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

FORM 10-Q

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

For the quarterly period ended June 30, 1998

Commission File Number 1-12672

AVALON BAY COMMUNITIES, INC.
(Exact name of Registrant as specified in its Charter)

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

2900 Eisenhower Avenue, Third Floor, Alexandria, Virginia 22314
(Address of principal executive offices, including zip code)
(703) 329-6300
(Registrant's telephone number, including area code)

Bay Apartment Communities, Inc.
4340 Stevens Creek Boulevard, #275, San Jose, California 95129
(Former name, former address and former fiscal year,
if changed since last report)

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

Yes [X] No

APPLICABLE ONLY TO CORPORATE ISSUERS

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

63,574,010 shares outstanding as of August 3, 1998

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PART I - FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

AVALON BAY COMMUNITIES, INC.
 CONSOLIDATED BALANCE SHEETS
 (Dollars in thousands, except share data)

<TABLE>
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	6-30-98 (unaudited)	12-31-97
	----- <C>	----- <C>
A S S E T S		
Real estate:		
Land	\$ 714,072	\$ 299,885
Buildings and improvements	2,597,889	839,638
Furniture, fixtures and equipment	115,195	63,631
	-----	-----
Less accumulated depreciation	3,427,156 (103,261)	1,203,154 (79,031)
	-----	-----
Net operating real estate	3,323,895	1,124,123
Construction in progress (including land)	332,072	170,361
	-----	-----
Total real estate, net	3,655,967	1,294,484
Cash and cash equivalents	15,060	3,188
Cash in escrow	6,692	1,597
Resident security deposits	9,475	--
Investments in unconsolidated joint ventures	17,206	--
Deferred financing costs, net	9,097	8,174
Deferred development costs	10,311	--
Prepaid expenses and other assets	41,377	10,207
	-----	-----
TOTAL ASSETS	\$ 3,765,185	\$ 1,317,650
	=====	=====

L I A B I L I T I E S A N D S T O C K H O L D E R S ' E Q U I T Y

Variable rate unsecured credit facility	\$ 374,000	\$ 224,200
Unsecured senior notes	460,000	--
Notes payable	497,059	263,284
Dividends payable	40,978	12,591
Payables for construction	32,848	3,853
Accrued expenses and other liabilities	43,674	5,598
Accrued interest payable	12,575	84
Resident security deposits	18,746	6,212
	-----	-----
TOTAL LIABILITIES	1,479,880	515,822
	-----	-----

Minority interest of unitholders in consolidated operating partnerships 32,323 9,133

Stockholders' equity:

Preferred stock, \$.01 par value; 50,000,000 shares authorized; 0 and 2,308,800 shares of Series A outstanding at June 30, 1998 and December 31, 1997, respectively; 0 and 405,022 shares of Series B outstanding at June 30, 1998 and December 31, 1997, respectively; 2,300,000 shares of Series C outstanding at both June 30, 1998 and December 31, 1997; 3,267,700 shares of Series D outstanding at both June 30, 1998 and December 31, 1997; 4,455,000 and 0 shares of Series F outstanding at June

30, 1998 and December 31, 1997, respectively; and 4,300,000 and 0 shares of Series G outstanding at June 30, 1998 and December 31, 1997, respectively	143	83
Common stock, \$.01 par value; 300,000,000 shares authorized; 63,567,985 and 26,077,518 shares outstanding at June 30, 1998 and December 31, 1997, respectively	636	261
Additional paid-in capital	2,317,749	823,520
Deferred compensation	(6,221)	--
Dividends in excess of accumulated earnings	(59,325)	(31,169)
TOTAL STOCKHOLDERS' EQUITY	<u>2,252,982</u>	<u>792,695</u>
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	<u>\$ 3,765,185</u>	<u>\$ 1,317,650</u>

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

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AVALON BAY COMMUNITIES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(Dollars in thousands, except share data)

	For the three months ended		For the six months ended	
	6-30-98	6-30-97	6-30-98	6-30-97
<S>	<C>	<C>	<C>	<C>
Revenue:				
Rental income	\$ 70,399	\$ 30,152	\$ 116,101	\$
56,641				
Management fees	115	--	115	
Other income	10	9	14	
13				
Total revenue	70,524	30,161	116,230	
56,654				
Expenses:				
Operating expenses	19,220	7,797	30,705	
14,692				
Property taxes	5,635	2,247	9,394	
4,157				
Interest expense	11,152	3,800	17,363	
7,117				
Depreciation and amortization	14,597	6,426	24,503	
12,125				
General and administrative expenses	1,778	921	2,946	
1,669				
Provision for unrecoverable deferred development costs	250	450	400	
530				
Total expenses	52,632	21,641	85,311	
40,290				
Equity in income of unconsolidated joint ventures	238	--	238	
Interest income	362	45	468	
111				
Minority interest	(250)	(86)	(404)	
(224)				
Net income	18,242	8,479	31,221	
16,251				

Dividends attributable to preferred stock (2,441)	(4,494)	(1,295)	(8,523)	
=====	=====	=====	=====	
Net income available to common stockholders 13,810	\$ 13,748	\$ 7,184	\$ 22,698	\$
=====	=====	=====	=====	
Per common share:				
Net income - basic 0.65	\$ 0.35	\$ 0.33	\$ 0.68	\$
=====	=====	=====	=====	
Net income - diluted 0.65	\$ 0.34	\$ 0.33	\$ 0.66	\$
=====	=====	=====	=====	

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

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AVALON BAY COMMUNITIES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(Dollars in thousands, except share data)

<TABLE>
<CAPTION>

	For the six months ended	
	6-30-98	6-30-97
	-----	-----
	<C>	<C>
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income	\$ 31,221	\$ 16,251
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation and amortization	24,503	12,125
Equity in income of unconsolidated joint ventures	75	--
Income allocated to minority interest	404	224
Decrease in cash in escrow, net	(988)	(307)
Increase (decrease) in prepaid expenses and other assets	7,149	(2,974)
Increase in accrued expenses, other liabilities and accrued interest payable	10,716	2,686
	-----	-----
Total adjustments	41,859	11,754
	-----	-----
Net cash provided by operating activities	73,080	28,005
	-----	-----
CASH FLOWS USED IN INVESTING ACTIVITIES:		
Investments in unconsolidated joint ventures	104	--
Increase in construction payables	14,833	246
Purchase and development of real estate	(288,113)	(163,847)
	-----	-----
Net cash used in investing activities	(273,176)	(163,601)
	-----	-----
CASH FLOWS FROM FINANCING ACTIVITIES:		
Issuance of common stock, net	55,151	163,921
Dividends paid	(30,990)	(18,479)
Proceeds from sale of unsecured senior notes	150,000	--
Payment of deferred financing costs	(1,484)	--
Repayments of notes payable	(1,035)	(370)
Borrowings under unsecured facilities	281,126	151,500
Repayments of unsecured facilities	(240,326)	(159,700)
Distribution to minority partners	(474)	(350)
	-----	-----
Net cash provided by financing activities	211,968	136,522
	-----	-----
Net increase in cash	11,872	926
Cash and cash equivalents, beginning of period	3,188	920
	-----	-----

Cash and cash equivalents, end of period	\$ 15,060	\$ 1,846
	=====	=====
Cash paid during period for interest, net of amount capitalized	\$ 10,218	\$ 6,678
	=====	=====

</TABLE>

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AVALON BAY COMMUNITIES, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(CONTINUED)

Supplemental disclosures of non-cash investing and financing activities:

In connection with the merger of Avalon Properties, Inc. with and into the Company (the "Merger") in June 1998, the Company issued Common and Preferred Shares valued at \$1,433,513 in exchange for the net real estate assets of Avalon Properties, Inc. The Company also assumed \$643,410 in debt, \$6,221 in deferred compensation expense, \$25,866 in net other assets, \$1,013 in cash and cash equivalents and minority interest of \$19,409.

The Company assumed debt in connection with acquisitions totaling \$10,400 and \$12,870 during the six months ended June 30, 1998 and 1997, respectively. The Company issued \$3,851 in operating partnership units for acquisitions during 1998.

During the six months ended June 30, 1998, 2,308,800 shares of Series A Preferred Stock and 405,022 shares of Series B Preferred Stock totaling \$28 were converted into an aggregate of 2,713,822 shares of common stock.

Dividends declared but not paid as of June 30, 1998 and 1997 totaled \$40,978 and \$10,428, respectively.

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

1. Organization and Significant Accounting Policies:

Organization and Recent Developments

Avalon Bay Communities, Inc. (in conjunction with its wholly-owned partnerships and subsidiaries referred to as the "Company"), is a real estate investment trust ("REIT") that is focused exclusively on the ownership of institutional-quality apartment communities in high barrier-to-entry markets of the United States. These markets include Northern and Southern California and selected states in the Mid-Atlantic, Northeast, Midwest and Pacific Northwest regions of the country. The Company is the surviving corporation from the merger (the "Merger") of Avalon Properties, Inc. ("Avalon") with and into the Company (sometimes hereinafter referred to as "Bay" before the Merger) on June 4, 1998. The Merger was accounted for as a purchase of Avalon by Bay. Concurrently with the Merger, the Company changed its name from Bay Apartment Communities, Inc. to Avalon Bay Communities, Inc.

At June 30, 1998, the Company owned or held an ownership interest in 130 stabilized apartment communities containing 37,768 apartment homes in sixteen states and the District of Columbia. The Company also owned 15 communities with 4,332 apartment homes under construction and rights to develop an additional 23 communities that will contain an estimated 6,707 apartment homes. Of the stabilized apartment communities, there were 12 communities containing 3,954 apartment homes under reconstruction.

During the second quarter of 1998, Avalon, Bay or the Company purchased four communities with a total of 1,362 apartment homes for a total purchase price of approximately \$107,200. One community is located in the Minneapolis area, one community is located in the St. Louis area and two communities are located in the Seattle metropolitan area. The community acquired in the St. Louis area and one of the communities acquired in the Seattle metropolitan area were purchased pursuant to presale agreements. Also, the Company has acquired a parcel of land on which the Company intends to begin development, by the end of 1999 of a 288

apartment home community located in California. The total budgeted construction cost for this community is approximately \$53,800.

The interim unaudited financial statements have been prepared in accordance with generally accepted accounting principles ("GAAP") for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements required by GAAP have been condensed or omitted pursuant to such rules and regulations. These unaudited financial statements should be read in conjunction with the financial statements and notes included in the Company's and Avalon's Annual Report on Form 10-K for the year ended December 31, 1997. The results of operations for the three and six months ended June 30, 1998 are not necessarily indicative of the operating results for the full year. Management believes that the disclosures are adequate to make the information presented not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods have been included.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned partnerships and subsidiaries and the operating partnerships structured as DownREITs. All significant intercompany balances and transactions have been eliminated in consolidation.

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Real Estate

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

The capitalization of costs during the development and construction of assets (including interest and related loan fees, property taxes and other direct and indirect costs) begins when active development commences and ends when the asset is delivered and a final certificate of occupancy is issued. Cost capitalization during redevelopment and reconstruction of assets (including interest and related loan fees, property taxes and other direct and indirect costs) begins when an apartment home is taken out-of-service for reconstruction and ends when the apartment home reconstruction is completed and the apartment home is placed-in-service. The accompanying consolidated financial statements include a charge to expense for unrecoverable deferred development costs related to pre-development communities that may not proceed to development.

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

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

Income Taxes

The Company elected to be taxed as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"), 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, if certain conditions are met (including but not limited to the payment of a minimum level of dividends to shareholders), the payment of federal and state income taxes at the corporate level is avoided or reduced. Management estimates that all such conditions for the avoidance of taxes have been met for the periods presented. Accordingly, no provision for federal and state income taxes has been made.

Deferred Financing Costs

Deferred financing costs include fees and costs incurred to obtain debt financings and are amortized on a straight-line basis over the shorter of the term of the loan or the related credit enhancement facility, if applicable. Unamortized financing costs are written-off when debt is retired before the maturity date.

Cash and Cash Equivalents

Cash and cash equivalents include all cash and liquid investments with an

original maturity of three months or less from the date acquired. The majority of the Company's cash, cash equivalents, and cash in escrows is held at major commercial banks.

Earnings per Common Share

The Company has adopted Statement of Financial Accounting Standards ("SFAS") No. 128, "Earnings per Share". In accordance with the provisions of SFAS No. 128, basic earnings per share for the three and six months ended June 30, 1998 and 1997 is computed by dividing earnings available to common shares (net income less preferred stock dividends) by the weighted average number of shares outstanding during the period. Additionally, other potentially dilutive common shares are considered when calculating earnings per

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share on a diluted basis. The Company's basic and diluted weighted average shares outstanding for three and six months ended June 30, 1998 and 1997 are as follows:

<TABLE>
<CAPTION>

	Three months ended		Six months ended	
	6-30-98	6-30-97	6-30-98	6-30-97
<S>	<C>	<C>	<C>	<C>
Weighted average common shares outstanding - basic	39,628,200	21,824,601	34,190,165	20,916,499
Shares issuable from assumed conversion of:				
Preferred stock	--	2,713,822	--	2,713,822
Common stock options	474,666	295,378	496,961	294,542
Unvested restricted stock grants	243,117	--	243,117	--
Weighted average common shares outstanding - diluted	40,345,983	24,833,801	34,930,243	23,924,863

</TABLE>

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that 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 with current year presentations.

Newly Issued Accounting Standards

In June 1997, the Financial Accounting Standards Board issued SFAS No. 130 "Reporting Comprehensive Income" and No. 131 "Disclosure of Segment Information." SFAS No. 130 establishes the disclosure requirements for reporting comprehensive income in an entity's annual and interim financial statements and becomes effective for the Company for the fiscal year ending December 31, 1998. Comprehensive income includes unrealized gains and losses on securities currently reported by the Company as a component of stockholders' equity which the Company would be required to include in a financial statement and display the accumulated balance of other comprehensive income separately in the equity section of the consolidated balance sheet. At June 30, 1998 this pronouncement has no material effect on the Company's results of operations.

SFAS No. 131 establishes standards for determining an entity's operating segments and the type and level of financial information to be disclosed. SFAS No. 131 becomes effective for the Company for the fiscal year ending December 31, 1998. The Company does not believe this pronouncement will have a significant impact on the Company's consolidated financial statements.

In March 1998, the Emerging Issues Task Force of the Financial Accounting Standards Board issued Ruling 97-11 entitled "Accounting for Internal Costs Relating to Real Estate Property Acquisitions," which requires that internal costs of identifying and acquiring operating property be expensed as incurred. Costs associated with the acquisition of non-operating property may still be capitalized. The ruling is effective for acquisitions completed subsequent to March 19, 1998. The Company estimates that this ruling will not have a material

effect on the Company's consolidated financial statements.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities". Statement 133 is

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effective for fiscal years beginning after June 15, 1999 and cannot be applied retroactively. The Statement establishes accounting and reporting standards requiring that every derivative instrument be recorded in the balance sheet as either an asset or liability measured at its fair value. The Statement requires that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met. The Company currently plans to adopt Statement 133 effective January 1, 2000, and will determine both the method and impact of adoption prior to that date.

2. Merger between Bay and Avalon

In June 1998, the Company completed its merger with Avalon. The Merger and related transactions were accounted for using the purchase method of accounting in accordance with GAAP. Accordingly, the assets and liabilities of Avalon were adjusted to fair value for financial accounting purposes and the results of operations of Avalon are included in the results of operations of the Company beginning June 4, 1998.

In connection with the Merger, the following related transactions occurred:

The Company issued .7683 of a share of common stock for each outstanding share of Avalon common stock;

The Company issued one share of Series F and G Preferred Stock for each outstanding share of Avalon Series A and B Preferred Stock;

The following unaudited pro forma information has been prepared as if the Merger and related transactions had occurred on January 1, 1997. The pro forma financial information is presented for informational purposes only and is not necessarily indicative of what actual results would have been if the Merger had been consummated on January 1, 1997 nor does it purport to represent the results of operations for future periods (in thousands, except per share data).

<TABLE>
<CAPTION>

	For the six months ended	
	6-30-98	6-30-97
<S>	<C>	<C>
Pro forma total revenue	\$ 212,104	\$ 134,952
Pro forma income available to common stockholders before extraordinary items	\$ 39,481	\$ 27,367
Pro forma net income available to common stockholders	\$ 39,481	\$ 26,184
Per common share:		
Pro forma income before extraordinary items-basic	\$ 0.63	\$ 0.57
Pro forma income before extraordinary items-diluted	\$ 0.62	\$ 0.56
Pro forma net income-basic	\$ 0.63	\$ 0.54
Pro forma net income-diluted	\$ 0.62	\$ 0.53

</TABLE>

3. Interest Capitalized

Capitalized interest associated with projects under development and construction or redevelopment and reconstruction totaled \$3,561 and \$1,396 for the three months ended June 30, 1998 and 1997, respectively, and \$6,525 and \$2,421 for the six months ended June 30, 1998 and 1997, respectively.

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4. Notes Payable, Unsecured Senior Notes and Credit Facility

The Company's notes payable, unsecured senior notes and credit facility are summarized as follows:

	6-30-98	12-31-97
	-----	-----
<S>	<C>	<C>
Fixed rate notes payable (conventional and tax-exempt)	\$ 433,407	\$ 263,284
Variable rate notes payable (tax-exempt)	63,652	--
Fixed rate unsecured senior notes	460,000	--
Variable rate unsecured credit facility	374,000	224,200
	-----	-----
	\$ 1,331,059	\$ 487,484
	=====	=====

</TABLE>

Notes payable are collateralized by certain apartment communities and mature at various dates from July 1999 through December 2036. The weighted average interest rate of variable rate notes (tax-exempt) was 4.8% at June 30, 1998. The weighted average interest rate of fixed rate notes (conventional and tax-exempt) was 6.6% and 6.4% at June 30, 1998 and December 31, 1997, respectively.

The Company has a \$600,000 variable rate unsecured credit facility (the "Unsecured Facility") with Morgan Guaranty Trust Company of New York, Union Bank of Switzerland and Fleet National Bank, serving as co-agents for a syndicate of commercial banks. The Unsecured Facility bears interest at the London Interbank Offered Rate ("LIBOR") based on rating levels achieved on the Company's senior unsecured notes and on a maturity selected by the Company. The current pricing is LIBOR plus 0.60% per annum. The Unsecured Facility, which was put into place during June 1998, replaced three separate credit facilities previously available to the separate companies prior to the merger. The terms of the retired facilities were similar to the Unsecured Facility. In addition, the Unsecured Facility includes a competitive bid option for up to \$400,000. The interest rate for borrowings under the Unsecured Facility as of June 30, 1998 was 6.4%. The Company, among other things, is subject to certain customary covenants under the credit facility including maintaining certain maximum leverage ratios, minimum fixed charge coverage ratio, minimum unencumbered assets and equity levels and restrictions on paying dividends in amounts that exceed 95% of the Company's Funds from Operations ("FFO"), as defined. The Unsecured Facility matures in June 2001 and has two, one-year extension options.

The Company's unsecured senior notes are in the form of \$100,000 of 7.375% notes due in 2002, \$50,000 of 6.25% notes due in 2003, \$100,000 of 6.625% notes due in 2005, \$50,000 of 6.5% notes due in 2005, \$110,000 of 6.875% notes due in 2007, and \$50,000 of 6.625% notes due in 2008. The Company's unsecured senior notes contain a number of financial and other covenants with which the Company must comply, including but not limited to: limits on the aggregate amount of total and secured indebtedness the Company may have on a consolidated basis; and, limits on the Company's required debt service payments.

5. Stockholders' Equity

The following summarizes the changes in stockholders' equity for the six months ended June 30, 1998:

	Preferred Stock	Common Stock	Additional paid-in capital	Deferred compensation	Dividends in excess of accumulated earnings	
	-----	-----	-----	-----	-----	---
<S>	<C>	<C>	<C>	<C>	<C>	
Stockholders' equity, December 31, 1997	\$ 83	\$ 261	\$ 823,520	\$ --	\$ (31,169)	\$
792,695						
Dividends declared (59,377)	--	--	--	--	(59,377)	
Issuance of common stock 55,151	--	16	55,135	--	--	
Merger of Avalon and the Company 1,433,292	88	331	1,439,094	(6,221)	--	
Conversion of Preferred Stock to common stock	(28)	28	--	--	--	
--						
Net income	--	--	--	--	31,221	
31,221						

Stockholders' equity, June 30, 1998	\$ 143	\$ 636	\$ 2,317,749	\$ (6,221)	\$ (59,325)	\$
2,252,982						

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6. Investments in Unconsolidated Joint Ventures

At June 30, 1998, investments in unconsolidated joint ventures consist of a 50% general partnership interest in Falkland Partners, a 49% equity interest in Avalon Run and a 50% general partnership interest in Avalon Grove. The unconsolidated joint venture interests were obtained in connection with the Merger. The following is a combined summary of the financial position of these joint ventures for the periods presented:

	6-30-98	12-31-97
Assets:		
Real estate, net	\$ 97,093	\$ 97,964
Other assets	4,509	10,790
Total assets	\$ 101,602	\$ 108,754
Liabilities and partners' equity:		
Mortgage notes payable	\$ 26,000	\$ 26,000
Other liabilities	4,409	4,164
Partners' equity	71,193	78,590
Total liabilities and partners' equity	\$ 101,602	\$ 108,754

</TABLE>

The following is a combined summary of the operating results of these joint ventures for the periods presented:

	Three months ended		Six months ended	
	6-30-98	6-30-97	6-30-98	6-30-97
Rental income	\$ 4,936	\$ 3,916	\$ 9,700	\$ 7,289
Other income	5	12	12	24
Operating expenses	(1,367)	(1,280)	(2,656)	(2,408)
Mortgage interest expense	(226)	(243)	(423)	(439)
Depreciation and amortization	(762)	(685)	(1,515)	(1,256)
Net income	\$ 2,586	\$ 1,720	\$ 5,118	\$ 3,210

</TABLE>

7. Subsequent Events

On July 7, 1998, the Company issued \$250,000 of senior unsecured notes of which \$100,000 of the notes will bear interest at 6.5% and will mature in July 2003 and \$150,000 of the notes will bear interest at 6.8% and will mature in July 2006. The net proceeds of \$247,600 to the Company were used to reduce borrowings under the Company's Unsecured Facility.

In July 1998, the Company acquired the Prudential Center Apartments, a 781 apartment home community located in downtown Boston, Massachusetts. This community, comprising the residential portion of the Prudential Center and related underground parking, was purchased from the Prudential Insurance Company of America for approximately \$130,000.

The Company disposed of two communities, Village Park of Troy and Aspen Meadows, in suburban Detroit, Michigan, in connection with an agreement which provided for the buyout of certain limited partners in DownREIT V Limited Partnership. Proceeds from the sale of the two communities, containing 758 apartment homes combined, were approximately \$44,000. The proceeds were re-invested in a

participating mortgage note for \$24,000 and an expected yield of 10.1% in the first stabilized year secured by Fairlane Woods, a 288 apartment home community located in Dearborn, Michigan, with the balance used to repay amounts outstanding under the Unsecured Facility. Management is pursuing the purchase of a 100% equity interest in the community secured by the participating mortgage note, but no assurance can be provided that such an equity interest can be acquired.

The Company exercised its option to acquire a 3.2 acre site in Stamford, Connecticut for approximately \$6,200. The Company plans to develop an apartment home community on the Stamford, Connecticut site with up to 195 apartment homes.

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PART I. FINANCIAL INFORMATION (CONTINUED)

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

Forward-Looking Statements

Certain statements in this Form 10-Q constitute "forward-looking statements" as that term is defined under the Private Securities Litigation Reform Act of 1995 (the "Reform Act"). The words "believe," "expect," "anticipate," "intend," "estimate," "assume" and other similar expressions which are predictions of or indicate future events and trends and which do not relate to historical matters identify forward-looking statements. In addition, information concerning construction, occupancy and completion of Development Communities and Development Rights (as hereinafter defined) and related cost and EBITDA estimates, are forward-looking statements. Reliance should not be placed on forward-looking statements as they involve known and unknown risks, uncertainties and other factors, which are in some cases beyond the control of the Company and may cause the actual results, performance or achievements of the Company to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements.

Certain factors that might cause such differences include, but are not limited to, the following: the Company may not be successful in managing its current growth in the number of apartment communities and the related growth of its business operations; the Company's expansion into new geographic market areas may not produce financial results that are consistent with its historical performance; acquisitions of portfolios of apartment communities may result in the Company acquiring communities that are more expensive to manage and portfolio acquisitions may not be successfully completed, resulting in charges to earnings; the Company may fail to secure or may abandon development opportunities; construction costs of a community may exceed original estimates; construction and lease-up may not be completed on schedule, resulting in increased debt service expense and construction costs and reduced rental revenues; occupancy rates and market rents may be adversely affected by local economic and market conditions which are beyond management's control; financing may not be available on favorable terms; the Company's cash flow may be insufficient to meet required payments of principal and interest; and existing indebtedness may not be able to be refinanced or the terms of such refinancing may not be as favorable as the terms of existing indebtedness.

The following discussion should be read in conjunction with the consolidated financial statements and notes included in this report.

General

The Company is a real estate investment trust ("REIT") that is focused exclusively on the ownership of institutional-quality apartment communities in high barrier-to-entry markets of the United States. These markets include Northern and Southern California and selected states in the Mid-Atlantic, Northeast, Midwest and Pacific Northwest regions of the country. The Company is the surviving corporation from the merger (the "Merger") of Avalon Properties, Inc. ("Avalon") with and into the Company (sometimes hereinafter referred to as "Bay" before the Merger) on June 4, 1998. The Merger was accounted for as a purchase of Avalon by Bay. Concurrently with the Merger, the Company changed its name from Bay Apartment Communities, Inc. to Avalon Bay Communities, Inc.

The Company is a fully-integrated real estate organization with in-house acquisition, development, redevelopment, construction, reconstruction, financing, marketing, leasing and management expertise. With its experience and in-house capabilities, the Company believes it is well-positioned to continue to pursue opportunities to develop and acquire upscale apartment homes in its target markets.

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The Company's real estate holdings as of August 10, 1998 consist exclusively of apartment communities in various stages of the development cycle and can be divided into three categories:

<TABLE>
<CAPTION>

	Number of Communities -----	Number of Apartment Homes -----
<S>	<C>	<C>
Current Communities	129	37,791
Development Communities	16	4,527 (*)
Development Rights	22	6,512 (*)

</TABLE>

(*) Represents an estimate

"Current Communities" are apartment communities where construction is complete and the community has either reached stabilized occupancy or is in the initial lease-up process. A "Stabilized Community" is a Current Community that has completed its initial lease-up and has attained a physical occupancy level of at least 95% or has been completed for one year, whichever occurs earlier. An "Established Community" is a Current Community that has been a Stabilized Community with stabilized operating costs during the current and the beginning of the previous calendar year such that its year-to-date operating results are comparable between periods. Included in the Current Communities are "Redevelopment Communities", which are communities for which substantial redevelopment has either begun or is scheduled to begin. Redevelopment is considered substantial when additional capital invested during the reconstruction effort exceeds the lesser of \$5 million or 10% of the community's acquisition cost. There are currently 12 Redevelopment Communities containing 3,954 apartment homes.

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

"Development Rights" are development opportunities in the very earliest phase of the development process for which the Company has an option to acquire land or owns land to develop a new community and where related pre-development costs have been incurred and capitalized in pursuit of these new developments.

Of the Current Communities, the Company held a fee simple ownership interest in 113 operating communities (one of which is on land subject to a 149 year land lease), a general partnership interest in four other operating communities, a general partner interest in partnerships structured as DownREITs, which own 11 communities, and a 100% interest in a senior participating mortgage note secured by another operating community. The Company holds a fee simple ownership interest in each of the Development Communities except for two communities for which the Company holds a general partnership interest. The existing DownREITs have been structured so that substantially all of the economic interests of these partnerships accrue to the benefit of the Company. The Company believes that it is unlikely that the limited partners in these partnerships will receive any financial return on their limited partnership interests other than the stated distributions on their units of the operating partnerships ("Units") or as a result of the possible future conversion of their Units into shares of common stock. The DownREIT partnerships are consolidated for financial reporting purposes.

Management believes that apartment communities present an attractive investment opportunity compared to other real estate investments because a broad potential resident base results in relatively stable demand during all phases of a real estate cycle. The Company intends to pursue appropriate new investments (both acquisitions of new communities and new developments) where constraints to new supply exist and where new household formations have out-paced multifamily permit activity in recent years.

At June 30, 1998, the Company's management ("Management") had positioned the Company's portfolio of Stabilized Communities, excluding communities owned by joint ventures, to a physical occupancy level of 97.5% and achieved an average economic occupancy of 96.7% and 96.6% for the three and six months ended June 30, 1998, respectively. Average economic occupancy for the portfolio for the three and six months ended June 30, 1997 was 95.4% and 95.5%. This continued high occupancy was achieved through aggressive marketing efforts combined with limited and targeted pricing adjustments. This positioning has resulted in overall growth in rental revenue from Established Communities between periods. It is Management's strategy to maximize total rental revenue through management

of rental rates and occupancy levels. If market and economic conditions change, Management's strategy of maximizing rental rates could lead to lower occupancy levels. Given the currently high occupancy level of the portfolio, Management anticipates that, for the foreseeable future, any rental revenue and net income gains from currently owned and Established Communities would be achieved primarily through higher rental rates and enhanced operating cost leverage provided by high occupancy, rather than through continued occupancy gains.

The Company elected to be taxed as a REIT for federal income tax purposes for the year ended December 31, 1994 and has not revoked that election. The Company was incorporated under the laws of the State of California in 1978 and was reincorporated in the State of Maryland in July 1995. Its principal executive offices are located at 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314, and its telephone number at that location is (703) 329-6300. The Company also maintains super-regional offices in San Jose, California and Wilton, Connecticut and acquisition, development, redevelopment, construction, reconstruction or administrative offices in Boston, Massachusetts; Chicago, Illinois; Minneapolis, Minnesota; Newport Beach, California; New York, New York; Princeton, New Jersey; Richmond, Virginia; and Seattle, Washington.

Recent Developments

Merger of Bay and Avalon. On June 4, 1998, the stockholders of Bay Apartment Communities, Inc. and Avalon Properties, Inc. approved the merger of Avalon with and into Bay. Bay Apartment Communities, Inc., the surviving corporation, was renamed Avalon Bay Communities, Inc.

Pursuant to the merger agreement between Avalon and Bay, each Avalon common stockholder received .7683 of a share of common stock of Avalon Bay. In addition, the Company assumed outstanding liabilities of Avalon of approximately \$646 million. Avalon's preferred stockholders received one share of the Company preferred stock for each share of Avalon preferred stock, with the same rights, preferences and privileges provided by the Avalon preferred stock. The liquidation value of the preferred stock issued in connection with the Merger is approximately \$219 million. The Merger was accounted for as a purchase of Avalon by Bay.

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Acquisitions of Existing Communities. Since March 31, 1998, Avalon, Bay or the Company has acquired the following communities and development rights (dollars in millions):

<TABLE>
<CAPTION>

Current Communities	Location	Period Acquired	Purchase Price	Apartment Homes	
1. Pinnacle at Oxford Hill	Creve Coeur, MO	2Q98	\$ 29.8	480	(a)
2. Avalon Ridge	Renton, WA	2Q98	\$ 25.1	420	(b)
3. Gates of Edinburgh	Brooklyn Park, MN	2Q98	\$ 18.0	198	(a)
4. The Verandas at Bear Creek	Redmond, WA	2Q98	\$ 34.3	264	(c)
5. Avalon at Prudential Center	Boston, MA	3Q98	\$130.0	781	(c)

</TABLE>

<TABLE>
<CAPTION>

Development Communities	Location	Period Acquired	Budgeted Cost	Apartment Homes	
1. Avalon Corners	Stamford, CT	3Q98	\$32.5	195	(c)

</TABLE>

(a) Acquired by Avalon.

(b) Acquired by Bay. Community consists of Avalon Ridge (356 apartment homes, purchase price of \$21.3 million) and Sunpointe (64 apartment homes, purchase price of \$3.8 million).

(c) Acquired by Avalon Bay.

Acquisitions entail risks that investments will fail to perform in accordance with expectations and that judgments with respect to the cost of improvements to bring an acquired community up to standards established for the market position intended for that community will prove inaccurate, as well as general investment risks associated with any new real estate investment. Although the Company undertakes an evaluation of the physical condition of each new community before it is acquired, certain defects or necessary repairs may not

be detected until after the community is acquired, which could significantly increase the Company's total acquisition costs and decrease the Company's percentage return on that investment.

Historically, construction costs and the costs to reposition communities that have been acquired have, in some cases, exceeded management's original estimates. Management believes that it may experience similar increases in the future. There can be no assurance that the Company will be able to charge rents upon completing either the development or redevelopment of the communities that will be sufficient to offset the effects of increases in construction costs in order to achieve the original projected yield on the investment.

Sale of Existing Communities and Re-investment of Proceeds. In connection with an agreement executed by Avalon in March 1998 which provided for the buyout of certain limited partners in DownREIT V Limited Partnership, the Company sold two communities, Village Park of Troy and Aspen Meadows, in suburban Detroit, Michigan in July 1998. Gross proceeds from the sale of the two communities, containing an aggregate of 758 apartment homes, were approximately \$44 million and were re-invested in the participating mortgage note secured by the Fairlane Woods community in Dearborn, Michigan, with the balance used to repay amounts outstanding under the variable rate unsecured credit facility ("Unsecured Facility").

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Results of Operations

The changes in operating results from period-to-period are primarily the result of increases in the number of apartment homes owned due to the Merger as well as the development and acquisition of additional communities. Where appropriate, comparisons are made on a weighted average basis for the number of occupied apartment homes in order to adjust for such changes in the number of apartment homes. For Stabilized Communities (excluding communities owned by joint ventures), all occupied apartment homes are included in the calculation of weighted average occupied apartment homes for each reporting period. For communities in the initial lease-up phase, only apartment homes of communities that are completed and occupied are included in the weighted average number of occupied apartment homes calculation for each reporting period.

The analysis that follows compares the operating results of the Company for the three and six months ended June 30, 1998 and 1997.

Net income increased \$9,763,000 (115.1%) to \$18,242,000 for the three months ended June 30, 1998 compared to \$8,479,000 for the comparable period of the preceding year. Net income increased \$14,970,000 (92.1%) to \$31,221,000 for the six months ended June 30, 1998 compared to \$16,251,000 for the comparable period of the preceding year. The primary reasons for this increase are additional operating income from the former Avalon communities, communities developed or acquired during 1998 and 1997, as well as growth in operating income from Established Communities.

Rental income increased \$40,247,000 (133.5%) to \$70,399,000 for the three months ended June 30, 1998 compared to \$30,152,000 for the comparable period of the preceding year. Rental income increased \$59,460,000 (105.0%) to \$116,101,000 for the six months ended June 30, 1998 compared to \$56,641,000 for the comparable period of the preceding year. Of the increase for the six month period, \$3,011,000 relates to rental revenue increases from Established Communities, \$20,880,000 relates to rental revenue attributable to the former Avalon communities, and \$35,569,000 is attributable to the addition of newly completed or acquired apartment homes.

Overall Portfolio - The \$59,460,000 increase in rental income for the six month period is primarily due to increases in the weighted average number of occupied apartment homes as well as an increase in the weighted average monthly rental income per occupied apartment home. The weighted average number of occupied apartment homes increased from 9,182 apartment homes for the six months ended June 30, 1997 to 18,433 apartment homes for the six months ended June 30, 1998 as a result of additional apartment homes from the former Avalon communities, and the development and acquisition of new communities. For the three months ended June 30, 1998, the weighted average monthly revenue per occupied apartment home increased \$63 (6.0%) to \$1,110 compared to \$1,047 for the comparable period of the preceding year. For the six months ended June 30, 1998, the weighted average monthly revenue per occupied apartment home increased \$21 (2.0%) to \$1,048 compared to \$1,027 for the comparable period of the preceding year.

Established Communities - Rental revenue increased \$1,403,000 and \$3,011,000 for the three and six months ended June 30, 1998, respectively, compared to the comparable periods of the preceding year due to strengthening market conditions and the resulting impact on rents and occupancy. For the three months ended June 30, 1998, weighted average

monthly revenue per occupied apartment home increased \$73 (7.0%) to \$1,110 compared to \$1,037 for the comparable period of the preceding year. The average economic occupancy increased .3% from 97.6% for the three months ended June 30, 1997 to 97.9% for the three months ended June 30, 1998. For the six months ended June 30, 1998, weighted average monthly revenue per occupied apartment home increased \$76 (7.4%) to \$1,100 compared to \$1,024 for the comparable period of the preceding year. The average economic occupancy increased .5% from 97.3% for the six months ended June 30, 1997 to 97.8% for the six months ended June 30, 1998.

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Management fees totaling \$115,000 for both the three and six months ended June 30, 1998, represents revenue from certain third-party contracts obtained from the merger with Avalon.

Operating expenses increased \$11,423,000 (146.5%) to \$19,220,000 for the three months ended June 30, 1998 compared to \$7,797,000 for the comparable period of the preceding year. These expenses increased \$16,013,000 (109.0%) to \$30,705,000 for the six months ended June 30, 1998 compared to \$14,692,000 for the comparable period of the preceding year.

Overall Portfolio - The increases for the three and six months ended June 30, 1998 are primarily due to additional expense from the former Avalon communities, the acquisition of new communities as well as the completion of Development Communities whereby maintenance, insurance and other costs are expensed as communities move from the initial construction and lease-up phase to the stabilized operating phase.

Established Communities - Operating expenses increased \$22,000 (0.5%) to \$4,362,000 for the three months ended June 30, 1998 compared to \$4,340,000 for the comparable period of the preceding year. These expenses decreased \$109,000 (1.3%) to \$8,520,000 for the six months ended June 30, 1998 compared to \$8,629,000 for the comparable period of the preceding year.

Property taxes increased \$3,388,000 (150.8%) to \$5,635,000 for the three months ended June 30, 1998 compared to \$2,247,000 for the comparable period of the preceding year. Property taxes increased \$5,237,000 (126.0%) to \$9,394,000 for the six months ended June 30, 1998 compared to \$4,157,000 for the comparable period of the preceding year.

Overall Portfolio - The increases for the three and six months ended June 30, 1998 are primarily due to additional expense from the former Avalon communities, the acquisition of new communities as well as the completion of Development Communities whereby property taxes are expensed as communities move from the initial construction and lease-up phase to the stabilized operating phase.

Established Communities - Property taxes increased \$9,000 (0.7%) to \$1,358,000 for the three months ended June 30, 1998 compared to \$1,349,000 for the comparable period of the preceding year. Property taxes increased \$120,000 (4.6%) to \$2,737,000 for the six months ended June 30, 1998 compared to \$2,617,000 for the comparable period of the preceding year.

Interest expense increased \$7,352,000 (193.5%) to \$11,152,000 for the three months ended June 30, 1998 compared to \$3,800,000 for the comparable period of the preceding year. Interest expense increased \$10,246,000 (144.0%) to \$17,363,000 for the six months ended June 30, 1998 compared to \$7,117,000 for the comparable period of the preceding year. These increases are primarily attributable to \$643,410,000 debt assumed in connection with the Merger as well as increased borrowings under the variable rate unsecured credit facility ("Unsecured Facility") offset in part by higher capitalization of interest from increased development, redevelopment, construction and reconstruction activity.

Depreciation and amortization increased \$8,171,000 (127.2%) to \$14,597,000 for the three months ended June 30, 1998 compared to \$6,426,000 for the comparable period of the preceding year. Depreciation and amortization increased \$12,378,000 (102.1%) to \$24,503,000 for the six months ended June 30, 1998 compared to \$12,125,000 for the comparable period of the preceding year. These increases reflect additional expense from the former Avalon communities, as well as acquisitions and development of communities in 1998 and 1997.

General and administrative expenses increased \$857,000 (93.1%) to \$1,778,000 for the three months ended June 30, 1998 compared to \$921,000 for the comparable period of the preceding year. General

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and administrative expenses increased \$1,277,000 (76.5%) to \$2,946,000 for the six months ended June 30, 1998 compared to \$1,669,000 for the comparable period of the preceding year. These increases are primarily due to the Merger and

staff additions related to the growth of the Company's portfolio.

Provision for unrecoverable deferred development costs decreased \$200,000 (44.4%) to \$250,000 for the three months ended June 30, 1998 compared to \$450,000 for the comparable period of the preceding year. Abandoned project costs decreased \$130,000 (24.5%) to \$400,000 for the six months ended June 30, 1998 compared to \$530,000 for the comparable period of the preceding year. These decreases are primarily due to the absence in 1998 of a one time charge present in 1997 related to the abandoned pursuit of a large west coast portfolio acquisition.

