall be sufficient if in writing and hand-delivered, or sent by registered or certified mail, to the address below:

AvalonBay Communities Retirement Planning Committee
c/o AvalonBay Communities, Inc.
2900 Eisenhower Avenue, Third Floor
Alexandria, VA 22314
Attention: Senior Director, Human Resources

Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing and hand-delivered, or sent by mail, to the last known address of the Participant.

14.11 Successors. The provisions of this Plan shall bind and inure to the benefit of the Sponsor and its successors and assigns and the Participant and the Participant's designated Beneficiaries.

14.12 Spouse's Interest. The interest in the benefits hereunder of a spouse of a Participant who has predeceased the Participant shall automatically pass to the Participant and shall not be transferable by such spouse in any manner, including but not limited to such spouse's will, nor shall such interest pass under the laws of intestate succession.

14.13 Validity. In case any provision of this Plan shall be illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts hereof, but this Plan shall be construed and enforced as if such illegal or invalid provision had never been inserted herein.

14.14 Incompetent. If the Retirement Planning Committee determines in its discretion that a benefit under this Plan is to be paid to a minor, a person declared incompetent or to a person incapable of handling the disposition of that person's property, the Retirement Planning Committee may direct payment of such benefit to the guardian, legal representative or person having the care and custody of such minor, incompetent or incapable person. The Retirement Planning Committee may require proof of minority, incompetence, incapacity or guardianship, as it may deem appropriate prior to distribution of the benefit. Any payment of a benefit shall be a payment for the account of the Participant and the Participant's Beneficiary, as the case may be, and shall be a complete discharge of any liability under the Plan for such payment amount.

14.15 Court Order. The Retirement Planning Committee is authorized to make any payments directed by court order in any action in which the Plan or the Retirement Planning Committee has been named as a party. In addition, if a court determines that a spouse or former spouse of a Participant has an interest in the Participant's benefits under the Plan in connection with a property settlement or otherwise, the Retirement Planning Committee shall have the right, notwithstanding any election made by a Participant, to distribute the spouse's or former spouse's interest in the Participant's benefits under the Plan to that spouse or former spouse pursuant to the terms of the domestic relations order.

14.16 Distribution in the Event of Taxation.

If, for any reason, all or any portion of a Participant's benefits under this Plan becomes taxable to the Participant prior to receipt on account of failure to meet the requirements of Section 409A of the Code, the Participant may petition the Retirement Planning Committee for a distribution of that portion of his or her benefit that has become taxable. Upon the grant of such a petition, which grant shall not be unreasonably withheld, the Sponsor shall distribute to the Participant immediately available funds in an amount equal to the taxable portion of his or her benefit (which amount shall not exceed a Participant's unpaid Deferral Account balance under the Plan). If the petition is granted, the tax liability distribution shall be made within 90 days of the date when the Participant's petition is granted.

IN WITNESS WHEREOF, the Sponsor has caused this amended and restated Plan document to be duly executed by a duly authorized officer this 18th day of November, 2008.

AVALONBAY COMMUNITIES, INC.

By: /s/ Edward M. Schulman
Title: SVP, General Counsel & Secretary

Exhibit 12.1

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

	Year Ended December 31, 2008	Year Ended December 31, 2007 (1)	Year Ended December 31, 2006 (1)	Year Ended December 31, 2005 (1)	Year Ended December 31, 2004 (1)
Income from continuing operations before gain on sale of communities and cumulative effect of change in accounting principle	$ 114,378	$ 231,184	$ 148,942	$ 84,802	$ 45,969
(Plus):					
Minority interest in consolidated partnerships	(741)	1,585	573	1,481	150
Amortization of capitalized interest (2)	12,428	9,941	7,503	5,957	5,114
Earnings before fixed charges	$ 126,065	$ 242,710	$ 157,018	$ 92,240	$ 51,233
(Plus) Fixed charges:					
Portion of rents representative of the interest factor	$ 855	$ 722	$ 518	$ 354	$ 323
Interest expense	114,878	94,540	106,271	122,787	127,123
Interest capitalized	74,621	73,118	46,388	25,284	20,566
Preferred dividend	10,454	8,700	8,700	8,700	8,700
Total fixed charges (3)	$ 200,808	$ 177,080	$ 161,877	$ 157,125	$ 156,712
(Less):					
Interest capitalized	74,621	73,118	46,388	25,284	20,566
Preferred dividend	10,454	8,700	8,700	8,700	8,700
Earnings (4)	$ 241,798	$ 337,972	$ 263,807	$ 215,381	$ 178,679
Ratio (4 divided by 3)	1.20	1.91	1.63	1.37	1.14