Equity in income of unconsolidated joint ventures of \$238,000 for both the three and six months ended June 30, 1998 represents the Company's share of income of certain joint ventures that were acquired in conjunction with the Merger.

Interest income increased \$317,000 (704.4%) to \$362,000 for the three months ended June 30, 1998 compared to \$45,000 for the comparable period of the preceding year. Interest income increased \$357,000 (321.6%) to \$468,000 for the six months ended June 30, 1998 compared to \$111,000 for the comparable period of the preceding year. These increases are primarily due to the interest earned on the Avalon Arbor note that was obtained from the Merger.

Management generally considers Funds from Operations ("FFO") to be an appropriate measure of the operating performance of the Company because it provides investors an understanding of the ability of the Company to incur and service debt and to make capital expenditures. The Company believes that in order to facilitate a clear understanding of the operating results of the Company, FFO should be examined in conjunction with the net income as presented in the consolidated financial statements included elsewhere in this report. FFO is determined in accordance with a resolution adopted by the Board of Governors of the National Association of Real Estate Investment Trusts(R), and is defined as net income (loss) (computed in accordance with generally accepted accounting principles ("GAAP"), excluding gains (or losses) from debt restructuring and sales of property, plus depreciation of real estate assets and after adjustments for unconsolidated partnerships and joint ventures). FFO does not represent cash generated from operating activities in accordance with GAAP and therefore should not be considered an alternative to net income as an indication of the Company's performance or to net cash flows from operating activities as determined by GAAP as a measure of liquidity and is not necessarily indicative of cash available to fund cash needs. Further, FFO as calculated by other REITs may not be comparable to the Company's calculation of FFO.

For the three months ended June 30, 1998, FFO increased to \$28,314,000 from \$14,591,000 for the comparable period in the preceding year. This increase is primarily due to the delivery of high yielding new development and redevelopment communities (11%+) from the Merger with Avalon as well as the Company's existing redevelopment programs. Growth in earnings from Established Communities also contributed to the increase. Acquisition activity in 1998 and 1997 was also an important component of FFO growth between years.

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FFO for the three months ended June 30, 1998, March 31, 1998, December 31, 1997, September 30, 1997, and June 30, 1997 are summarized as follows (dollars in thousands):

<TABLE>

<CAPTION>

	For the three months ended				
	6-30-98	3-31-98	12-31-97	9-30-97	6-30-97
	-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>
Net income	\$ 18,242	\$ 12,979	\$ 12,039	\$ 10,653	\$ 8,479
Preferred dividends	(4,494)	(2,856)	(1,469)	(1,222)	(149)
Depreciation - real estate assets	14,164	9,523	7,669	6,659	6,173
Joint venture adjustments	62	--	--	--	--
Minority interest expense	250	--	--	--	--
Non-recurring adjustments to net income:					
Amortization of non-recurring costs, primarily legal, from the issuance of tax-exempt bonds (1)	90	90	90	88	88
	-----	-----	-----	-----	-----
Funds from Operations	\$ 28,314	\$ 19,736	\$ 18,329	\$ 16,178	\$ 14,591
	=====	=====	=====	=====	=====

</TABLE>

- (1) Represents the amortization of pre-1986 bond issuance costs carried forward to the Company, under the pooling of interest method of accounting, and costs associated with the reissuance of tax-exempt bonds incurred prior to the initial public offering of Bay in March 1994 (the "Initial Offering") in order to preserve the tax-exempt status of the bonds at the Initial Offering.

Capitalization of Fixed Assets and Community Improvements

The Company maintains a policy with respect to capital expenditures that generally provides that only non-recurring expenditures are capitalized. Improvements and upgrades are capitalized only if the item exceeds \$15,000, extends the useful life of the asset and is not related to making an apartment home ready for the next resident. Under this policy, virtually all capitalized costs are non-recurring, as recurring make ready costs are expensed as incurred, including costs of carpet and appliance replacements, floor coverings, interior painting and other redecorating costs. Purchases of personal property (such as computers and furniture) are capitalized only if the item is a new addition (i.e., not a replacement) and only if the item exceeds \$2,500. The application of these policies for the six months ended June 30, 1998 resulted in non-revenue generating capitalized expenditures for Stabilized Communities of approximately \$2,457,000 or \$70 per apartment home on a pro forma basis. For the six months ended June 30, 1998, the Company charged to maintenance expense, including carpet and appliance replacements, a total of approximately \$13,725,000 for Stabilized Communities or \$363 per apartment home on a pro forma basis. Management anticipates that capitalized costs per apartment home will gradually rise as the Company's portfolio of communities matures.

Liquidity and Capital Resources

Liquidity. A primary source of liquidity to the Company is cash flows from operations. Operating cash flows have historically been determined by the number of apartment homes, rental rates, occupancy levels and the Company's expenses with respect to such apartment homes. The cash flows used in investing activities and provided by financing activities have historically been dependent on the number of apartment homes under active development and construction or that were acquired during any given period.

Cash and cash equivalents increased from \$1,846,000 at June 30, 1997 to \$15,060,000 at June 30, 1998 due to the excess of cash provided by financing and operating activities over cash flow used in investing activities.

Net cash provided by operating activities increased by \$45,075,000 from \$28,005,000 for the six months ended June 30, 1997 to \$73,080,000 for the six months ended June 30, 1998 primarily

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due to an increase in operating income from newly developed and acquired communities and Established Communities.

Cash used in investing activities increased by \$109,575,000 from \$163,601,000 for the six months ended June 30, 1997 to \$273,176,000. This increase reflects the expenditures for the 1998 and 1997 communities acquired, and the amounts used to acquire, develop, and construct the Development and Redevelopment Communities.

Net cash provided by financing activities increased by \$75,446,000 from \$136,522,000 for the six months ended June 30, 1997 to \$211,968,000 for the six months ended June 30, 1998 primarily due to the proceeds from the sale of unsecured senior notes, a net increase in borrowings under the unsecured facilities compared to the comparable period in the prior year, and a reduction in proceeds raised through the sale of common stock.

The Company regularly reviews its short-term liquidity needs and the adequacy of Funds from Operations and other expected liquidity sources to meet these needs. The Company believes that its principal short-term liquidity needs are to fund normal recurring operating expenses, debt service payments and the minimum dividend payment required to maintain the Company's REIT qualification under the Code. Management anticipates that these needs will be fully funded from cash flows provided by operating activities. Any short-term liquidity needs not provided by current operating cash flows would be funded from the Company's Unsecured Facility.

Management anticipates that no significant portion of the principal of any indebtedness will be repaid prior to maturity and if the Company does not have funds on hand sufficient to repay such indebtedness, it will be necessary for the Company to refinance this debt. Such refinancing could be accomplished through additional debt financing, which may be collateralized by mortgages on individual communities or groups of communities, by uncollateralized private or public debt offerings or by additional equity offerings. There can be no assurance that such additional debt financing or debt offerings will be available on terms satisfactory to the Company.

Capital Resources. To sustain the Company's active development and acquisitions program, continuous access to the capital markets is required. Management intends to match the long-term nature of its real estate assets with long-term cost effective capital. Management follows a focused strategy to help facilitate uninterrupted access to capital. This strategy includes:

1. Hire, train and retain associates with a strong resident service focus, which should lead to higher rents, lower turnover and reduced operating costs;
2. Manage, acquire and develop institutional quality communities with in-fill locations that should provide consistent, sustained earnings growth;
3. Operate in markets with growing demand (as measured by household formation and job growth) and high barriers-to-entry. These characteristics combine to provide a favorable demand-supply balance, which the Company believes will create a favorable environment for future rental rate growth while protecting existing and new communities from new supply. This strategy is expected to result in a high level of quality to the revenue stream;
4. Maintain a conservative capital structure largely comprised of equity and with modest, cost-effective leverage. Secured debt will generally be avoided and used primarily to obtain low cost, tax-exempt debt. Such a structure should promote an environment for ratings upgrades that can lead to a lower cost of capital and increased financial flexibility;
5. Accounting practices that provide a high level of quality to reported earnings; and
6. Timely, accurate and detailed disclosures to the investment community.

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Management believes that these strategies provide a disciplined approach to capital access that is expected to ensure that capital resources are available to fund portfolio growth.

The following is a discussion of specific capital transactions, arrangements and agreements that are important to the capital resources of the Company.

Unsecured Facility

The Company's Unsecured Facility is provided by a consortium of banks that provides for \$600,000,000 in short-term credit and is subject to an annual facility fee of \$900,000. The Unsecured Facility bears interest at the London Interbank Offered Rate ("LIBOR") based on rating levels achieved on the Company's senior unsecured notes and on a maturity selected by the Company. The current pricing is LIBOR plus 0.60% per annum and matures in June 2001. The Unsecured Facility, which was put into place during June 1998, replaced three separate credit facilities previously available to the separate companies prior to the Merger, with terms similar to the Unsecured Facility. A competitive bid option is available for up to \$400,000,000 which may result in lower pricing if market conditions allow. Pricing under the competitive bid option resulted in average pricing of LIBOR + .42% for balances most recently placed under the competitive bid option. At June 30, 1998, \$374,000,000 was outstanding, \$15,567,245 was used to provide letters of credit and \$210,432,755 was available for borrowing under the Unsecured Facility. The Company will use borrowings under the Unsecured Facility for capital expenditures, acquisitions of developed or undeveloped communities, construction, development and renovation costs, credit enhancement for tax-exempt bonds and for working capital purposes.

Interest Rate Protection Agreements

The Company is not a party to any long-term interest rate agreements, other than interest rate protection and swap agreements on certain tax-exempt indebtedness. The Company intends, however, to evaluate the need for long-term interest rate protection agreements as interest rate market conditions dictate and has engaged a consultant to assist in managing the Company's interest rate risks and exposure.

Financing Commitments/Transactions Completed

Sale of Common Stock. On April 29, 1998, Bay sold 1,244,147 shares of common stock for aggregate net proceeds of approximately \$44 million. Bay used the net proceeds from the offering to reduce its borrowings under its then-existing unsecured revolving credit facility.

Sale of senior unsecured notes. On July 7, 1998, the Company issued \$250 million of senior unsecured notes, of which \$100 million of the notes will bear interest at 6.5% and will mature in July 2003 and \$150 million of the notes will bear interest at 6.8% and will mature in July 2006. The net proceeds of \$247.6 million to the Company were used to reduce borrowings under the Company's Unsecured Facility.

Future Financing Needs

Substantially all of the capital expenditures to complete the communities currently under construction and reconstruction will be funded from the Unsecured Facility and/or issuance of debt or equity securities. Management expects to continue to fund deferred development costs related to future developments from Funds from Operations and advances under the Unsecured Facility. The Company believes that these sources of capital are adequate to take each of the proposed communities to the point in the development cycle where construction can commence.

Management anticipates that available borrowing capacity under the Unsecured Facility and Funds from Operations will be adequate to meet future expenditures required to commence construction of each of the Development Rights. In addition, the Company currently anticipates funding construction of some (but not all) of the Development Rights under the expected remaining capacity of the Unsecured Facility. However, before the construction of a Development Right commences, the Company intends, if

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necessary, to issue additional equity or debt securities, arrange additional capacity under the Unsecured Facility or future credit facilities or obtain additional construction loan commitments not currently in place to ensure that adequate liquidity sources are in place to fund the construction of a Development Right, although no assurance can be given in this regard.

The table on the following page summarizes debt maturities for the next five years (excluding the Unsecured Facility):

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AVALON BAY COMMUNITIES, INC.
DEBT MATURITY SCHEDULE
(Dollars in thousands)

<TABLE>
<CAPTION>

COMMUNITY	ALL-IN INTEREST RATE	PRINCIPAL MATURITY DATE	BALANCE OUTSTANDING	
			12-31-97	6-30-98
<hr/>				
<S>	<C>	<C>	<C>	<C>
TAX-EXEMPT BONDS:				
FIXED RATE				
Canyon Creek	6.48%	Jun-25	\$ 38,534	\$ 38,297
Waterford	5.88%	Aug-14	33,100	33,100
City Heights	5.80%	Jun-25	20,714	20,607
CountryBrook	7.87%	Mar-12	19,850	19,712
Villa Mariposa	5.88%	Mar-17	18,300	18,300
Sea Ridge	6.48%	Jun-25	17,479	17,372
Foxchase	5.88%	Nov-07	26,400	26,400
Governor's Square	7.65%	Aug-04	14,184	14,120
Barrington Hills	6.48%	Jun-25	13,185	13,103
The Arbors	7.25%	May-04	12,870	12,870
Gallery Place	7.31%	May-01	11,685	11,588
Rivershore	6.48%	Nov-22	10,309	10,237
Fairway Glen	5.88%	Nov-07	9,580	9,580
Crossbrook	6.48%	Jun-25	8,484	8,434
Larkspur Canyon	5.50%	Jun-25	7,610	7,571
Avalon Ridge	5.69%	Jun-26	--	26,815
Avalon View	7.55%	Aug-24	--	19,215
Avalon Lea	5.71%	Jun-26	--	16,835
Avalon at Lexington	6.56%	Feb-25	--	14,958
Avalon Knoll	6.95%	Jun-26	--	13,837
Avalon at Dulles	7.04%	Jul-24	--	12,360
Avalon Fields	7.57%	May-27	--	11,956
Avalon at Hampton II	7.04%	Jul-24	--	11,550
Avalon at Symphony Glen	7.06%	Jul-24	--	9,780
Avalon West	7.73%	Dec-36	--	8,705
Avalon Landing	6.85%	Jun-26	--	6,851
			-----	-----
			262,284	414,153
VARIABLE RATE				
Avalon Devonshire		Dec-25	--	27,305
Avalon at Fairway Hills I		Jun-26	--	11,500
Laguna Brisas		Mar-09	--	10,400
Avalon at Hampton I		Jun-26	--	8,060
Avalon Pointe		Jun-26	--	6,387
			-----	-----

CONVENTIONAL LOANS:			--	63,652
FIXED RATE				
\$100 Million Senior Unsecured Notes	7.375%	Sep-02	--	100,000
\$100 Million Senior Unsecured Notes	6.625%	Jan-05	--	100,000
\$110 Million Senior Unsecured Notes	6.875%	Dec-07	--	110,000
\$50 Million Senior Unsecured Notes	6.25%	Jan-03	--	50,000
\$50 Million Senior Unsecured Notes	6.50%	Jan-05	--	50,000
\$50 Million Senior Unsecured Notes	6.625%	Jan-08	--	50,000
Cedar Ridge	6.50%	Jul-99	1,000	1,000
Avalon Walk II	8.93%	Nov-04	--	12,864
Avalon Pines	8.00%	Dec-03	--	5,390
			-----	-----
			1,000	479,254
VARIABLE RATE-NONE			--	--
			-----	-----
TOTAL INDEBTEDNESS - EXCLUDING CREDIT FACILITY			\$ 263,284	\$ 957,059
			=====	=====

</TABLE>

<TABLE>
<CAPTION>

		TOTAL MATURITIES				
		1998	1999	2000	2001	2002
-----	COMMUNITY	-----	-----	-----	-----	-----
THEREAFTER						
-----		-----	-----	-----	-----	-----
<S>		<C>	<C>	<C>	<C>	<C>
TAX-EXEMPT BONDS:						
FIXED RATE						
Canyon Creek	\$ 35,750	\$ 245	\$ 517	\$ 554	\$ 594	\$ 637
Waterford	33,100	--	--	--	--	--
City Heights	19,457	111	233	250	268	288
CountryBrook	18,190	144	305	330	357	386
Villa Mariposa	18,300	--	--	--	--	--
Sea Ridge	16,216	111	235	251	270	289
Foxchase	26,400	--	--	--	--	--
Governor's Square	13,415	67	142	153	165	178
Barrington Hills	12,231	84	177	190	203	218
The Arbors	12,870	--	--	--	--	--
Gallery Place	--	102	214	230	11,042	--
Rivershore	9,451	75	158	171	184	198
Fairway Glen	9,580	--	--	--	--	--
Crossbrook	7,894	52	109	117	126	136
Larkspur Canyon	7,152	40	85	91	98	105
Avalon Ridge	26,815	--	--	--	--	--
Avalon View	17,692	180	290	330	350	373
Avalon Lea	16,835	--	--	--	--	--
Avalon at Lexington	13,734	170	240	255	271	288
Avalon Knoll	12,937	124	175	187	200	214
Avalon at Dulles	12,360	--	--	--	--	--
Avalon Fields	11,250	96	137	147	157	169
Avalon at Hampton II	11,550	--	--	--	--	--
Avalon at Symphony Glen	9,780	--	--	--	--	--

8,453	Avalon West	31	50	53	57	61
6,395	Avalon Landing	63	89	95	101	108
387,807		1,695	3,156	3,404	14,443	3,648
	VARIABLE RATE					
27,305	Avalon Devonshire	--	--	--	--	--
11,500	Avalon at Fairway Hills I	--	--	--	--	--
10,400	Laguna Brisas	--	--	--	--	--
8,060	Avalon at Hampton I	--	--	--	--	--
6,387	Avalon Pointe	--	--	--	--	--
63,652		--	--	--	--	--
	CONVENTIONAL LOANS:					
	FIXED RATE					
--	\$100 Million Senior Unsecured Notes	--	--	--	--	100,000
100,000	\$100 Million Senior Unsecured Notes	--	--	--	--	--
110,000	\$110 Million Senior Unsecured Notes	--	--	--	--	--
50,000	\$50 Million Senior Unsecured Notes	--	--	--	--	--
50,000	\$50 Million Senior Unsecured Notes	--	--	--	--	--
50,000	\$50 Million Senior Unsecured Notes	--	--	--	--	--
--	Cedar Ridge	--	1,000	--	--	--
11,701	Avalon Walk II	149	221	241	264	288
4,798	Avalon Pines	86	112	121	131	142
376,499		235	1,333	362	395	100,430
--	VARIABLE RATE-NONE	--	--	--	--	--
	TOTAL INDEBTEDNESS - EXCLUDING CREDIT FACILITY	\$ 1,930	\$ 4,489	\$ 3,766	\$ 14,838	\$ 104,078
	\$ 827,958					

Inflation

Substantially all of the leases at the Current Communities are for a term of one year or less, which may enable the Company to realize increased rents upon renewal of existing leases or commencement of new leases. Such short-term leases generally minimize the risk to the Company of the adverse effects of inflation, although as a general rule these leases permit residents to leave at the end of the lease term without penalty. Short-term leases combined with relatively consistent demand allow rents, and therefore cash flow from the Company's portfolio of apartments, to provide an attractive inflation hedge.

Year 2000 Compliance

The Year 2000 compliance issue concerns the inability of computer systems to accurately calculate, store or use a date after 1999. This could result in a system failure or miscalculations causing disruptions of operations. The Year 2000 issue affects virtually all companies and organizations.

The Company has been taking the necessary steps to understand the nature and extent of the work required to make its core information computer systems and non-information embedded systems Year 2000 compliant. The Company has

established a Year 2000 project team which has completed the assessment phase for computerized management information systems. The assessment determined that it will be necessary to modify, update or replace limited portions of the Company's computer hardware and software applications.

The Company anticipates that replacing and upgrading its existing management information systems (both hardware and software) in the normal course of business will result in Year 2000 compliance by the end of the second quarter of 1999. The vendor that provides the Company's existing general ledger software expects to release a compliant version of its product by the end of 1998. Growth in the Company's operations is expected to require a general ledger system with scope and functionality that is not present in the current, non-compliant system in use, and the scope and functionality required by the Company is not expected to be provided by the Year 2000 compliant version of that system. Accordingly, the Company expects to replace the current general ledger system with an enhanced system that, in addition to increased functionality, is Year 2000 compliant. The cost of the new general ledger system, after considering anticipated efficiencies provided by the new system, is not currently expected to have a material effect (either beneficial or adverse) on the Company's financial condition or results of operations. The new general ledger system is expected to be selected by the end of the third quarter of 1998 and implemented by the second quarter of 1999. The Company believes its computerized information systems will be Year 2000 compliant by the beginning of the third quarter of 1999.

The Company is also reviewing each community for embedded systems (e.g., security, HVAC, fire and elevator systems) that may not be Year 2000 compliant. The Company is currently conducting an assessment of these systems to identify and evaluate the changes and modifications necessary to make these systems compliant for Year 2000 processing and this assessment is expected to be completed by December 31, 1998. The Company continues to evaluate the estimated costs associated with these compliance efforts and, therefore, the total cost of bringing all embedded systems into Year 2000 compliance has not been quantified. Based on available information, the Company believes that these costs will not have a material adverse effect on its business, financial condition or results of operations. However, no assurance can be given that the Company's embedded systems will be Year 2000 compliant by December 31, 1999 or that the Company will not incur significant costs pursuing Year 2000 compliance.

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Upon completion of each of the above described upgrades and replacements of the Company's information computer systems and non-information embedded systems, the Company will commence testing to ensure Year 2000 compliance. The Company currently expects its testing to be completed in the third quarter of 1999. While the Company anticipates that such tests will be successful in all material respects, the Company's Year 2000 project team intends to closely monitor the Company's Year 2000 compliance and will develop contingency plans if necessary.

The Company is communicating with third-party service providers and vendors with which it does business to determine the efforts being made on their part for compliance. The Company is attempting to receive compliance certificates from all third parties that have a material impact on the Company's operations, but no assurance can be given with respect to the cost or timing of such efforts or the potential effects of any failure to comply.

Natural Disasters

Many of the Company's West Coast communities are located in the general vicinity of active earthquake faults. In July 1998, the Company obtained a seismic risk analysis from an engineering firm which estimated the probable maximum damage ("PMD") for each of the 60 communities that the Company owned at that time and for each of the five communities under development, individually and for all of those communities combined. To establish a PMD, the engineers first define a severe earthquake event for the applicable geographic area, which is an earthquake that has only a 10% likelihood of occurring over a 50-year period. The PMD is determined as the structural and architectural damage and business interruption loss that has a 10% probability of being exceeded in the event of such an earthquake. Because a significant number of the Company's communities are located in the San Francisco Bay Area, the engineers' analysis defined an earthquake on the Hayward Fault with a Richter Scale magnitude of 7.1 as a severe earthquake with a 10% probability of occurring within a 50-year period. The engineers then established an aggregate PMD at that time of \$113 million for the 60 west coast communities that the Company owned at that time and the five communities under development. The \$113 million PMD for those communities was a PMD level that the engineers expected to be exceeded only 10% of the time in the event of such a severe earthquake. The actual aggregate PMD could be higher or lower as a result of variations in soil classifications and structural vulnerabilities. For each community, the engineers' analysis calculated an individual PMD as a percentage of the community's replacement cost and projected revenues. No assurance can be given that an earthquake would not cause damage or losses greater than the PMD assessments indicate, that future PMD levels will not be higher than the current PMD levels for the Company's communities located on the West Coast, or

that future acquisitions or developments will not have PMD assessments indicating the possibility of greater damage or losses than currently indicated.

In August 1998, the Company renewed its earthquake insurance, both for physical damage and lost revenue, with respect to all communities it owned at that time and all of the communities under development. For any single occurrence, the Company self-insures the first \$25 million of loss, and has in place \$75 million of coverage above this amount. In addition, the Company's general liability and property casualty insurance provides coverage for personal liability and fire damage. In the event that an uninsured disaster or a loss in excess of insured limits were to occur, the Company could lose its capital invested in the affected community, as well as anticipated future revenue from that community, and would continue to be obligated to repay any mortgage indebtedness or other obligations related to the community. Any such loss could materially and adversely affect the business of the Company and its financial condition and results of operations.

Development Communities

Currently sixteen Development Communities are under construction. The total capitalized cost of these Development Communities, when completed, is expected to be approximately \$685.5 million. There can be no assurance that the Company will complete the Development Communities, that the Company's

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budgeted costs, leasing, start dates, completion dates, occupancy or estimates of "EBITDA as % of Total Budgeted Cost" will be realized or that future developments will realize comparable returns.

The following page presents a summary of Development Communities:

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AVALON BAY COMMUNITIES, INC.
DEVELOPMENT COMMUNITIES SUMMARY

<TABLE>
<CAPTION>

EBITDA as % of Total Budgeted Cost (3)	Number of Apartment Homes	Budgeted Cost (1) (\$ millions)	Construction Start	Initial Occupancy	Estimated Completion Date	Estimated Stabilization Date (2)
---	---------------------------------	---------------------------------------	-----------------------	----------------------	---------------------------------	--

<S> <C>	<C>	<C>	<C>	<C>	<C>	<C>
1. Avalon Gardens Nanuet, NY 11.5%	504	\$53.8	Q3 1996	Q2 1997	Q3 1998	Q4 1998
2. Avalon at Cameron Court Alexandria, VA 11.3%	460	\$44.7	Q2 1997	Q1 1998	Q4 1998	Q1 1999
3. Toscana Sunnyvale, CA 11.1%	710	\$116.5	Q3 1996	Q3 1997	Q4 1998	Q2 1999
4. Avalon Fields II Gaithersburg, MD 10.7%	96	\$9.2	Q3 1997	Q2 1998	Q3 1998	Q4 1998
5. CentreMark San Jose, CA 10.5%	311	\$47.5	Q1 1997	Q3 1998	Q1 1999	Q2 1999
6. Avalon Willow Mamaroneck, NY 9.2%	227	\$41.8	Q2 1997	Q4 1998	Q1 1999	Q2 1999
7. Rosewalk II San Jose, CA 11.1%	156	\$20.3	Q4 1997	Q4 1998	Q1 1999	Q2 1999
8. Paseo Alameda San Jose, CA 10.1%	305	\$52.7	Q3 1997	Q4 1998	Q2 1999	Q3 1999
9. Avalon Cove South Jersey City, NJ 10.0%	269	\$51.8	Q1 1998	Q2 1999	Q3 1999	Q4 1999
10. The Avalon						

9.7%	Bronxville, NY	110	\$26.4	Q1 1998	Q2 1999	Q3 1999	Q4 1999
11.0%	Avalon Valley Danbury, CT	268	\$26.1	Q1 1998	Q1 1999	Q3 1999	Q1 2000
10.1%	(4)						
12.0%	Avalon Lake Danbury, CT	135	\$17.0	Q2 1998	Q2 1999	Q3 1999	Q1 2000
10.1%	(4)						
13.0%	Avalon Oaks (5) Wilmington, MA	204	\$21.9	Q2 1998	Q1 1999	Q3 1999	Q1 2000
10.3%							
14.0%	Avalon Crest Fort Lee, NJ	351	\$57.4	Q4 1997	Q2 1999	Q4 1999	Q1 2000
10.1%							
15.0%	Bay Towers San Francisco, CA	226	\$65.9	Q4 1997	Q3 1999	Q4 1999	Q1 2000
9.6%							
16.0%	Avalon Corners Stamford, CT	195	\$32.5	Q3 1998	Q2 1999	Q2 2000	Q3 2000
10.4%							

	Total/average	4,527	\$685.5				
10.4%							
=====							

</TABLE>

- (1) Total budgeted cost includes all capitalized costs projected to be incurred to develop the respective Development Community, including land acquisition costs, construction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated development overhead and other regulatory fees determined in accordance with GAAP.
- (2) Stabilized operations is defined as the first full quarter of 95% or greater occupancy after completion of construction.
- (3) Projected EBITDA represents gross potential earnings projected to be achieved at completion of construction before interest, income taxes, depreciation, amortization and extraordinary items, minus (a) projected economic vacancy and (b) projected stabilized operating expenses.
- (4) Represents a combined yield for Avalon Valley and Avalon Lake.
- (5) Financed with tax-exempt bonds.

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Redevelopment Communities

There are currently twelve Redevelopment Communities. The total capitalized cost of these Redevelopment Communities, when completed, is expected to be approximately \$379.7 million. There can be no assurance that the Company will complete the Redevelopment Communities, that the Company's budgeted costs, leasing, start dates, completion dates, occupancy or estimates of "EBITDA as % of Total Budgeted Cost" will be realized or that future redevelopments will realize comparable returns.

In accordance with GAAP, cost capitalization during redevelopment and reconstruction of assets (including interest and related loan fees, property taxes and other direct and indirect costs) begins when an apartment home is taken out-of-service for reconstruction and ends when the apartment home reconstruction is completed and the apartment home is placed-in-service.

The following page presents a summary of Redevelopment Communities:

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AVALON BAY COMMUNITIES, INC. REDEVELOPMENT COMMUNITIES SUMMARY (1)

<TABLE>
<CAPTION>

EBITDA as

Number of Budgeted

Estimated

% of Total Budgeted Cost (4)	Apartment Homes	Cost (2) (\$ millions)	Reconstruction Start	Reconstruction Completion	Restabilized Operations (3)	
<S>	<C>	<C>	<C>	<C>	<C>	
<C>						
1. 9.3%	Sunset Towers San Francisco, CA	243	\$27.6	Q4 1997	Q3 1998	Q4 1998
2. 10.5%	TimberWood West Covina, CA	209	\$14.9	Q3 1997	Q3 1998	Q1 1999
3. 9.9%	SunScape Huntington Beach, CA	400	\$36.6	Q3 1997	Q3 1998	Q1 1999
4. 8.9%	The Arbors Campbell, CA	252	\$30.0	Q4 1997	Q4 1998	Q1 1999
5. 8.0%	Mission Woods San Diego, CA	200	\$20.8	Q3 1997	Q3 1998	Q4 1998
6. 9.0%	Cedar Ridge Daly City, CA	195	\$24.8	Q3 1997	Q4 1998	Q1 1999
7. 9.4%	The Park Hacienda Heights, CA	351	\$28.7	Q2 1998	Q3 1999	Q1 2000
8. 9.2%	Lakeside Burbank, CA	750	\$67.1	Q2 1998	Q2 2000	Q4 2000
9. 8.6%	Gallery Place Redmond, WA	222	\$24.9	Q1 1998	Q1 1999	Q2 1999
10. 9.7%	Viewpointe Woodland Hills, CA	663	\$72.6	Q2 1998	Q1 1999	Q3 1999
11. 9.4%	Landing West Seattle, WA	190	\$12.3	Q1 1998	Q4 1998	Q1 1999
12. 9.3%	Waterhouse Place Beaverton, OR	279	\$19.4	Q2 1998	Q2 1999	Q3 1999
9.3%	Subtotal/Weighted Average	3,954	\$379.7			

</TABLE>

- (1) Redevelopment Communities are communities acquired for which redevelopment costs are expected to exceed the lesser of 10% of the original acquisition cost or \$5,000,000.
- (2) Total budgeted cost includes all capitalized costs projected to be incurred to redevelop the respective Redevelopment Community, including costs to acquire the community, reconstruction costs, real estate taxes, capitalized interest and loan fees, permits, professional fees, allocated redevelopment overhead and other regulatory fees determined in accordance with GAAP.
- (3) Restabilized operations is defined as the first full quarter of 95% or greater occupancy after completion of redevelopment.
- (4) Projected EBITDA represents gross potential earnings projected to be achieved at completion of redevelopment before interest, income taxes, depreciation, amortization and extraordinary items, minus (a) projected economic vacancy and (b) projected stabilized operating expenses.

Development Rights

The Company is considering the development of 22 new apartment communities. The status of these Development Rights range from land owned or under contract for which design and architectural planning has just commenced to land under contract or owned by the Company with completed site plans and drawings where construction can commence almost immediately. There can be no assurance that the

Company will succeed in obtaining zoning and other necessary governmental approvals or the financing required to develop these communities, or that the Company will decide to develop any particular community. Further, there can be no assurance that construction of any particular community will be undertaken or, if undertaken, will begin at the expected times assumed in the financial projections or be completed at the total budgeted cost. Although there can be no assurance that all or any of these communities will proceed to development, management estimates that the successful completion of all of these communities would ultimately add approximately 6,512 institutional-quality apartment homes to the Company's portfolio. At June 30, 1998, the cumulative capitalized costs incurred in pursuit of the 22 Development Rights was approximately \$32.7 million. Many of these apartment homes will offer features like those offered by the communities currently owned by the Company. The 22 Development Rights that the Company is currently pursuing are summarized on the following table.

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AVALON BAY COMMUNITIES, INC.
DEVELOPMENT RIGHTS SUMMARY

<TABLE>
<CAPTION>

	Location	Estimated Number of Homes	Total Budgeted Cost (\$ millions)
<S>	<C>	<C>	<C>
1.	Peabody, MA	434	\$35.9
2.	Bellevue, WA	200	29.1
3.	Mountain View, CA (1)	200	50.0
4.	San Jose, CA (1)	288	53.8
5.	Hull, MA	162	17.0
6.	New Rochelle, NY	408	63.1
7.	Freehold, NJ	452	38.4
8.	Herndon, VA	165	19.6
9.	Melville - II, NY	340	40.3
10.	Orange, CT	168	15.4
11.	New Canaan, CT (1) (2)	104	23.8
12.	Darien, CT	172	26.1
13.	Yonkers, NY	256	33.7
14.	Greenburgh - II, NY	500	74.5
15.	Greenburgh - III, NY	266	39.6
16.	Arlington, VA	635	68.9
17.	Florham Park, NJ	270	37.5
18.	Edgewater, NJ	404	68.6
19.	Hopewell, NJ	280	29.8
20.	Naperville, IL	200	20.4
21.	Westbury, NY	361	49.8
22.	Providence, RI	247	30.4
	Totals	6,512	\$865.7

</TABLE>

- (1) Company owns land, but construction has not yet begun.
- (2) Currently anticipated that the land seller will retain a minority limited partner interest.

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Risks of Development and Redevelopment

The Company intends to continue to pursue the development and construction of apartment home communities in accordance with the Company's development and underwriting policies. Risks associated with the Company's development and construction activities may include: the abandonment of development and acquisition opportunities explored by the Company; construction costs of a community may exceed original estimates due to increased materials, labor or other expenses, which could make completion of the community uneconomical; occupancy rates and rents at a newly completed community are dependent on a number of factors, including market and general economic conditions, and may not be sufficient to make the community profitable; financing may not be available on favorable terms for the development of a community; and construction and lease-up may not be completed on schedule, resulting in

increased debt service expense and construction costs. Development activities are also subject to risks relating to the inability to obtain, or delays in obtaining, all necessary zoning, land-use, building, occupancy, and other required governmental permits and authorizations. The occurrence of any of the events described above could adversely affect the Company's ability to achieve its projected yields on communities under development or reconstruction and could prevent the Company from paying distributions to its stockholders.

For each new development community, the Company establishes a target for projected EBITDA as a percentage of total budgeted cost. Projected EBITDA as a percentage of total budgeted cost represents gross potential earnings projected to be achieved at completion of development or redevelopment before interest, income taxes, depreciation, amortization and extraordinary items, minus (a) projected economic vacancy and (b) projected stabilized operating expenses. Total budgeted cost includes all capitalized costs projected to be incurred to develop the respective Development or 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 determined in accordance with GAAP. Gross potential earnings and construction costs reflect those prevailing in the community's market at the time the Company's development budgets are prepared taking into consideration certain changes to those market conditions anticipated by the Company at the time. Although the Company attempts to anticipate changes in market conditions, the Company cannot predict with certainty what those changes will be. Construction costs have been increasing and, for certain of the Company's development communities, the total construction costs have been or are expected to be higher than the original budget. Nonetheless, because of increases in prevailing market rents management believes that, in the aggregate, the Company will still achieve its targeted projected EBITDA as a percentage of total budgeted cost for those communities experiencing costs in excess of the original budget. Management believes that it could experience similar increases in construction costs and market rents with respect to other development communities resulting in total construction costs that exceed original budgets. Likewise, costs to redevelop communities that have been acquired have, in some cases, exceeded management's original estimates and similar increases in costs may be experienced in the future. There can be no assurances that market rents in effect at the time new development communities or repositioned communities complete lease-up will be sufficient to fully offset the effects of any increased construction costs.

Capitalized Interest

In accordance with GAAP, the Company capitalizes interest expense during construction until each building obtains a final certificate of occupancy. Thereafter, interest for each completed building is expensed. Capitalized interest for all communities under construction or reconstruction the three months ended June 30, 1998 and 1997 totaled \$3,561,000 and \$1,396,000, respectively and for the six months ended June 30, 1998 and 1997 totaled \$6,525,000 and \$2,421,000, respectively.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None

Item 2. Changes in Securities

None

Item 3. Defaults Upon Senior Securities

None

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

The Company held its Annual Meeting of Stockholders on June 4, 1998. The stockholders voted to elect Gilbert M. Meyer, Bruce A. Choate, John J. Healy, Jr., Brenda J. Mixson, Thomas H. Nielsen and Lance R. Primis to serve as directors of the Company until the 1999 Annual Meeting of Stockholders and until their successors are duly elected and qualified.

22,295,769 votes were cast for, and 2,134,974 votes were withheld from the election of Mr. Meyer.

22,295,989 votes were cast for, and 2,134,755 votes were withheld from the election of Mr. Choate.

22,295,989 votes were cast for, and 2,134,755 votes were withheld from the election of Mr. Healy.

22,295,989 votes were cast for, and 2,134,755 votes were withheld from the election of Ms. Mixson.

22,295,989 votes were cast for, and 2,134,755 votes were withheld from the election of Mr. Nielsen.

22,295,989 votes were cast for, and 2,134,755 votes were withheld from the election of Mr. Primis.

The stockholders voted to ratify certain amendments to the Company's charter relating to the rights, preferences and privileges of the Series A Preferred Stock. Of the shares of common stock voted on this proposal, 19,692,750 votes were cast in favor of this proposal, 688,092 were cast against, 71,560 votes abstained and 3,978,342 broker non-votes were recorded. Of the shares of Series A Preferred Stock voted on this proposal, 2,308,800 votes were cast in favor of this proposal.

The stockholders voted to ratify the 1994 Stock Incentive Plan, as amended and restated. Of the shares of common stock voted on this proposal, 18,304,106 votes were cast in favor of this proposal, 2,304,946 were cast against, 113,345 votes abstained and 3,978,347 broker non-votes were recorded.

The stockholders voted to approve the Agreement and Plan of Merger, dated as of March 9, 1998 (the "Merger Agreement"), by and between Bay and Avalon, the merger of Avalon with and into the Company (the "Merger"), with the Company as the surviving corporation (the "Surviving Corporation"), and all of the matters and transactions contemplated by the Merger Agreement, including the amendment and restatement of the charter of the Company. Of the shares of common stock voted on this proposal,

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19,126,147 votes were cast in favor of this proposal, 1,288,540 votes were cast against, 37,719 votes abstained and 3,978,388 broker non-votes were recorded.

Item 5. Other Information

None

Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits

EXHIBIT NO. - - - - -	DESCRIPTION - - - - -
3(i).1	Articles of Amendment and Restatement of Articles of Incorporation of the Company, dated as of June 4, 1998.
3(ii).1	Bylaws of the Company, as amended and restated on July 24, 1998.
10.1	Employment Agreement, dated as of March 9, 1998, between the Company and Richard L. Michaux.
10.2	Employment Agreement, dated as of March 9, 1998, between the Company and Charles H. Berman.
10.3	Employment Agreement, dated as of March 9, 1998, between the Company and Robert H. Slater.
10.4	Employment Agreement, dated as of March 9, 1998, between the Company and Thomas J. Sargeant.
10.5	Employment Agreement, dated as of March 9, 1998, between the Company and Bryce Blair.
10.6	Revolving Loan Agreement, dated as of June 23, 1998, between the Company and Fleet National bank, Morgan Guaranty Trust Company of New York and Union Bank of Switzerland, each as co-agents.
27.1	Financial Data Schedule.

1. Form 8-K of the Company, filed April 16, 1998, relating to the filing of unaudited pro forma condensed financial statements giving effect to the Merger of the Company and Avalon Properties, Inc.
2. Form 8-K of the Company, filed April 22, 1998, relating to the announcement of the Company's results of operations for fiscal quarter ended March 31, 1998.
3. Form 8-K of the Company, filed June 19, 1998, announcing the completion of the Merger by and between the Company and Avalon Properties, Inc., in which the Company was the surviving corporation. This Form 8-K contains unaudited pro forma condensed financial statements.
4. Form 8-K/A of the Company, filed June 26, 1998, incorporating by reference certain agreements related to Avalon Properties, Inc.

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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.

AVALON BAY COMMUNITIES, INC.

Date: August 14, 1998

/s/ Richard L. Michaux

Richard L. Michaux
Chief Executive Officer and Director

Date: August 14, 1998

/s/ Thomas J. Sargeant

Thomas J. Sargeant
Chief Financial Officer and Treasurer

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ARTICLES OF
AMENDMENT AND RESTATEMENT
OF
ARTICLES OF INCORPORATION
OF
BAY APARTMENT COMMUNITIES, INC.

Dated: June 4, 1998
ARTICLES OF
AMENDMENT AND RESTATEMENT
OF
ARTICLES OF INCORPORATION
OF
BAY APARTMENT COMMUNITIES, INC.

ARTICLE I

PREAMBLE

Bay Apartment Communities, Inc., a corporation organized and existing under the laws of the State of Maryland (the "Corporation"), hereby certifies as follows:

1.1 The name of the Corporation is Bay Apartment Communities, Inc. The date of the filing of its Articles of Incorporation with the State Department of Assessments and Taxation of the State of Maryland (the "Department") was March 13, 1995 (as thereafter amended from time to time prior to the date hereof, the "Original Charter").

1.2 The total number of shares of stock which the Corporation has authority to issue (the "Stock") prior to the date of this Amendment and Restatement is eighty-five million (85,000,000) shares, consisting of (i) twenty-five million (25,000,000) shares of preferred stock, par value \$.01 per share ("Preferred Stock"); (ii) forty million (40,000,000) shares of common stock, par value \$.01 per share ("Common Stock"); and (iii) twenty million (20,000,000) shares of excess common stock, par value \$.01 per share. The aggregate par value of all of the shares of all classes of Stock prior to the date of this Amendment and Restatement is \$850,000.

1.3 The total number of shares of Stock which the Corporation has authority to issue immediately following this Amendment and Restatement is three hundred seventy million (370,000,000) shares, initially consisting of (i) fifty million (50,000,000) shares of Preferred Stock; (ii) three hundred million (300,000,000) shares of Common Stock; and (iii) twenty million (20,000,000) shares of excess stock, par value \$.01 per share ("Excess Stock"). The aggregate par value of all the shares of all classes of Stock immediately following this Amendment and Restatement is \$3,700,000.

1.4 These Articles of Amendment and Restatement of Articles of Incorporation (the "Articles"), which amend, restate and integrate the provisions of the Original Charter were deemed advisable and approved by a majority of the Board of Directors of the Corporation and were approved by the stockholders of the Corporation in accordance with the Maryland General Corporation Law (the "MGCL").

1.5 The Corporation desires to amend and restate the Original Charter as currently in effect, and upon acceptance for record by the Department the provisions set forth in these

ARTICLE II

NAME

The name of the Corporation is:

"Avalon Bay Communities, Inc."

ARTICLE III

PURPOSES

Purpose and Powers. The purposes for which the Corporation is formed are to engage in business as a real estate investment trust (a "REIT") (as that phrase is defined under Section 856 of the Internal Revenue Code of 1986, as amended (the "Code")) and to engage in any other lawful act or activity for which corporations may be organized under the Maryland General Corporation Law. The foregoing purposes shall be in no way limited or restricted by reference to, or inference from, the terms of any other clause of these Articles, as amended from time to time, and each shall be regarded as independent. The foregoing purposes are also to be construed as powers of the Corporation, and shall be in addition to and not in limitation of the general powers of corporations under the laws of the State of Maryland.

ARTICLE IV

PRINCIPAL OFFICE ADDRESS

The address of the principal office of the Corporation in Maryland is c/o The Corporation Trust Incorporated, 300 East Lombard Street, Suite 1400, Baltimore, Maryland 21202.

ARTICLE V

THE RESIDENT AGENT

The resident agent of the Corporation in Maryland is The Corporation Trust Incorporated, whose address is 300 East Lombard Street, Suite 1400, Baltimore, Maryland 21202.

ARTICLE VI

BOARD OF DIRECTORS

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6.1 General Powers; Action by Committee. The business and affairs of the Corporation shall be managed under the direction of the Board of Directors and, except as otherwise expressly provided by law, these Articles or the bylaws, as amended from time to time (the "Bylaws"), of the Corporation, all of the powers of the Corporation shall be vested in such Board. Any action which the Board of Directors is empowered to take may be taken on behalf of the Board of Directors by a duly authorized committee thereof except (i) to the extent limited by Maryland law, these Articles or the Bylaws and (ii) for any action which requires the affirmative vote or approval of a majority of all Directors then in office (unless, in such case, these Articles or the Bylaws specifically provide that a duly authorized committee can take such action on behalf of the Board of Directors). A majority of the Board of Directors shall constitute a quorum and, except as otherwise specifically provided in these Articles, the affirmative vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

6.2 Number. The number of Directors of the Corporation shall be fixed from time to time by a resolution duly adopted by the Board of Directors; provided, however, that the total number of Directors shall be not fewer than three (3). No reduction in the number of Directors shall cause the removal of any Director from office prior to the expiration of his or her term. Immediately following the effectiveness of this Amendment and Restatement the Corporation shall have twelve (12) Directors, whose names shall be as follows:

Gilbert M. Meyer
Charles H. Berman
Bruce A. Choate
Michael A. Futterman
John J. Healy, Jr.
Christopher B. Leinberger
Richard L. Michaux
Richard W. Miller
Brenda J. Mixson
Thomas H. Nielsen
Lance R. Primis

6.3 Term; Election. The term of office of each Director shall expire at the next succeeding annual meeting of stockholders. The Directors elected at each annual meeting of stockholders shall hold office until their successors are duly elected and qualified or until their earlier resignation or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article VII or Article XIV of these Articles, the holders of any one or more series of Stock shall have the right, voting separately as a series or together with holders of other such series, to elect Directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of these

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Articles and any articles supplementary applicable thereto.

During any period when the holders of any series of Stock have the right to elect additional Directors as provided for or fixed pursuant to the provisions of Article VII or Article XIV of these Articles, then upon commencement and for the duration of the period during which such right continues: (a) the then otherwise total authorized number of Directors of the Corporation shall automatically be increased by such specified number of Directors, and the holders of such Stock shall be entitled to elect the additional Directors so provided for or fixed pursuant to said provisions and (b) each such additional Director shall serve until such Director's successor shall have been duly elected and qualified, or until such Director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to such Director's earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board of Directors in the resolution or resolutions establishing such series, whenever the holders of any series of Stock having such right to elect additional Directors are divested of such right pursuant to the provisions of such Stock, the terms of office of all such additional Directors elected by the holders of such Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional Directors, shall forthwith terminate and the total authorized number of Directors of the Corporation shall be reduced accordingly.

6.4 Resignation or Removal of Directors. Any Director may resign from the Board of Directors or any committee thereof at any time by written notice to the Board of Directors, effective upon execution and delivery to the Corporation of such notice or upon any future date specified in the notice. Subject to the rights, if any, of the holders of any series of Stock to elect Directors and to remove any Director whom such holders have the right to elect, any Director (including persons elected by Directors to fill vacancies in the Board of Directors) may be removed from office (a) only with cause and (b) only by the affirmative vote of the holders of at least 75% of the shares then entitled to vote at a meeting of the stockholders called for that purpose. At least 30 days prior to any meeting of stockholders at which it is proposed that any Director be removed from office, written notice of such proposed removal shall be sent to the Director whose removal will be considered at the meeting. For purposes of these Articles, "cause," with respect to the removal of any Director, shall mean only (i) conviction of a felony, (ii) declaration of unsound mind by order of a court, (iii) gross dereliction of duty, (iv) commission of any act involving moral turpitude or (v) commission of an act that constitutes intentional misconduct or a knowing violation of law if such action in either event results both in an improper substantial personal benefit to such Director and a material injury to the Corporation.

6.5 Vacancies. Subject to the rights, if any, of the holders of any class or series of Stock to elect Directors and to fill vacancies on the Board of Directors relating thereto, any vacancy on the Board of Directors which results from the removal of a Director for cause shall be filled by the affirmative vote of a majority of votes cast by the stockholders normally entitled to vote in the election of Directors at a meeting of stockholders. Any vacancy occurring on the Board of Directors for any other reason, except as a result of an increase in the number of Directors, may be filled by a majority vote of the remaining Directors,

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notwithstanding that such majority is less than a quorum; provided, however, that any Director appointed to fill the vacancy for an Independent Director (as hereinafter defined) shall also require the vote affirmative vote of a majority of the remaining Independent Directors. Any vacancy occurring on the Board of Directors as a result of an increase in the number of Directors may be filled

by a majority vote of the entire Board of Directors. A Director elected by the Board of Directors or the stockholders to fill a vacancy shall hold office until the next annual meeting of stockholders and until his or her successor is elected and qualified. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, may exercise the powers of the full Board of Directors until such vacancy is filled.

6.6 Independent Directors. Notwithstanding anything herein to the contrary, at all times (except during a period not to exceed sixty (60) days following the death, resignation, incapacity, or removal from office of a Director prior to the expiration of the Director's term of office), a majority of the Board of Directors shall be comprised of persons ("Independent Directors") who are not officers or employees of the Corporation or any affiliate thereof and who do not have a material business or professional relationship with the Corporation or any affiliate thereof.

6.7 Powers. Subject to the express limitations herein or in the Bylaws, the business and affairs of the Corporation shall be managed under the direction of the Board of Directors. These Articles, as amended or supplemented from time to time, shall be construed with a presumption in favor of the grant of power and authority to the Directors. The determination as to any of the following matters, made in good faith by or pursuant to the direction of the Board of Directors consistent with these Articles and in the absence of actual receipt of an improper benefit in money, property or services or active and deliberate dishonesty established by a court, shall be final and conclusive and shall be binding upon the Corporation and every holder of shares of its Stock: the amount of the net income of the Corporation for any period and the amount of assets at any time legally available for the payment of dividends, redemption of its Stock or the payment of other distributions on its Stock; the amount of paid-in surplus, net assets, other surplus, annual or other net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Corporation; any matter relating to the acquisition, holding and disposition of any assets by the Corporation; or any other matter relating to the business and affairs of the Corporation.

ARTICLE VII

STOCK

7.1 Authorized Stock. The total number of shares of Stock which the Corporation has authority to issue is three hundred seventy million (370,000,000) shares, initially

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consisting of (i) fifty million (50,000,000) shares of Preferred Stock, par value \$.01 per share; (ii) three hundred million (300,000,000) shares of Common Stock, par value \$.01 per share; and (iii) twenty million (20,000,000) shares of Excess Stock, par value \$.01 per share. The aggregate par value of all the shares of all classes of Stock is \$3,700,000. If shares of one class of Stock are classified or reclassified into shares of another class of Stock pursuant to this Article VII, the number of authorized shares of the former class shall be automatically decreased and the number of shares of the latter class shall be automatically increased, in each case by the number of shares so classified or reclassified, so that the aggregate number of shares of Stock of all classes that the Corporation has authority to issue shall not be more than the total number of shares of Stock set forth in the first sentence of this paragraph.

7.2 Preferred Stock. Subject to any limitations prescribed by law, the Board of Directors is expressly authorized to classify any unissued shares of Preferred Stock and reclassify any previously classified but unissued shares of Preferred Stock of any series from time to time, in one or more classes or series of such Stock and, by filing articles supplementary with the Department, to establish or change from time to time the number of shares to be included in each such class or series, and to fix the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of each class or series. Any action by the Board of Directors under this Section 7.2 of Article VII shall require the affirmative vote of a majority of the Directors then in office; provided, however, that by the affirmative vote of a majority of the Directors then in office, the Board of Directors may appoint a committee to act on behalf of the Board of Directors under this Section 7.2, and in such event the affirmative vote of a majority of the members of such committee then in office shall be required for any action under this Section 7.2.

At the time of acceptance for record of these Articles, the Board of Directors had duly divided and classified 18,238,800 shares of Preferred Stock into seven series of Preferred Stock. The rights, preferences and privileges of these series are set forth herein in Article XIV.

7.3 Common Stock. Subject to all of the rights, powers and preferences of the Preferred Stock and except as provided by law or in this Article VII or Article XIV (or in any articles supplementary regarding any class or series of Preferred Stock):

7.3.1 Voting Rights. The holders of shares of Common Stock shall be entitled to vote for the election of Directors and on all other matters requiring stockholder action, and each holder of shares of Common Stock shall be entitled to one vote for each share of Common Stock held by such stockholder.

7.3.2 Dividend Rights. Holders of Common Stock shall be entitled to receive such dividends and other distributions in cash, Stock or property of the Corporation as may be authorized and declared by the Board of Directors upon the Common Stock and, if any Excess Stock resulting from the conversion of Common Stock is then outstanding, such Excess Stock out of any assets or funds of the Corporation legally available therefor, but only when and as authorized by the Board of Directors or any

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authorized committee thereof from time to time, and shall share ratably with the holders of such Excess Stock resulting from the conversion of Common Stock in any such dividend or distribution.

Before payment of any dividends or other distributions, there may be set aside out of any assets 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 for contingencies, for equalizing dividends or other distributions, 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 interest of the Corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

7.3.3 Rights Upon Liquidation. Upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, subject to the rights of holders of any shares of Preferred Stock and Excess Stock resulting from the conversion of Preferred Stock, the net assets of the Corporation available for distribution to the holders of Common Stock, and, if any Excess Stock resulting from the conversion of Common Stock is then outstanding, such Excess Stock, shall be distributed pro rata to such holders in proportion to the number of shares of Common Stock and such Excess Stock held by each.

7.4 Excess Stock. For the purposes of this Section 7.4, terms not otherwise defined shall have the meanings set forth in Article IX.

7.4.1 Conversion into Excess Stock.

(a) If, notwithstanding the other provisions contained in these Articles, prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event such that any Person (other than a Look-Through Entity) would Beneficially Own shares of Equity Stock in excess of the Ownership Limit, or such that any Person that is a Look-Through Entity would Beneficially Own shares of Equity Stock in excess of the Look-Through Limit, then, (i) except as otherwise provided in Section 9.4 of Article IX, the purported transferee shall be deemed to be a Prohibited Owner and shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title to the shares of Equity Stock Beneficially Owned by such Beneficial Owner shall cease to own any right or interest) in such number of shares of Equity Stock which would cause such Beneficial Owner to Beneficially Own shares of Equity Stock in excess of the Ownership Limit or the Look-Through Limit, as the case may be, (ii) such number of shares of Equity Stock in excess of the Ownership Limit or the Look-Through Limit, as the case may be (rounded up to the nearest whole share), shall be automatically converted into an equal number of shares of Excess Stock and transferred to a Trust in accordance with Section 7.4.4 of this Article VII and (iii) the Prohibited Owner shall submit the

certificates representing such number of shares of Equity Stock to the Corporation, accompanied by all requisite and duly executed assignments of transfer thereof, for registration in the name of the Trustee of the Trust. If the shares of Equity Stock that are converted into Excess Stock are not shares of Common Stock, then the Excess Stock into which they are converted shall be deemed to be a separate series of Excess Stock with a designation and title corresponding to the designation and title of the shares that have been converted into the Excess Stock. Such conversion into Excess Stock and transfer to a Trust shall be effective as of the close of trading on the Trading Day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be, even though the certificates representing the shares of Equity Stock so converted may be submitted to the Corporation at a later date.

(b) If, notwithstanding the other provisions contained in these Articles, prior to the Restriction Termination Date there is a purported Transfer or Non-Transfer Event that, if effective, would (i) result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, (ii) cause the Corporation to Constructively Own 10% or more of the ownership interest in a tenant of the Corporation's or a Subsidiary's real property within the meaning of Section 856(d)(2)(B) of the Code or (iii) result in the shares of Equity Stock being beneficially owned by fewer than 100 persons within the meaning of Section 856(a)(5) of the Code, then (x) the purported transferee shall be deemed to be a Prohibited Owner and shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title of the shares of Equity Stock with respect to which such Non-Transfer Event occurred shall cease to own any right or interest) in such number of shares of Equity Stock, the ownership of which by such purported transferee or record holder would (A) result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, (B) cause the Corporation to Constructively Own 10% or more of the ownership interests in a tenant of the Corporation's or a Subsidiary's real property within the meaning of Section 856(d)(2)(B) of the Code or (c) result in the shares of Equity Stock being beneficially owned by fewer than 100 persons within the meaning of Section 856(a)(5) of the Code, (y) such number of shares of Equity Stock (rounded up to the nearest whole share) shall be automatically converted into an equal number of shares of Excess Stock and transferred to a Trust in accordance with Section 7.4.4 of this Article VII and (z) the Prohibited Owner shall submit such number of shares of Equity Stock to the Corporation, accompanied by all requisite and duly executed assignments of transfer thereof, for registration in the name of the Trustee of the Trust. If the shares of Equity Stock that are converted into Excess Stock are not shares of Common Stock, then the Excess Stock into which they are converted shall be deemed to be a separate series of Excess Stock with a designation and title corresponding to the designation and title of the shares that have been converted into the Excess Stock. Such conversion into Excess Stock and transfer to a Trust shall be effective as of the close of trading on the Trading

Day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be, even though the certificates representing the shares of Equity Stock so converted may be submitted to the Corporation at a later date.

(c) Upon the occurrence of such a conversion of shares of Equity Stock into an equal number of shares of Excess Stock, such shares of Equity Stock shall be automatically retired and canceled, without any action required by the Board of Directors of the Corporation, and shall thereupon be restored to the status of authorized but unissued shares of the particular class or series of Equity Stock from which such Excess Stock was converted and may be reissued by the Corporation as that particular class or series of Equity Stock.

7.4.2 Remedies for Breach. If the Corporation, or its designees, shall at any time determine in good faith that a Transfer has taken place in violation of Section 9.2 of Article IX or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any shares of Equity Stock in violation of Section 9.2 of Article IX, the Corporation shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or acquisition, including, but not limited to, refusing to give effect to such Transfer on the stock transfer books of the Corporation or instituting proceedings to enjoin such Transfer or acquisition, but the failure to take any such action shall not affect the automatic conversion of shares of Equity Stock into Excess Stock and their transfer to a Trust in accordance with Section 7.4.4.

7.4.3 Notice of Restricted Transfer. Any Person who acquires or attempts to acquire shares of Equity Stock in violation of Section 9.2 of Article IX, or any Person who owns shares of Equity Stock that were converted into shares of Excess Stock and transferred to a Trust pursuant to Sections 7.4.1 and 7.4.4 of this Article VII, shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or Non-Transfer Event, as the case may be, on the Corporation's status as a REIT.

7.4.4 Ownership in Trust. Upon any purported Transfer or Non-Transfer Event that results in Excess Stock pursuant to Section 7.4.1 of this Article VII, (i) the Corporation shall create, or cause to be created, a Trust, and shall designate a Trustee and name a Beneficiary thereof and (ii) such Excess Stock shall be automatically transferred to such Trust to be held for the exclusive benefit of the Beneficiary. Any conversion of shares of Equity Stock into shares of Excess Stock and transfer to a Trust shall be effective as of the close of trading on the Trading Day prior to the date of the purported Transfer or Non-Transfer Event that results in the conversion. Shares of Excess Stock so held in trust shall remain issued and outstanding shares of Stock of the Corporation.

7.4.5 Dividend Rights. Each share of Excess Stock shall be entitled to the

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same dividends and distributions (as to both timing and amount) as may be authorized by the Board of Directors with respect to shares of the same class and series as the shares of Equity Stock that were converted into such Excess Stock. The Trustee, as record holder of the shares of Excess Stock, shall be entitled to receive all dividends and distributions and shall hold all such dividends or distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to such shares of Excess Stock shall repay to the Trust the amount of any dividends or distributions received by it that are (i) attributable to any shares of Equity Stock that have been converted into shares of Excess Stock and (ii) dividends or distributions which were distributed by the Corporation to stockholders of record on a record date which was on or after the date that such shares were converted into shares of Excess Stock. The Corporation shall take all measures that it determines reasonably necessary to recover the amount of any such dividend or distribution paid to a Prohibited Owner, including, if necessary, withholding any portion of future dividends or distributions payable on shares of Equity Stock Beneficially Owned by the Person who, but for the provisions of Articles VII and IX, would Constructively Own or Beneficially Own the shares of Equity Stock that were converted into shares of Excess Stock; and, as soon as reasonably practicable following the Corporation's receipt or withholding thereof, shall pay over to the Trust for the benefit of the Beneficiary the dividends so received or withheld, as the case may be.

7.4.6 Rights upon Liquidation. In the event of any voluntary or involuntary liquidation of, or winding up of, or any distribution of the assets of, the Corporation, each holder of shares of Excess Stock shall be entitled to receive, ratably with each other holder of shares of Equity Stock of the same class and series as the shares which were converted into such Excess Stock and other holders of such Excess Stock, that portion of the assets of the Corporation that is available for distribution to the holders of shares of such class and series of Equity Stock and such Excess Stock. The Trust shall distribute to the Prohibited Owner the amounts received upon such liquidation, dissolution, or winding up, or distribution; provided, however, that the Prohibited Owner shall not be entitled to

receive amounts in excess of, in the case of a purported Transfer in which the Prohibited Owner gave value for shares of Equity Stock and which Transfer resulted in the conversion of the shares into shares of Excess Stock, the product of (x) the price per share, if any, such Prohibited Owner paid for the shares of Equity Stock and (y) the number of shares of Equity Stock which were so converted into Excess Stock, and, in the case of a Non-Transfer Event or purported Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or purported Transfer, as the case may be, resulted in the conversion of the shares into shares of Excess Stock, the product of (x) the price per share equal to the Market Price on the date of such Non-Transfer Event or purported Transfer and (y) the number of shares of Equity Stock which were so converted into Excess Stock. Any remaining amount in such Trust shall be distributed to the Beneficiary.

7.4.7 Voting Rights. Each share of Excess Stock shall entitle the holder to no

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voting rights other than those voting rights which must accompany a class of Stock under Maryland law. The Trustee, as record holder of the Excess Stock, shall be entitled to vote all shares of Excess Stock in the event voting rights are mandated by Maryland law. Any vote by a Prohibited Owner as a purported holder of shares of Equity Stock prior to the discovery by the Corporation that such shares of Equity Stock have been converted into shares of Excess Stock shall, subject to applicable law, (i) be rescinded and shall be void ab initio with respect to such shares of Excess Stock and (ii) be recast in accordance with the desires of the Trustee acting for the benefit of the Beneficiary; provided, however, that if the Corporation has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote.

7.4.8 Designation of Permitted Transferee.

(a) As soon as practicable after the Trustee acquires Excess Stock, but in an orderly fashion so as not to materially adversely affect the trading price of Common Stock, the Trustee shall designate one or more Persons as Permitted Transferees and sell to such Permitted Transferees any shares of Excess Stock held by the Trustee; provided, however, that (i) any Permitted Transferee so designated purchases for valuable consideration (whether in a public or private sale) the shares of Excess Stock and (ii) any Permitted Transferee so designated may acquire such shares of Excess Stock without violating any of the restrictions set forth in Section 9.2 of Article IX and without such acquisition resulting in the conversion of the shares of Equity Stock so acquired into shares of Excess Stock and the transfer of such shares to a Trust pursuant to Sections 7.4.1 and 7.4.4 of this Article VII. The Trustee shall have the exclusive and absolute right to designate Permitted Transferees of any and all shares of Excess Stock. Prior to any transfer by the Trustee of shares of Excess Stock to a Permitted Transferee, the Trustee shall give not less than five Trading Days' prior written notice to the Corporation of such intended transfer and the Corporation must have waived in writing its purchase rights, if any, under Section 7.4.10 of this Article VII.

(b) Subject to Section 7.4.8, upon the designation by the Trustee of a Permitted Transferee in accordance with the provisions of this Section 7.4.8, the Trustee shall cause to be transferred to the Permitted Transferee shares of Excess Stock acquired by the Trustee pursuant to Section 7.4.4 of this Article VII. Upon such transfer of shares of Excess Stock to the Permitted Transferee, such shares of Excess Stock shall be automatically converted into an equal number of shares of Equity Stock of the same class and series which was converted into such Excess Stock. Upon the occurrence of such a conversion of shares of Excess Stock into an equal number of shares of Equity Stock, such shares of Excess Stock shall be automatically retired and canceled, without any action required by the Board of Directors of the Corporation, and shall thereupon be restored to the status of authorized but unissued shares of Excess Stock and may be reissued by the Corporation as Excess Stock. The Trustee shall (i) cause to be recorded on the stock transfer books of the Corporation that the Permitted Transferee is the holder of record of such number of shares of Equity Stock, and (ii) distribute to the Beneficiary any and all amounts held with respect to such shares of Excess Stock after making payment to the Prohibited Owner pursuant to Section 7.4.9 of this Article VII.

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(c) If the Transfer of shares of Excess Stock to a

purported Permitted Transferee would or does violate any of the transfer restrictions set forth in Section 9.2 of Article IX, such Transfer shall be void ab initio as to that number of shares of Excess Stock that cause the violation of any such restriction when such shares are converted into shares of Equity Stock (as described in clause (b) above) and the purported Permitted Transferee shall be deemed to be a Prohibited Owner and shall acquire no rights in such shares of Excess Stock or Equity Stock. Such shares of Equity Stock shall be automatically re-converted into Excess Stock and transferred to the Trust from which they were originally Transferred. Such conversion and transfer to the Trust shall be effective as of the close of trading on the Trading Day prior to the date of the Transfer to the purported Permitted Transferee and the provisions of this Article VII shall apply to such shares, including, without limitation, the provisions of Sections 7.4.8 through 7.4.10 with respect to any future Transfer of such shares by the Trust.

7.4.9 Compensation to Record Holder of Shares of Equity Stock That Are Converted into Shares of Excess Stock. Any Prohibited Owner shall be entitled (following acquisition of the shares of Excess Stock and subsequent designation of and sale of Excess Stock to a Permitted Transferee in accordance with Section 7.4.8 of this Article VII or following the purchase of such shares in accordance with Section 7.4.10 of this Article VII) to receive from the Trustee following the sale or other disposition of such shares of Excess Stock the lesser of (i) (a) in the case of a purported Transfer in which the Prohibited Owner gave value for shares of Equity Stock and which Transfer resulted in the conversion of such shares into shares of Excess Stock, the product of (x) the price per share, if any, such Prohibited Owner paid for the shares of Equity Stock and (y) the number of shares of Equity Stock which were so converted into Excess Stock and (b) in the case of a Non-Transfer Event or purported Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or purported Transfer, as the case may be, resulted in the conversion of such shares into shares of Excess Stock, the product of (x) the price per share equal to the Market Price on the date of such Non-Transfer Event or purported Transfer and (y) the number of shares of Equity Stock which were so converted into Excess Stock or (ii) the proceeds received by the Trustee from the sale or other disposition of such shares of Excess Stock in accordance with Section 7.4.8 or Section 7.4.10 of this Article VII. Any amounts received by the Trustee in respect of such shares of Excess Stock and in excess of such amounts to be paid to the Prohibited Owner pursuant to this Section 7.4.9 shall be distributed to the Beneficiary in accordance with the provisions of Section 7.4.8 of this Article VII. Each Beneficiary and Prohibited Owner shall be deemed to have waived any and all claims that it may have against the Trustee and the Trust arising out of the disposition of shares of Excess Stock, except for claims arising out of the gross negligence or willful misconduct of, or any failure to make payments in accordance with this Section 7.4 of this Article VII, by such Trustee.

7.4.10 Purchase Right in Excess Stock. Except for shares of Excess Stock which may result from the conversion of shares of Series A Preferred Stock and Series

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B Preferred Stock which are outstanding as of the acceptance for record of these Articles, which shares shall not be subject to this Section 7.4.10, shares of Excess Stock shall be deemed to have been offered for sale to the Corporation or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that created such shares of Excess Stock (or, in the case of a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for the shares (e.g., if the shares were received through a gift or devise), the Market Price on the date of such Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for the shares) or (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer for a period of 90 days following the later of (a) the date of the Non-Transfer Event or purported Transfer which results in such shares of Excess Stock or (b) the date the Board of Directors first determines that a Transfer or Non-Transfer Event resulting in shares of Excess Stock has occurred, if the Corporation does not receive a notice of such Transfer or Non-Transfer Event pursuant to Section 7.4.3 of this Article VII.

7.5 Classification of Stock. The Board of Directors may classify or reclassify any unissued shares of Stock from time to time by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption for each class or

series, including, but not limited to, the reclassification of unissued shares of Common Stock to shares of Preferred Stock or unissued shares of Preferred Stock to shares of Common Stock or the issuance of any rights plan or similar plan.

7.6 Issuance of Stock. The Board of Directors may authorize the issuance from time to time of shares of Stock of any class or series, whether now or hereafter authorized, or securities or rights convertible into shares of Stock, for such consideration as the Board of Directors may deem advisable (or without consideration in the case of a share split or dividend), subject to such restrictions or limitations, if any, as may be set forth in these Articles or the Bylaws of the Corporation.

7.7 Dividends or Distributions. The Directors may from time to time authorize and declare and pay to stockholders such dividends or distributions in cash, property or other assets of the Corporation or in securities of the Corporation or from any other source as the Directors in their discretion shall determine.

7.8 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article VII, the Board of Directors shall have the power to determine the application of the provisions of this Article VII with respect to any situation based on the facts known to it.

7.9 Legend. Except as otherwise determined by the Board of Directors, each certificate for shares of Equity Stock shall bear substantially the following legend:

"The shares of Avalon Bay Communities, Inc. (the

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"Corporation") represented by this certificate are subject to restrictions set forth in the Corporation's charter, as the same may be amended from time to time, which prohibit in general (a) any Person (other than a Look-Through Entity) from Beneficially Owning shares of Equity Stock in excess of the Ownership Limit, (b) any Look-Through Entity from Beneficially Owning shares of Equity Stock in excess of the Look-Through Ownership Limit and (c) any Person from acquiring or maintaining any ownership interest in the stock of the Corporation that is inconsistent with (i) the requirements of the Internal Revenue Code of 1986, as amended, pertaining to real estate investment trusts or (ii) the charter of the Corporation, and the holder of this certificate by his, her or its acceptance hereof consents to be bound by such restrictions. Capitalized terms used in this paragraph and not defined herein are defined in the Corporation's charter, as the same may be amended from time to time.

The Corporation will furnish without charge, to each stockholder who so requests, a copy of the relevant provisions of the charter and the bylaws, each as amended, of the Corporation, a copy of the provisions setting forth the designations, preferences, privileges and rights of each class of stock or series thereof that the Corporation is authorized to issue and the qualifications, limitations and restrictions of such preferences and/or rights. Any such request may be addressed to the Secretary of the Corporation or to the transfer agent named on the face hereof."

7.10 Severability. Each provision of this Article VII shall be severable and an adverse determination as to any such provision shall in no way affect the validity of any other provision.

7.11 Articles and Bylaws. All persons who shall acquire Stock in the Corporation shall acquire the same subject to the provisions of these Articles and the Bylaws.

ARTICLE VIII

LIMITATION ON PREEMPTIVE RIGHTS

No holder of any Stock or any other securities of the Corporation, whether now or hereafter authorized, shall have any preferential or preemptive rights to subscribe for or purchase any Stock or any other securities of the Corporation other than such rights, if any, as the Board of Directors, in its sole discretion, may fix by articles supplementary, by contract or otherwise; and any Stock or other securities which the Board of Directors may determine to offer for subscription may, within the Board of Directors' sole discretion, be offered to the holders of any class, series or type of Stock or other securities at the time outstanding to the

exclusion of holders of any or all other classes, series or types of Stock or other securities at the time outstanding.

ARTICLE IX

LIMITATIONS ON TRANSFER AND OWNERSHIP OF EQUITY STOCK

9.1 Definitions. For purposes of this Article IX, the following terms shall have the meanings set forth below:

"Beneficial Ownership," when used with respect to ownership of shares of Equity Stock by any Person, shall mean all shares of Equity Stock which are (i) directly owned by such Person, (ii) indirectly owned by such Person (if such Person is an "individual" as defined in Section 542(a)(2) of the Code) taking into account the constructive ownership rules of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code, or (iii) beneficially owned by such Person pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended; provided, however, that in determining the number of shares Beneficially Owned by a Person or group, no share shall be counted more than once although applicable to two or more of clauses (i), (ii) and (iii) of this definition or (in the case of a group) although Beneficially Owned by more than one Person in such group. (If a Person Beneficially Owns shares of Equity Stock that are not actually outstanding (e.g., shares issuable upon the exercise of an option or convertible security) ("Option Shares"), then, whenever these Articles require a determination of the percentage of outstanding shares of a class of Equity Stock Beneficially Owned by that Person, the Option Shares Beneficially Owned by that Person shall also be deemed to be outstanding.)

"Beneficiary" shall mean, with respect to any Trust, one or more organizations described in each of Section 170(b)(1)(A) (other than clauses (vii) and (viii) thereof) and Section 170(c)(2) of the Code that are named by the Corporation as the beneficiary or beneficiaries of such Trust, in accordance with the provisions of Section 7.4.4 of Article VII.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Constructive Ownership" shall mean ownership of shares of Equity Stock by a Person who is or would be treated as a direct or indirect owner of such shares of Equity Stock through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have correlative meanings.

"Equity Stock" shall mean a particular class (other than Excess Stock) or series of stock of the Corporation. The use of the term "Equity Stock" or any term defined by reference to the term "Equity Stock" shall refer to the particular class or series of stock which is appropriate under the context.

"Look-Through Entity" shall mean a Person that is either (i) a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code as modified by Section 856(h)(3) of the Code or (ii) registered under the Investment Company Act of 1940.

"Look-Through Ownership Limit" shall mean, with respect to a class or series of Equity Stock, 15% of the number of outstanding shares of such Equity Stock.

"Market Price" of Equity Stock on any date shall mean the average of the Closing Price for shares of such Equity Stock for the five consecutive Trading Days ending on such date. The "Closing Price" on any date shall mean (A) where there exists a public market for the Corporation's Equity Stock, the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the shares of Equity Stock are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares of Equity Stock are listed or admitted to trading or, if the shares of Equity Stock are not

listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the Nasdaq Stock Market, Inc. or, if such system is no longer in use, the principal other automated quotation system that may then be in use or (B) if no public market for the Equity Stock exists, the Closing Price will be determined by a single, independent appraiser selected by a committee composed of Independent Directors which appraiser shall appraise the Market Price for such Equity Stock within such guidelines as shall be determined by the committee of Independent Directors.

"Non-Transfer Event" shall mean an event other than a purported Transfer that would cause (a) any Person (other than a Look-Through Entity) to Beneficially Own shares of Equity Stock in excess of the Ownership Limit or (b) any Look-Through Entity to Beneficially Own shares of Equity Stock in excess of the Look-Through Ownership Limit. Non-Transfer Events include but are not limited to (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of shares (or of Beneficial Ownership of shares) of Equity Stock or (ii) the sale, transfer, assignment or other disposition of interests in any Person or of any securities or rights convertible into or exchangeable for shares of Equity Stock or for interests in any Person that results in changes in Beneficial Ownership of shares of Equity Stock.

"Ownership Limit" shall mean, with respect to a class or series of Equity Stock, 9.8% of the number of outstanding shares of such Equity Stock.

"Permitted Transferee" shall mean any Person designated as a Permitted Transferee in accordance with the provisions of Section 7.4.8 of Article VII.

"Person" shall mean (a) an individual or any corporation, partnership, estate,

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trust, association, private foundation, joint stock company or any other entity and (b) a "group" as that term is used for purposes of Section 13(d)(3) of the Exchange Act; but shall not include an underwriter that participates in a public offering of Equity Stock for a period of 90 days following purchase by such underwriter of such Equity Stock.

"Prohibited Owner" shall mean, with respect to any purported Transfer or Non-Transfer Event, any Person who is prevented from becoming or remaining the owner of record title to shares of Equity Stock by the provisions of Section 7.4.1 of Article VII.

"Restriction Termination Date" shall mean the first day on which the Board of Directors, in accordance with Article VI hereof, determines that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify under the Code as a REIT.

"Trading Day" shall mean a day on which the principal national securities exchange on which any of the shares of Equity Stock are listed or admitted to trading is open for the transaction of business or, if none of the shares of Equity Stock are listed or admitted to trading on any national securities exchange, 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.

"Transfer" (as a noun) shall mean any sale, transfer, gift, assignment, devise or other disposition of shares (or of Beneficial Ownership of shares) of Equity Stock, whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise. "Transfer" (as a verb) shall have the correlative meaning.

"Trust" shall mean any separate trust created and administered in accordance with the terms of Section 7.4 of Article VII, for the exclusive benefit of any Beneficiary.

"Trustee" shall mean any Person or entity, unaffiliated with both the Corporation and any Prohibited Owner (and, if different than the Prohibited Owner, the Person who would have had Beneficial Ownership of the Shares that would have been owned of record by the Prohibited Owner), designated by the Corporation to act as trustee of any Trust, or any successor trustee thereof.

9.2 Restriction on Ownership and Transfer.

(a) (I) Except as provided in Section 9.4 of this Article IX, until the Restriction Termination Date, (i) no Person (other than a

Look-Through Entity) shall Beneficially Own shares of Equity Stock in excess of the Ownership Limit and (ii) no Look-Through Entity shall Beneficially Own shares of Equity Stock in excess of the Look-Through Ownership Limit.

(II) Except as provided in Section 9.4 of this Article IX, until the Restriction Termination Date, any purported Transfer (whether or not the result of a transaction entered into through the facilities of the New York Stock Exchange or any other national securities

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exchange or the Nasdaq Stock Market, Inc. or any other automated quotation system) that, if effective, would result in any Person (other than a Look-Through Entity) Beneficially Owning shares of Equity Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of that number of shares of Equity Stock which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit, and the intended transferee shall acquire no rights in such shares of Equity Stock.

(III) Except as provided in Section 9.4 of this Article IX, until the Restriction Termination Date, any purported Transfer (whether or not the result of a transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or the Nasdaq Stock Market, Inc. or any other automated quotation system) that, if effective, would result in any Look-Through Entity Beneficially Owning shares of Equity Stock in excess of the Look-Through Ownership Limit shall be void ab initio as to the Transfer of that number of shares of Equity Stock which would be otherwise Beneficially Owned by such Look-Through Ownership Entity in excess of the Look-Through Ownership Limit, and the intended transferee Look-Through Entity shall acquire no rights in such shares of Equity Stock.

(b) Until the Restriction Termination Date, any purported Transfer (whether or not the result of a transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or the Nasdaq Stock Market, Inc. or any other automated quotation system) of shares of Equity Stock that, if effective, would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code shall be void ab initio as to the Transfer of that number of shares of Equity Stock that would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code, and the intended transferee shall acquire no rights in such shares of Equity Stock.

(c) Until the Restriction Termination Date, any purported Transfer (whether or not the result of a transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or the Nasdaq Stock Market, Inc. or any other automated quotation system) of shares of Equity Stock that, if effective, would cause the Corporation to Constructively Own 10% or more of the ownership interests in a tenant of the real property of the Corporation or any direct or indirect subsidiary (whether a corporation, partnership, limited liability company or other entity) of the Corporation (a "Subsidiary"), within the meaning of Section 856(d)(2)(B) of the Code, shall be void ab initio as to the Transfer of that number of shares of Equity Stock that would cause the Corporation to Constructively Own 10% or more of the ownership interests in a tenant of the real property of the Corporation or a Subsidiary within the meaning of Section 856(d)(2)(B) of the Code, and the intended transferee shall acquire no rights in such shares of Equity Stock.

(d) Until the Restriction Termination Date, any purported Transfer (whether or not the result of a transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or the Nasdaq Stock Market, Inc. or any other automated quotation system) that, if effective, would result in shares of Equity Stock being beneficially owned by fewer than 100 persons within the meaning of Section 856(a)(5) of

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the Code shall be void ab initio and the intended transferee shall acquire no rights in such shares of Equity Stock.

9.3 Owners Required to Provide Information. Until the Restriction Termination Date:

(a) Every Beneficial Owner of more than 5%, or such lower percentages as are then required pursuant to regulations under the Code, of the outstanding shares of any class or series of Equity Stock of the Corporation as of any dividend record date on the Corporation's Equity Stock shall, within 30 days after January 1 of each year, provide to the Corporation a written

statement or affidavit stating the name and address of such Beneficial Owner, the number of shares of Equity Stock Beneficially Owned by such Beneficial Owner as of each such dividend record date, and a description of how such shares are held. Each such Beneficial Owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT and to ensure compliance with the Ownership Limit.

(b) Each Person who is a Beneficial Owner of shares of Equity Stock and each Person (including the stockholder of record) who is holding shares of Equity Stock for a Beneficial Owner shall provide to the Corporation a written statement or affidavit stating such information as the Corporation may request in order to determine the Corporation's status as a REIT and to ensure compliance with the Ownership Limit.

9.4. Exception. The Board of Directors, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence or undertakings acceptable to it, may, in its sole discretion, waive the application of the Ownership Limit or the Look-Through Ownership Limit to a Person subject, as the case may be, to any such limit, provided that (A) the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that such Person's Beneficial Ownership or Constructive Ownership of shares of Equity Stock will now and in the future (i) not result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, (ii) not cause the Corporation to Constructively Own 10% or more of the ownership interests of a tenant of the Corporation or a Subsidiary within the meaning of Section 856(d)(2)(B) of the Code and to violate the 95% gross income test of Section 856(c)(2) of the Code, and (iii) not result in the shares of Equity Stock of the Corporation being beneficially owned by fewer than 100 persons within the meaning of Section 856(a)(5) of the Code, and (B) such Person agrees in writing that any violation or attempted violation of (x) such other limitation as the Board of Directors may establish at the time of such waiver with respect to such Person or (y) such other restrictions and conditions as the Board of Directors may in its sole discretion impose at the time of such waiver with respect to such Person, will result, as of the time of such violation even if discovered after such violation, in the conversion of such shares in excess of the original limit applicable to such Person into shares of Excess Stock pursuant to Section 7.4.1 of Article VII.