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO FIXED CHARGES

	Year Ended December 31, 2008	Year Ended December 31, 2007 (1)	Year Ended December 31, 2006 (1)	Year Ended December 31, 2005 (1)	Year Ended December 31, 2004 (1)
Income from continuing operations before gain on sale of communities and cumulative effect of change in accounting principle	$ 114,378	$ 231,184	$ 148,942	$ 84,802	$ 45,969
(Plus):					
Minority interest in consolidated partnerships	(741)	1,585	573	1,481	150
Amortization of capitalized interest (2)	12,428	9,941	7,503	5,957	5,114
Earnings before fixed charges	$ 126,065	$ 242,710	$ 157,018	$ 92,240	$ 51,233
(Plus) Fixed charges:					
Portion of rents representative of the interest factor	$ 855	$ 722	$ 518	$ 354	$ 323
Interest expense	114,878	94,540	106,271	122,787	127,123
Interest capitalized	74,621	73,118	46,388	25,284	20,566
Total fixed charges (3)	$ 190,354	$ 168,380	$ 153,177	$ 148,425	$ 148,012
(Less):					
Interest capitalized	74,621	73,118	46,388	25,284	20,566
Earnings (4)	$ 241,798	$ 337,972	$ 263,807	$ 215,381	$ 178,679
Ratio (4 divided by 3)	1.27	2.01	1.72	1.45	1.21

(1) The results of operations for 2004 through 2007 have been adjusted to reflect discontinued operations for properties sold or held for sale as of December 31, 2008.

(2) Represents an estimate of capitalized interest costs based on the Company's established depreciation policy and an analysis of interest costs capitalized since 1998 (the year in which AvalonBay was formed).

Exhibit 21.1

SUBSIDIARY LIST (BY JURISDICTION)

California

Bay Rincon, LP
Foxchase Drive San Jose Partners II, L.P.
San Francisco Bay Partners II, Ltd.
San Francisco Bay Partners III, L.P.

Connecticut

Bronxville West, LLC
Forestbroad LLC
Smithtown Galleria Associates Limited Partnership
Town Close Associates Limited Partnership

Delaware

4600 Eisenhower Avenue, LLC
AIV I, LLC
AMP Apartments, LLC
AMP Apartments Subtenant, LLC
AMV I, LLC
AMV II, LLC
AMV III, LLC
AMV IV, LLC
Aria at Hathorne Hill, LLC
Aria at Laurel Hill, LLC
Arlington Square Financing, LLC
Avalon 57, LLC
Avalon Ballard, LLC
Avalon California Value I, LLC
Avalon California Value II, LLC
Avalon California Value III, LLC
Avalon California Value IV, LLC
Avalon California Value V, LLC
Avalon California Value VI, LLC
Avalon California Value VII, LLC
Avalon California Value VIII, LLC
Avalon Clark and Polk, LLC
Avalon Del Rey Apartments, LLC
Avalon DownREIT V, L.P.
Avalon Gold, LLC
Avalon Grosvenor, L.P.
Avalon Illinois Value I, LLC
Avalon Illinois Value II, LLC
Avalon Illinois Value III, LLC
Avalon Lowlands, LLC
Avalon Madison Racine, LLC
Avalon Maryland Value I, LLC
Avalon Maryland Value II, LLC
Avalon Maryland Value III, LLC
Avalon Massachusetts Value I, LLC
Avalon Massachusetts Value II, LLC
Avalon New Jersey Urban Renewal Entity I, LLC
Avalon New Jersey Value II, LLC
Avalon New Rochelle II, LLC
Avalon New York Value I, LLC
Avalon Oyster, LLC

Avalon Park Tower, LLC
Avalon Riverview I, LLC
Avalon Riverview North, LLC
Avalon Run, LLC
Avalon Sharon FS, LLC
Avalon Shipyard, LLC
Avalon Towers Bellevue, LLC
Avalon Upper Falls Limited Partnership
Avalon Upper Falls, LLC
Avalon Washington Value Ravenswood, LLC
Avalon West Chelsea, LLC
Avalon WFS, LLC
Avalon Willoughby West, LLC
Avalon WP I, LLC
Avalon WP II, LLC
Avalon WP III, LLC
Avalon WP IV, LLC
Avalon WP V, LLC
Avalon WP VI, LLC
AvalonBay Capital Management II, LLC
AvalonBay Fund II Subsidiary GP, LLC
AvalonBay Redevelopment LLC
AvalonBay Trade Zone Village, LLC
AvalonBay VAF Acquisition, LLC
AvalonBay VAF II Acquisition, LLC
AvalonBay Value Added Fund, L.P.
AvalonBay Value Added Fund II, L.P.
AvalonBay Value Added Fund II Feeder, L.P.
AvalonBay Value Added REIT II, L.P.
Bay Countrybrook L.P.
Bay Pacific Northwest, L.P.
Bowery Place I Low-Income Operator, LLC
Bowery Place I Manager, LLC
Cameron Court Financing, LLC
Centerpoint Master Tenant LLC
Chrystie Venture Partners, LLC
Coto De Caza, LLC
Crescent Financing, LLC
CVP I, LLC
CVP II, LLC
CVP III, LLC
Darien Financing, LLC
Downtown Manhattan Residential LLC
East 1st Street G, LLC
ER Cedar, L.L.C.
Extra Place 4, LLC
Garden City Duplex, LLC
Garden City SF, LLC
Glen Cove Development LLC
Glen Cove II Development LLC
Hathorne FS Holdings, LLC
Jones Road Residential, LLC
Laurel Hill Private Sewer Treatment Facility, LLC
MVP I, LLC
Norwalk Retail, LLC
Oak Road Office, LLC
PHVP I, LP
PHVP I GP, LLC
Pleasant Hill Manager, LLC