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9.5 New York Stock Exchange Transactions. Notwithstanding any provision contained herein to the contrary, nothing in these Articles shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange or any other national securities exchange or the Nasdaq Stock Market, Inc. or any other automated quotation system. In no event shall the existence or application of the preceding sentence have the effect of deterring or preventing the conversion of Equity Stock into Excess Stock as contemplated herein.

9.6 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article IX, including any definition contained in Section 9.1 of this Article IX, the Board of Directors shall have the power to determine the application of the provisions of this Article IX with respect to any situation based on the facts known to it.

9.7 Remedies Not Limited. Except as set forth in Section 9.5 of this Article IX, nothing contained in this Article IX or Article VII shall limit the authority of the Corporation to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preservation of the Corporation's status as a REIT and to ensure compliance with the Ownership Limit or the Look-Through Ownership Limit.

ARTICLE X

RIGHTS AND POWERS OF CORPORATION,
BOARD OF DIRECTORS AND OFFICERS

In carrying on its business, or for the purpose of attaining or furthering any of its objects, the Corporation shall have all of the rights, powers and privileges granted to corporations by the laws of the State of Maryland, as well as the power to do any and all acts and things that a natural person or partnership could do as now or hereafter authorized by law, either alone or in partnership or conjunction with others. In furtherance and not in limitation of the powers conferred by statute, the powers of the Corporation and of the Directors and stockholders shall include the following:

10.1 Conflicts of Interest. Any Director or officer individually, or any firm of which any Director or officer may be a member, or any corporation or association of which any Director or officer may be a director or officer or in which any Director or officer may be interested as the holder

of any amount of its Stock or otherwise, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation, and, in the absence of fraud, no contract or other transaction shall be thereby affected or invalidated; provided, however, that (a) such fact shall have been disclosed or shall have been known to the Board of Directors or the committee thereof that approved such contract or transaction and such contract or transaction shall have been approved or ratified by the affirmative vote of a majority of the disinterested Directors, or (b) such fact shall have been disclosed or shall have been known to the stockholders entitled to vote, and such contract or transaction shall have been approved or ratified by a majority of the votes cast by the stockholders entitled to vote, other than the votes of shares owned of record or beneficially by the interested Director or

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corporation, firm or other entity, or (c) the contract or transaction is fair and reasonable to the Corporation. Any Director of the Corporation who is also a director or officer of or interested in such other corporation or association, or who, or the firm of which he is a member, is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of the Corporation which shall authorize any such contract or transaction, with like force and effect as if he were not such director or officer of such other corporation or association or were not so interested or were not a member of a firm so interested.

10.2 Amendment of Articles. The Corporation reserves the right, from time to time, to make any amendment of its Articles, now or hereafter authorized by law, including any amendment which alters the contract rights, as expressly set forth in its Articles, of any outstanding Stock.

No amendment or repeal of these Articles shall be made unless the same is first approved by the Board of Directors pursuant to a resolution adopted by the Board of Directors in accordance with the MGCL, and, except as otherwise provided by law, thereafter approved by the stockholders.

Whenever any vote of the holders of voting stock is required to amend or repeal any provision of these Articles, then in addition to any other vote of the holders of voting stock that is required by these Articles, the affirmative vote of the holders of a majority of the outstanding shares of Stock of the Corporation entitled to vote on such amendment or repeal, voting together as a single class, and the affirmative vote of the holders of a majority of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of these Articles; provided, however, that the affirmative vote of the holders of not less than two-thirds of the outstanding shares entitled to vote on such amendment or repeal, voting together as a single class, and the affirmative vote of the holders of not less than two-thirds of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any of the provisions of Sections 6.4, 6.5 or 6.6 of Article VI, Article X or Article XII of these Articles.

ARTICLE XI

INDEMNIFICATION

The Corporation (which for the purpose of this Article XI shall include predecessor entities of the Corporation as set forth in Section 2-418 of the MGCL) shall have the power to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former Director or officer of the Corporation or (b) any individual who, while a Director of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner or trustee of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former

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Director or officer of the Corporation. The Corporation shall have the power, with the approval of the Board of Directors, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation.

ARTICLE XII

LIMITATION OF LIABILITY

To the fullest extent permitted under the MGCL as in effect on the date of filing these Articles or as the MGCL is thereafter amended from time to time, no Director or officer shall be liable to the Corporation or its stockholders for money damages. Neither the amendment or the repeal of this Article, nor the adoption of any other provision in the Corporation's Articles inconsistent with this Article, shall eliminate or reduce the protection afforded by this Article to a Director or officer of the Corporation with respect to any matter which occurred, or any cause of action, suit or claim which but for this Article would have accrued or arisen, prior to such amendment, repeal or adoption.

ARTICLE XIII

MISCELLANEOUS

13.1 Provisions in Conflict with Law or Regulations.

(a) The provisions of these Articles are severable, and if the Directors shall determine that any one or more of such provisions are in conflict with the REIT provisions of the Code, or other applicable federal or state laws, the conflicting provisions shall be deemed never to have constituted a part of these Articles, even without any amendment of these Articles pursuant to Section 10.2 hereof; provided, however, that such determination by the Directors shall not affect or impair any of the remaining provisions of these Articles or render invalid or improper any action taken or omitted prior to such determination. No Director shall be liable for making or failing to make such a determination.

(b) If any provision of these Articles or any application of such provision shall be held invalid or unenforceable by any federal or state court having jurisdiction, such holding shall not in any manner affect or render invalid or unenforceable such provision in any other jurisdiction, and the validity of the remaining provisions of these Articles shall not be affected. Other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

ARTICLE XIV

DESIGNATED SERIES OF PREFERRED STOCK

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14.1 Series A Preferred Stock. The Board of Directors has duly divided and classified 2,308,800 shares of the Preferred Stock of the Corporation into a series designated Series A Preferred Stock and has provided for the issuance of such series. Subject in all cases to the provisions of Section 7.4 of Article VII and Article IX of the Articles with respect to Excess Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Series A Preferred Stock of the Corporation:

14.1.1 Designation and Amount. The designation of the Preferred Stock described in Section 14.1 hereof shall be "Series A Preferred Stock (par value \$.01 per share)" (hereinafter "Series A Preferred Stock"). The number of authorized shares of Series A Preferred Stock is 2,308,800. The Series A Preferred Stock shall rank (a) senior to the Corporation's Series E Preferred Stock (as defined in Section 14.5 hereof) and Common Stock, (b) on a pari passu basis with the Corporation's Series B Preferred Stock (as defined in Section 14.2 hereof), and (c) junior to the Corporation's Series C Preferred Stock (as defined in Section 14.3 hereof), Series D Preferred Stock (as defined in Section 14.4 hereof), Series F Preferred Stock (as defined in Section 14.6 hereof) and Series G Preferred Stock (as defined in Section 14.7 hereof), with respect to the payment of dividends.

14.1.2 Dividend Rights.

(a) The holders of record of outstanding shares of Series A Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available therefor, cash dividends which are (i) cumulative, (ii) preferential to the dividends paid on the Corporation's Series E Preferred Stock and Common Stock, on a pari passu basis to the dividends paid on the Corporation's Series B Preferred Stock, and junior to the dividends paid on the Corporation's Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, and (iii) payable at an annual rate equal to the Series A Dividend Amount, and no more, on the fifteenth day of each February, May, August and November following

the date of original issuance of the Series A Preferred Stock (the "Series A Original Issue Date"). Each calendar quarter immediately preceding the fifteenth day of February, May, August and November (or if the Series A Original Issue Date is not on the first day of a calendar quarter, the period beginning on the date of issuance and ending on the last day of the calendar quarter of issuance) is referred to hereinafter as a "Series A Dividend Period." The initial per share Series A Dividend Amount per annum shall be equal to \$1.6068. The amount of dividends payable for each full Series A Dividend Period for the Series A Preferred Stock shall be computed by dividing the Series A Dividend Amount by four. The amount of dividends on the Series A Preferred Stock payable for the initial Series A Dividend Period, or any other period shorter or longer than a full Series A Dividend Period, shall be computed ratably on the basis of the actual number of days in such Series A Dividend Period. In the event of any change in the quarterly cash dividend per share applicable to the Common Stock, the quarterly cash dividend per share on the Series A Preferred Stock shall be adjusted for the same dividend period by an amount computed by multiplying the amount of the change in the Common Stock dividend times the Series A Conversion Ratio (as defined in Section 14.1.4(a)).

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(b) In the event the Corporation shall declare a distribution payable in (i) securities of other persons, (ii) evidences of indebtedness issued by the Corporation or other persons, (iii) assets (excluding cash dividends) or (iv) options or rights to purchase capital stock or evidences of indebtedness in the Corporation or other persons, then, in each such case for the purpose of this Section 14.1.2(b), the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series A Preferred Stock are or would be convertible (assuming such shares of Series A Preferred Stock were then convertible).

(c) The Corporation shall not (i) declare or pay or set apart for payment any dividends or distributions on any Stock ranking as to dividends junior to the Series A Preferred Stock (other than dividends paid in shares of such junior Stock) or (ii) make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any Stock ranking as to dividends junior to the Series A Preferred Stock (other than a purchase or redemption made by issue or delivery of such junior Stock) unless all dividends payable on all outstanding shares of Series A Preferred Stock for all past Series A Dividend Periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof, provided, however, that any moneys theretofore deposited in any sinking fund with respect to any Preferred Stock of the Corporation in compliance with the provisions of such sinking fund may thereafter be applied to the purchase or redemption of such Preferred Stock in accordance with the terms of such sinking fund.

(d) All dividends declared on shares of Series A Preferred Stock and any other class of Preferred Stock or series thereof ranking on a parity as to dividends with the Series A Preferred Stock shall be declared pro rata, so that the amounts of dividends declared per share on the Series A Preferred Stock for the Series A Dividend Period of the Series A Preferred Stock ending either on the same day or within the dividend period of such other Stock shall, in all cases, bear to each other the same ratio that accrued dividends per share on the shares of Series A Preferred Stock and such other Stock bear to each other.

14.1.3 Liquidation Rights.

(a) Subject to the prior rights of the Corporation's Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock, Series G Preferred Stock and any class or series of Stock the terms of which specifically provide that such Stock ranks senior to the Series A Preferred Stock, in the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, on a pari passu basis with the holders of the Corporation's Series B Preferred Stock and prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock by reason of their ownership of such Stock, an amount equal to all accrued but unpaid dividends for each share of Series A Preferred Stock then held by them. If

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upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series A Preferred Stock shall be insufficient to permit the payment to such holders of the full amounts to which they are entitled under

the preceding sentence, then, subject to any prior rights of any classes or series of Stock, the entire assets and funds of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series A Preferred Stock and the holders of any other shares of Stock on a parity for liquidation purposes with the Series A Preferred Stock in proportion to the aggregate amounts owed to each such holder.

(b) Subject to any prior rights of any other class or series of Stock, after the payment or setting apart of payment to the holders of Series A Preferred Stock of the full preferential amounts to which they shall be entitled pursuant to Section 14.1.3(a) above, the holders of the Series A Preferred Stock shall be treated pari passu with the holders of the record of Common Stock, with each holder of record of Series A Preferred Stock being entitled to receive in addition to the amounts payable pursuant to Section 14.1.3(a) above, that amount which such holder would be entitled to receive if such holder had converted all its Series A Preferred Stock into Common Stock immediately prior to the liquidating distribution in question.

14.1.4 Conversion.

(a) Right to Convert. Beginning on the third anniversary of the Series A Original Issue Date, the holders of shares of Series A Preferred Stock shall have the right, at their option, to convert each such share, at any time and from time to time, into one (the "Series A Conversion Ratio," which shall be subject to adjustment as hereinafter provided) fully paid and nonassessable share of Common Stock; provided, however, that no holder of Series A Preferred Stock shall be entitled to convert shares of such Series A Preferred Stock into Common Stock pursuant to the foregoing provision, if, as a result of such conversion, such person would become the Beneficial Owner of more than 4.9% of the Corporation's outstanding Common Stock (the "4.9% Limitation"). As used in Section 14.1 and 14.2 hereof, Beneficial Owner shall have the meaning set forth in Rule 13d-3 under the Securities Exchange Act of 1934 (or any successor provision thereto). Notwithstanding the foregoing, such conversion right may be exercised at any time after the Series A Original Issue Date and irrespective of the 4.9% Limitation (and no such limit shall apply) if any of the following circumstances occurs:

(i) For any two consecutive fiscal quarters, the aggregate amount outstanding as of the end of the quarter under (1) all mortgage indebtedness of the Corporation and its consolidated entities and (2) unsecured indebtedness of the Corporation and its consolidated entities exceeds sixty-five percent (65%) of the amount arrived at by (A) taking the Corporation's consolidated gross revenues less property-related expenses, including real estate taxes, insurance, maintenance and utilities, but excluding depreciation, amortization, interest and corporate general and administrative expenses, for the quarter in question and the immediately preceding quarter, (B) multiplying the amount in clause (A) by two (2), and (C) dividing the resulting product in clause (B) by nine percent (9%) (all as such items of indebtedness, revenues and expenses are reported in consolidated financial statements contained in the Corporation's Forms 10-K and Forms 10-Q as filed with the Securities and Exchange Commission); or

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(ii) Gilbert M. Meyer has ceased to be an executive officer of the Corporation, unless the holders of a majority of the shares of the Series A Preferred Stock then outstanding have voted on and approved a replacement for Mr. Meyer and the replacement remains an executive officer of the Corporation; or

(iii) If (A) the Corporation shall be party to, or shall have entered into an agreement for, any transaction (including, without limitation, a merger, consolidation, statutory share exchange or sale of all or substantially all of its assets (each of the foregoing a "Series A Transaction")), in each case as a result of which shares of Common Stock shall have been or will be converted into the right to receive stock, securities or other property (including cash or any combination thereof) or which has resulted or will result in the holders of Common Stock immediately prior to the Series A Transaction owning less than 50% of the Common Stock after the Series A Transaction, or (B) a "change of control" as defined in the next sentence occurs with respect to the Corporation. A change of control shall mean the acquisition (including by virtue of a merger, share exchange or other business combination) by one stockholder or a group of stockholders acting in concert of the power to elect a majority of the Corporation's Board of Directors. The Corporation shall notify the holders of Series A Preferred Stock promptly if any of the events listed in this Section 14.1.4(a)(iii) shall occur. Calculations set forth in Section 14.1.4(a)(i) shall be made without regard to unconsolidated indebtedness incurred as a joint venture partner, and

the effect of any unconsolidated joint venture, including any income from such unconsolidated joint venture, shall be excluded for purposes of the calculation set forth in Section 14.1.4(a)(i).

(b) **Mandatory Conversion.** On the tenth anniversary of the Series A Original Issue Date (the "Series A Mandatory Conversion Date"), each issued and outstanding share of Series A Preferred Stock which has not been converted to Common Stock shall mandatorily convert to that number of fully paid and nonassessable shares of Common Stock equal to the Series A Conversion Ratio, as adjusted, regardless of the 4.9% Limitation. From and after the Series A Mandatory Conversion Date, certificates representing shares of Series A Preferred Stock shall be deemed to represent the shares of Common Stock into which they have been converted. Following the Series A Mandatory Conversion Date, the holder of certificates for Series A Preferred Stock may surrender those certificates at the office of any transfer agent for the Common Stock, or if there is no such transfer agent, at the principal offices of the Corporation, or at such other office as may be designated by the Corporation, accompanied by instructions from the holder as to the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon such conversion to be issued. Promptly following surrender of certificates for Series A Preferred Stock after the Series A Mandatory Conversion Date, the Corporation shall issue and deliver at such office a certificate or certificates for the number of whole shares of Common Stock issuable upon mandatory conversion of the Series A Preferred Stock to the person(s) entitled to receive the same. For purposes of Sections 14.1.4(d) and 14.1.4(e) below, the Series A Mandatory Conversion Date shall constitute the Series A Conversion Date.

(c) **Procedure for Conversion.** In order to exercise its right to convert shares

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of Series A Preferred Stock into Common Stock, the holder of shares of Series A Preferred Stock shall surrender the certificate(s) therefor, duly endorsed if the Corporation shall so require, or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office of any transfer agent for the Series A Preferred Stock, or if there is no such transfer agent, at the principal offices of the Corporation, or at such other office as may be designated by the Corporation, together with written notice that such holder elects to convert such shares. Such notice shall also state the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon conversion to be issued. As soon as practicable after a conversion, the Corporation shall issue and deliver at said office a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock duly surrendered for conversion, to the person(s) entitled to receive the same. Shares of Series A Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the date on which the certificates therefor and notice of intention to convert the same are duly received by the Corporation in accordance with the foregoing provisions, and the person(s) entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes as record holder(s) of such Common Stock as of the close of business on such date (hereinafter, the "Series A Conversion Date").

(d) **Fractional Shares.** No fractional shares shall be issued upon conversion of the Series A Preferred Stock into Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. As to any final fraction of a share which the holder of one or more shares of Series A Preferred Stock would be entitled to receive upon exercise of his conversion right the Corporation shall pay a cash adjustment in an amount equal to the same fraction of the last sale price (or bid price if there were no sales) per share of Common Stock on the New York Stock Exchange on the business day which next precedes the Series A Conversion Date or, if such Common Stock is not then listed on the New York Stock Exchange, of the market price per share (as determined in a manner prescribed by the Board of Directors of the Corporation) at the close of business on the business day which next precedes the Series A Conversion Date.

(e) **Payment of Adjusted Accrued Dividends Upon Conversion.** On the next dividend payment date (or such later date as is permitted in this Section 14.1.4(e)) following any Series A Conversion Date hereunder, the Corporation shall pay in cash Series A Adjusted Accrued Dividends (as defined below) on shares of Series A Preferred Stock so converted. The holder shall be entitled to receive accrued and unpaid dividends accrued to and including the Series A Conversion Date on the shares of Series A Preferred Stock converted (assuming that such dividends accrue ratably each day that such shares are outstanding), less an amount equal to the pre-conversion portion of the dividends paid on the shares of Common Stock issued upon such conversion (the "Series A Conversion Stock"). (The record date for the Series A Conversion Stock which occurs after the Series A

Conversion Date is hereinafter referred to as the "Series A Subsequent Record Date.") The pre-conversion portion of such Series A Conversion Stock dividend means that portion of such dividend as is attributable to the period that (i) begins on the day after the last Series A Conversion Stock dividend record date occurring before such Series A Subsequent Record Date and (ii) ends on such Series A Conversion Date, assuming that such dividends accrue ratably during the period. The term "Series A Adjusted

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Accrued Dividends" means the amount arrived at through the application of the foregoing formula. Series A Adjusted Accrued Dividends shall not be less than zero. The formula for Series A Adjusted Accrued Dividends shall be applied to effectuate the Corporation's intent that the holder converting shares of Series A Preferred Stock to Series A Conversion Stock shall be entitled to receive dividends on such shares of Series A Preferred Stock up to and including the Series A Conversion Date and shall be entitled to the dividends on the shares of Series A Conversion Stock issued upon such conversion which are deemed to accrue beginning on the first day after the Series A Conversion Date, but shall not be entitled to dividends attributable to the same period for both the shares of Series A Preferred Stock converted and the shares of Series A Conversion Stock issued upon such conversion. The Corporation shall be entitled to withhold (to the extent consistent with the intent to avoid double dividends for overlapping portions of Series A Preferred and Series A Conversion Stock dividend periods) the payment of Series A Adjusted Accrued Dividends until the applicable Series A Subsequent Record Date, even though such date occurs after the applicable dividend payment date with respect to the Series A Preferred Stock, in which event the Corporation shall mail to each holder who converted Series A Preferred Stock a check for the Series A Adjusted Accrued Dividends thereon within five (5) business days after such Series A Subsequent Record Date. Series A Adjusted Accrued Dividends shall be accompanied by an explanation of how such Series A Adjusted Accrued Dividends have been calculated. Series A Adjusted Accrued Dividends shall not bear interest.

(f) Adjustments.

(i) In the event the Corporation shall at any time (i) pay a dividend or make a distribution to holders of Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the Series A Conversion Ratio shall be adjusted on the effective date of the dividend, distribution, subdivision or combination by multiplying the Series A Conversion Ratio by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such dividend, distribution, subdivision or combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such dividend, distribution, subdivision or combination.

(ii) Whenever the Series A Conversion Ratio shall be adjusted as herein provided, the Corporation shall cause to be mailed by first class mail, postage prepaid, as soon as practicable to each holder of record of shares of Series A Preferred Stock a notice stating that the Series A Conversion Ratio has been adjusted and setting forth the adjusted Series A Conversion Ratio, together with an explanation of the calculation of the same.

(iii) If the Corporation shall be party to any Series A Transaction in each case

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as a result of which shares of Common Stock shall be converted into the right to receive stock, securities or other property (including cash or any combination thereof), the holder of each share of Series A Preferred Stock shall have the right in connection with such Series A Transaction to convert such share, pursuant to the optional conversion provisions hereof, into the number and kind of shares of stock or other securities and the amount and kind of property receivable upon such Series A Transaction by a holder of the number of shares of Common Stock issuable upon conversion of such share of Series A Preferred Stock immediately prior to such Series A Transaction. The Corporation shall not be party to any Series A Transaction unless the terms of such Series A Transaction are consistent with the provisions

of this Section 14.1.4(f) (iii), and it shall not consent to or agree to the occurrence of any Series A Transaction until the Corporation has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series A Preferred Stock, thereby enabling the holders of the Series A Preferred Stock to receive the benefits of this Section 14.1.4(f) (iii) and the other provisions of the Articles. Without limiting the generality of the foregoing, provision shall be made for adjustments in the Series A Conversion Ratio which shall be as nearly equivalent as may be practicable to the adjustments provided for in Section 14.1.4(f) (iii). The provisions of this Section 14.1.4(f) (iii) shall similarly apply to successive Series A Transactions.

(iv) In the event that the Corporation shall propose to effect any Series A Transaction which would result in an adjustment under Section 14.1.4(f) (iii), the Corporation shall cause to be mailed to the holders of record of Series A Preferred Stock at least 20 days prior to the record date for such Series A Transaction a notice stating the date on which such Series A Transaction is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such Series A Transaction. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such Series A Transaction.

(g) Other.

(i) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the maximum number of shares of Common Stock issuable upon the conversion of all shares of Series A Preferred Stock then outstanding, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, in addition to such other remedies as shall be available to the holder of such Series A Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(ii) The Corporation shall pay any taxes that may be payable in respect of the issuance of shares of Common Stock upon conversion of shares of Series A Preferred

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Stock, but the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer of shares of Series A Preferred Stock or any transfer involved in the issuance of shares of Common Stock in a name other than that in which the shares of Series A Preferred Stock so converted are registered, and the Corporation shall not be required to transfer any such shares of Series A Preferred Stock or to issue or deliver any such shares of Common Stock unless and until the person(s) requesting such transfer or issuance shall have paid to the Corporation the amount of any such taxes, or shall have established to the satisfaction of the Corporation that such taxes have been paid.

(iii) The Corporation will not, by amendment of the Articles or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out of all the provisions of the Articles and in the taking of all such action as may be necessary or appropriate to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(iv) Holders of Series A Preferred Stock shall be entitled to receive copies of all communications by the Corporation to its holders of Common Stock, concurrently with the distribution to such shareholders.

14.1.5 Voting Rights. Except as indicated in this Section 14.1.5, or except as otherwise from time to time required by applicable law, the holders of shares of Series A Preferred Stock shall not be entitled to vote on any matter on which the holders of shares of Common Stock are entitled to vote, except that the holders of a majority of the outstanding shares of Series A Preferred Stock, voting as a separate class, shall be required to vote on and approve any material

adverse change in the rights, preferences or privileges of the Series A Preferred Stock. For purposes of the foregoing, the creation of a new class of Stock having rights, preferences or privileges senior to, in parity with or junior to the rights, preferences or privileges of the Series A Preferred Stock shall not be treated as a material adverse change in the rights, preferences or privileges of the Series A Preferred Stock, and the holders of Series A Preferred Stock shall not have any right to vote on the creation of such new class of Stock. Except as provided above and as required by law, the holders of Series A Preferred Stock are not entitled to vote on any merger or consolidation involving the Corporation, on any share exchange or on a sale of all or substantially all of the assets of the Corporation.

14.1.6 Reacquired Shares. Shares of Series A Preferred Stock converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of Preferred Stock without designation as to series.

14.2 Series B Preferred Stock. The Board of Directors has duly divided and classified 425,000 shares of the Preferred Stock of the Corporation into a series designated Series B Preferred Stock and has provided for the issuance of such series. Subject in all cases to the

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provisions of Section 7.4 of Article VII and Article IX of the Articles with respect to Excess Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Series B Preferred Stock of the Corporation:

14.2.1 Designation and Amount. The designation of the Preferred Stock described in Section 14.2 hereof shall be "Series B Preferred Stock (par value \$.01 per share)" (hereinafter, the "Series B Preferred Stock"). The number of shares of the Series B Preferred Stock is 425,000. The Series B Preferred Stock shall rank (a) senior to the Corporation's Series E Preferred Stock and Common Stock, (b) on a pari passu basis with the Corporation's Series A Preferred Stock, and (c) junior to the Corporation's Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, with respect to the payment of dividends. The Series B Preferred Stock shall have identical preferences, voting powers, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption, conversion and other rights as the Series A Preferred Stock.

14.2.2 Dividend Rights.

(a) The holders of record of outstanding shares of Series B Preferred Stock shall be entitled to receive, when, as and if authorized by the Board of Directors, out of funds legally available therefor, cash dividends which are (1) cumulative (2) preferential to the dividends paid on the Corporation's Series E Preferred Stock and Common Stock, on a pari passu basis with the dividends paid on the Corporation's Series A Preferred Stock, and junior to the dividends paid on the Corporation's Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock and Series G Preferred Stock, and (3) payable at an annual rate equal to the Series B Dividend Amount (as defined below) and no more, on the fifteenth day of each February, May, August and November following the date of original issuance of the Series B Preferred Stock (the "Series B Original Issue Date"). Each calendar quarter immediately preceding the fifteenth day of February, May, August and November (or if the Series B Original Issue Date is not on the first day of a calendar quarter, the period beginning on the date of issuance and ending on the last day of the calendar quarter of issuance) is referred to hereinafter as a "Series B Dividend Period." The initial per share Series B Dividend Amount per annum shall be equal to \$1.648. The amount of dividends payable for each full Series B Dividend Period for each share of the Series B Preferred Stock shall be computed by dividing the per share Series B Dividend Amount by four. The amount of dividends on the Series B Preferred Stock payable for the initial Series B Dividend Period, or any other period shorter or longer than a full Series B Dividend Period, shall be computed ratably on the basis of the actual number of days in such Series B Dividend Period. In the event of any change in the quarterly cash dividend per share declared on the Common Stock, the quarterly cash dividend per share on the Series B Preferred Stock shall be adjusted for the same Series B Dividend Period by an amount computed by multiplying the amount of the change in the Common Stock dividend times the Series B Conversion Ratio (as defined in Section 14.2.4(a)).

(b) In the event the Corporation shall declare a distribution payable in (i) securities of other persons, (ii) evidences of indebtedness issued by the Corporation or other persons, (iii) assets (excluding cash dividends) or (iv) options or rights to purchase capital stock or evidences of indebtedness in the Corporation or other persons, then, in each such case for the purpose of this Section 14.2.2(b), the holders of the Series B Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock of the Corporation into which their shares of Series B Preferred Stock are or would be convertible (assuming such shares of Series B Preferred Stock were then convertible).

(c) The Corporation shall not (i) declare or pay or set apart for payment any dividends or distributions on any Stock ranking as to dividends junior to the Series B Preferred Stock (other than dividends paid in shares of such junior Stock) or (ii) make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any Stock ranking as to dividends junior to the Series B Preferred Stock (other than a purchase or redemption made by issue or delivery of such junior Stock) unless all dividends payable on all outstanding shares of Series B Preferred Stock for all past Series B Dividend Periods shall have been paid in full or declared and a sufficient sum set apart for payment thereof, provided, however, that any moneys theretofore deposited in any sinking fund with respect to any Preferred Stock of the Corporation in compliance with the provisions of such sinking fund may thereafter be applied to the purchase or redemption of such Preferred Stock in accordance with the terms of such sinking fund.

(d) All dividends declared on shares of Series B Preferred Stock and any other class of Preferred Stock or series thereof ranking on a parity as to dividends with the Series B Preferred Stock and the Series A Preferred Stock shall be declared pro rata, so that the amounts of dividends declared per share on the Series B Preferred Stock and Series A Preferred Stock for the Series B Dividend Period of the Series B Preferred Stock and Series A Preferred Stock ending either on the same day or within the dividend period of such other Stock, shall, in all cases, bear to each other the same ratio that accrued dividends per share on the shares of Series B Preferred Stock, Series A Preferred Stock and such other Stock bear to each other.

14.2.3 Liquidation Rights.

(a) Subject to any prior rights of any class or series of Stock, in the event of any liquidation, dissolution, or winding up of the Corporation, either voluntary or involuntary, the holders of Series B Preferred Stock shall be entitled to receive, on a pari passu basis with the holders of the Corporation's Series A Preferred Stock and prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of Common Stock by reason of their ownership of such Stock, an amount equal to all accrued but unpaid dividends for each share of Series B Preferred Stock then held by them. If upon the occurrence of such event, the assets and funds thus distributed among the holders of the Series B Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid amounts to which they are entitled, then, subject to any prior rights of any classes or series of Stock, the

entire assets and funds of the Corporation legally available for distribution shall be distributed ratably to the holders of the Series A Preferred Stock and Series B Preferred Stock, and any other shares of Stock on a parity for liquidation purposes in proportion to the aggregate amounts owed to each such holder.

(b) Subject to any prior rights of any other class or series of Stock, after the payment or setting apart of payment to the holders of Series B Preferred Stock of the full preferential amounts to which they shall be entitled pursuant to Section 14.2.3(a) above, the holders of record of the Series B Preferred Stock shall be treated pari passu with the holders of record of Series A Preferred Stock and Common Stock, with each holder of record of Series B Preferred Stock being entitled to receive, in addition to the amounts payable pursuant to Section 14.2.3(a) above, that amount which such holder would be entitled to receive if such holder had converted all its Series B Preferred Stock into Common Stock immediately prior to the liquidating distribution in question.

14.2.4 Conversion.

(a) Right to Convert. Beginning on October 2, 1998, the

holders of shares of Series B Preferred Stock shall have the right, at their option, to convert each such share, at any time and from time to time, into one (the "Series B Conversion Ratio," which shall be subject to adjustment as hereinafter provided) fully paid and nonassessable share of Common Stock; provided, however, that no holder of Series B Preferred Stock shall be entitled to convert shares of such Series B Preferred Stock into Common Stock pursuant to the foregoing provision, if, immediately after such conversion, such person would be the Beneficial Owner of the Corporation's outstanding Common Stock in an amount exceeding the 4.9% Limitation. Notwithstanding the foregoing, such conversion right may be exercised at any time after the Series B Original Issue Date and irrespective of the 4.9% Limitation (and no such limit shall apply) if any of the following circumstances occurs:

(i) For any two consecutive fiscal quarters, the aggregate amount outstanding as of the end of the quarter under (1) all mortgage indebtedness of the Corporation and its consolidated entities and (2) unsecured indebtedness of the Corporation and its consolidated entities exceeds sixty-five percent (65%) of the amount arrived at by (A) taking the Corporation's consolidated gross revenues less property-related expenses, including real estate taxes, insurance, maintenance and utilities, but excluding depreciation, amortization, interest and corporate general and administrative expenses, for the quarter in question and the immediately preceding quarter, (B) multiplying the amount in clause (A) by two (2), and (C) dividing the resulting product in clause B by nine percent (9%) (all as such items of indebtedness, revenues and expenses are reported in consolidated financial statements contained in the Corporation's Forms 10-K and Forms 10-Q as filed with the Securities and Exchange Commission); or

(ii) Gilbert M. Meyer has ceased to be an executive officer of the Corporation, unless the holders of a majority of the shares of the Series B Preferred Stock then outstanding have voted on and approved a replacement for Mr. Meyer and the

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replacement remains an executive officer of the Corporation; or

(iii) If (A) the Corporation shall be party to, or shall have entered into an agreement for, any transaction (including, without limitation, a merger, consolidation, statutory share exchange or sale of all or substantially all of its assets (each of the foregoing a "Series B Transaction")), in each case as a result of which shares of Common Stock shall have been or will be converted into the right to receive stock, securities or other property (including cash or any combination thereof) or which has resulted or will result in the holders of Common Stock immediately prior to the Series B Transaction owning less than 50% of the Common Stock after the Series B Transaction, or (B) a "change of control" as defined in the next sentence occurs with respect to the Corporation. A change of control shall mean the acquisition (including by virtue of a merger, share exchange or other business combination) by one stockholder or a group of stockholders acting in concert of the power to elect a majority of the Corporation's Board of Directors. The Corporation shall notify the holders of Series B Preferred Stock promptly if any of the events listed in this Section 14.2.4(a)(iii) shall occur.

Calculations set forth in Section 14.2.4(a)(i) shall be made without regard to unconsolidated indebtedness incurred as a joint venture partner, and the effect of any unconsolidated joint venture, including any income from such unconsolidated joint venture, shall be excluded for purposes of the calculation set forth in Section 14.2.4(a)(i).

(b) **Mandatory Conversion.** On October 2, 2005 (the "Series B Mandatory Conversion Date"), each issued and outstanding share of Series B Preferred Stock which has not been converted to Common Stock shall mandatorily convert to that number of fully paid and nonassessable shares of Common Stock equal to the Series B Conversion Ratio, as adjusted, regardless of the 4.9% Limitation. From and after the Series B Mandatory Conversion Date, certificates representing shares of Series B Preferred Stock shall be deemed to represent the shares of Common Stock into which they have been converted. Following the Series B Mandatory Conversion Date, the holder of certificates for Series B Preferred Stock may surrender those certificates at the office of any transfer agent for the Common Stock, or if there is no such transfer agent, at the principal offices of the Corporation, or at such other office as may be designated by the Corporation, accompanied by instructions from the holder as to the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon such conversion to be issued. Promptly following surrender of certificates for Series B Preferred Stock after the Series B Mandatory Conversion Date, the Corporation shall issue and deliver at such office a certificate or certificates for the number of whole shares of

Common Stock issuable upon mandatory conversion of the Series B Preferred Stock to the person(s) entitled to receive the same. For purposes of Sections 14.2.4(d) and 14.2.4(e) below, the Series B Mandatory Conversion Date shall constitute the Series B Conversion Date.

(c) Procedure for Conversion. In order to exercise its right to convert shares of Series B Preferred Stock into Common Stock, the holder of shares of Series B Preferred Stock shall surrender the certificate(s) therefor, duly endorsed if the Corporation shall so require, or accompanied by appropriate instruments of transfer satisfactory to the Corporation, at the office

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of any transfer agent for the Series B Preferred Stock or if there is no such transfer agent, at the principal offices of the Corporation, or at such other office as may be designated by the Corporation, together with written notice that such holder elects to convert such shares. Such notice shall also state the name(s) and address(es) in which such holder wishes the certificate(s) for the shares of Common Stock issuable upon conversion to be issued. As soon as practicable after a conversion, the Corporation shall issue and deliver at said office a certificate or certificates for the number of whole shares of Common Stock issuable upon conversion of the shares of Series B Preferred Stock duly surrendered for conversion, to the person(s) entitled to receive the same. Shares of Series B Preferred Stock shall be deemed to have been converted immediately prior to the close of business on the date on which the certificates therefor and notice of intention to convert the same are duly received by the Corporation in accordance with the foregoing provisions, and the person(s) entitled to receive the Common Stock issuable upon such conversion shall be deemed for all purposes as record holder(s) of such Common Stock as of the close of business on such date (hereinafter, the "Series B Conversion Date").

(d) No Fractional Shares. No fractional shares shall be issued upon conversion of the Series B Preferred Stock into Common Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. As to any final fraction of a share which the holder of one or more shares of Series B Preferred Stock would be entitled to receive upon exercise of his conversion right, the Corporation shall pay a cash adjustment in an amount equal to the same fraction of the last sale price (or bid price if there were no sales) per share of Common Stock on the New York Stock Exchange on the business day which next precedes the Series B Conversion Date or, if such Common Stock is not then listed on the New York Stock Exchange, of the market price per share (as determined in a manner prescribed by the Board of Directors of the Corporation) at the close of business on the business day which next precedes the Series B Conversion Date.

(e) Payment of Adjusted Accrued Dividends Upon Conversion. On the next dividend payment date (or such later date as is permitted in this Section 14.2.4(e)) following any Series B Conversion Date hereunder, the Corporation shall pay in cash Series B Adjusted Accrued Dividends (as defined below) on shares of Series B Preferred Stock so converted. The holder shall be entitled to receive accrued and unpaid dividends, if any, accrued to and including the Series B Conversion Date on the shares of Series B Preferred Stock converted (assuming that such dividends accrue ratably each day that such shares are outstanding based on the Series B Dividend Amount for such quarter), less an amount equal to the pre-conversion portion of the dividends paid on the shares of Common Stock issued upon such conversion (the "Series B Conversion Stock"). (The record date for the Series B Conversion Stock which occurs after the Series B Conversion Date is hereinafter referred to as the "Series B Subsequent Record Date.") The pre-conversion portion of such Series B Conversion Stock dividend means that portion of such dividend as is attributable to the period that (i) begins on the day after the last Series B Conversion Stock dividend record date occurring before such Subsequent Record Date and (ii) ends on such Series B Conversion Date, assuming that such dividends accrue ratably during the period. The term "Series B Adjusted Accrued Dividends" means the amount arrived at through the application of the foregoing formula. Series B Adjusted Accrued Dividends shall not be less than zero. The formula for Series B Adjusted Accrued Dividends shall be applied to effectuate

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the Corporation's intent that the holder converting shares of Series B Preferred Stock to Series B Conversion Stock shall be entitled to receive dividends on such shares of Series B Preferred Stock up to and including the Series B Conversion Date and shall be entitled to the dividends on the shares of Series B Conversion Stock issued upon such conversion which are deemed to accrue beginning on the first day after the Series B Conversion Date, but shall

not be entitled to dividends attributable to the same period for both the shares of Series B Preferred Stock converted and the shares of Series B Conversion Stock issued upon such conversion. The Corporation shall be entitled to withhold (to the extent consistent with the intent to avoid double dividends for overlapping portions of Series B Preferred Stock and the Series B Conversion Stock dividend periods) the payment of Series B Adjusted Accrued Dividends until the applicable Subsequent Record Date, even though such date occurs after the applicable dividend payment date with respect to the Series B Preferred Stock, in which event the Corporation shall mail to each holder who converted Series B Preferred Stock a check for the Series B Adjusted Accrued Dividends thereon within five (5) business days after such Series B Subsequent Record Date. Series B Adjusted Accrued Dividends shall be accompanied by an explanation of how such Series B Adjusted Accrued Dividends have been calculated. Series B Adjusted Accrued Dividends shall not bear interest.

(f) Adjustments.

(i) In the event the Corporation shall at any time (i) pay a dividend or make a distribution to holders of Common Stock in shares of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a larger number of shares, or (iii) combine its outstanding shares of Common Stock into a smaller number of shares, the Series B Conversion Ratio shall be adjusted on the effective date of the dividend, distribution, subdivision or combination by multiplying the Series B Conversion Ratio by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding immediately after such dividend, distribution, subdivision or combination and the denominator of which shall be the number of shares of Common Stock outstanding immediately prior to such dividend, distribution, subdivision or combination.

(ii) Whenever the Series B Conversion Ratio shall be adjusted as herein provided, the Corporation shall cause to be mailed by first class mail, postage prepaid, as soon as practicable to each holder of record of shares of Series B Preferred Stock a notice stating that the Series B Conversion Ratio has been adjusted and setting forth the adjusted Series B Conversion Ratio, together with an explanation of the calculation of the same.