Pleasant Hill Transit Village Associates LLC
Roselle Park VP, LLC
Silicon Valley Financing, LLC
Tysons West, LLC
WLBVP, LLC

District of Columbia

4100 Massachusetts Avenue Associates, L.P.

Maryland

Avalon at Chestnut Hill, Inc.
Avalon at Great Meadow, Inc.
Avalon at St. Clare, Inc.
Avalon 4100 Massachusetts Avenue, Inc.
Avalon Acton, Inc.
Avalon BFG, Inc.
Avalon Blue Hills, Inc.
Avalon Chase Glen, Inc.
Avalon Chase Grove, Inc.
Avalon Cohasset, Inc.
Avalon Collateral, Inc.
Avalon Commons, Inc.
Avalon Decoverly, Inc.
Avalon DownREIT V, Inc.
Avalon Fairway Hills I Associates
Avalon Fairway Hills II Associates
Avalon Fairway II, Inc.
Avalon Grosvenor LLC
Avalon Hingham PM, Inc.
Avalon Mills, Inc.
Avalon Oaks, Inc.
Avalon Oaks West, Inc.
Avalon Promenade, Inc.
Avalon Rock Spring Associates, LLC
Avalon Sharon, Inc.
Avalon Town Green II, Inc.
Avalon Upper Falls Limited Dividend Corporation
Avalon Village North, Inc.
Avalon Village South, Inc.
AvalonBay Arna Valley, Inc.
AvalonBay Capital Management, Inc.
AvalonBay Construction Services, Inc.
AvalonBay Grosvenor, Inc.
AvalonBay Ledges, Inc.
AvalonBay NYC Development, Inc.
AvalonBay Orchards, Inc.
AvalonBay Parking, Inc.
AvalonBay Shrewsbury, Inc.
AvalonBay Value Added Fund, Inc.
AVB Development Transactions, Inc.
AVB Northborough, Inc.
AVB Pleasant Hill TRS, Inc.
AVB Service Provider, Inc.
AVB West Long Branch, Inc.
Bay Asset Group, Inc.
Bay Development Partners, Inc.
Bay GP, Inc.
Bay Waterford, Inc.

Centerpoint Tower LLC
Centerpoint Garage LLC
Centerpoint Eutaw/Howard Holdings LLC
Centerpoint Development II LLC
Centerpoint Howard LLC
Centerpoint Eutaw LLC
Centerpoint Tower/Garage Holdings LLC
Georgia Avenue, Inc.
JP Construction in Milford, Inc.
Juanita Construction, Inc.
Lexington Ridge-Avalon, Inc.
Shady Grove Road Property, LLC

Massachusetts

AvalonBay BFG Limited Partnership
Hingham Shipyard East Property Owners Association, Inc.

New Jersey

Quakerbridge Road Development, LLC
Town Cove Jersey City Urban Renewal, Inc.
Town Run Associates

Virginia

Arna Valley View Limited Partnership
Avalon Decoverly Associates Limited Partnership

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the following Registration Statements of AvalonBay Communities, Inc. and in the related Prospectus of our reports dated February 25, 2009, with respect to the consolidated financial statements and schedule of AvalonBay Communities, Inc. and the effectiveness of internal control over financial reporting of AvalonBay Communities, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2008.

Form S-3	Form S-8
No. 333-87063	No. 333-16837
No. 333-15407	No. 333-115290
No. 333-107413	No. 333-150742
No. 333-139839	

/s/ Ernst & Young LLP

Mclean, Virginia
February 25, 2009

Exhibit 31.1

CERTIFICATION

I, Bryce Blair, certify that:

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

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a — 15(e) and 15d — 15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a — 15(f) and 15d — 15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2009

/s/ Bryce Blair
Bryce Blair
Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Thomas J. Sargeant, certify that:

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

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a — 15(e) and 15d — 15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a — 15(f) and 15d — 15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's Board of Directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 25, 2009

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

Exhibit 32

CERTIFICATION

The undersigned officers of AvalonBay Communities, Inc. (the "Company") hereby certify that the Company's annual report on Form 10-K to which this certification is attached (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 25, 2009

/s/ Bryce Blair
Bryce Blair
Chief Executive Officer

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

This certification is being furnished and not filed, and shall not be incorporated into any document for any purpose, under the Securities Exchange Act of 1934 or the Securities Act of 1933.