(iii) If the Corporation shall be party to any Series B Transaction in each case as a result of which shares of Common Stock shall be converted into the right to receive stock, securities or other property (including cash or any combination thereof), the holder of each share of Series B Preferred Stock shall have the right in connection with such Series B Transaction to convert such share, pursuant to the optional conversion provisions hereof, into the number and kind of shares of stock or other securities and the amount and kind of property receivable upon such Series B Transaction by a holder of the number of shares of Common Stock issuable upon conversion of such share of Series B

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Preferred Stock immediately prior to such Series B Transaction. The Corporation shall not be party to any Series B Transaction unless the terms of such Series B Transaction are consistent with the provisions of this Section 14.2.4(f)(iii), and it shall not consent to or agree to the occurrence of any Series B Transaction until the Corporation has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Series B Preferred Stock, thereby enabling the holders of the Series B Preferred Stock to receive the benefits of this Section 14.2.4(f)(iii) and the other provisions of the Articles. Without limiting the generality of the foregoing, provision shall be made for adjustments in the Conversion Ratio which shall be as nearly equivalent as may be practicable to the adjustments provided for in Section 14.2.4(f)(i). The provisions of this Section 14.2.4(f)(iii) shall similarly apply to successive Series B Transactions.

(iv) In the event that the Corporation shall propose to effect any Series B Transaction which would result in an adjustment under Section 14.2.4(f)(iii), the Corporation shall cause to be mailed to the holders of record of Series B Preferred Stock at least 20 days prior to the record date for such Series B Transaction a notice stating the date on which such Series B Transaction is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such Series B Transaction. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such Series B Transaction.

(g) Other.

(i) The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock the maximum number of shares of Common Stock issuable upon the conversion of all shares of Series B Preferred Stock then outstanding, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series B Preferred Stock, in addition to such other remedies as shall be available to the holders of such Series B Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes.

(ii) The Corporation shall pay any taxes that may be payable in respect of the issuance of shares of Common Stock upon conversion of shares of Series B Preferred Stock, but the Corporation shall not be required to pay any taxes which may be payable in respect of any transfer of shares of Series B Preferred Stock or any transfer involved in the issuance of shares of Common Stock in a name other than that in which the shares of Series B Preferred Stock so converted are registered, and the Corporation shall not be required to transfer any such shares of Series B Preferred Stock or to issue or deliver any such shares of Common Stock unless and until the person(s) requesting such transfer or issuance shall have paid to the Corporation the amount of any such taxes, or shall have

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established to the satisfaction of the Corporation that such taxes have been paid.

(iii) The Corporation will not, by amendment of the Articles or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in carrying out of all the provisions of the Articles and in the taking of all such action as may be necessary or appropriate to protect the conversion rights of the holders of the Series B Preferred Stock against impairment.

(iv) Holders of Series B Preferred Stock shall be entitled to receive copies of all communications by the Corporation to its holders of Common Stock, concurrently with the distribution to such shareholders.

14.2.5 Voting Rights.

(a) Except as indicated in this Section 14.2.5, or except as otherwise from time to time required by applicable law, the holders of shares of Series B Preferred Stock will have no voting rights.

(b) If six quarterly dividends (whether or not consecutive) payable on shares of Series B Preferred Stock or on any series of Preferred Stock which ranks pari passu with the Series B Preferred Stock as to dividends (the "Series B Parity Stock") are in arrears, the number of Directors then constituting the Board of Directors of the Corporation will be increased by two, and the holders of the shares of Series B Preferred Stock, voting together as a class with the holders of shares of any other series of Series B Parity Stock entitled to such voting rights (any such other series, the "Series B Voting Preferred Stock"), will have the right to elect two additional Directors to serve on the Corporation's Board of Directors at any annual meeting of stockholders or a properly called special meeting of the holders of Series B Preferred Stock and such other Series B Voting Preferred Stock until all such dividends have been declared and paid or set aside for payment. The term of office of all Directors so elected will terminate with the termination of such voting rights.

(c) The approval of holders of two-thirds of the outstanding Series B Preferred Stock and all other series of Series B Voting Preferred Stock similarly affected, voting as a single class, is required in order to amend the Articles to affect materially and adversely the rights, preferences or voting power of the holder of shares of Series B Preferred Stock or the Series B Voting Preferred Stock. For purposes of the foregoing, the creation of a new class of Stock having rights, preferences or privileges senior to, on a parity with or junior to the rights, preferences or privileges of the Series B Preferred Stock shall not be treated as a material adverse change in the rights, preferences or privileges of the Series B Preferred Stock, and the holders of Series B Preferred Stock shall not have any right to

vote on the creation of such new class of Stock.

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(d) Except as provided above and as required by law, the holders of Series B Preferred Stock are not entitled to vote on any merger or consolidation involving the Corporation, on any share exchange or on a sale of all or substantially all of the assets of the Corporation.

14.2.6 Reacquired Shares. Shares of Series B Preferred Stock converted, redeemed or otherwise purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of Preferred Stock without designation as to series.

14.3 8.50% Series C Cumulative Redeemable Preferred Stock. The Board of Directors has, by resolution, duly divided and classified 2,300,000 shares of the Preferred Stock of the Corporation into a series designated 8.50% Series C Cumulative Redeemable Preferred Stock and has provided for the issuance of such series. Subject in all cases to the provisions of the Articles, including without limitation, Section 7.4 of Article VII and Article IX with respect to limitations on the transfer and ownership of Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the 8.50% Series C Cumulative Redeemable Preferred Stock of the Corporation:

14.3.1 Designation and Number. A series of Preferred Stock, designated the "8.50% Series C Cumulative Redeemable Preferred Stock" (the "Series C Preferred Stock"), has been established. The number of authorized shares of the Series C Preferred Stock is 2,300,000.

14.3.2 Rank. The Series C Preferred Stock shall, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Corporation, rank (a) senior to the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series E Preferred Stock and all classes or series of Common Stock of the Corporation, and to all equity securities issued by the Corporation ranking junior to such Series C Preferred Stock; (b) on a parity with the Corporation's Series D Preferred Stock, Series F Preferred Stock, Series G Preferred Stock and all other equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank on a parity with the Series C Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series C Preferred Stock. The term "equity securities" shall not include convertible debt securities.

14.3.3 Dividends.

(a) Holders of the then outstanding shares of Series C Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of

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8.50% of the \$25.00 liquidation preference per annum (equivalent to a fixed annual amount of \$2.125 per share). Such dividends shall be cumulative from the first date on which any Series C Preferred Stock is issued and shall be payable quarterly in arrears on or before March 15, June 15, September 15 and December 15 of each year or, if not a business day, the next succeeding business day (each, a "Series C Dividend Payment Date"). The first dividend, which will be paid on September 15, 1997, will be for less than a full quarter. Such dividend and any dividend payable on the Series C Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the first day of the calendar month in which the applicable Series C Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation as the record date for the payment of dividends on the Series C Preferred Stock that is not more than 30 nor less than 10 days prior to such Series C Dividend Payment Date (each, a "Series C Dividend Record Date").

(b) No dividends on shares of Series C Preferred Stock shall be authorized by the Board of Directors of the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its

indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(c) Notwithstanding the foregoing, dividends on the Series C Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 14.3.3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series C Preferred Stock will accumulate as of the Series C Dividend Payment Date on which they first become payable.

(d) Except as provided in Section 14.3.3(e) below, no dividends will be declared or paid or set apart for payment on any Stock of the Corporation or any other series of Preferred Stock ranking, as to dividends, on a parity with or junior to the Series C Preferred Stock (other than a dividend in shares of the Corporation's Common Stock or in any other class of Stock ranking junior to the Series C Preferred Stock as to dividends and upon liquidation) for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Series C Preferred Stock for all past dividend periods and the then current dividend period.

(e) When dividends are not paid in full (and a sum sufficient for such full payment is not so set apart) upon the Series C Preferred Stock and the shares of any other series of Preferred Stock ranking on a parity as to dividends with the Series C Preferred Stock, all dividends declared upon the Series C Preferred Stock and any other series of Preferred Stock ranking on a parity as to dividends with the Series C Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series C Preferred Stock and such other series

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of Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Stock and such other series of Preferred Stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such Preferred Stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series C Preferred Stock which may be in arrears.

(f) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series C Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or other shares of Stock ranking junior to the Series C Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment, nor shall any other distribution be declared or made, upon the Common Stock or any other Stock of the Corporation ranking junior to or on a parity with the Series C Preferred Stock as to dividends or upon liquidation, nor shall any shares of Common Stock, or any other shares of Stock of the Corporation ranking junior to or on a parity with the Series C Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other Stock of the Corporation ranking junior to the Series C Preferred Stock as to dividends and upon liquidation).

(g) Any dividend payment made on shares of the Series C Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of the Series C Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock in excess of full cumulative dividends on the Series C Preferred Stock as described above.

14.3.4 Liquidation Preference.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series C Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation legally available for distribution to its stockholders a liquidation preference of \$25.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment, before any distribution of assets is made to holders of Common Stock or any other class or series of Stock of the Corporation that ranks junior to the Series C Preferred Stock as to liquidation rights.

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series C Preferred Stock and the corresponding amounts payable on all shares of other classes or series of Stock of the Corporation ranking on a parity with the Series C Preferred Stock in the distribution of assets, then the holders of the Series C Preferred Stock and all other such classes or series of Stock shall

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share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series C Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series C Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

14.3.5 Redemption.

(a) Right of Optional Redemption. The Series C Preferred Stock is not redeemable prior to June 20, 2002. However, in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes, shares of Series C Preferred Stock which have been converted into Excess Stock shall be subject to repurchase by the Corporation in accordance with Section 7.4.10 of Article VII. On and after June 20, 2002, the Corporation, at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series C Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends thereon to the date fixed for redemption (except as provided in Section 14.3.5(c) below), without interest. If less than all of the outstanding Series C Preferred Stock is to be redeemed, the Series C Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by the Corporation.

(b) Limitations on Redemption.

(i) The redemption price of the Series C Preferred Stock (other than the portion thereof consisting of accrued and unpaid dividends) is payable solely out of the sale proceeds of other capital stock of the Corporation, which may include other series of Preferred Stock, and from no other source. For purposes of the preceding sentence, "capital stock" means any equity securities (including Common Stock and Preferred Stock), shares, interest, participation or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

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(ii) Unless full cumulative dividends on all shares of Series C Preferred Stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of Series C Preferred Stock shall be redeemed unless all outstanding shares of Series C Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series C Preferred Stock (except by exchange for Stock of the Corporation ranking junior to the Series C Preferred Stock as to

dividends and upon liquidation); provided, however, that the foregoing shall not prevent the purchase by the Corporation of shares of Excess Stock in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or the purchase or acquisition of shares of Series C Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series C Preferred Stock.

(c) Immediately prior to any redemption of Series C Preferred Stock, the Corporation shall pay, in cash, any accumulated and unpaid dividends through the redemption date, unless a redemption date falls after a Series C Dividend Record Date and prior to the corresponding Series C Dividend Payment Date, in which case each holder of Series C Preferred Stock at the close of business on such Series C Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Series C Dividend Payment Date notwithstanding the redemption of such shares before such Series C Dividend Payment Date. Except as provided above, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series C Preferred Stock which is redeemed.

(d) Procedures for Redemption.

(i) Notice of redemption will be (A) given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date, and (B) mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series C Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series C Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series C Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series C Preferred Stock to be redeemed; (D) the place or places where the Series C Preferred Stock is to be surrendered for payment of the redemption price; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date. If less than all of the Series C Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of

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Series C Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series C Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series C Preferred Stock so called for redemption, then from and after the redemption date dividends will cease to accrue on such shares of Series C Preferred Stock, such shares of Series C Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. Holders of Series C Preferred Stock to be redeemed shall surrender such Series C Preferred Stock at the place designated in such notice and, upon surrender in accordance with said notice of the certificates for shares of Series C Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series C Preferred Stock shall be redeemed by the Corporation at the redemption price plus any accrued and unpaid dividends payable upon such redemption. In case less than all the shares of Series C Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series C Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust corporation for the purpose of redeeming Series C Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to

such interest or other earnings; and

(B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series C Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) The shares of Series C Preferred Stock are subject to the provisions of Section 7.4 of Article VII and Article IX of the Articles relating to Excess Stock. Excess Stock issued upon exchange of shares of Series C Preferred Stock pursuant to such provisions may be redeemed, in whole or in part, at any time when outstanding shares of Series C Preferred Stock are being redeemed, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends on the shares of Series C Preferred Stock, which were exchanged for such Excess Stock, through the date of such exchange, without interest. If the Corporation elects to redeem Excess Stock pursuant to the redemption right set forth in the preceding sentence, such Excess Stock shall be redeemed in such proportion and in accordance with such procedures as shares of Series C Preferred Stock are being redeemed.

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(f) Any shares of Series C Preferred Stock that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Stock, without designation as to series until such shares are thereafter designated as part of a particular series by the Board of Directors.

14.3.6 Voting Rights.

(a) Holders of the Series C Preferred Stock will not have any voting rights, except as set forth below or as otherwise from time to time required by law.

(b) Whenever dividends on any shares of Series C Preferred Stock shall be in arrears for six or more quarterly periods (a "Series C Preferred Dividend Default"), the Board of Directors shall take such action as may be necessary to increase the number of Directors of the Corporation by two and the holders of such shares of Series C Preferred Stock (voting separately as a class with the holders of all other series of Preferred Stock ranking on a parity with the Series C Preferred Stock as to dividends or upon liquidation ("Series C Parity Preferred") upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of a total of two Directors of the Corporation (the "Series C Preferred Stock Directors") at a special meeting called by the holders of record of at least 20% of the Series C Preferred Stock or the holders of any other series of Series C Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such shares of Series C Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series C Preferred Stock shall have been paid in full or set aside for payment in full, the holders of shares of Series C Preferred Stock shall be divested of the voting rights set forth in Section 14.3.6(b) hereof (subject to reversion in the event of each and every Series C Preferred Dividend Default) and, if all accumulated dividends and the dividend for the current dividend period have been paid in full or set aside for payment in full on all other series of Series C Parity Preferred upon which like voting rights have been conferred and are exercisable, the term of office of each Series C Preferred Stock Director so elected shall terminate and the Board of Directors shall take such action as may be necessary to reduce the number of Directors by two. Any Series C Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series C Preferred Stock when they have the voting rights set forth in Section 14.3.6(b) (voting separately as a class with all other series of Series C Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Series C Preferred Dividend Default shall continue, any vacancy in the office of a Series C Preferred Stock Director may be filled by written consent of the Series C Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series C Preferred Stock when

they have the voting rights set forth in Section 14.3.6(b) (voting separately as a class with all other series of Series C Parity Preferred upon which like voting rights have been conferred and are exercisable). The Series C Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(d) So long as any shares of Series C Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two-thirds of the shares of the Series C Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of Stock ranking senior to the Series C Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized Stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares or (ii) amend, alter or repeal the provisions of the Articles, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series C Preferred Stock or the holders thereof; provided, however, that with respect to the occurrence of any event set forth in (ii) above, so long as the Series C Preferred Stock remains outstanding with the terms thereof materially unchanged or, if the Corporation is not the surviving entity in such transaction, is exchanged for a security of the surviving entity with terms that are materially the same as the Series C Preferred Stock, the occurrence of any such event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers of the holders of the Series C Preferred Stock; and, provided further, that any increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Series C Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

(e) The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series C Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

14.3.7 Conversion. The Series C Preferred Stock is not convertible into or exchangeable for any other property or securities of the Corporation, except that the shares of Series C Preferred Stock will automatically be converted by the Corporation into shares of Excess Stock and transferred to a Trust in accordance with Section 7.4 of Article VII and Article IX of the Articles in the same manner that Common Stock is converted into Excess Stock and transferred to a Trust pursuant thereto, in order to ensure that the Company remains qualified as a REIT for federal income tax purposes.

14.4 8.00% Series D Cumulative Redeemable Preferred Stock. The Board of Directors has, by resolution, duly divided and classified 3,450,000 shares of the Preferred Stock

of the Corporation into a series designated 8.00% Series D Cumulative Redeemable Preferred Stock and has provided for the issuance of such series. Subject in all cases to the provisions of the Articles, including without limitation, Section 7.4 of Article VII and Article IX with respect to limitations on the transfer and ownership of Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the 8.00% Series D Cumulative Redeemable Preferred Stock of the Corporation:

14.4.1 Designation and Number. A series of Preferred Stock, designated the "8.00% Series D Cumulative Redeemable Preferred Stock" (the "Series D Preferred Stock"), has been established. The number of authorized shares of the Series D Preferred Stock is 3,450,000.

14.4.2 Rank. The Series D Preferred Stock shall, with respect to dividend rights and rights upon liquidation,

dissolution or winding up of the Corporation, rank (a) senior to the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series E Preferred Stock, all classes or series of Common Stock of the Corporation, and to all equity securities issued by the Corporation ranking junior to such Series D Preferred Stock; (b) on a parity with the Corporation's Series C Preferred Stock, Series F Preferred Stock, Series G Preferred Stock and all other equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank on a parity with the Series D Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series D Preferred Stock. The term "equity securities" shall not include convertible debt securities.

14.4.3 Dividends.

(a) Holders of the then outstanding shares of Series D Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 8.00% of the \$25.00 liquidation preference per annum (equivalent to a fixed annual amount of \$2.00 per share). Such dividends shall be cumulative from the first date on which any Series D Preferred Stock is issued and shall be payable quarterly in arrears on or before March 15, June 15, September 15 and December 15 of each year or, if not a business day, the next succeeding business day (each, a "Series D Dividend Payment Date"). The first dividend, which will be paid on March 15, 1998, will be for less than a full quarter. Such dividend and any dividend payable on the Series D Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the first day of the calendar month in which the applicable Series D Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation as the record date for the payment of dividends on the Series D Preferred Stock that is not more than 30 nor less than 10 days prior to such Series D Dividend Payment Date (each, a "Series D Dividend Record Date").

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(b) No dividends on shares of Series D Preferred Stock shall be authorized by the Board of Directors of the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(c) Notwithstanding the foregoing, dividends on the Series D Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 14.4.3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series D Preferred Stock will accumulate as of the Series D Dividend Payment Date on which they first become payable.

(d) Except as provided in Section 14.4.3(e) below, no dividends will be declared or paid or set apart for payment on any Stock of the Corporation or any other series of Preferred Stock ranking, as to dividends, on a parity with or junior to the Series D Preferred Stock (other than a dividend in shares of the Corporation's Common Stock or in any other class of Stock ranking junior to the Series D Preferred Stock as to dividends and upon liquidation) for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Series D Preferred Stock for all past dividend periods and the then current dividend period.

(e) When dividends are not paid in full (and a sum sufficient for such full payment is not so set apart) upon the Series D Preferred Stock and the shares of any other series of Preferred Stock ranking on a parity as to dividends with the Series D Preferred Stock, all dividends declared upon the Series D Preferred Stock and any other series of Preferred Stock ranking on a parity as to dividends with the Series D Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series D Preferred Stock and such other series of Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series D Preferred Stock and such other series of Preferred Stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such Preferred Stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable

in respect of any dividend payment or payments on Series D Preferred Stock which may be in arrears.

(f) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series D Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or other shares of Stock ranking junior to the Series D Preferred Stock as to

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dividends and upon liquidation) shall be declared or paid or set aside for payment, nor shall any other distribution be declared or made, upon the Common Stock or any other Stock of the Corporation ranking junior to or on a parity with the Series D Preferred Stock as to dividends or upon liquidation, nor shall any shares of Common Stock, or any other shares of Stock of the Corporation ranking junior to or on a parity with the Series D Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other Stock of the Corporation ranking junior to the Series D Preferred Stock as to dividends and upon liquidation).

(g) Any dividend payment made on shares of the Series D Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of the Series D Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or stock in excess of full cumulative dividends on the Series D Preferred Stock as described above.

14.4.4 Liquidation Preference.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series D Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation legally available for distribution to its stockholders a liquidation preference of \$25.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment, before any distribution of assets is made to holders of Common Stock or any other class or series of Stock of the Corporation that ranks junior to the Series D Preferred Stock as to liquidation rights.

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series D Preferred Stock and the corresponding amounts payable on all shares of other classes or series of Stock of the Corporation ranking on a parity with the Series D Preferred Stock in the distribution of assets, then the holders of the Series D Preferred Stock and all other such classes or series of Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series D Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series D Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other

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corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

14.4.5 Redemption.

(a) Right of Optional Redemption. The Series D Preferred Stock is not redeemable prior to December 15, 2002. However, in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes, shares of Series D Preferred Stock which have been converted into Excess Stock shall be subject to repurchase by the Corporation in accordance with Section 7.4.10 of Article VII. On and after December 15, 2002, the Corporation, at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series D Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends thereon to the date fixed for redemption (except as provided in Section 14.4.5(c) below), without interest. If less than all of the outstanding Series D Preferred Stock is to be redeemed, the Series D Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by the Corporation.

(b) Limitations on Redemption.

(i) The redemption price of the Series D Preferred Stock (other than the portion thereof consisting of accrued and unpaid dividends) is payable solely out of the sale proceeds of other capital stock of the Corporation, which may include other series of Preferred Stock, and from no other source. For purposes of the preceding sentence, "capital stock" means any equity securities (including Common Stock and Preferred Stock), shares, interest, participation or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(ii) Unless full cumulative dividends on all shares of Series D Preferred Stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of Series D Preferred Stock shall be redeemed unless all outstanding shares of Series D Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series D Preferred Stock, (except by exchange for Stock of the Corporation ranking junior to the Series D Preferred Stock as to dividends and upon liquidation); provided, however, that the foregoing shall not prevent the purchase by the Corporation of shares of Excess Stock in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or the purchase or acquisition of shares of Series D Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series D Preferred Stock.

(c) Immediately prior to any redemption of Series D Preferred Stock, the

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Corporation shall pay, in cash, any accumulated and unpaid dividends through the redemption date, unless a redemption date falls after a Series D Dividend Record Date and prior to the corresponding Series D Dividend Payment Date, in which case each holder of Series D Preferred Stock at the close of business on such Series D Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Series D Dividend Payment Date notwithstanding the redemption of such shares before such Series D Dividend Payment Date. Except as provided above, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series D Preferred Stock which is redeemed.

(d) Procedures for Redemption.

(i) Notice of redemption will be (A) given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date, and (B) mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series D Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series D Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series D Preferred Stock may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series D Preferred Stock to be redeemed; (D) the place or places where the Series D Preferred Stock is to be surrendered for payment of the redemption price; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date. If less than all of the Series D Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series D Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series D Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series D Preferred Stock so called for redemption, then from and after the redemption date dividends will cease to accrue on such shares of Series D Preferred Stock, such shares of Series D Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. Holders of Series D Preferred Stock to be redeemed shall surrender such Series D Preferred Stock at the place designated in such notice and, upon surrender in accordance with said notice of the certificates for shares of Series D Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series D Preferred Stock shall be redeemed by the Corporation at the redemption price plus any accrued and unpaid dividends payable upon such redemption.

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In case less than all the shares of Series D Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series D Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust corporation for the purpose of redeeming Series D Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series D Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) The shares of Series D Preferred Stock are subject to the provisions of Section 7.4 of Article VII and Article IX of the Articles relating to Excess Stock. Excess Stock issued upon exchange of shares of Series D Preferred Stock pursuant to such provisions may be redeemed, in whole or in part, at any time when outstanding shares of Series D Preferred Stock are being redeemed, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends on the shares of Series D Preferred, which were exchanged for such Excess Stock, through the date of such exchange, without interest. If the Corporation elects to redeem Excess Stock pursuant to the redemption right set forth in the preceding sentence, such Excess Stock shall be redeemed in such proportion and in accordance with such procedures as shares of Series D Preferred Stock are being redeemed.

(f) Any shares of Series D Preferred Stock that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Stock, without designation as to series until such shares are thereafter designated as part of a particular series by the Board of Directors.

14.4.6 Voting Rights.

(a) Holders of the Series D Preferred Stock will not have any voting rights, except as set forth below or as otherwise from time to time

required by law.

(b) Whenever dividends on any shares of Series D Preferred Stock shall be in arrears for six or more quarterly periods (a "Series D Preferred Dividend Default"), the Board of Directors shall take such action as may be necessary to increase the number of Directors of the Corporation by two and the holders of such shares of Series D Preferred Stock (voting separately

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as a class with the holders of all other series of Preferred Stock ranking on a parity with the Series D Preferred Stock as to dividends or upon liquidation ("Series D Parity Preferred") upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of a total of two Directors of the Corporation (the "Series D Preferred Stock Directors") at a special meeting called by the holders of record of at least 20% of the Series D Preferred Stock or the holders of any other series of Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such shares of Series D Preferred Stock for the past dividend periods and the dividend for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series D Preferred Stock shall have been paid in full or set aside for payment in full, the holders of shares of Series D Preferred Stock shall be divested of the voting rights set forth in Section 14.4.6(b) hereof (subject to revesting in the event of each and every Series D Preferred Dividend Default) and, if all accumulated dividends and the dividend for the current dividend period have been paid in full or set aside for payment in full on all other series of Series D Parity Preferred upon which like voting rights have been conferred and are exercisable, the term of office of each Series D Preferred Stock Director so elected shall terminate and the Board of Directors shall take such action as may be necessary to reduce the number of Directors by two. Any Series D Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series D Preferred Stock when they have the voting rights set forth in Section 14.4.6(b) (voting separately as a class with all other series of Series D Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Series D Preferred Dividend Default shall continue, any vacancy in the office of a Series D Preferred Stock Director may be filled by written consent of the Series D Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series D Preferred Stock when they have the voting rights set forth in Section 14.4.6(b) (voting separately as a class with all other series of Series D Parity Preferred upon which like voting rights have been conferred and are exercisable). The Series D Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(d) So long as any shares of Series D Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two-thirds of the shares of the Series D Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of Stock ranking senior to the Series D Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized Stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares or (ii) amend, alter or repeal the provisions of the Articles, whether by merger, consolidation or otherwise, so as to materially and adversely

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affect any right, preference, privilege or voting power of the Series D Preferred Stock or the holders thereof; provided, however, that with respect to the occurrence of any event set forth in (ii) above, so long as the Series D Preferred Stock remains outstanding with the terms thereof materially unchanged or, if the Corporation is not the surviving entity in such transaction, is exchanged for a security of the surviving entity with terms that are materially the same as the Series D Preferred Stock, the occurrence of any such event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers of the holders of the Series D

Preferred Stock; and, provided further, that any increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Series D Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

(e) The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series D Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

14.4.7 Conversion. The Series D Preferred Stock is not convertible into or exchangeable for any other property or securities of the Corporation, except that the shares of Series D Preferred Stock will automatically be converted by the Corporation into shares of Excess Stock and transferred to a Trust in accordance with Section 7.4 of Article VII and Article IX of the Articles in the same manner that Common Stock is converted into Excess Stock and transferred to a Trust pursuant thereto, in order to ensure that the Company remains qualified as a REIT for federal income tax purposes.

14.5 Series E Junior Participating Cumulative Preferred Stock. The Board of Directors has duly divided and classified 1,000,000 shares of the Preferred Stock of the Corporation into a series designated Series E Junior Participating Cumulative Preferred Stock and has provided for the issuance of such series. Subject in all cases to the provisions of Section 7.4 of Article VII and Article IX of the Articles with respect to Excess Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Series E Junior Cumulative Preferred Stock of the Corporation:

14.5.1 Designation and Amount. The designation of the Preferred Stock described in Section 14.5 hereof shall be "Series E Junior Participating Cumulative Preferred Stock," par value \$.01 per share (hereinafter called "Series E Preferred Stock"), and the number of shares constituting such series shall be 1,000,000. Such number of shares may be increased or decreased by resolution of the Board of Directors and by the filing of articles of amendment pursuant to the provisions of the MGCL stating that such increase or reduction has been so authorized; provided, however, that no decrease shall reduce the number of shares of Series E Preferred

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Stock to a number less than that of the shares then outstanding plus the number of shares of Series E Preferred Stock issuable upon exercise of outstanding rights, options or warrants or upon conversion of outstanding securities issued by the Corporation.

14.5.2 Dividends and Distributions.

(a) (i) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar Stock) ranking prior and superior to the Series E Preferred Stock with respect to dividends, the holders of shares of Series E Preferred Stock, in preference to the holders of shares of Common Stock and of any other junior Stock, shall be entitled to receive, when, as and if authorized by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Series E Quarterly Dividend Payment Date"), commencing on the first Series E Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series E Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (x) \$1.00 or (y) subject to the provisions for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the shares of Common Stock since the immediately preceding Series E Quarterly Dividend Payment Date, or, with respect to the first Series E Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series E Preferred Stock. The multiple of cash and non-cash dividends declared on the Common Stock to which

holders of the Series E Preferred Stock are entitled, which shall be 1,000 initially but which shall be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Series E Dividend Multiple." In the event the Corporation shall at any time after March 9, 1998 (the "Series E Rights Declaration Date") (i) declare or pay any dividend on the shares of Common Stock payable in shares of Common Stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the Series E Dividend Multiple thereafter applicable to the determination of the amount of dividends which holders of shares of Series E Preferred Stock shall be entitled to receive shall be the Series E Dividend Multiple applicable immediately prior to such event multiplied by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(ii) Notwithstanding anything else contained in this paragraph (a), the Corporation shall, out of funds legally available for that purpose, declare a dividend or distribution on the Series E Preferred Stock as provided in this paragraph

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(a) immediately after it declares a dividend or distribution on the shares of Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the shares of Common Stock during the period between any Series E Quarterly Dividend Payment Date and the next subsequent Series E Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the Series E Preferred Stock shall nevertheless be payable on such subsequent Series E Quarterly Dividend Payment Date.

(b) Dividends shall begin to accrue and be cumulative on outstanding shares of Series E Preferred Stock from the Series E Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series E Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Series E Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Series E Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series E Preferred Stock entitled to receive a quarterly dividend and before such Series E Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Series E Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series E Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix in accordance with applicable law a record date for the determination of holders of shares of Series E Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than such number of days prior to the date fixed for the payment thereof as may be allowed by applicable law.

14.5.3 Voting Rights. In addition to any other voting rights required by law, the holders of shares of Series E Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series E Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. The number of votes which a holder of a share of Series E Preferred Stock is entitled to cast, which shall initially be 1,000 but which may be adjusted from time to time as hereinafter provided, is hereinafter referred to as the "Vote Multiple." In the event the Corporation shall at any time after the Series E Rights Declaration Date (i) declare or pay any dividend on shares of Common Stock payable in shares of Common Stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the Vote Multiple thereafter applicable to the determination of the number of votes per share to which holders of shares of Series E Preferred Stock shall be entitled shall be the Vote Multiple immediately prior to such event multiplied by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after

such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein or by law, the holders of shares of Series E Preferred Stock and the holders of shares of Common Stock and the holders of shares of any other Stock of this Corporation having general voting rights, shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c) (i) Whenever, at any time or times, dividends payable on any shares of Series E Preferred Stock shall be in arrears in an amount equal to at least two full quarter dividends (whether or not declared and whether or not consecutive), the holders of record of the outstanding shares of Series E Preferred Stock shall have the exclusive right, voting separately as a single class, to elect two Directors of the Corporation at a special meeting of stockholders of the Corporation or at the Corporation's next annual meeting of stockholders, and at each subsequent annual meeting of shareholders, as provided below. At elections for such Directors, each Series E Preferred Share shall entitle the holder thereof to 1,000 votes in such elections.

(ii) Upon the vesting of such right of the holders of shares of Series E Preferred Stock, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of the outstanding shares of Series E Preferred Stock as hereinafter set forth. A special meeting of the stockholders of the Corporation then entitled to vote shall be called by the Chairman of the Board of Directors or the President or the Secretary of the Corporation, if requested in writing by the holders of record of not less than 10% of the shares of Series E Preferred Stock then outstanding. At such special meeting, or, if no such special meeting shall have been called, then at the next annual meeting of stockholders of the Corporation, the holders of the shares of Series E Preferred Stock shall elect, voting as above provided, two Directors of the Corporation to fill the aforesaid vacancies created by the automatic increase in the number of members of the Board of Directors. At any and all such meetings for such election, the holders of a majority of the outstanding shares of Series E Preferred Stock shall be necessary to constitute a quorum for such election, whether present in person or proxy, and such two Directors shall be elected by the vote of at least a majority of the shares of Series E Preferred Stock held by such stockholders present or represented at the meeting. Any director elected by holders of shares of Series E Preferred Stock pursuant to this Section may be removed at any annual or special meeting, by vote of a majority of the shareholders voting as a class who elected such Director, with or without cause. In case any vacancy shall occur among the Directors elected by the holders of shares of Series E Preferred Stock pursuant to this Section, such vacancy may be filled by the remaining director so elected, or his successor then in office, and the director so elected to fill such vacancy shall serve until the next meeting of shareholders for the election of Directors. After the holders of shares of Series E Preferred Stock shall have exercised their right to elect Directors in any default period and during the continuance of such period, the number of Directors shall not be further increased or decreased except by vote of the holders of shares of Series E Preferred

Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series E Preferred Stock.

(iii) The right of the holders of shares of Series E Preferred Stock, voting separately as a class, to elect two members of the Board of Directors of the Corporation as aforesaid shall continue until, and only until, such time as all arrears in dividends (whether or not declared) on the Series E Preferred Stock shall have been paid or declared and set apart for payment, at which time such right shall terminate, except as herein or by law expressly provided subject to revesting in the event of each and every subsequent default of the character above-mentioned. Upon any termination of the right of the holders of the Series E Preferred Stock as a class to vote for Directors as herein provided, the term of office of all Directors then in office elected by the holders of shares of Series E Preferred Stock pursuant to this Section shall terminate immediately. Whenever the

term of office of the Directors elected by the holders of shares of Series E Preferred Stock pursuant to this Section shall terminate and the special voting powers vested in the holders of the Series E Preferred Stock pursuant to this Section shall have expired, the maximum number of members of this Board of Directors of the Corporation shall be such number as may be provided for in the By-laws of the Corporation, irrespective of any increase made pursuant to the provisions of this Section.

(d) Except as otherwise required by applicable law or as set forth herein, holders of Series E Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of shares of Common Stock as set forth herein) for taking any corporate action.

14.5.4 Certain Restrictions.

(a) Whenever dividends or distributions payable on the Series E Preferred Stock as provided in Section 14.5.2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series E Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of Stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series E Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of Stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series E Preferred Stock, except dividends paid ratably on the Series E Preferred Stock and all such parity Stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

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(iii) except as permitted in subsection 14.5.4(a)(iv) below, redeem, purchase or otherwise acquire for consideration shares of any Stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series E Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity Stock in exchange for shares of any Stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series E Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series E Preferred Stock, or any shares of any Stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series E Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of Stock of the Corporation unless the Corporation could, under subsection (a) of this Section 14.5.4, purchase or otherwise acquire such shares at such time and in such manner.

14.5.5 Reacquired Shares. Any shares of Series E Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

14.5.6 Liquidation, Dissolution or Winding Up. Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made (x) to the holders of shares of Stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series E Preferred Stock unless, prior thereto, the holders of Series E Preferred Stock

shall have received an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, plus an amount equal to the greater of (1) \$1,000.00 per share or (2) an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 1,000 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (y) to the holders of Stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series E Preferred Stock, except distributions made ratably on the Series E Preferred Stock and all other such parity Stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation,

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dissolution or winding up. In the event the Corporation shall at any time after the Series E Rights Declaration Date (i) declare or pay any dividend on shares of Common Stock payable in shares of Common Stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount per share to which holders of shares of Series E Preferred Stock were entitled immediately prior to such event under clause (x) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Neither the consolidation of nor merging of the Corporation with or into any other corporation or corporations, nor the sale or other transfer of all or substantially all of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this Section 14.5.6.

14.5.7 Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series E Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged, plus accrued and unpaid dividends, if any, payable with respect to the Series E Preferred Stock. In the event the Corporation shall at any time after the Series E Rights Declaration Date (i) declare or pay any dividend on shares of Common Stock payable in shares of Common Stock, or (ii) effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series E Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

14.5.8 Redemption. The shares of Series E Preferred Stock shall not be redeemable; provided, however, that the foregoing shall not limit the ability of the Corporation to purchase or otherwise deal in such shares to the extent otherwise permitted hereby and by law.

14.5.9 Ranking. Unless otherwise expressly provided in the Articles or

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Articles Supplementary relating to any other series of Preferred Stock of the Corporation, the Series E Preferred Stock shall rank junior to every other series of the Corporation's Preferred Stock previously or hereafter authorized, as to the payment of dividends and the distribution of assets on liquidation, dissolution or winding up

and shall rank senior to the Common Stock.

14.5.10 Amendment. The Articles may not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series E Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series E Preferred Stock, voting separately as a class.

14.5.11 Fractional Shares. Shares of Series E Preferred Stock may be issued in whole shares or in any fraction of a share that is one ten-thousandth (1/1,000th) of a share or any integral multiple of such fraction, which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of shares of Series E Preferred Stock. In lieu of fractional shares, the Corporation may elect to make a cash payment as provided in the Rights Agreement for fractions of a share other than one ten-thousandth (1/1,000th) of a share or any integral multiple thereof.

14.6 9.00% Series F Cumulative Redeemable Preferred Stock. The Board of Directors has, by resolution, duly divided and classified 4,455,000 shares of the Preferred Stock of the Corporation into a series designated 9.00% Series F Cumulative Redeemable Preferred Stock and has provided for the issuance of such series. Subject in all cases to the provisions of the Articles, including, without limitation, Section 7.4 of Article VII and Article IX with respect to limitations on the transfer and ownership of Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the 9.00% Series F Cumulative Redeemable Preferred Stock of the Corporation:

14.6.1 Designation and Number. A series of Preferred Stock, designated the "9.00% Series F Cumulative Redeemable Preferred Stock" (the "Series F Preferred Stock"), has been established. The number of authorized shares of the Series F Preferred Stock shall be 4,455,000.

14.6.2 Rank. The Series F Preferred Stock shall, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Corporation, rank (a) senior to the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series E Preferred Stock, and all classes or series of Common Stock of the Corporation, and to all equity securities issued by the Corporation ranking junior to such Series F Preferred Stock; (b) on a parity with the Corporation's Series C Preferred Stock, Series D Preferred Stock, Series G Preferred Stock and all equity securities

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issued by the Corporation the terms of which specifically provide that such equity securities rank on a parity with the Series F Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series F Preferred Stock. The term "equity securities" shall not include convertible debt securities.

14.6.3 Dividends.

(a) Holders of the then outstanding shares of Series F Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 9.00% of the \$25.00 liquidation preference per annum (equivalent to a fixed annual amount of \$2.25 per share). Such dividends shall be cumulative from the first date on which any Series F Preferred Stock is issued and shall be payable quarterly in arrears on or before the fifteenth day of February, May, August and November or, if not a business day, the next succeeding business day (each, a "Series F Dividend Payment Date"). Any dividend payable on the Series F Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the first day of the calendar month in which the applicable Series F Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation as the record date for the payment of dividends on the Series F Preferred Stock that is not more than 30 nor less than 10 days prior to such Series F Dividend Payment Date (each, a "Series F Dividend Record Date").

(b) No dividends on shares of Series F Preferred Stock

shall be authorized by the Board of Directors of the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(c) Notwithstanding the foregoing, dividends on the Series F Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 14.6.3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series F Preferred Stock will accumulate as of the Series F Dividend Payment Date on which they first become payable.

(d) Except as provided in Section 14.6.3(e) below, no dividends will be declared or paid or set apart for payment on any Stock of the Corporation or any other series of Preferred Stock ranking, as to dividends, on a parity with or junior to the Series F Preferred Stock (other than a dividend in shares of the Corporation's Common Stock or in any other class of Stock ranking junior to the Series F Preferred Stock as to dividends and upon

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liquidation) for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Series F Preferred Stock for all past dividend periods and the then current dividend period.

(e) When dividends are not paid in full (and a sum sufficient for such full payment is not so set apart) upon the Series F Preferred Stock and the shares of any other series of Preferred Stock ranking on a parity as to dividends with the Series F Preferred Stock, all dividends declared upon the Series F Preferred Stock and any other series of Preferred Stock ranking on a parity as to dividends with the Series F Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series F Preferred Stock and such other series of Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series F Preferred Stock and such other series of Preferred Stock (which shall not include any accrual in respect of unpaid dividends for prior dividend periods if such Preferred Stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series F Preferred Stock which may be in arrears.

(f) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series F Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or other shares of Stock ranking junior to the Series F Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any other Stock of the Corporation ranking junior to or on a parity with the Series F Preferred Stock as to dividends or upon liquidation, nor shall any shares of Common Stock, or any other shares of Stock of the Corporation ranking junior to or on a parity with the Series F Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other Stock of the Corporation ranking junior to the Series F Preferred Stock as to dividends and upon liquidation).

(g) Any dividend payment made on shares of the Series F Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of the Series F Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or Stock in excess of full cumulative dividends on the Series F Preferred Stock as described above.

14.6.4 Liquidation Preference.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series F Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation legally available for

distribution to its stockholders a liquidation preference of \$25.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment, before any distribution of assets is made to holders of Common Stock or any other class or series of Stock of the Corporation that ranks junior to the Series F Preferred Stock as to liquidation rights.

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series F Preferred Stock and the corresponding amounts payable on all shares of other classes or series of Stock of the Corporation ranking on a parity with the Series F Preferred Stock in the distribution of assets, then the holders of the Series F Preferred Stock and all other such classes or series of Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series F Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series F Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

14.6.5 Redemption.

(a) Right of Optional Redemption. The Series F Preferred Stock is not redeemable prior to February 15, 2001. However, in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes, shares of Series F Preferred Stock which have been converted into Excess Stock shall be subject to repurchase by the Corporation in accordance with Section 7.4.10 of Article VII. On and after February 15, 2001, the Corporation, at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series F Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends thereon to the date fixed for redemption (except as provided in Section 14.6.5(c) below), without interest. If less than all of the outstanding Series F Preferred Stock is to be redeemed, the Series F Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method

determined by the Corporation.

(b) Limitations on Redemption.

(i) The redemption price of the Series F Preferred Stock (other than the portion thereof consisting of accrued and unpaid dividends) is payable solely out of the sale proceeds of other capital stock of the Corporation, which may include other series of Preferred Stock, and from no other source. For purposes of the preceding sentence, "capital stock" means any equity securities (including Common Stock and Preferred Stock), shares, interest, participation or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(ii) Unless full cumulative dividends on all shares of Series F Preferred Stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of

Series F Preferred Stock shall be redeemed unless all outstanding shares of Series F Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series F Preferred Stock (except by exchange for Stock of the Corporation ranking junior to the Series F Preferred Stock as to dividends and upon liquidation); provided, however, that the foregoing shall not prevent the purchase by the Corporation of shares of Excess Stock in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or the purchase or acquisition of shares of Series F Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series F Preferred Stock.

(c) Rights to Dividends on Shares Called for Redemption.

Immediately prior to any redemption of Series F Preferred Stock, the Corporation shall pay, in cash, any accumulated and unpaid dividends through the redemption date, unless a redemption date falls after a Series F Dividend Record Date and prior to the corresponding Series F Dividend Payment Date, in which case each holder of Series F Preferred Stock at the close of business on such Series F Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Series F Dividend Payment Date notwithstanding the redemption of such shares before such Series F Dividend Payment Date. Except as provided above, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series F Preferred Stock which is redeemed.

(d) Procedures for Redemption.

(i) Notice of redemption will be (A) given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date, and (B) mailed by the Corporation, postage prepaid, not

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less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series F Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series F Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series F Preferred may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series F Preferred Stock to be redeemed; (D) the place or places where the Series F Preferred Stock is to be surrendered for payment of the redemption price; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date. If less than all of the Series F Preferred Stock held by any holder is to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series F Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series F Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series F Preferred Stock so called for redemption, then from and after the redemption date dividends will cease to accrue on such shares of Series F Preferred Stock, such shares of Series F Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. Holders of Series F Preferred Stock to be redeemed shall surrender such Series F Preferred Stock at the place designated in such notice and, upon surrender in accordance with said notice of the certificates for shares of Series F Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series F Preferred Stock shall be redeemed by the Corporation at the redemption price plus any accrued and unpaid dividends payable upon such redemption. In case less than all the shares of Series F Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series F Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust

corporation for the purpose of redeeming Series F Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of monies so deposited by the Corporation

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and unclaimed by the holders of the Series F Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) The shares of Series F Preferred Stock are subject to the provisions of Section 7.4 of Article VII and Article IX of the Articles relating to Excess Stock. Excess Stock issued upon exchange of shares of Series F Preferred Stock pursuant to such provisions may be redeemed, in whole or in part, at any time when outstanding shares of Series F Preferred Stock are being redeemed, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends on the shares of Series F Preferred Stock, which are exchanged for such Excess Stock, through the date of such exchange, without interest. If the Corporation elects to redeem Excess Stock pursuant to the redemption right set forth in the preceding sentence, such Excess Stock shall be redeemed in such proportion and in accordance with such procedures as shares of Series F Preferred Stock are being redeemed.

(f) Any shares of Series F Preferred Stock that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Stock, without designation as to series until such shares are thereafter designated as part of a particular series by the Board of Directors.

14.6.6 Voting Rights.

(a) Holders of the Series F Preferred Stock will not have any voting rights, except as set forth below or as otherwise from time to time required by law.

(b) Whenever dividends on any shares of Series F Preferred Stock shall be in arrears for six or more quarterly periods (a "Series F Preferred Dividend Default"), the Board of Directors shall take such action as may be necessary to increase the number of Directors of the Corporation by two and the holders of such shares of Series F Preferred Stock (voting separately as a class with the holders of all other series of Preferred Stock ranking on a parity with the Series F Preferred Stock as to dividends or upon liquidation ("Series F Parity Preferred") upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of a total of two Directors of the Corporation (the "Series F Preferred Stock Directors") at a special meeting called by the holders of record of at least 10% of the Series F Parity Preferred or the holders of any other series of Series F Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such shares of Series F Preferred Stock for the past dividend periods and the dividends for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

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(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series F Preferred Stock shall have been paid in full or set aside for payment in full, the holders of shares of Series F Preferred Stock shall be divested of the voting rights set forth in Section 14.6.6(b) hereof (subject to reversioning in the event of each and every Series F Preferred Dividend Default) and the term of office of each Series F Preferred Stock Director so elected shall terminate and the Board of Directors shall take such action as may be necessary to reduce the number of Directors by two. Any Series F Preferred Stock Director may be removed at any

time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series F Preferred Stock when they have the voting rights set forth in Section 14.6.6(b) (voting separately as a class with all other series of Series F Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Series F Preferred Dividend Default shall continue, any vacancy in the office of a Series F Preferred Stock Director may be filled by written consent of the Series F Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding shares of Series F Preferred Stock when they have voting rights as set forth in Section 14.6.6(b) (voting separately as a class with all other series of Series F Parity Preferred upon which like voting rights have been conferred and are exercisable). The Series F Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(d) So long as any shares of Series F Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two thirds of the shares of the Series F Preferred Stock outstanding at the time given in person or by proxy, either in writing or at a meeting (voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of Stock ranking senior to the Series F Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized Stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares, or (ii) amend, alter or repeal the provisions of the Articles, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series F Preferred Stock or the holders thereof; provided, however, that any increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Series F Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

(e) The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series F Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

14.6.7 Conversion. The Series F Preferred Stock is not convertible into or

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exchangeable for any other property or securities of the Corporation, except that the shares of Series F Preferred Stock will automatically be converted by the Corporation into shares of Excess Stock and transferred to a Trust in accordance with Section 7.4 of Article VII and Article IX of the Articles in the same manner that Common Stock is converted into Excess Stock and transferred to a Trust pursuant thereto, in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes.

14.7 8.96% Series G Cumulative Redeemable Preferred Stock. The Board of Directors has, by resolution, duly divided and classified 4,300,000 shares of the Preferred Stock of the Corporation into a series designated 8.96% Series G Cumulative Redeemable Preferred Stock and has provided for the issuance of such series. Subject in all cases to the provisions of the Articles, including, without limitation, Section 7.4 of Article VII and Article IX with respect to limitations on the transfer and ownership of Stock, the following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the 8.96% Series G Cumulative Redeemable Preferred Stock of the Corporation:

14.7.1 Designation and Number. A series of Preferred Stock, designated the "8.96% Series G Cumulative Redeemable Preferred Stock" (the "Series G Preferred Stock"), has been established. The number of authorized shares of the Series G Preferred Stock shall be 4,300,000.

14.7.2 Rank. The Series G Preferred Stock shall, with respect to dividend rights and rights upon liquidation, dissolution or winding up of the Corporation, rank (a) senior to the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series E Preferred Stock, and all classes or series of Common Stock of the Corporation, and to all equity securities issued by the Corporation ranking junior

to such Series G Preferred Stock; (b) on a parity with the Corporation's Series C Preferred Stock, Series D Preferred Stock, Series F Preferred Stock and all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank on a parity with the Series G Preferred Stock; and (c) junior to all equity securities issued by the Corporation the terms of which specifically provide that such equity securities rank senior to the Series G Preferred Stock. The term "equity securities" shall not include convertible debt securities.

14.7.3 Dividends.

(a) Holders of the then outstanding shares of Series G Preferred Stock shall be entitled to receive, when and as authorized by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate of 8.96% of the \$25.00 liquidation preference per annum (equivalent to a fixed annual amount of \$2.24 per share). Such dividends shall be cumulative from the first date on which any Series G Preferred Stock is issued and shall be payable quarterly in arrears on or before the fifteenth day of February, May, August and November or, if not a business day, the next

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succeeding business day (each, a "Series G Dividend Payment Date"). Any dividend payable on the Series G Preferred Stock for any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the first day of the calendar month in which the applicable Series G Dividend Payment Date falls or on such other date designated by the Board of Directors of the Corporation as the record date for the payment of dividends on the Series G Preferred Stock that is not more than 30 nor less than 10 days prior to such Series G Dividend Payment Date (each, a "Series G Dividend Record Date").

(b) No dividends on shares of Series G Preferred Stock shall be authorized by the Board of Directors of the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, payment or setting apart for payment or provides that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization or payment shall be restricted or prohibited by law.

(c) Notwithstanding the foregoing, dividends on the Series G Preferred Stock shall accrue whether or not the terms and provisions set forth in Section 14.7.3(b) hereof at any time prohibit the current payment of dividends, whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of such dividends and whether or not such dividends are declared. Accrued but unpaid dividends on the Series G Preferred Stock will accumulate as of the Series G Dividend Payment Date on which they first become payable.

(d) Except as provided in Section 14.7.3(e) below, no dividends will be declared or paid or set apart for payment on any Stock of the Corporation or any other series of Preferred Stock ranking, as to dividends, on a parity with or junior to the Series G Preferred Stock (other than a dividend in shares of the Corporation's Common Stock or in any other class of Stock ranking junior to the Series G Preferred Stock as to dividends and upon liquidation) for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Series G Preferred Stock for all past dividend periods and the then current dividend period.

(e) When dividends are not paid in full (and a sum sufficient for such full payment is not so set apart) upon the Series G Preferred Stock and the shares of any other series of Preferred Stock ranking on a parity as to dividends with the Series G Preferred Stock, all dividends declared upon the Series G Preferred Stock and any other series of Preferred Stock ranking on a parity as to dividends with the Series G Preferred Stock shall be declared pro rata so that the amount of dividends declared per share of Series G Preferred Stock and such other series of Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series G Preferred Stock and such other series of Preferred Stock (which shall not include any accrual in respect of unpaid dividends for prior dividend

periods if such Preferred Stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on Series G Preferred Stock which may be in arrears.

(f) Except as provided in the immediately preceding paragraph, unless full cumulative dividends on the Series G Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for payment for all past dividend periods and the then current dividend period, no dividends (other than in shares of Common Stock or other shares of Stock ranking junior to the Series G Preferred Stock as to dividends and upon liquidation) shall be declared or paid or set aside for payment nor shall any other distribution be declared or made upon the Common Stock, or any other Stock of the Corporation ranking junior to or on a parity with the Series G Preferred Stock as to dividends or upon liquidation, nor shall any shares of Common Stock, or any other shares of Stock of the Corporation ranking junior to or on a parity with the Series G Preferred Stock as to dividends or upon liquidation be redeemed, purchased or otherwise acquired for any consideration (or any monies be paid to or made available for a sinking fund for the redemption of any such shares) by the Corporation (except by conversion into or exchange for other Stock of the Corporation ranking junior to the Series G Preferred Stock as to dividends and upon liquidation).

(g) Any dividend payment made on shares of the Series G Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to such shares which remains payable. Holders of the Series G Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or Stock, in excess of full cumulative dividends on the Series G Preferred Stock as described above.

14.7.4 Liquidation Preference.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series G Preferred Stock then outstanding are entitled to be paid out of the assets of the Corporation legally available for distribution to its stockholders a liquidation preference of \$25.00 per share, plus an amount equal to any accrued and unpaid dividends to the date of payment, before any distribution of assets is made to holders of Common Stock or any other class or series of Stock of the Corporation that ranks junior to the Series G Preferred Stock as to liquidation rights.

(b) In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Corporation are insufficient to pay the amount of the liquidating distributions on all outstanding shares of Series G Preferred Stock and the corresponding amounts payable on all shares of other classes or series of Stock of the Corporation ranking on a parity with the Series G Preferred Stock in the distribution of assets, then the holders of the Series G Preferred Stock and all other such classes or series of Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(c) After payment of the full amount of the liquidating distributions to which

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they are entitled, the holders of Series G Preferred Stock will have no right or claim to any of the remaining assets of the Corporation.

(d) Written notice of any such liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not less than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of the Series G Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Corporation.

(e) The consolidation or merger of the Corporation with or into any other corporation, trust or entity or of any other corporation with or into the Corporation, or the sale, lease or conveyance of all or substantially all of the property or business of the Corporation, shall not be deemed to constitute a liquidation, dissolution or winding up of the Corporation.

14.7.5 Redemption.

(a) Right of Optional Redemption. The Series G Preferred Stock is not redeemable prior to October 15, 2001. However, in order to ensure that the Corporation remains qualified as a REIT for federal income tax

purposes, shares of Series G Preferred Stock which have been converted into Excess Stock shall be subject to repurchase by the Corporation in accordance with Section 7.4.10 of Article VII. On and after October 15, 2001, the Corporation, at its option and upon not less than 30 nor more than 60 days' written notice, may redeem shares of the Series G Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends thereon to the date fixed for redemption (except as provided in Section 14.7.5(c) below), without interest. If less than all of the outstanding Series G Preferred Stock is to be redeemed, the Series G Preferred Stock to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other equitable method determined by the Corporation.

(b) Limitations on Redemption.

(i) The redemption price of the Series G Preferred Stock (other than the portion thereof consisting of accrued and unpaid dividends) is payable solely out of the sale proceeds of other capital stock of the Corporation, which may include other series of Preferred Stock, and from no other source. For purposes of the preceding sentence, "capital stock" means any equity securities (including Common Stock and Preferred Stock), shares, interest, participation or other ownership interests (however designated) and any rights (other than debt securities convertible into or exchangeable for equity securities) or options to purchase any of the foregoing.

(ii) Unless full cumulative dividends on all shares of Series G Preferred Stock shall have been or contemporaneously are declared and paid or

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declared and a sum sufficient for the payment thereof set apart for payment for all past dividend periods and the then current dividend period, no shares of Series G Preferred Stock shall be redeemed unless all outstanding shares of Series G Preferred Stock are simultaneously redeemed, and the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Series G Preferred Stock (except by exchange for Stock of the Corporation ranking junior to the Series G Preferred Stock as to dividends and upon liquidation); provided, however, that the foregoing shall not prevent the purchase by the Corporation of shares of Excess Stock in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes or the purchase or acquisition of shares of Series G Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series G Preferred Stock.

(c) Rights to Dividends on Shares Called for Redemption. Immediately prior to any redemption of Series G Preferred Stock, the Corporation shall pay, in cash, any accumulated and unpaid dividends through the redemption date, unless a redemption date falls after a Series G Dividend Record Date and prior to the corresponding Series G Dividend Payment Date, in which case each holder of Series G Preferred Stock at the close of business on such Series G Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Series G Dividend Payment Date notwithstanding the redemption of such shares before such Series G Dividend Payment Date. Except as provided above, the Corporation will make no payment or allowance for unpaid dividends, whether or not in arrears, on Series G Preferred Stock which is redeemed.

(d) Procedures for Redemption.

(i) Notice of redemption will be (A) given by publication in a newspaper of general circulation in the City of New York, such publication to be made once a week for two successive weeks commencing not less than 30 nor more than 60 days prior to the redemption date, and (B) mailed by the Corporation, postage prepaid, not less than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series G Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series G Preferred Stock except as to the holder to whom notice was defective or not given.

(ii) In addition to any information required by law or by the applicable rules of any exchange upon which Series G Preferred may be listed or admitted to trading, such notice shall state: (A) the redemption date; (B) the redemption price; (C) the number of shares of Series G Preferred Stock to be redeemed; (D) the

place or places where the Series G Preferred Stock is to be surrendered for payment of the redemption price; and (E) that dividends on the shares to be redeemed will cease to accrue on such redemption date. If less than all of the Series G Preferred Stock held by any holder is to be redeemed, the notice mailed to

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such holder shall also specify the number of shares of Series G Preferred Stock held by such holder to be redeemed.

(iii) If notice of redemption of any shares of Series G Preferred Stock has been given and if the funds necessary for such redemption have been set aside by the Corporation in trust for the benefit of the holders of any shares of Series G Preferred Stock so called for redemption, then from and after the redemption date dividends will cease to accrue on such shares of Series G Preferred Stock, such shares of Series G Preferred Stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price. Holders of Series G Preferred Stock to be redeemed shall surrender such Series G Preferred Stock at the place designated in such notice and, upon surrender in accordance with said notice of the certificates for shares of Series G Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and the notice shall so state), such shares of Series G Preferred Stock shall be redeemed by the Corporation at the redemption price plus any accrued and unpaid dividends payable upon such redemption. In case less than all the shares of Series G Preferred Stock represented by any such certificate are redeemed, a new certificate or certificates shall be issued representing the unredeemed shares of Series G Preferred Stock without cost to the holder thereof.

(iv) The deposit of funds with a bank or trust corporation for the purpose of redeeming Series G Preferred Stock shall be irrevocable except that:

(A) the Corporation shall be entitled to receive from such bank or trust corporation the interest or other earnings, if any, earned on any money so deposited in trust, and the holders of any shares redeemed shall have no claim to such interest or other earnings; and

(B) any balance of monies so deposited by the Corporation and unclaimed by the holders of the Series G Preferred Stock entitled thereto at the expiration of two years from the applicable redemption dates shall be repaid, together with any interest or other earnings thereon, to the Corporation, and after any such repayment, the holders of the shares entitled to the funds so repaid to the Corporation shall look only to the Corporation for payment without interest or other earnings.

(e) The shares of Series G Preferred Stock are subject to the provisions of Section 7.4 of Article VII and Article IX of the Articles relating to Excess Stock. Excess Stock issued upon exchange of shares of Series G Preferred Stock pursuant to such provisions may be redeemed, in whole or in part, at any time when outstanding shares of Series G Preferred Stock are being redeemed, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends on the shares of Series G Preferred Stock, which are exchanged for such Excess Stock, through the date of such exchange, without interest. If the Corporation elects to redeem Excess Stock pursuant to the redemption right set forth in the

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preceding sentence, such Excess Stock shall be redeemed in such proportion and in accordance with such procedures as shares of Series G Preferred Stock are being redeemed.

(f) Any shares of Series G Preferred Stock that shall at any time have been redeemed shall, after such redemption, have the status of authorized but unissued Preferred Stock, without designation as to series until such shares are thereafter designated as part of a particular series by the Board of Directors.

14.7.6 Voting Rights.

(a) Holders of the Series G Preferred Stock will not have

any voting rights, except as set forth below or as otherwise from time to time required by law.

(b) Whenever dividends on any shares of Series G Preferred Stock shall be in arrears for six or more quarterly periods (a "Series G Preferred Dividend Default"), the Board of Directors shall take such action as may be necessary to increase the number of Directors of the Corporation by two and the holders of such shares of Series G Preferred Stock (voting separately as a class with the holders of all other series of Preferred Stock ranking on a parity with the Series G Preferred Stock as to dividends or upon liquidation ("Series G Parity Preferred") upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of a total of two Directors of the Corporation (the "Series G Preferred Stock Directors") at a special meeting called by the holders of record of at least 10% of the Series G Parity Preferred or the holders of any other series of Series G Parity Preferred so in arrears (unless such request is received less than 90 days before the date fixed for the next annual or special meeting of the stockholders) or at the next annual meeting of stockholders, and at each subsequent annual meeting until all dividends accumulated on such shares of Series G Preferred Stock for the past dividend periods and the dividends for the then current dividend period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment.

(c) If and when all accumulated dividends and the dividend for the then current dividend period on the Series G Preferred Stock shall have been paid in full or set aside for payment in full, the holders of shares of Series G Preferred Stock shall be divested of the voting rights set forth in Section 14.7.6(b) hereof (subject to revesting in the event of each and every Series G Preferred Dividend Default) and the term of office of each Series G Preferred Stock Director so elected shall terminate and the Board of Directors shall take such action as may be necessary to reduce the number of Directors by two. Any Series G Preferred Stock Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding shares of the Series G Preferred Stock when they have the voting rights set forth in Section 14.7.6(b) (voting separately as a class with all other series of Series G Parity Preferred upon which like voting rights have been conferred and are exercisable). So long as a Series G Preferred Dividend Default shall continue, any vacancy in the office of a Series G Preferred Stock Director may be filled by written consent of the Series G Preferred Stock Director remaining in office, or if none remains in office, by a vote of the holders of record of a

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majority of the outstanding shares of Series G Preferred Stock when they have voting rights as set forth in Section 14.7.6(b) (voting separately as a class with all other series of Series G Parity Preferred upon which like voting rights have been conferred and are exercisable). The Series G Preferred Stock Directors shall each be entitled to one vote per director on any matter.

(d) So long as any shares of Series G Preferred Stock remain outstanding, the Corporation shall not, without the affirmative vote of the holders of at least two thirds of the shares of the Series G Preferred Stock outstanding at the time given in person or by proxy, either in writing or at a meeting (voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of Stock ranking senior to the Series G Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up or reclassify any authorized Stock of the Corporation into any such shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such shares, or (ii) amend, alter or repeal the provisions of the Articles, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series G Preferred Stock or the holders thereof; provided, however, that any increase in the amount of the authorized Preferred Stock or the creation or issuance of any other series of Preferred Stock, or any increase in the amount of authorized shares of such series, in each case ranking on a parity with or junior to the Series G Preferred Stock with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up, shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

(e) The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series G Preferred Stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been deposited in trust to effect such redemption.

14.7.7 Conversion. The Series G Preferred Stock is not convertible into or exchangeable for any other property or securities

of the Corporation, except that the shares of Series G Preferred Stock will automatically be converted by the Corporation into shares of Excess Stock and transferred to a Trust in accordance with Section 7.4 of Article VII and Article IX of the Articles in the same manner that Common Stock is converted into Excess Stock and transferred to a Trust pursuant thereto, in order to ensure that the Corporation remains qualified as a REIT for federal income tax purposes.

BYLAWS
OF
AVALON BAY COMMUNITIES, INC.

July 24, 1998

BYLAWS
OF
AVALON BAY 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 Avalon Bay

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 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 first Monday of June of each year, or on such other date determined by the Board of Directors which is not more than fifteen days prior to or after such first Monday of June, 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. If no annual meeting is held on the date designated, a special meeting in lieu thereof may be held, and such special meeting shall have, for purposes of these Bylaws or otherwise, all the force and effect of an annual meeting. Any and all references hereafter in these Bylaws to an annual meeting or to annual meetings shall be deemed to refer also to any special meeting(s) in lieu thereof. 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) At an annual meeting of Stockholders, only such business shall be conducted, and only such proposals shall be acted upon, as shall have been properly brought before the annual meeting (i) by, or at the direction of, a majority of the Board of Directors, or (ii) by any holder of record (both as of the time notice of such proposal is given by the Stockholder as set forth below and as of the record date for the annual meeting in question) of any shares of the Corporation's capital stock entitled to vote at such annual meeting who complies with the procedures set forth in this Section 1.03. For a proposal 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, and such Stockholder or his representative must be present in person at the annual meeting. For each annual meeting, a Stockholder's notice shall be timely if delivered to, or mailed and received at, the principal executive offices of the Corporation (A) not less than seventy-five (75) days nor more than one hundred eighty (180) days prior to the anniversary date of the immediately preceding annual meeting of Stockholders or special meeting in lieu thereof (the "Anniversary Date") or (B) in the event that the annual meeting of Stockholders is called for a date more than seven (7) calendar days prior to the Anniversary Date, not later than the close of business on (1) the twentieth (20th) calendar day (or if that day is not a business day for the Corporation, on the next succeeding business day) following the earlier of (x) the date on which notice of the date of such meeting was mailed to Stockholders, or (y) the date on which the date of such meeting

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was publicly disclosed, or (2) if such date of notice or public disclosure occurs more than seventy-five (75) calendar days prior to the scheduled date of such meeting, then the later of (x) the twentieth (20th) calendar day (or if that day is not a business day for the Corporation, on the next succeeding business day) following the date of the first to occur of such notice or public disclosure or (y) the seventy-fifth (75th) calendar day prior to such scheduled date of such meeting (or if that day is not a business day for the Corporation, on the next succeeding business day).

For purposes of these Bylaws, "publicly disclosed" and "public disclosure" shall mean disclosure in a (i) press release reported by the Dow Jones News Service, Associated Press or comparable national news service, (ii) report or other document filed publicly with the Securities and Exchange Commission (including, without limitation, a Form 8-K), or (iii) letter or report sent to Stockholders of record of the Corporation.

(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 brief description of the proposal desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting, (ii) the name and address, as they appear on the Corporation's stock transfer books, of the Stockholder proposing such business and of the beneficial owners (if any) of the stock registered in such Stockholder's name and the name and address of other Stockholders known by such Stockholder to be supporting such proposal on the date of such Stockholder's notice, (iii) the class and number of shares of the Corporation's capital stock which are beneficially owned by the Stockholder and such beneficial owners (if any) on the date of such Stockholder's notice and by any other Stockholders known by such Stockholder to be supporting such proposal on the date of such Stockholder's notice, and (iv) any financial interest of the Stockholder or of any such beneficial owner in such proposal.

(c) If the Board of Directors, or a designated committee thereof, determines that any Stockholder proposal was not timely made in accordance with the terms of this Section 1.03, such proposal shall not be presented for action at the annual meeting in question. If the Board of Directors, or a designated committee thereof, determines that the information

provided in a Stockholder's notice does not satisfy the informational requirements of this Section in any material respect, the Secretary of the Corporation shall promptly notify such Stockholder of the deficiency in the notice. Such Stockholder shall have an opportunity to cure the deficiency by providing additional information to the Secretary within the period of time, not to exceed five (5) days from the date such deficiency notice is given to the Stockholder, determined by the Board of Directors or such committee. If the deficiency is not cured within such period, or if the Board of Directors or such committee determines that the additional information provided by the Stockholder, together with the information previously provided, does not satisfy the requirements of this Section 1.03 in any material respect, then such proposal shall not be presented for action at the annual meeting in question.

(d) Notwithstanding the procedure set forth in the preceding paragraph, if neither the Board of Directors nor such committee makes a determination as to the validity of

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any Stockholder proposal as set forth above, the presiding officer of the annual meeting shall determine and declare at the annual meeting whether the Stockholder proposal was made in accordance with the terms of this Section 1.03. If the presiding officer determines that a Stockholder proposal was made in accordance with the terms of this Section 1.03, the presiding officer shall so declare at the annual meeting. If the presiding officer determines that a Stockholder proposal was not made in accordance with the provisions of this Section 1.03, the presiding officer shall so declare at the annual meeting and such proposal shall not be acted upon at the annual meeting.

(e) This provision 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. The Executive Chairman of the Board of Directors (the "Executive Chairman"), the Chief Executive Officer, the President or a majority of the Board of Directors may call special meetings of the Stockholders. In addition, 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. Such request shall state the purpose or purposes of such meeting and the matters proposed to be acted on thereat. The date, time, place and record date for any special meeting, including a special meeting called at the request of Stockholders, shall be established by the Board of Directors or officer calling the same.

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 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 that 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 Stockholders present in person or by proxy or the presiding officer shall have the power to adjourn the meeting from time to time without notice

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other than announcement at the meeting until a quorum is present and the meeting so adjourned may be reconvened without further notice, except that if adjournment is for more than forty-five (45) days or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Stockholder of record entitled to vote thereat. 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, if any action taken (other than adjournment) is approved by at least a majority of the shares required to constitute 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 (the "Stock"), 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 shares said Stockholder is entitled to vote. 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, a plurality of the votes cast at a meeting of Stockholders duly called and at which a quorum is present shall be sufficient 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 in writing by the Stockholder or by his or her duly authorized agent. 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 Executive Chairman or, in the absence of the Executive Chairman, the Chief Executive Officer or, in the absence of both the Executive Chairman and the Chief

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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 Presiding Officer shall call the meeting to order, establish the agenda, and conduct the business of the meeting in accordance therewith, or at the Presiding Officer's discretion, it may be conducted otherwise in accordance with the wishes of the Stockholders in attendance. The Presiding Officer shall also conduct the meeting in an orderly manner, rule on the precedence of, and procedure on, motions and other procedural matters, and exercise discretion with respect to such procedural matters with fairness and good faith toward all those entitled to take part. The Presiding Officer may impose reasonable limits on the amount of time taken up at the meeting on discussion in general or on remarks by any one Stockholder. Should any person in attendance become unruly or obstruct the meeting proceedings, the Presiding Officer shall have the power to have such person removed from participation. Notwithstanding anything in the Bylaws to the contrary, no business shall be considered at a meeting except in accordance with the procedures set forth in this Section 1.10 and Section 1.03 above. The Presiding Officer of a meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of this Section 1.10 and Section 1.03 above, and if the Presiding Officer should so determine, he or she shall so declare to the meeting, and such business shall not be transacted.

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.

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1.12 INFORMAL ACTION BY STOCKHOLDERS. An 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 subject matter thereof 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 at 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 the Maryland General Corporation Law, as amended from time to time (the "MGCL"). Except as set forth in the Charter or by separate agreement, 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, 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.

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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 candidates for election as Directors of the Corporation at any annual meeting of Stockholders may be made (i) by, or at the direction of, a majority of the Board of Directors or (ii) by any holder of record (both as of the time notice of such nomination is given by the

Stockholder as set forth below and as of the record date for the annual meeting in question) of any shares of the Corporation's capital stock entitled to vote at such meeting who complies with the procedures set forth in this Section 2.04. Any Stockholder who seeks to make such a nomination, or his representative, must be present in person 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) Nominations, other than those made by, or at the direction of, the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the Corporation as set forth in this Section 2.04. For each annual meeting of the Corporation, a Stockholder's notice shall be timely if delivered to, or mailed and received at, the principal executive offices of the Corporation (i) not fewer than seventy-five (75) days nor more than one hundred eighty (180) days prior to the Anniversary Date or (ii) in the event that the annual meeting of Stockholders is called for a date more than seven (7) calendar days prior to the Anniversary Date, not later than the close of business on (A) the twentieth (20th) calendar day (or if that day is not a business day for the Corporation, on the next succeeding business day) following the earlier of (1) the date on which notice of the date of such meeting was mailed to Stockholders, or (2) the date on which the date of such meeting was publicly disclosed, or (B) if such date of notice or public disclosure occurs more than seventy-five (75) calendar days prior to the scheduled date of such meeting, then the later of (1) the twentieth (20th) calendar day (or if that day is not a business day for the Corporation, on the next succeeding business day) following the date of the first to occur of such notice or public disclosure or (2) the seventy-fifth (75th) calendar day prior to such scheduled date of such meeting (or if that day is not a business day for the Corporation, on the next succeeding business day).

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(c) A Stockholder's notice of nomination shall set forth as to each person the Stockholder proposes to nominate for election as a Director (i) the name, age, business address and residence address of such person; (ii) the principal occupation or employment of such person for the past five (5) years; (iii) the class and number of shares of the Corporation's capital stock which are beneficially owned by such person on the date of such notice; (iv) such nominee's written consent to be named in the proxy statement as a nominee and to serve as a Director if elected; and (v) any other information relating to such person that is required to be disclosed in solicitations of proxies with respect to nominees for election under the Securities Exchange Act of 1934, as amended, and the Rules and Regulations promulgated thereunder, and as may otherwise be deemed necessary or desirable by the Corporation's counsel, in the exercise of his or her discretion. Notice by a Stockholder shall, in addition to the above-referenced information, set forth as to the Stockholder giving the notice (A) the name and address, as they appear on the Corporation's stock transfer books, of such Stockholder and of the beneficial owners (if any) of the stock registered in such Stockholder's name; (B) the name and address of other Stockholders known by such Stockholder to be supporting such nominees on the date of such Stockholder's notice; (C) the class and number of shares of the Corporation's capital stock which are beneficially owned by such Stockholder and such beneficial owners (if any) on the date of such Stockholder notice; and (D) the class and number of shares of the Corporation's capital stock which are beneficially owned by any other Stockholders known by such Stockholder to be supporting such nominees on the date of such Stockholder notice. 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) No person shall be elected by the Stockholders as a Director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.04. If the Board of Directors, or a designated committee thereof, determines that a nomination made by any Stockholder was not timely made in accordance with the terms of this Section, such nomination shall not be considered at the annual meeting in question. If the Board of Directors, or a designated committee thereof, determines that the information provided in a Stockholder's notice does not satisfy the informational requirements of this Section 2.04 in any material respect, the Secretary of the Corporation shall promptly notify such Stockholder of the deficiency in the notice. Such Stockholder shall have an opportunity to cure the deficiency by providing additional information to the Secretary within the period of time, not to exceed five (5) days from the date such deficiency notice is given to such Stockholder, determined by the Board of Directors or such committee. If the deficiency is not cured within such period, or if the Board of Directors or such committee determines that the additional information provided by such Stockholder, together with the information previously provided, does not satisfy the requirements of this Section 2.04 in any material respect, such nomination shall not be considered at the annual meeting in question.

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(e) Notwithstanding the procedures set forth in the preceding paragraph, if neither the Board of Directors nor a designated committee thereof makes a determination as to the validity of any nominations by any Stockholder

as set forth above, the presiding officer of the Stockholders' meeting shall determine and declare at the Stockholders' meeting whether a nomination was made in accordance with the terms of this Section 2.04. If the presiding officer determines that a nomination was not made in accordance with the terms of this Section 2.04, such nomination shall be disregarded and the Board of Directors shall make all Director nominations on behalf of the Corporation.

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 Executive 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 to be provided herein shall be given, in accordance with ARTICLE VIII, by written notice delivered personally, telegraphed or telecopied to each Director at his or her business or residence at least twenty-four (24) hours, or by mail at least five (5) days, prior to the meeting. 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 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.

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

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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.

2.10 CONDUCT OF MEETINGS. All meetings of the Board of Directors shall be called to order and presided over by the Executive Chairman, or in the absence of the Executive Chairman, by the Chief Executive Officer (if a member of the Board of Directors) or, in the absence of the Executive 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 may 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.

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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 adopted by a majority of the Directors. If any committee may 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 may have any interest, a majority of the members of such committee shall be independent Directors, except that any such committee consisting of only two Directors may have one independent Director and one Director who is not an independent Director.

(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 two or more Directors whose membership on the Audit Committee shall meet the requirements set forth in the applicable rules, if any, of the New York Stock Exchange, 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 authorized number of Directors, appoint a Compensation Committee, consisting of two or more Directors, each of whom is not an employee, officer or former officer of the Corporation or a subsidiary or division thereof, or a relative of a principal executive officer, or an individual member of an organization acting as an advisor, consultant, or legal counsel, receiving compensation on a continuing basis from the Corporation in addition to the compensation pursuant to Section 2.15 hereof. 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 authorized number of Directors, designate 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

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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 the such committee.

3.02 DELEGATION OF POWER. The Board of Directors may delegate to these committees in the intervals between meetings of the Board of Directors any of the powers of the Board of Directors to manage the business and affairs of the Corporation, except those powers which the Board of Directors is specifically prohibited from delegating pursuant to Section 2-411 of the MGCL.

3.03 QUORUM AND VOTING. 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 quorum shall constitute the act of the committee, except that 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. Each committee shall designate a presiding officer of such committee, and if not present at a particular meeting, the committee shall select a presiding officer for such meeting. Each committee

shall adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings shall be as provided by such rules, and it shall also meet at the call of any member of the committee. Members of any committee may 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 at the next succeeding annual or regular meeting of 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 an Executive Chairman of the Board, a Chief Executive Officer, a President, one or more Vice Presidents (including Executive Vice Presidents 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

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officer appointed by the Board of Directors for such purpose, may from time to time elect. 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 chosen 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 the law and these Bylaws. 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 separate agreement, 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 EXECUTIVE CHAIRMAN OF THE BOARD. The Executive 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 Executive 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. If the Executive Chairman is absent, the Chief Executive Officer shall preside, when present, at all meetings of the Stockholders and the Board of Directors.

4.07 PRESIDENT. Unless otherwise determined by the Board of Directors, 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, or 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 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 depositories 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 Executive 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 him by the Secretary or Treasurer, respectively, or by the Executive 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, Executive 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.

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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 the Executive Chairman of the Board or the President or Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or any Assistant Secretary. Each certificate shall state the certificate number, the date of issuance, the number, class or series, the name of the record holder of the shares represented thereby, and the name of the Corporation. Each certificate representing shares of Stock which are restricted as to their transferability or voting powers, which are preferred or limited as to their allocable portion of the assets upon liquidation or which are redeemable at the option of the Corporation, shall have a statement of such restriction, limitation, preference or redemption provision, or a summary thereof, plainly stated on the certificate. In lieu of such statement or summary, the Corporation may set forth on the face or back of the certificate a statement that the Corporation will furnish to any Stockholder, upon request and without charge, a full statement of such information.

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.

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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 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.

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(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 notice of or to vote at a meeting of Stockholders.

(c) 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 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 the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

ARTICLE VI

DIVIDENDS AND DISTRIBUTIONS

6.01 DECLARATION. Dividends and other distributions upon the Stock may be declared 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.

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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

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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. 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,

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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. 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 Executive 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 any person directed to do so by the Executive 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 CONTROL SHARE ACQUISITION STATUTE. The provisions of Sections 3-701 to 3-709 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 such Sections of the MGCL 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

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subordinated offices may at any time be established by the Board of Directors at any place or places where the Corporation is qualified to do business.

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 accounting books and records of the Corporation, 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 Stockholder lists, shall be made available for inspection by any Stockholder or holder of a voting trust certificate as set forth in 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

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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. Not later than one hundred twenty (120) days after the close of 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 deem proper.

9.11 OTHER REPORTS. Any distributions to Stockholders of income or capital assets shall be accompanied by a written statement disclosing the source of the funds distributed unless at the time of distribution they are accompanied by a written explanation of the relevant circumstances. The statement as to such source shall be sent to the Stockholders not later than sixty (60) days after the close of the fiscal year in which the distributions were made.

9.12 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 July 24, 1998.

/S/ JEFFREY B. VAN HORN

Jeffrey B. Van Horn
Secretary

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Richard L. Michaux ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and Avalon Properties, Inc. ("Avalon") have previously entered into an Employment Agreement, dated as of July 15, 1997 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon, dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, 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 the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months 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 3 years from the date of such Change in Control. (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 be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of Chief Executive Officer. In the performance of his duties, Executive shall be subject to the direction of the Board of Directors of the Company (the "Board of Directors") and shall not be required to take direction from or report to any other person. Executive shall be appointed to the Board of Directors of the Company effective as of the Effective Date. Executive's duties and authority under this Agreement are set forth on Exhibit 1 to this Agreement.
 - 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 herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors 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

Midwest 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 otherwise in the greater Washington, D.C. metropolitan area.
- d. Breach by either party of any of 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 \$350,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for Washington, D.C.-MD-Va 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. 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 as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.
- c. **Medical Insurance/Physical.** During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.
- d. **Life Insurance/Disability Insurance.** 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 Avalon and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. The Company shall reimburse Executive for the cost of the comprehensive disability insurance policy, which is in effect on January 1, 1997, and shall also be responsible for any increases in premiums which become effective during the Employment Period as may be necessary to maintain the same level of insurance as in effect on January 1, 1997. Executive agrees to submit to such medical examinations as may be required in order to maintain such policies 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 executives, not to exceed 6 weeks per annum, in the aggregate.
- f. **Office/Secretary, etc.** During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.
- g. **Club Membership.** The Company will pay, or at Executive's

election reimburse, during the Employment Period (i) the membership dues and special assessments (exclusive of initiation or admittance costs) for country club memberships of Executive's choice in an aggregate amount not to exceed \$10,000 per year,

increased but not decreased for each succeeding twelve month period during the Employment Period by the CPI Adjustment plus (ii) other costs and fees of use of such country club(s) reasonably related to the Company's business, subject to substantiation thereof in accordance with the Company's policies in effect from time to time for executive employees of the Company.

- h. Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than \$950 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.
- 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 executives of the Company from time to time, and shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service with Avalon, its affiliates and TCR prior to the Effective Date under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon and its subsidiaries, provided that no such crediting of service results in duplication of benefits.

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 to use its best efforts to secure and maintain officers and directors' liability insurance 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.

6. Records/Nondisclosure/Company Policies.

- a. General. All records, 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:

- i. Cause. "Cause" shall mean:

- (1) 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 of Directors, a material adverse impact on the business or reputation of the Company;
 - (2) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;
 - (3) a breach by Executive of his fiduciary duties under Maryland law as an officer;
 - (4) Executive'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 has resulted in material harm to the business or reputation of the Company; or
 - (5) 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 (i) through (iii) below have been complied with:

i. Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

ii. The Board of Directors has voted (at a meeting of the Board of Directors 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 after the meeting and an opportunity to present his position in writing; and

iii. The Board of Directors has given a Notice of Termination to Executive within 20 days of 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 (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

- ii. Change in Control. A "Change in Control" shall mean the occurrence of

any one or more of the following events following the Effective Date:

- (1) 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
- (2) 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, (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 of Directors, 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
- (3) 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;

- (4) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or
- (5) 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.

- iii. 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.
- iv. 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:

- (1) 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; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in

this Agreement, 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;
- (2) any material breach by the Company of this Agreement;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) the relocation of the Company's Alexandria office to a new location more than fifty (50) miles from Alexandria, or the failure to locate Executive's own office at the Alexandria office (or at the office to which such office is relocated which is within 50 miles of Alexandria) or, following a Change in Control, the failure to locate Executive's office at the Company's principal executive office or the relocation of Company's principal executive office to a location more than 50 miles from Alexandria; or
- (7) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

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

- v. 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.
- vi. 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 (disregarding any decreases made effective during the Employment Period), (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.

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 (or of the common stock of Avalon, as the case may be) and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.
- (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 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, and is lower than the last cash bonus paid more than three months from the Date of Termination, 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, except that all awards made in connection with the Company's initial public offering shall be disregarded.
- vii. 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(d) of this Agreement.

c. Rights Upon Termination.

- (1) 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 all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. 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.

- (2) 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 such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.
- (3) 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), pay to Executive, in one lump sum, no later than 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:
 - (a) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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; 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.
- (4) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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; and
 - (d) 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.
- (5) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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); 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.
- (6) 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.

d. Additional Benefits.

- (1) 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 (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.

- (2) 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 Coopers & Lybrand LLP or such other 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 Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. 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.

- (3) 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 knows 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.

- (4) 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 on the Board of Directors.
- 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 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 (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential 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 residential real estate ownership, management, residential real estate franchising, and residential 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 Virginia. 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 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 5904 Richmond Avenue, Alexandria, VA 22303, 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 Exhibit 1, Annex A and Annex B and the Split Dollar Insurance Agreement, 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 no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Avalon employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. 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. 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.

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 Virginia in accordance with the National 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.

- (1) 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.
- (2) 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.
- (3) 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 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.
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 then in office 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.

Bay Apartment Communities, Inc.

By: /S/ GILBERT M. MEYER

Its: Chairman of the Board

/S/
Richard L. Michaux

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Charles H. Berman ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and Avalon Properties, Inc. ("Avalon") have previously entered into an Employment Agreement, dated as of July 16, 1997 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon, dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, 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 the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months 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 3 years from the date of such Change in Control. (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 be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of President and Chief Operating Officer. In the performance of his duties, Executive shall be subject to the direction of the Board of Directors of the Company (the "Board of Directors") and shall not be required to take direction from or report to any other person. Executive shall be appointed to the Board of Directors of the Company effective as of the Effective Date. Executive's duties and authority under this Agreement are set forth on Exhibit 1 to this Agreement.
 - 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 herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors 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 Midwest 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 San Jose, California (or otherwise in the greater San Francisco Bay area), as soon as practicable following the Effective Date, provided, that following the second anniversary of the Effective Date, Executive may cause his employment to be located in Wilton, Connecticut (or otherwise in the Company's regional office in the greater Fairfield County area). Additional terms of

Executive's employment in San Jose are set forth on Exhibit 2 to this Agreement.

- d. Breach by either party of any of 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 \$350,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for New York - Northern New Jersey - Long Island 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. 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 as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.
 - c. Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.
 - d. Life Insurance/Disability Insurance. 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 Avalon and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. The Company shall reimburse Executive for the cost of the comprehensive disability insurance policy, which is in effect on January 1, 1997, and shall also be responsible for any increases in premiums which become effective during the Employment Period as may be necessary to maintain the same level of insurance as in effect on January 1, 1997. Executive agrees to submit to such medical examinations as may be required in order to maintain such policies 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 executives, not to exceed 6 weeks per annum, in the aggregate.
 - f. Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.
 - g. Avalon Stock Option. The Company acknowledges that, notwithstanding the consummation of the Merger, Avalon granted to Executive on March 8, 1998, a non-qualified employee stock option to purchase 162,697 shares of common stock of Avalon, par value \$.01 per share (the "Avalon Stock Option"). The Avalon Stock Option was granted at an exercise price equal to \$28.8125. Upon termination of Executive's employment, vesting and exercisability of the Avalon Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.

- h. Club Membership. The Company will pay, or at Executive's election reimburse, during the Employment Period (i) the membership dues and special assessments (exclusive of initiation or admittance costs) for country club memberships of Executive's choice in an aggregate amount not to exceed \$10,000 per year, increased but not decreased for each succeeding twelve month period during the Employment Period by the CPI Adjustment plus (ii) other costs and fees of use of such country club(s) reasonably related to the Company's business, subject to substantiation thereof in accordance with the Company's policies in effect from time to time for executive employees of the Company.
 - i. Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than \$950 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.
 - j. 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 executives of the Company from time to time, and shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service with Avalon, its affiliates and TCR prior to the Effective Date under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon and its subsidiaries, provided that no such crediting of service results in duplication of benefits.
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 to use its best efforts to secure and maintain officers and directors' liability insurance 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.
6. Records/Nondisclosure/Company Policies.
- a. General. All records, 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:
 - i. Cause. "Cause" shall mean:
 - (1) 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 of Directors, a material adverse impact on the business or reputation of the Company;
 - (2) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;
 - (3) a breach by Executive of his fiduciary duties under Maryland law as an officer;
 - (4) Executive'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 has resulted in material harm to the business or reputation of the Company; or
 - (5) 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 (i) through (iii) below have been complied with:

i. Notice of intention to terminate for Cause has been given by the Company within 120 days after

the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

ii. The Board of Directors has voted (at a meeting of the Board of Directors 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 after the meeting and an opportunity to present his position in writing; and

iii. The Board of Directors has given a Notice of Termination to Executive within 20 days of 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 (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

ii. Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

- (1) 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

- (2) 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, (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 of Directors, 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

- (3) 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;

- (4) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or
- (5) 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.

- iii. 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.
- iv. 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:
 - (1) 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; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, 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;
 - (2) any material breach by the Company of this Agreement;
 - (3) 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;
 - (4) 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;
 - (5) 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;

- (6) the relocation of the Company's San Jose offices (or the office to which Executive relocates pursuant to Exhibit 2, as the case may be) to a new location more than 50 miles from San Jose (or such office) or the failure to locate Executive's own office at the San Jose office (or such other office location) (or at the office to which such office is relocated which is within 50 miles of San Jose (or such other office location)); or
- (7) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

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.

- v. 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.
- vi. 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 (disregarding any decreases made effective during the Employment Period), (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.

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 (or of the common stock of Avalon, as the case may be) and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.
- (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 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, and is lower than the last cash bonus paid more than three

months from the Date of Termination, 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, except that all awards made in connection with the Company's initial public offering shall be disregarded.

vii. 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(d) of this Agreement.

c. Rights Upon Termination.

- (1) 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 all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. 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.
- (2) 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 such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.
- (3) 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), pay to Executive, in one lump sum, no later than 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:
- (a) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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; 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.

- (4) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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; and
 - (d) 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.
- (5) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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); 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.
- (6) 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.

d. Additional Benefits.

- (1) 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 (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.
- (2) 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 Coopers & Lybrand LLP or such other 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 Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. 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.

- (3) 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 knows 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.

- (4) 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 on the Board of Directors.

- 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 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 (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential 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 residential real estate ownership, management, residential real estate franchising, and residential 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 California. 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 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 5904 Richmond Avenue, Alexandria, VA 22303, 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 Exhibits 1 and 2, Annex A and Annex B and the Split Dollar Insurance Agreement, 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 no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Avalon employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. 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. 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.

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 California in accordance with the National 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.

- (1) 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.
- (2) 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.

- (3) 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 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.
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 then in office 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.

Bay Apartment Communities, Inc.

By: /S/ GILBERT M. MEYER

Its: Chairman of the Board

/S/ CHARLES H. BERMAN
Charles H. Berman

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Robert H. Slater ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and Avalon Properties, Inc. ("Avalon") have previously entered into an Employment Agreement, dated as of July 17, 1997 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon, dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, 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 the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months 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 3 years from the date of such Change in Control. (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 be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of Senior Vice President-Property Operations. Executive's duties and authority shall be commensurate with his title and position with the Company, and shall not be materially diminished from, or materially inconsistent with, his primary duties and authority with Avalon immediately prior to the date of this Agreement.

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 herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors 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 Midwest projects of Trammell Crow Residential ("TCR"), and such activity shall not be treated as a Competing Enterprise.

- b. 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, VA or otherwise in the greater Washington, D.C. metropolitan area.
 - c. Breach by either party of any of 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 \$300,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for Washington, D.C.-MD-VA 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. 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 as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.
- c. Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.
- d. Life Insurance/Disability Insurance. 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 Avalon and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. The Company shall reimburse Executive for the cost of the comprehensive disability insurance policy, which is in effect on January 1, 1997, and shall also be responsible for any increases in premiums which become effective during the Employment Period as may be necessary to maintain the same level of insurance as in effect on January 1, 1997. Executive agrees to submit to such medical examinations as may be required in order to maintain such policies 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 executives, not to exceed 6 weeks per annum, in the aggregate.
- f. Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.
- g. Avalon Stock Option. The Company acknowledges that, notwithstanding the consummation of the Merger, Avalon granted to Executive on March 8, 1998, a non-qualified employee stock option to purchase 104,126 shares of common stock of Avalon, par value \$.01 per share (the "Avalon Stock Option"). The Avalon Stock Option was granted at an exercise price equal to \$28.8125. Upon termination of Executive's employment, vesting and exercisability of the Avalon

Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.

- h. Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than \$750 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.

- 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 executives of the Company from time to time, and shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service with Avalon, its affiliates and TCR prior to the Effective Date under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon and its subsidiaries, provided that no such crediting of service results in duplication of benefits.

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 to use its best efforts to secure and maintain officers and directors' liability insurance 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.

6. Records/Nondisclosure/Company Policies.

- a. General. All records, 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:

- i. Cause. "Cause" shall mean:

- (1) 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 of Directors, a material adverse impact on the business or reputation of the Company;

- (2) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;
- (3) a breach by Executive of his fiduciary duties under Maryland law as an officer;
- (4) Executive'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 has resulted in material harm to the business or reputation of the Company; or
- (5) 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 (i) through (iii) below have been complied with:

i. Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

ii. The Board of Directors has voted (at a meeting of the Board of Directors 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 after the meeting and an opportunity to present his position in writing; and

iii. The Board of Directors has given a Notice of Termination to Executive within 20 days of 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 (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause

(iii) above, no further payments shall be due Executive.

ii. Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

- (1) 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
- (2) 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, (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 of Directors, 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

- (3) 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;
- (4) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or
- (5) 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.

- iii. 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.
- iv. 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:

- (1) 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; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, 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;
- (2) any material breach by the Company of this Agreement;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) the relocation of the Company's Alexandria offices to a new location more than fifty (50) miles from Alexandria or the failure to locate Executive's own office at the Alexandria office (or at the office to which such office is relocated which is within 50 miles of Alexandria) or, following a Change in Control, the failure to locate Executive's office at the Company's principal executive office or the

relocation of the Company's principal executive office to a

location more than 50 miles from Alexandria; or

- (7) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

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.

- v. 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.
- vi. 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 (disregarding any decreases made effective during the Employment Period), (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.

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 (or of the common stock of Avalon, as the case may be) and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.
- (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 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, and is lower than the last cash bonus paid more than three months from the Date of Termination, 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, except that all awards made in connection with the Company's initial public offering shall be disregarded.

- vii. 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(d) of this Agreement.

c. Rights Upon Termination.

- (1) 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 all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. 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.
- (2) 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 such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.
- (3) 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), pay to Executive, in one lump sum, no later than 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:
 - (a) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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; 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.
- (4) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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; and
- (d) 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.

- (5) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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); 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.
- (6) 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.

d. Additional Benefits.

- (1) 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 (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.

- (2) 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 Coopers & Lybrand LLP or such other 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 Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. 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.

- (3) 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 knows 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.

- (4) 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 on the Board of Directors.
 - 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 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 (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential 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 residential real estate ownership, management, residential real estate franchising, and residential 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 Virginia. 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 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 5904 Richmond Avenue, Alexandria, VA 22303, 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, 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 no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Avalon employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. 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. 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.

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 Virginia in accordance with the National 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.

- (1) 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.

- (2) 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.
- (3) 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 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.
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 then in office 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.

Bay Apartment Communities, Inc.

By: /S/ GILBERT M. MEYER

Its: Chairman of the Board

/S/ ROBERT H. SLATER
Robert H. Slater

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Thomas J. Sargeant ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and Avalon Properties, Inc. ("Avalon") have previously entered into an Employment Agreement, dated as of April 4, 1997 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon, dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, 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 the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months 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 3 years from the date of such Change in Control. (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 be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of Senior Vice President-Chief Financial Officer. Executive's duties and authority shall be commensurate with his title and position with the Company, and shall not be materially diminished from, or materially inconsistent with, his primary duties and authority with Avalon immediately prior to the date of this Agreement.
 - 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 herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors 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 Midwest 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, VA or

otherwise in the greater Washington, D.C. metropolitan area.

- d. Breach by either party of any of 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 \$270,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for Washington, D.C.-MD-VA 1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. 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 as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.
- c. Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.
- d. Life Insurance/Disability Insurance. 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 Avalon and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. The Company shall reimburse Executive for the cost of the comprehensive disability insurance policy, which is in effect on January 1, 1997, and shall also be responsible for any increases in premiums which become effective during the Employment Period as may be necessary to maintain the same level of insurance as in effect on January 1, 1997. Executive agrees to submit to such medical examinations as may be required in order to maintain such policies 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 executives, not to exceed 6 weeks per annum, in the aggregate.
- f. Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.
- g. Avalon Stock Option. The Company acknowledges that, notwithstanding the consummation of the Merger, Avalon granted to Executive on March 8, 1998, a

non-qualified employee stock option to purchase 91,110 shares of common stock of Avalon, par value \$.01 per share (the

"Avalon Stock Option"). The Avalon Stock Option was granted at an exercise price equal to \$28.8125. Upon termination of Executive's employment, vesting and exercisability of the Avalon Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.

- h. Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than \$750 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.
- 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 executives of the Company from time to time, and shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service with Avalon, its affiliates and TCR prior to the Effective Date under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon and its subsidiaries, provided that no such crediting of service results in duplication of benefits.

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 to use its best efforts to secure and maintain officers and directors' liability insurance 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.

6. Records/Nondisclosure/Company Policies.

- a. General. All records, 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:

- i. Cause. "Cause" shall mean:

- (1) 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 of Directors, a material adverse impact on the business or reputation of the Company;
 - (2) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;
 - (3) a breach by Executive of his fiduciary duties under Maryland law as an officer;
 - (4) Executive'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 has resulted in material harm to the business or reputation of the Company; or
 - (5) 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 (i) through (iii) below have been complied with:

i. Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

ii. The Board of Directors has voted (at a meeting of the Board of Directors 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 after the meeting and an opportunity to present his position in writing; and

iii. The Board of Directors has given a Notice of Termination to Executive within 20 days of 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 (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

- ii. Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following

events following the Effective Date:

- (1) 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
- (2) 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, (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 of Directors, 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
- (3) 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;

- (4) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or
- (5) 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.

- iii. 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.
- iv. 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:

- (1) 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; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, 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;
- (2) any material breach by the Company of this Agreement;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) the relocation of the Company's Alexandria offices to a new location more than fifty (50) miles from Alexandria or the failure to locate Executive's own office at the Alexandria office (or at the

office to which such office is relocated which is within 50 miles of Alexandria) or, following a Change in Control, the failure to locate Executive's office at the Company's principal executive office or the relocation of the Company's principal executive office to a location more than 50 miles from Alexandria; or

- (7) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

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.

- v. 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.
- vi. 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 (disregarding any decreases made effective during the Employment Period), (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.

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 (or of the common stock of Avalon, as the case may be) and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.

- (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 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, and is lower than the last cash bonus paid more than three months from the Date of Termination, 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, except that all awards made in connection with the Company's initial public offering shall be disregarded.

vii. 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(d) of this Agreement.

c. Rights Upon Termination.

(1) 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 all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. 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.

(2) 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 such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.

(3) 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), pay to Executive, in one lump sum, no later than 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:

(a) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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; 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.

(4) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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; and
- (d) 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.

- (5) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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); 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.

- (6) 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.

d. Additional Benefits.

- (1) 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 (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.
- (2) 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 Coopers & Lybrand LLP or such other 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 Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. 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.

(3) 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 knows 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.

- (4) 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 on the Board of Directors.

- 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 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 (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential 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 residential real estate ownership, management, residential real estate franchising, and residential 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 Virginia. 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 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 5904 Richmond Avenue, Alexandria, VA 22303, 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, 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 no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Avalon employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. 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. 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.

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 Virginia in accordance with the National 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.

(1) 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.

(2) 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.

(3) 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 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.
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 then in office 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.

Bay Apartment Communities, Inc.

By: /S/ GILBERT M. MEYER

Its: Chairman of the Board

/S/ THOMAS J. SARGEANT
Thomas J. Sargeant

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT (this "Agreement") made as of the 9th day of March, 1998 by and between Bryce Blair ("Executive") and Bay Apartment Communities, Inc., a Maryland corporation (the "Company").

WHEREAS, Executive and Avalon Properties, Inc. ("Avalon") have previously entered into an Employment Agreement, dated as of April 4, 1997 (the "Prior Agreement"); and

WHEREAS, pursuant to the Agreement and Plan of Merger, by and between the Company and Avalon, dated as of March 9, 1998 (the "Merger Agreement"), Avalon will merge into the Company (the "Merger"); and

WHEREAS, Executive and the Company desire to enter into a new employment agreement, effective as of the consummation of the merger contemplated by the Merger Agreement (the "Effective Date"), to replace the Prior Agreement.

NOW, THEREFORE, the parties hereto do hereby agree as follows.

1. Term. Subject to the consummation of the merger contemplated by the Merger Agreement, 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 the third anniversary of the Effective Date (the "Original Term"), unless earlier terminated as provided in Section 7. The Original Term shall be extended automatically for additional 1 year periods (each a "Renewal Term"), unless notice that this Agreement will not be extended is given by either party to the other 6 months 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 3 years from the date of such Change in Control. (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 be employed in the business of the Company and its affiliates. Executive shall serve as a corporate officer of the Company with the title of Senior Vice President - Development and Acquisitions. Executive's duties and authority shall be commensurate with his title and position with the Company, and shall not be materially diminished from, or materially inconsistent with, his primary duties and authority with Avalon immediately prior to the date of this Agreement. 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 herein shall be interpreted to preclude Executive from (i) participating with the prior written consent of the Board of Directors 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 Midwest projects of Trammell Crow Residential ("TCR"), and such activity shall not be treated as a Competing Enterprise.
 - b. In performing his duties hereunder, Executive shall be available for reasonable travel as the needs of the business require. Executive shall be based in Braintree, MA, or otherwise in the greater Boston metropolitan area.
 - c. Breach by either party of any of 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 \$300,000. Executive's Base Salary will be reviewed by the Company as of the first anniversary of the Effective Date, and may be adjusted upward (but not downward) at such time to reflect any inequities in compensation. Commencing as of January 1, 2000, Executive's Base Salary shall be reviewed no less frequently than annually by the Company and may be adjusted upward (but not downward) by the Company. Upon such annual review during the Renewal Term, if any, Executive's Base Salary shall be increased to the greatest of (i) an amount equal to Base Salary for the prior year plus 5%, (ii) a factor measured by the increase, if any, in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) (City Average for New York-Northern New Jersey-Long Island-1982-84=100), as published by the Bureau of Labor Statistics, for the prior calendar year (the "CPI Adjustment") or (iii) such greater amount as may be agreed by Executive and the Company. 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 as a bonus if the Board, or any compensation committee hereof, in its discretion, determines that Executive's contribution to the Company warrants such additional payment and the Company's anticipated financial performance of the present period permits such payment. The bonuses hereunder shall be paid as a lump sum not later than 60 days after the end of the Company's preceding fiscal year.
- c. Medical Insurance/Physical. During the Employment Period, the Company shall provide to Executive and Executive's immediate family a comprehensive policy of health insurance. During the Employment Period, Executive shall be entitled to a comprehensive annual physical performed, at the expense of the Company by the physician or medical group of Executive's choosing.
- d. Life Insurance/Disability Insurance. 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 Avalon and Executive, subject to reimbursement by Executive as provided in such Split Dollar Insurance Agreement. The Company shall reimburse Executive for the cost of the comprehensive disability insurance policy, which is in effect on January 1, 1997, and shall also be responsible for any increases in premiums which become effective during the Employment Period as may be necessary to maintain the same level of insurance as in effect on January 1, 1997. Executive agrees to submit to such medical examinations as may be required in order to maintain such policies 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 executives, not to exceed 6 weeks per annum, in the aggregate.
- f. Office/Secretary, etc. During the Employment Period, Executive shall be entitled to secretarial services and a private office commensurate with his title and duties.
- g. Avalon Stock Option. The Company acknowledges that, notwithstanding the consummation of the Merger, Avalon granted to Executive on March 8, 1998, a non-qualified employee stock option to purchase 104,126 shares of common stock of Avalon, par value \$.01 per share (the "Avalon Stock Option"). The Avalon Stock Option was granted at an exercise price equal to \$28.8125. Upon termination of Executive's employment, vesting and exercisability of the Avalon Stock Option shall be governed by the terms of the stock option agreement and this Agreement, as applicable. During the Employment Period, Executive shall be eligible for future employee stock option grants on the same basis as other senior management of the Company.
- h. Automobile. The Company shall provide Executive with a monthly car allowance during the Employment Period of not less than \$750 per month (adjusted annually for inflation by the CPI Adjustment); provided that, at Executive's election, the Company may instead purchase or lease, and maintain insurance for, an automobile of comparable value for use by Executive, who shall be responsible for maintaining such automobile, at his own expense, with the same standard of care Executive applies to his own property and as may be required under any applicable lease agreement.
- 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 executives of the Company from time to time and shall be given credit for purposes of eligibility and vesting of employee benefits and benefit accrual for service with Avalon, its affiliates and TCR prior to the Effective Date under each benefit plan of the Company and its subsidiaries to the extent such service had been credited under employee benefit plans of Avalon and its subsidiaries, provided that no such crediting of service results in duplication of benefits.

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 to use its best efforts to secure and maintain officers and directors' liability insurance 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.

6. Records/Nondisclosure/Company Policies.

- a. General. All records, 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:
 - i. Cause. "Cause" shall mean:
 - (1) 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 of Directors, a material adverse impact on the business or reputation of the Company;
 - (2) any one or more acts of theft, larceny, embezzlement, fraud or material intentional misappropriation from or with respect to the Company;

- (3) a breach by Executive of his fiduciary duties under Maryland law as an officer;
- (4) Executive'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 has resulted in material harm to the business or reputation of the Company; or
- (5) 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 (i) through (iii) below have been complied with:

i. Notice of intention to terminate for Cause has been given by the Company within 120 days after the Board of Directors learns of the act, failure or event (or latest in a series of acts, failures or events) constituting "Cause";

ii. The Board of Directors has voted (at a meeting of the Board of Directors 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 after the meeting and an opportunity to present his position in writing; and

iii. The Board of Directors has given a Notice of Termination to Executive within 20 days of 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 (i) above until final Notice of Termination is given under clause (iii) above. Upon the giving of notice as provided in clause (iii) above, no further payments shall be due Executive.

ii. Change in Control. A "Change in Control" shall mean the occurrence of any one or more of the following events following the Effective Date:

- (1) 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
- (2) 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, (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 of Directors, 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
- (3) 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;

- (4) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company; or
- (5) 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.

- iii. 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.
- iv. 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:

- (1) 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; or any removal of Executive from or failure to reappoint or reelect Executive to any position set forth in this Agreement, 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;
- (2) any material breach by the Company of this Agreement;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) the relocation of the Company's Braintree offices to a new location more than fifty (50) miles from Braintree or the failure to locate Executive's own office at the Braintree office (or at the office to which such office is relocated which is within 50 miles of Braintree); or
- (7) any termination of employment by the Executive for any reason during the 12-month period immediately following a Complete Change in Control of the Company.

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.

- v. 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.
- vi. 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 (disregarding any decreases made effective during the Employment Period), (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.

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 (or of the common stock of Avalon, as the case may be) and other equity-based compensation awards shall be valued at the value established by the Compensation Committee of the Board of Directors on the date of grant.

- (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 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, and is lower than the last cash bonus paid more than three months from the Date of Termination, 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, except that all awards made in connection with the Company's initial public offering shall be disregarded.

vii. 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(d) of this Agreement.

c. Rights Upon Termination.

- (1) 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 all accrued but unpaid Base Salary and all earned but unpaid cash incentive compensation earned through his Date of Termination. 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.
- (2) 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 such period as is provided in the case of vested and exercisable awards in the event of death under the terms of the applicable award agreements.
- (3) 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), pay to Executive, in one lump sum, no later than 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:
 - (a) Continue, without cost to Executive, benefits comparable to the medical and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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; 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.

(4) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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; and

(d) 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.

(5) 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 and disability benefits provided to Executive immediately prior to the Date of Termination under Section 3(c) and Section 3(d) 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) 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); 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.

(6) 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.

d. Additional Benefits.

- (1) 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 (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.
- (2) 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 Coopers & Lybrand LLP or such other 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 Company and Executive within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or Executive. 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.
- (3) 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 knows 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.
- (4) 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 on the Board of Directors.

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 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 (a) is a publicly traded real estate investment trust, or (b) is engaged in the business of managing, owning, leasing or joint venturing residential real estate within 30 miles of residential 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 residential real estate ownership, management, residential real estate franchising, and residential 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 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 5904 Richmond Avenue, Alexandria, VA 22303, 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, 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 no further force or effect. Executive hereby waives, to the extent applicable, the effect of the transactions contemplated by the Merger Agreement (or shareholder approval of such transaction) on any change in control provisions in any Avalon employee benefit plan or agreement. This Agreement shall terminate upon termination of the Merger Agreement and abandonment of the merger contemplated by the Merger Agreement. 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. 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.
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 National 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.

- (1) 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.
- (2) 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.
- (3) 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 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.
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 then in office 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.

Bay Apartment Communities, Inc.

By: /S/ GILBERT M. MEYER

Its: Chairman of the Board

/S/ BRYCE BLAIR
Bryce Blair

REVOLVING LOAN AGREEMENT

dated as of June 23, 1998

among

AVALON BAY COMMUNITIES, INC.,
as Borrower,

FLEET NATIONAL BANK,
as Co-Agent and Bank,

MORGAN GUARANTY TRUST COMPANY OF NEW YORK,
as Co-Agent and Bank,

UNION BANK OF SWITZERLAND
(New York Branch),
as Co-Agent and Bank,

the other banks signatory hereto,
each as a Bank,

and

FLEET NATIONAL BANK,
as Administrative Agent

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REVOLVING LOAN AGREEMENT dated as of June 23, 1998 among AVALON BAY COMMUNITIES, INC., a corporation organized and existing under the laws of the State of Maryland ("Borrower"), FLEET NATIONAL BANK (in its individual capacity and not as Administrative Agent, "Fleet"), MORGAN GUARANTY TRUST COMPANY OF NEW YORK ("Morgan"), UNION BANK OF SWITZERLAND (New York Branch) ("UBS"), the other lenders signatory hereto, and FLEET NATIONAL BANK, as administrative agent for the Banks (in such capacity, together with its successors in such capacity, "Administrative Agent"; Fleet, Morgan, UBS, the other lenders signatory hereto, such other lenders who from time to time become Banks pursuant to Section 3.07 or 12.05 and, if applicable, any of the foregoing lenders' Designated Lender, each a "Bank" and collectively, the "Banks").

Borrower desires that the Banks extend credit as provided herein, and the Banks are prepared to extend such credit. Accordingly, in consideration of the premises and the mutual agreements, covenants and conditions hereinafter set forth, Borrower, Administrative Agent and each of the Banks agree as follows:

ARTICLE I

DEFINITIONS; ETC.

Section 1.01 Definitions. As used in this Agreement the following terms have the following meanings (except as otherwise provided, terms defined in the singular to have a correlative meaning when used in the plural and vice versa):

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

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

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

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

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

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

"Administrative Agent's Office" means Administrative Agent's address located at One Landmark Square, Stamford, Connecticut 06904, or such other address in the United States as Administrative Agent may designate by written notice to Borrower and the Banks.

"Affiliate" means, with respect to any Person (the "first Person"), any other Person (1) which directly or indirectly controls, or is controlled by, or is under common control with the first Person; or (2) 10% or more of the beneficial interest in which is directly or indirectly owned or held by the first Person. The term "control" means the possession, directly

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or indirectly, of the power, alone, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" means this Revolving Loan Agreement.

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

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

<TABLE>

<CAPTION> Range of Borrower's Credit Rating (S&P/Moody's) -----	Applicable Margin for Base Rate Loans (% per annum) -----	Applicable Margin for LIBOR Loans (% per annum) -----
<S>	<C>	<C>
Below BBB-/below Baa3 or unrated	0.25	1.15
BBB-/Baa3	0.00	0.95
BBB/Baa2	0.00	0.75
BBB+/Baa1	0.00	0.60
A-or higher/A3 or higher	0.00	0.55

</TABLE>

"Assignee" and "Consented Assignee" have the respective meanings specified in Section 12.05.

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

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

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

"Avalon" means Avalon Properties, Inc., a Maryland corporation.

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

"Bank Parties" means Administrative Agent and the Banks.

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

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

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

"Bay" means Bay Apartment Communities, Inc., a Maryland corporation.

"Bid Borrowing Limit" means 66 2/3% of the Total Loan Commitment.

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

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

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

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

"Borrower" has the meaning specified in the preamble.

"Borrower's Accountants" means Coopers & Lybrand, or such other accounting firm(s) selected by Borrower and reasonably acceptable to the Required Banks.

"Borrower's Credit Rating" means the rating assigned from time to time to Borrower's unsecured and unsubordinated long-term indebtedness by, respectively, S&P and/or Moody's. In connection with the foregoing, it is understood that if more than one (1) of the rating agencies identified above assigns a rating to Borrower's unsecured and unsubordinated long-term indebtedness, the following shall apply: (i) "Borrower's Credit Rating" shall be

the lower of said ratings and (ii) if the aforesaid ratings are greater than one (1) rating level apart, "Borrower's Credit Rating" shall be the average of said ratings. Unless such indebtedness of Borrower is rated by at least one (1) of the rating agencies identified above, "Borrower's Credit Rating" shall be considered unrated for purposes of this Agreement.

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

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

"Capitalization Value" means, as of the end of any calendar quarter, the sum of (1) Combined EBITDA (less all leasing commissions and management and development fees, net of any expenses applicable thereto, contributing to Combined EBITDA) for such quarter annualized (i.e., multiplied by four (4)), capitalized at a rate of 8.75% per annum (i.e., divided by 8.75%), and (2) such leasing commissions and management and development fees for such quarter, annualized, (i.e., multiplied by four (4)), capitalized at a rate of 25% per annum (i.e., divided by 25%), (3) Cash and Cash Equivalents of Borrower and its Consolidated Businesses, as of the end of such quarter, as reflected in Borrower's Consolidated Financial Statements, and (4) the lesser of (a) the aggregate book value (on a cost basis) of the properties of Borrower and its Consolidated Businesses under development plus Borrower's beneficial interest in the book value (on a cost basis) of the properties of the UJVs under development or (b) 20% of the sum of the amounts determined pursuant to clauses (1), (2) and (3) of this definition.

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

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

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

"Co-Agent" means each of Fleet, Morgan and UBS and "Co-Agents" means Fleet, Morgan and UBS collectively.

"Code" means the Internal Revenue Code of 1986.

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

paid or payable by the UJVs during such period (other than debt service on construction loans until completion of the relevant construction and other capitalized interest) plus (b) a deemed annual capital expense charge of \$150 per apartment unit owned by the UJVs plus (3) preferred dividends paid or payable by Borrower and its Consolidated Businesses during such period.

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

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

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

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

"Consolidated Tangible Net Worth" means, at any date, Borrower's share of the consolidated stockholders' equity of Borrower and its Consolidated Businesses less their

consolidated Intangible Assets, all determined as of such date. For purposes of this definition, "Intangible Assets" means with respect to any such intangible assets, the amount (to the extent reflected in determining such consolidated stockholders' equity) of (1) all write-ups (other than write-ups resulting from foreign currency translations and write-ups of assets of a going concern business made within twelve (12) months after the acquisition of such business) subsequent to September 30, 1994 in the book value of any asset (other than real property assets) owned by Borrower or a Consolidated Business and (2) all debt discount and expense, deferred charges, goodwill, patents, trademarks, service marks, trade names, anticipated future benefit of tax loss carry-forwards, copyrights, organization or developmental expenses and other intangible assets (in each case, not adjusted for depreciation).

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

the balance sheet and on the footnotes to the most recent Borrower's Consolidated Financial Statements required to be delivered pursuant to this Agreement. Notwithstanding anything contained herein to the contrary, guarantees of completion shall not be deemed to be Contingent Obligations unless and until a claim for payment or performance has been made thereunder, at which time any such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to any such claim. Subject to the preceding sentence, (1) in the case of a joint and several guaranty given by Borrower or one of its Consolidated Businesses and another Person (but only to the extent such guaranty is recourse, directly or indirectly to Borrower), the amount of the guaranty shall be deemed to be 100% thereof unless and only to the extent that such other Person has delivered Cash and Cash Equivalents to secure all or any part of such Person's guaranteed obligations and (2) in the case of joint and several guarantees given by a Person in which Borrower owns an interest (which guarantees are non-recourse to Borrower), to the extent the guarantees, in the aggregate, exceed 10% of Capitalization Value, the amount in excess of 10% shall be deemed to be a Contingent Obligation of Borrower. Notwithstanding anything contained herein to the

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contrary, "Contingent Obligations" shall be deemed not to include guarantees of unadvanced funds under any indebtedness of Borrower or its Consolidated Businesses or of construction loans to the extent the same have not been drawn. All matters constituting "Contingent Obligations" shall be calculated without duplication.

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

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

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

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

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

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

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

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

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

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"Documentation Agent" means Union Bank of Switzerland (New York

Branch).

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

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

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

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

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

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

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

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

"Extension Option", "Notice to Extend" and "Request to Extend" have the respective meanings specified in Section 2.19.

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"Facility Fee Rate" means the rate per annum determined, at any time, based on Borrower's Credit Rating in accordance with the following table. Any change in Borrower's Credit Rating which causes it to move into a different range on the table shall effect an immediate change in the Facility Fee Rate.

Borrower's Credit Rating (S&P/Moody's) -----	Facility Fee Rate (% per annum) -----
<S> Below BBB-/Baa3 or unrated	<C> 0.25
BBB-/Baa3	0.20
BBB/Baa2	0.150
BBB+/Baa1	0.150
A-/A3 or higher	0.150

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

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

"Fleet" has the meaning specified in the preamble.

"Funds From Operations" means Combined EBITDA less the sum of Interest Expense and income taxes included in Combined EBITDA.

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

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

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

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

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

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

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

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

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

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

consent decree or judgment.

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

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

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

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

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

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

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

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

"LIBOR Reserve Requirement" means, for any LIBOR Loan or LIBOR Bid Rate Loan, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period for such LIBOR Loan or LIBOR Bid Rate Loan under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the LIBOR Reserve Requirement shall also reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (1)

any category of liabilities which includes deposits by reference to which the LIBOR Base Rate is to be determined as provided in the definition of "LIBOR Base Rate" in this Section 1.01 or (2) any category of extensions of credit or other assets which include loans the interest rate on which is determined on the basis of rates referred to in said definition of "LIBOR Base Rate".

"Lien" means any mortgage, deed of trust, pledge, negative pledge, security interest, hypothecation, assignment for collateral purposes, deposit arrangement, lien (statutory or other), or other security agreement or charge of any kind or nature whatsoever of any third party (excluding any right of setoff but including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable Law of any jurisdiction to evidence any of the foregoing and carriers, warehousemen, mechanics and other similar inchoate liens that have been insured against in a manner reasonably satisfactory to the Required Banks).

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

"Loan Commitment" means, with respect to each Bank, the obligation to make a Ratable Loan in the principal amount set forth below (subject to change as a result of assignments by one or more of the Banks pursuant to the third paragraph of Section 12.05) as such amount may be reduced from time to time in accordance with the provisions of Section 2.10:

<TABLE>
<CAPTION>

Bank ----	Loan Commitment -----
<S>	<C>
Morgan	\$120,000,000

</TABLE>

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<TABLE> <S>	<C>
Fleet	65,000,000
UBS	65,000,000
Commerzbank AG	50,000,000
Dresdner Bank AG	50,000,000
First Union National Bank	50,000,000
NationsBank, N.A.	50,000,000
PNC Bank, National Association	50,000,000
AMSOUTH Bank	30,000,000
The Long Term Credit Bank of Japan	25,000,000
Summit Bank	25,000,000
The Sumitomo Bank, Limited	20,000,000
TOTAL:	\$600,000,000 =====

</TABLE>

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

"Majority Banks" means at any time the Banks having Pro Rata Shares aggregating at least 51%; provided, however, that during the existence of an Event of Default, the "Majority Banks" shall be the Banks holding at least 51% of the then aggregate unpaid principal amount of the Loans. For purposes of this definition, a Bank's Loan shall be deemed to include its participating interest in Swing Loans pursuant to Section 2.18(c) and the Swing Lender's Loans shall be deemed to exclude such participating interests of other Banks.

"Material Adverse Change" means an effect resulting from any circumstance or event or series of circumstances or events, of whatever nature, which does or could reasonably be expected to, on more than an interim basis, either (1) materially and adversely impair the ability of Borrower and its

Consolidated Businesses, taken as a whole, to fulfill its material obligations or (2) cause a Default.

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

"Maturity Date" means July 1, 2001, subject to extension in accordance with Section 2.19.

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

"Morgan" has the meaning specified in the preamble.

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

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

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

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

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

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

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

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

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

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

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

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

administrative exemption applies.

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

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

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

"Refunded Swing Loans" and "Refunding Date" have the respective meanings specified in Section 2.18.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System, as the same may be amended or supplemented from time to time, or any similar Law from time to time in effect.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System, as the same may be amended or supplemented from time to time.

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

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

"Required Banks" means at any time the Banks having Pro Rata Shares aggregating at least 66 2/3%; provided, however, that during the existence of an Event of Default, the "Required Banks" shall be the Banks holding at least 66 2/3% of the then aggregate unpaid principal amount of the Loans. For purposes of this definition, a Bank's Loan shall be deemed to include its participating interest in Swing Loans pursuant to Section 2.18(c) and the Swing Lender's Loans shall be deemed to exclude such participating interests of other Banks.

"Secured Indebtedness" means that portion of Total Outstanding Indebtedness that is secured.

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

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

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

"Supplemental Fee Letter" means, collectively, those certain letter agreements, each dated on or prior to the date hereof, between Borrower and each of Morgan, Fleet and UBS.

"Swing Lender" means Fleet in its capacity as the lender under the Swing Loan facility described in Section 2.18, and its successors in such capacity.

"Swing Loan" means a loan made by the Swing Lender pursuant to Section 2.18.

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

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

"Swing Loan Refund Amount" has the meaning specified in Section 2.18.

"Syndication Agent" means JP Morgan Securities, Inc.

"Total Loan Commitment" means an amount equal to the aggregate amount of all Loan Commitments (i.e., \$600,000,000).

"Total Outstanding Indebtedness" means the sum, without duplication, of (1) Consolidated Outstanding Indebtedness; (2) Borrower's Share of UJV

Combined Outstanding Indebtedness; and (3) Contingent Obligations.

"UBS" has the meaning specified in the preamble.

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

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

"Unencumbered Combined EBITDA" means that portion of Combined EBITDA attributable to Unencumbered Wholly-Owned Assets (assuming corporate overhead is allocated proportionately to Unencumbered Wholly-Owned Assets).

"Unencumbered Wholly-Owned Assets" means income-producing assets, reflected on Borrower's Consolidated Financial Statements, wholly owned, directly or indirectly,

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by Borrower which (1) are not, and the direct or indirect interests of Borrower therein are not, subject to any Lien to secure all or any portion of Secured Indebtedness or any other encumbrances which, in the reasonable judgment of Co-Agents, may diminish the value of the asset in question and (2) complies with the occupancy requirements set forth in the immediately following sentence. In order to qualify as an Unencumbered Wholly-Owned Asset for a particular calendar quarter an asset must (1) have average occupancy for the twelve (12)-month period ending with such quarter of 85% or more and (2) have average quarterly occupancy for at least three (3) of the four (4) calendar quarters during such twelve (12)-month period of 85% or more.

"Unsecured Debt Yield" means, for any calendar quarter, the ratio of (1) Unencumbered Combined EBITDA for such quarter to (2) Unsecured Indebtedness as of the end of such calendar quarter.

"Unsecured Indebtedness" means that portion of Total Outstanding Indebtedness that is unsecured.

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

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

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

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

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ARTICLE II

THE LOANS

Section 2.01 Ratable Loans; Bid Rate Loans; Purpose. (a) Subject to the terms and conditions of this Agreement, the Banks agree to make loans to Borrower as provided in this Article II.

(b) Each of the Banks severally agrees to make a loan to Borrower (each such loan by a Bank, a "Ratable Loan") in an amount up to its Loan Commitment pursuant to which the Bank shall from time to time advance and re-advance to Borrower an amount equal to its Pro Rata Share of the excess (the "Available Total Loan Commitment") of the Total Loan Commitment over the sum of (1) all previous advances (including Bid Rate Loans and Swing Loans) made by the Banks which remain unpaid and (2) the outstanding amount of all Letters of Credit. Within the limits set forth herein, Borrower may borrow from time to time under this paragraph (b) and prepay from time to time pursuant to Section 2.09 (subject, however, to the restrictions on prepayment set forth in said Section), and thereafter re-borrow pursuant to this paragraph (b). The Ratable Loans may be outstanding as (1) Base Rate Loans; (2) LIBOR Loans; or (3) a combination of the foregoing, as Borrower shall elect and notify Administrative Agent in accordance with Section 2.14. The LIBOR Loan, Bid Rate Loan and Base Rate Loan of each Bank shall be maintained at such Bank's Applicable Lending Office.

(c) In addition to Ratable Loans pursuant to paragraph (b) above, so long as Borrower's Credit Rating is BBB- or better by S&P or Baa(3) or better by Moody's, one or more Banks may, at Borrower's request and in their sole discretion, make non-ratable loans which shall bear interest at the LIBOR Bid Rate in accordance with Section 2.02 (such loans being referred to in this Agreement as "Bid Rate Loans"). Borrower may borrow Bid Rate Loans from time to time pursuant to this paragraph (c) in an amount up to the Available Total Loan Commitment at the time of the borrowing (taking into account any repayments of the Loans made simultaneously therewith) and shall repay such Bid Rate Loans as required by Section 2.08, and it may thereafter re-borrow pursuant to this paragraph (c); provided, however, that the aggregate outstanding principal amount of Bid Rate Loans at any particular time shall not exceed the Bid Borrowing Limit.

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

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

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Section 2.02 Bid Rate Loans. (a) When Borrower wishes to request offers from the Banks to make Bid Rate Loans, it shall transmit to Administrative Agent by facsimile a request (a "Bid Rate Quote Request") substantially in the form of EXHIBIT G-1 so as to be received not later than 12:00 Noon (New York time) on (x) the fifth Banking Day prior to the date for funding of the LIBOR Bid Rate Loan(s) proposed therein in the case of a LIBOR Auction or (y) the second Banking Day prior to the date for funding of the Absolute Bid Rate Loan(s) proposed therein in the case of an Absolute Rate Auction, specifying:

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

(2) the aggregate amount of the Bid Rate Loans requested, which shall be \$20,000,000 or a larger integral multiple of \$500,000;

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

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

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

(b) Promptly (the same day, if possible) upon receipt of a Bid Rate Quote Request, Administrative Agent shall send to the Banks by facsimile an invitation (an "Invitation for Bid Rate Quotes") substantially in the form of

EXHIBIT G-2, which shall constitute an invitation by Borrower to the Banks to submit Bid Rate Quotes offering to make Bid Rate Loans to which such Bid Rate Quote Request relates in accordance with this Section.

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

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instructions of Borrower. Bid Rate Loans to be funded pursuant to a Bid Rate Quote may, as provided in Section 12.16, be funded by a Bank's Designated Lender. A Bank making a Bid Rate Quote shall, if then known, specify in its Bid Rate Quote whether the related Bid Rate Loans are intended to be funded by such Bank's Designated Lender, as provided in Section 12.16, provided, however, that whether or not the same is specified in a Bank's Bid Rate Quote, such Bank's Bid Rate Loan(s) may be funded by its Designated Lender at the time of funding thereof.

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

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

(ii) the principal amount of the Bid Rate Loan(s) for which each such offer is being made, which principal amount (w) may be greater than or less than the Loan Commitment of the quoting Bank, (x) must be in the aggregate \$20,000,000 or a larger integral multiple of \$500,000, (y) may not exceed the principal amount of Bid Rate Loans for which offers were requested and (z) may be subject to an aggregate limitation as to the principal amount of Bid Rate Loans for which offers being made by such quoting Bank may be accepted;

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

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

(v) the applicable Interest Period; and

(vi) the identity of the quoting Bank.

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

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

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

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

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

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

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

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

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

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

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

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

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writing of any such allocation of Bid Rate Loans. Determinations by Administrative Agent of the allocation of Bid Rate Loans shall be conclusive in the absence of manifest error.

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

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

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

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

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

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

Section 2.04 Procedures for Advances. In the case of advances of Ratable Loans hereunder, Borrower shall submit to Administrative Agent a request for each advance, stating the amount requested and certifying the purpose, in general terms, for which such advance is to be used, no later than 11:00 a.m. (New York time) on the date, in the case of advances of Base Rate Loans, which is one (1) Banking Day, and, in the case of advances of LIBOR Loans, which is three (3) Banking Days, prior to the date the advance is to be made. In

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

Section 2.05 Interest Periods; Renewals. In the case of the LIBOR Loans and Bid Rate Loans, Borrower shall select an Interest Period of any duration in accordance with the definition of Interest Period in Section 1.01, subject to the following limitations: (1) no Interest Period may extend beyond the Maturity Date; and (2) if an Interest Period would end on a day which is not a Banking Day, such Interest Period shall be extended to the next Banking Day, unless such Banking Day would fall in the next calendar month, in which event such Interest Period shall end on the immediately preceding Banking Day. Only twelve (12) discrete segments of a Bank's Ratable Loan bearing interest at a LIBOR Interest Rate, for a designated Interest Period, pursuant to a particular Election, Conversion or Continuation, may be outstanding at any one time (each such segment of each Bank's Ratable Loan corresponding to a proportionate segment of each of the other Banks' Ratable Loans).

Upon notice to Administrative Agent as provided in Section 2.14, Borrower may Continue any LIBOR Loan on the last day of the Interest Period of the same or different duration in accordance with the limitations provided above. If Borrower shall fail to give notice to Administrative Agent of such a Continuation, such LIBOR Loan shall automatically become a LIBOR Loan with an Interest Period of one (1) month on the last day of the current Interest Period. Administrative Agent shall notify each of the Banks, either by telephone or by facsimile, at least two (2) Banking Days prior to the termination of the Interest Period in question in the event of such failure by Borrower to give such notice of Continuation.

Section 2.06 Interest. Borrower shall pay interest to Administrative Agent for the account of the applicable Bank on the outstanding and unpaid principal amount of the Loans, at a rate per annum as follows: (1) for Base Rate Loans at a rate equal to the Base Rate plus the Applicable Margin; (2) for LIBOR Loans at a rate equal to the applicable LIBOR Interest Rate plus the Applicable Margin; (3) for LIBOR Bid Rate Loans at a rate equal to the applicable LIBOR Bid Rate; (4) for Absolute Bid Rate Loans at a rate equal to the applicable Absolute Bid Rate; and (5) for Swing Loans at a three (3)-day LIBOR rate, as determined by the Swing

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Lender. Any principal amount not paid when due (when scheduled, at acceleration or otherwise) shall bear interest thereafter, payable on demand, at the Default Rate.

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

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

Section 2.07 Fees. (a) Borrower agrees to pay to and for the accounts of the parties specified therein, the fees provided for in the Supplemental Fee Letter.

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

Section 2.08 Notes. The Ratable Loan made by each Bank under this Agreement shall be evidenced by, and repaid with interest in accordance with, a single promissory note of Borrower in the form of EXHIBIT B duly completed and executed by Borrower, in the principal amount equal to such Bank's Loan Commitment, payable to such Bank for the account of its Applicable Lending Office (each such note, as the same may hereafter be amended, modified, extended, severed, assigned, renewed or restated from time to time, including any substitute notes pursuant to Section 3.07 or 12.05, a "Ratable Loan Note"). The Bid Rate Loans of the Banks shall be evidenced by a single global promissory note of Borrower, in the form of EXHIBIT B-1, duly completed and executed by Borrower, in the principal amount of \$400,000,000, payable to Administrative Agent for the account of the respective Banks making Bid Rate Loans (such note, as the same may hereafter be amended, modified, extended, severed, assigned, substituted, renewed or restated from time to time, the "Bid Rate Loan Note"). The Swing Loan of the Swing Lender shall be evidenced by, and repaid with interest in accordance with, a promissory note of Borrower, in the form of EXHIBIT B-2, duly completed and executed by Borrower, payable to the Swing Lender (such note, as the same may hereafter be amended, modified extended, severed, assigned, substituted, renewed or restated from time to time, the "Swing Loan Note"). A particular Bank's Ratable Loan Note, together with its interest, if any, in the Bid Rate Loan Note, and, in the case of the Swing Lender, the Swing Loan Note, are referred to collectively in this Agreement as such Bank's "Note"; all such Ratable Loan Notes and interests and Swing Loan Notes are referred to collectively in this Agreement as the "Notes". The Ratable Loan Notes shall mature, and all outstanding principal

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and accrued interest and other sums thereunder shall be paid in full, on the Maturity Date, as the same may be accelerated. The outstanding principal amount of each Bid Rate Loan evidenced by the Bid Rate Loan Note, and all accrued interest and other sums with respect thereto, shall become due and payable to the Bank making such Bid Rate Loan at the earlier of the expiration of the Interest Period applicable thereto or the Maturity Date, as the same may be accelerated. Principal amounts evidenced by the Swing Loan Notes shall become due and payable three (3) Banking Days after said amounts are advanced.

Each Bank is hereby authorized by Borrower to endorse on the schedule attached to the Ratable Loan Note held by it, the amount of each advance and each payment of principal received by such Bank for the account of its Applicable Lending Office(s) on account of its Ratable Loan, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Ratable Loan made by such Bank. The Swing Lender is hereby authorized by Borrower to endorse on the schedule attached to the Swing Loan Note held by it, the amount of each advance and each payment of principal received by the Swing Lender for the account of its Applicable Lending Office(s) on account of its Swing Loan, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Swing Loan made by the Swing Lender. Administrative Agent is hereby authorized by Borrower to endorse on the schedule attached to the Bid Rate Loan Note the amount of each LIBOR Bid Rate Loan and/or Absolute Bid Rate Loan, the name of the Bank making the same, the date of the advance thereof, the interest rate applicable thereto and the expiration of the Interest Period applicable thereto (i.e., the maturity date thereof). The failure by Administrative Agent or any Bank to make such notations with respect to the Loans or each advance or payment shall not limit or otherwise affect the obligations of Borrower under this Agreement or the Notes.

In case of any loss, theft, destruction or mutilation of any Bank's Note, Borrower shall, upon its receipt of an affidavit of an officer of such Bank as to such loss, theft, destruction or mutilation and an appropriate indemnification, execute and deliver a replacement Note to such Bank in the same principal amount and otherwise of like tenor as the lost, stolen, destroyed or mutilated Note.

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

Section 2.10 Cancellation of Commitments. (a) At any time, Borrower shall have the right, without premium or penalty, to terminate any unused Loan Commitments or unused commitment of the Swing Lender to make Swing Loans, in whole or in part, from time to time, provided that: (1) Borrower shall give notice of each such termination to Administrative Agent and the Swing Lender, if applicable, no later than 10:00 a.m. (New York time) on the date which is fifteen (15) Banking Days prior to the effectiveness of such termination; (2) the Loan Commitments of each of the Banks, or Swing Lender, as applicable, must be terminated ratably and simultaneously with those of the other Banks, or Swing Lender, as applicable; and (3) each partial termination of the Loan Commitments, or commitments to make Swing Loans, as a whole (and corresponding reduction of the Total Loan Commitment) shall be in an integral multiple of \$1,000,000.

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

Section 2.11 Method of Payment. Borrower shall make each payment under this Agreement and under the Notes not later than 11:00 a.m. (New York time) on the date when due in Dollars to Administrative Agent at Administrative Agent's Office in immediately available funds. Administrative Agent will thereafter, on the day of its receipt of each such payment, cause to be distributed to each Bank (1) such Bank's appropriate share (based upon the respective outstanding principal amounts and rate(s) of interest under the Notes of the Banks) of the payments of principal and interest in like funds for the account of such Bank's Applicable Lending Office; and (2) fees payable to such Bank in accordance with the terms of this Agreement. In the event Administrative Agent fails to pay funds received from Borrower to the Banks on the date on which Borrower is credited with payment, Administrative Agent shall pay interest on such amounts at the Federal Funds Rate until such payment to the Banks is made. Borrower hereby authorizes Administrative Agent and the Banks, if and to the extent payment by Borrower is not made when due under this Agreement or under the Notes, to charge from time to time against any account Borrower maintains with Administrative Agent or any Bank any amount so due to Administrative Agent and/or the Banks.

Except to the extent provided in this Agreement, whenever any payment to be made under this Agreement or under the Notes is due on any day other than a Banking Day, such payment shall be made on the next succeeding Banking Day, and such extension of time shall in such case be included in the computation of the payment of interest and other fees, as the case may be.

Section 2.12 Elections, Conversions or Continuation of Loans.

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

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

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

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<TABLE>
<CAPTION>

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

</TABLE>

Promptly following its receipt of any such notice, and no later than the close of business on the Banking Day of such receipt, Administrative Agent shall so advise the Banks either by telephone or by facsimile. Each such notice of Election shall specify the portion of the amount of the advance that is to be LIBOR Loans (subject to Section 2.13) and the duration of the Interest Period applicable thereto (subject to Section 2.05); each such notice of Conversion shall specify the LIBOR Loans or Base Rate Loans to be Converted; and each such notice of Conversion or Continuation shall specify the date of Conversion or Continuation (which shall be a Banking Day), the amount thereof (subject to Section 2.13) and the duration of the Interest Period applicable thereto (subject to Section 2.05). In the event that Borrower fails to Elect to have any portion of an advance of the Ratable Loans be LIBOR Loans, the entire amount of such advance shall constitute Base Rate Loans. In the event that Borrower fails to Continue LIBOR Loans within the time period and as otherwise provided in this Section, such LIBOR Loans will automatically become LIBOR Loans with an Interest Period of one (1) month on the last day of the then current applicable Interest Period for such LIBOR Loans. Administrative Agent shall notify each of the Banks, either by telephone or by facsimile, at least two (2) Banking Days prior to the termination of the Interest Period in question in the event of such failure by Borrower.

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

Section 2.16 Letters of Credit. (a) Borrower, by notice to Administrative Agent, may request, in lieu of advances of proceeds of the Ratable Loans, that Administrative Agent issue unconditional, irrevocable standby letters of credit (each, a "Letter of Credit") for the account of Borrower, payable by sight drafts, for such beneficiaries and with such other terms as Borrower shall specify. Promptly upon issuance of a Letter of Credit, Administrative Agent shall notify each of the Banks.

(b) The amount of any Letter of Credit shall be limited to the lesser of (x) \$75,000,000 less the aggregate amount of all Letters of Credit theretofore issued or (y) the Available Total Loan Commitment, it being understood that the amount of each Letter of Credit issued and outstanding shall effect a reduction, by an equal amount, of the Available Total Loan Commitment (such reduction to be allocated to each Bank's Ratable Loan ratably in accordance with the Banks' respective Pro Rata Shares).

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

(d) Each Letter of Credit shall expire no later than one (1) month prior to the Maturity Date, but may have a so-called "evergreen" clause allowing for the extension of the expiration date thereof upon the extension of the Maturity Date pursuant to Section 2.19.

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

(f) In connection with each Letter of Credit, Borrower hereby covenants to pay to Administrative Agent the following fees: (1) a fee, payable quarterly in arrears (on the first Banking Day of each calendar quarter following the issuance of the Letter of Credit), for the account of the Banks, computed daily on the amount of the Letter of Credit issued and outstanding at a rate per annum equal to the "Banks' L/C Fee Rate" (as hereinafter defined) and (2) the fee, for Administrative Agent's own account, required by the Supplemental Fee Letter between Borrower and Fleet. For purposes of this Agreement, the "Banks' L/C Fee Rate" shall mean, at any time, a rate per annum equal to the Applicable Margin for LIBOR Loans less 0.125% per annum. It is understood and agreed that the last installment of the fees provided for in this paragraph (f) with respect to any particular Letter of Credit shall be due and payable on the first day of the calendar quarter following the return, undrawn, or cancellation of such Letter of Credit and Borrower's receipt of notice from Administrative Agent.

(g) The parties hereto acknowledge and agree that, immediately upon notice from Administrative Agent of any drawing under a Letter of Credit, each Bank shall, notwithstanding the existence of a Default or Event of Default or the non-satisfaction of any conditions precedent to the making of an advance of the Loans, advance proceeds of its Ratable Loan, in an amount equal to its Pro Rata Share of such drawing, which advance shall be made to Administrative Agent to reimburse Administrative Agent, for its own account, for such drawing. Each of the Banks further acknowledges that its obligation to fund its Pro Rata Share of drawings under Letters of Credit as aforesaid shall survive the Banks' termination of this Agreement or enforcement of remedies hereunder or under the other Loan Documents.

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

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Section 2.17 Intentionally Omitted.

Section 2.18 Swing Loans. (a) During the term of this Agreement, the Swing Lender agrees, on the terms and conditions set forth in this Agreement, to make advances to Borrower pursuant to this Section from time to time in amounts such that (i) the aggregate of such advance and amount of Swing Loans theretofore advanced and still outstanding does not at any time exceed the Swing Loan Commitment and (ii) the amount of such advance does not exceed the Available Total Loan Commitment. Each advance under this Section shall be in an aggregate principal amount of \$1,000,000 or a larger multiple of \$100,000 (except that any such advance may be in the aggregate available amount of Swing Loans determined in accordance with the immediately preceding sentence). With the foregoing limits, Borrower may borrow under this Section, repay or, to the extent permitted by Section 2.09, prepay Swing Loans and reborrow under this Section at any time during the term of this Agreement.

(b) The Swing Lender shall, on behalf of Borrower (which hereby irrevocably directs the Swing Lender to act on its behalf), on notice given by the Swing Lender no later than 1:00 p.m. (New York time) on the Banking Day immediately following the funding of any Swing Loan, request each Bank to make, and each Bank hereby agrees to make, an advance of its Ratable Loan, in an amount (with respect to each Bank, its "Swing Loan Refund Amount") equal to such Bank's Pro Rata Share of the aggregate principal amount of the Swing Loans (the

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

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

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

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

(f) Notwithstanding anything above in this Section or elsewhere in this Agreement to the contrary, in the event that the Swing Lender funds a Swing Loan hereunder when it has actual knowledge that a monetary Default, or material Event of Default (which, for the avoidance of doubt shall include any violation of any provision of Article VII or Article VIII) has occurred and is continuing, the Banks shall have the option to make Ratable Loans to fund their ratable shares of such Swing Loan as contemplated in paragraph (b) of this Section or to purchase participations as contemplated in paragraph (c) of this Section.

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

Section 2.19 Extension Of Maturity. (a) Borrower shall have the option (the "Extension Option") to extend the original Maturity Date for a period of one (1) year. Subject to the conditions set forth below, Borrower may exercise the Extension Option by delivering a written notice to Administrative Agent not less than one hundred twenty (120) days prior to the original Maturity Date (a "Notice to Extend"), stating that Borrower has elected to extend the original Maturity Date for one (1) year. Borrower's delivery of the Notice to Extend shall be irrevocable and Borrower's right to exercise the Extension Option shall be subject to the following terms and conditions: (i) there shall

exist no Event of Default on both the date Borrower delivers the Notice to Extend to Administrative Agent and on the original Maturity Date, (ii) Borrower shall have paid to Administrative Agent for the account of each Bank an extension fee equal to 0.10% of such Bank's Loan Commitment simultaneously with delivery of the Notice to Extend and (iii) Borrower shall be in compliance with the covenants contained in Articles VII and VIII.

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(b) If Borrower shall have effectively exercised the Extension Option pursuant to paragraph (a) above, Borrower may request a one-year extension of the Maturity Date, as so extended, by delivering a written request therefor to Administrative Agent not more than six (6) months or less than one hundred twenty (120) days prior to such Maturity Date (a "Request to Extend"). Administrative Agent shall notify the Banks of its receipt of the Request to Extend and each Bank shall give notice in writing to Administrative Agent not less than ninety (90) days prior to the Maturity Date to be extended of such Bank's acceptance or rejection of such Request to Extend. If all the Banks shall have notified Administrative Agent on or prior to the date which is ninety (90) days prior to the Maturity Date to be extended that they accept such request, the Maturity Date shall be extended for one (1) year. If any Bank shall not have notified Administrative Agent on or prior to the date which is ninety (90) days prior to the Maturity Date to be extended that it accepts such Request to Extend, the Maturity Date shall not be extended. Administrative Agent shall notify Borrower and the Banks whether the Request to Extend has been accepted by all of the Banks. If the Request to Extend is accepted by all of the Banks, the Maturity Date shall be extended for one (1) year. The effectiveness of the acceptance of the Request to Extend shall be subject to the following terms and conditions: (i) there shall exist no Event of Default on both the date Borrower delivers the Request to Extend to Administrative Agent and on the Maturity Date to be extended, (ii) Borrower shall pay to Administrative Agent for the account of each Bank an extension fee equal to 0.10% of such Bank's Loan Commitment within five (5) Banking Days after receipt of notice from Administrative Agent that the Request to Extend has been accepted by all of the Banks and (iii) Borrower shall be in compliance with the covenants contained in Articles VII and VIII.

ARTICLE III

YIELD PROTECTION; ILLEGALITY, ETC.

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

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

(2) (other than to the extent the LIBOR Reserve Requirement is taken into account in determining the LIBOR Rate at the commencement of the applicable Interest Period) imposes or modifies any reserve, special deposit, deposit insurance or

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assessment, minimum capital, capital ratio or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, such Bank (including any LIBOR Loan or LIBOR Bid Rate Loan or any deposits referred to in the definition of "LIBOR Interest Rate" in Section 1.01), or any commitment of such Bank (including such Bank's Loan Commitment hereunder); or

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

Without limiting the effect of the provisions of the first paragraph of this Section, in the event that, by reason of any Regulatory Change, any Bank either (1) incurs Additional Costs based on or measured by the excess above a specified level of the amount of a category of deposits or other liabilities of such Bank which includes deposits by reference to which the LIBOR Interest Rate is determined as provided in this Agreement or a category of extensions of

credit or other assets of such Bank which includes loans based on the LIBOR Interest Rate or (2) becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold, then, if such Bank so elects by notice to Borrower (with a copy to Administrative Agent), the obligation of such Bank to permit Elections of, to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended (in which case the provisions of Section 3.04 shall be applicable) until such Regulatory Change ceases to be in effect.

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

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

(1) Administrative Agent reasonably determines (which determination shall be conclusive), and provides Borrower, in writing, with reasonable detail supporting such determination, that quotations of interest rates for the relevant deposits referred to in the definition of "LIBOR Interest Rate" in Section 1.01 are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for the LIBOR Loans or LIBOR Bid Rate Loans as provided in this Agreement; or

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

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

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

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

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

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

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

(1) any payment or prepayment of a LIBOR Loan or Bid Rate Loan made by such Bank, or any Conversion or Continuation of a LIBOR Loan made by such Bank, in any

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such case on a date other than the last day of an applicable Interest Period, whether by reason of acceleration or otherwise; or

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

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

Without limiting the foregoing, such compensation shall include any loss incurred in obtaining, liquidating or employing deposits from third parties, but excluding loss of margin for the period after the date of such payment, prepayment, Conversion or Continuation (or failure to Convert, Continue or borrow). A determination of any Bank as to the amounts payable pursuant to this Section shall be conclusive absent manifest error.

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

Section 3.07 Substitution of Banks. If any Bank (an "Affected Bank") (1) makes demand upon Borrower for (or if Borrower is otherwise required to pay) Additional Costs pursuant to Section 3.01 or (2) is unable to make or maintain a LIBOR Loan or LIBOR Bid Rate Loan as a result of a condition described in Section 3.03 or clause (2) of Section 3.02, Borrower may, within ninety (90) days of receipt of such demand or notice (or the occurrence of such other event causing Borrower to be required to pay Additional Costs or causing said Section 3.03 or clause (2) of Section 3.02 to be applicable), as the case may be, give written notice (a "Replacement Notice") to Administrative Agent and to each Bank of Borrower's intention either (x) to prepay in full the Affected Bank's Note and to terminate the Affected Bank's entire Loan Commitment or (y) to replace the Affected Bank with another financial institution (the "Replacement Bank") designated in such Replacement Notice.

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In the event Borrower opts to give the notice provided for in clause (x) above, and if the Affected Bank shall not agree within thirty (30) days of its receipt thereof to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03 or clause (2) of Section 3.02, then, so long as no Default or Event of Default shall exist, Borrower may (notwithstanding the provisions of clause (2) of Section 2.10(a)) terminate the Affected Bank's entire Loan Commitment, provided that in connection therewith it pays to the Affected Bank all outstanding principal and accrued and unpaid interest under the Affected Bank's Note, together with all

other amounts, if any, due from Borrower to the Affected Bank, including all amounts properly demanded and unreimbursed under Sections 3.01 and 3.05.

In the event Borrower opts to give the notice provided for in clause (y) above, and if (i) Administrative Agent shall, within thirty (30) days of its receipt of the Replacement Notice, notify Borrower and each Bank in writing that the Replacement Bank is reasonably satisfactory to Administrative Agent and (ii) the Affected Bank shall not, prior to the end of such thirty (30)-day period, agree to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03 or clause (2) of Section 3.02, then the Affected Bank shall, so long as no Default or Event of Default shall exist, assign its Note and all of its rights and obligations under this Agreement to the Replacement Bank, and the Replacement Bank shall assume all of the Affected Bank's rights and obligations, pursuant to an agreement, substantially in the form of an Assignment and Assumption Agreement, executed by the Affected Bank and the Replacement Bank. In connection with such assignment and assumption, the Replacement Bank shall pay to the Affected Bank an amount equal to the outstanding principal amount under the Affected Bank's Note plus all interest accrued thereon, plus all other amounts, if any (other than the Additional Costs in question), then due and payable to the Affected Bank; provided, however, that prior to or simultaneously with any such assignment and assumption, Borrower shall have paid to such Affected Bank all amounts properly demanded and unreimbursed under Sections 3.01 and 3.05. Upon the effective date of such assignment and assumption, the Replacement Bank shall become a Bank Party to this Agreement and shall have all the rights and obligations of a Bank as set forth in such Assignment and Assumption Agreement, and the Affected Bank shall be released from its obligations hereunder, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this Section, a substitute Ratable Loan Note (and, if applicable, Swing Loan Note) shall be issued to the Replacement Bank by Borrower, in exchange for the return of the Affected Bank's Ratable Loan Note (and, if applicable, Swing Loan Note). The obligations evidenced by such substitute note shall constitute "Obligations" for all purposes of this Agreement and the other Loan Documents. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. If the Replacement Bank is not incorporated under the laws of the United States of America or a state thereof, it shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 10.13. Each Replacement Bank shall be deemed to have made the representations contained in, and shall be bound by the provisions of, Section 10.13.

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

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

ARTICLE IV

CONDITIONS PRECEDENT

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

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

(2) Notes. The Ratable Loan Notes for Fleet, Morgan, UBS and each of the other Banks signatory hereto, the Bid Rate Loan Note for Fleet, as Administrative Agent, and the Swing Note for the Swing Lender, each duly executed by Borrower;

(3) Financial Statements. (a) Audited Consolidated Financial Statements of Avalon and Bay as of and for the year ended December 31, 1997, (b) unaudited Consolidated Financial Statements of Avalon and Bay, each certified by the chief financial officer thereof and as of and for the quarter ended March 31, 1998 and (c) the most recently prepared audited

Borrower's Consolidated Financial Statements;

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

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

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

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

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

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

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

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

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

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

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

(13) Corporate Merger and Termination of Other Credit Facilities. Satisfactory evidence that (a) the merger of Avalon and Bay into Borrower has been effectively completed in accordance with all applicable Laws and (b) any and all existing credit facilities of Avalon and of Bay have been effectively terminated;

(14) Covenant Compliance. A covenant compliance certificate of the sort required by paragraph (3) of Section 6.09;

(15) Material Adverse Change. There shall exist no Material Adverse Change; and

(16) Additional Materials. Such other approvals, documents, instruments or opinions as Administrative Agent or any Co-Agent may reasonably request.

Section 4.02 Conditions Precedent to Advances After the Initial Advance. The obligation of each Bank to make advances of the Loans subsequent to the Initial Advance shall be subject to satisfaction of the following conditions precedent:

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

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(2) No Default or Event of Default shall have occurred and be continuing as of the date of the advance;

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

(4) Administrative Agent shall have received a request for an advance in accordance with Section 2.04.

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

ARTICLE V

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

Section 5.07 ERISA. Borrower is in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred with respect to any Plan which could result in liability of Borrower; no notice of intent to terminate a Plan has

been filed nor has any Plan been terminated within the past five (5) years; no circumstance exists which constitutes grounds under Section 4042 of ERISA entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; Borrower and the ERISA Affiliates have not completely or partially withdrawn under Sections 4201 or 4204 of ERISA from a Multiemployer Plan; Borrower and the ERISA Affiliates have met the minimum funding requirements of Section 412 of the Code and Section 302 of ERISA of each with respect to the Plans of each and there is no material "Unfunded Current Liability" (as such quoted term is defined in ERISA) with respect to any Plan established or maintained by each; and Borrower and the ERISA Affiliates have not incurred any liability to the PBGC under ERISA (other than for the payment of premiums under Section 4007 of ERISA). No part of the funds to be used by Borrower in satisfaction of its obligations under this Agreement constitute "plan assets" of any "employee benefit plan" within the meaning of ERISA or of any "plan" within the meaning of Section 4975(e)(1) of the Code, as interpreted by the Internal Revenue Service and the U.S. Department of Labor in rules, regulations, releases, bulletins or as interpreted under applicable case law.

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Section 5.08 No Default on Outstanding Judgments or Orders.

Borrower and each of its Material Affiliates have satisfied all judgments which are not being appealed or which are not fully covered by insurance, and are not in default with respect to any judgment, order, writ, injunction, decree, rule or regulation of any court, arbitrator or federal, state, municipal or other Governmental Authority, commission, board, bureau, agency or instrumentality, domestic or foreign.

Section 5.09 No Defaults on Other Agreements. Except as disclosed

to Co-Agents and Administrative Agent in writing, Borrower is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any partnership, trust or other restriction which is likely to result in a Material Adverse Change. Borrower is not in default in any respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument which is likely to result in a Material Adverse Change.

Section 5.10 Government Regulation. Borrower is not subject to

regulation under the Investment Company Act of 1940 or any statute or regulation limiting its ability to incur indebtedness for money borrowed as contemplated hereby.

Section 5.11 Environmental Protection. To the best of Borrower's

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

Section 5.12 Solvency. Borrower is, and upon consummation of the

transactions contemplated by this Agreement, the other Loan Documents and any other documents, instruments or agreements relating thereto, will be, Solvent.

Section 5.13 Financial Statements. The Consolidated Financial

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

Section 5.14 Valid Existence of Affiliates. At the Closing Date,

the only Material Affiliates of Borrower are listed on EXHIBIT C. Each Material Affiliate is a corporation duly organized and existing in good standing under the laws of the jurisdiction of its formation. As to each Material Affiliate, its correct name, the jurisdiction of its formation, Borrower's percentage of beneficial interest therein, and the type of business in which it is primarily engaged, are set forth on said EXHIBIT C. Borrower and each of its Material

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Affiliates have the power to own their respective properties and to carry on their respective businesses now being conducted. Each Material Affiliate is duly qualified as a foreign corporation to do business and is in good standing in

every jurisdiction in which the nature of the respective businesses conducted by it or its respective properties, owned or held under lease, make such qualification necessary and where the failure to be so qualified would cause a Material Adverse Change.

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

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

Section 5.17 Corporate Merger and Termination of Other Credit Facilities. The merger of Avalon and Bay into Borrower has been effectively completed in accordance with all applicable Laws, and any and all existing credit facilities of Avalon and Bay have been effectively terminated.

ARTICLE VI

AFFIRMATIVE COVENANTS

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

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

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

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

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

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

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

Section 6.07 Maintenance of Properties. Do all things reasonably necessary to maintain, preserve, protect and keep its properties in good repair,

working order and condition except where the cost thereof is not in Borrower's best interests and the failure to do so would not result in a Material Adverse Change.

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

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

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

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

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

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

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

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

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

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acquisition and historical financial information and Borrower's projections with respect to the property acquired;

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

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

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

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

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

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

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

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

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

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ARTICLE VII

NEGATIVE COVENANTS

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

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

Section 7.02 Investments. Directly or indirectly, make any loan or advance to any Person or purchase or otherwise acquire any capital stock, assets, obligations or other securities of, make any capital contribution to, or otherwise invest in, or acquire any interest in, any Person (any such transaction, an "Investment") if such Investment constitutes the acquisition of a minority interest in a Person (a "Minority Interest") and the amount of such Investment, together with the value of all other Minority Interests acquired after the Closing Date, would exceed 15% of Capitalization Value, determined as of the end of the most recent calendar quarter for which Borrower is required to have reported financial results pursuant to Section 6.09. A 50% beneficial interest in a Person, in connection with which the holder thereof exercises joint control over such Person with the holder(s) of the other 50% beneficial interest, shall not constitute a "Minority Interest" for purposes of this Section.

Section 7.03 Sale of Assets. Effect a Disposition of any of its now owned or hereafter acquired assets, including assets in which Borrower owns a beneficial interest through its ownership of interests in joint ventures, aggregating more than 25% of Capitalization Value.

ARTICLE VIII

FINANCIAL COVENANTS

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

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

Section 8.02 Relationship of Total Outstanding Indebtedness to Capitalization Value. At any time, Total Outstanding Indebtedness to exceed 50% of Capitalization Value.

Section 8.03 Relationship of Combined EBITDA to Interest Expense. For any calendar quarter, the ratio of (1) Combined EBITDA to (2) Interest Expense (each for the twelve (12)-month period ending with such quarter), to be less than 2.50 to 1.00.

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Section 8.04 Relationship of Combined EBITDA to Combined Debt Service. For any calendar quarter, the ratio of (1) Combined EBITDA to (2) Combined Debt Service (each for the twelve (12)-month period ending with such quarter), to be less than 2.00 to 1.00.

Section 8.05 Relationship of Combined EBITDA to Total Outstanding Indebtedness. For any calendar quarter, the ratio of (1) Combined EBITDA for the twelve (12)-month period ending with such calendar quarter to (2) Total Outstanding Indebtedness as of the end of such calendar quarter to be less than 15%. For purposes of this Section, Combined EBITDA shall be adjusted as follows: in the case of properties acquired during such twelve (12)-month period, such property's contribution to Combined EBITDA shall be annualized, and in the case of properties disposed of during such twelve (12)-month period, such property's contribution to Combined EBITDA shall be disregarded.

Section 8.06 Unsecured Debt Yield. For any calendar quarter, Unsecured Debt Yield for the twelve (12)-month period ending with such calendar quarter to be less than 13.5%. For purposes of this Section, Combined EBITDA shall be adjusted as follows: in the case of properties acquired during such twelve (12)-month period, such property's contribution to Combined EBITDA shall be annualized, and in the case of properties disposed of during such twelve (12)-month period, such property's contribution to Combined EBITDA shall be disregarded.

Section 8.07 Relationship of Unencumbered Combined EBITDA to Unsecured Interest Expense. For any calendar quarter, the ratio of (1) Unencumbered Combined EBITDA to (2) Unsecured Interest Expense (each for such calendar quarter), to be less than 1.75 to 1.00.

Section 8.08 Relationship of Dividends to Funds From Operations. For any calendar year, dividends declared by Borrower to exceed 95% of Funds From Operations, each for such calendar year.

Section 8.09 Relationship of Secured Indebtedness to Capitalization Value. At any time, Secured Indebtedness to exceed 40% of Capitalization Value.

ARTICLE IX

EVENTS OF DEFAULT

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

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

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(2) If any representation or warranty made by Borrower in this

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

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

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

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

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or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (g) suffer any such custodianship, receivership or trusteeship for all or any substantial part of its property, to continue undischarged for a period of sixty (60) days or more; or

(6) If one or more judgments, decrees or orders for the payment of money in excess of \$10,000,000 (excluding any such judgments, decrees or orders which are fully covered by insurance) in the aggregate shall be rendered against Borrower or any of its Material Affiliates, and any such judgments, decrees or orders shall continue unsatisfied and in effect for a period of thirty (30) consecutive days without being vacated, discharged, satisfied or stayed or bonded pending appeal; or

(7) If any of the following events shall occur or exist with respect to Borrower or any ERISA Affiliate: (a) any Prohibited Transaction involving any Plan; (b) any Reportable Event with respect to any Plan; (c) the filing under Section 4041 of ERISA of a notice of intent to terminate any Plan or the termination of any Plan; (d) any event or circumstance which would constitute grounds for the termination of, or for the appointment of a trustee to administer, any Plan under Section 4042 of ERISA, or the institution by the PBGC of proceedings for any such termination or appointment under Section 4042 of ERISA; or (e) complete or partial withdrawal under Section 4201 or 4204 of ERISA from a Multiemployer Plan or the reorganization, insolvency, or termination of any Multiemployer Plan; and in each case above, if such event or conditions, if

any, could in the reasonable opinion of any Bank subject Borrower to any tax, penalty, or other liability to a Plan, Multiemployer Plan, the PBGC or otherwise (or any combination thereof) which in the aggregate exceeds or is likely to exceed \$50,000; or

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

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

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

(11) If there shall occur a change in the majority of the Board of Directors of Borrower during any twelve (12)-month period; or

(12) If any Person (including Affiliates of such Person) shall acquire more than 25% of the common shares of Borrower.

Section 9.02 Remedies. If any Event of Default shall occur and be continuing, Administrative Agent shall, upon request of the Majority Banks, by notice to Borrower, (1) declare the outstanding balance of the Notes, all interest thereon, and all other amounts payable under this Agreement to be forthwith due and payable, whereupon such balance, all such interest, and all such amounts due under this Agreement and under any other Loan Document shall become and be forthwith due and payable, without presentment, demand, protest, or further

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notice of any kind, all of which are hereby expressly waived by Borrower; and/or (2) exercise any remedies provided in any of the Loan Documents or by law. Notwithstanding the foregoing, if an Event of Default under Section 9.01(10) shall occur and be continuing, Administrative Agent shall not be entitled to exercise the foregoing remedies until (1) it has received a written notice from all of the Banks (the "Unanimous Bank Notices") (i) requesting Administrative Agent exercise such remedies and (ii) indicating each Bank's conclusion in its reasonable judgment that a Material Adverse Change has occurred and (2) Administrative Agent has provided notice to Borrower, together with copies of all of the Unanimous Bank Notices.

ARTICLE X

ADMINISTRATIVE AGENT; RELATIONS AMONG BANKS

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

services hereunder.

Section 10.02 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements

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of legal counsel, independent accountants and other experts selected by Administrative Agent. Administrative Agent may deem and treat each Bank as the holder of the Loan made by it for all purposes hereof and shall not be required to deal with any Person who has acquired a participation in any Loan or participation from a Bank. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by the Required Banks, and such instructions of the Required Banks and any action taken or failure to act pursuant thereto shall be binding on all of the Banks and any other holder of all or any portion of any Loan or participation.

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

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

Section 10.05 Indemnification of Administrative Agent. Each Bank agrees to indemnify Administrative Agent (to the extent not reimbursed under Section 12.04 or under the applicable provisions of any other Loan Document, but without limiting the obligations of Borrower under Section 12.04 or such provisions), for its Pro Rata Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of this Agreement, any other Loan Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and

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expenses which Borrower is obligated to pay under Section 12.04) or under the applicable provisions of any other Loan Document or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided that no Bank shall be liable for (1) any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the party to be indemnified, (2) any loss of principal or interest with respect to Administrative Agent's Loan or (3) any loss suffered by Administrative Agent in connection with a swap or other interest rate hedging arrangement entered into with Borrower.

Section 10.06 Non-Reliance on Administrative Agent and Other Banks. Each Bank agrees that it has, independently and without reliance on

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

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

Section 10.08 Resignation or Removal of Administrative Agent. Administrative Agent hereby agrees not to unilaterally resign except in the event it becomes an Affected Bank and is removed or replaced as a Bank pursuant to Section 3.07, in which event it shall have the right to resign. Administrative Agent may be removed at any time with cause by the Required Banks, provided that Borrower and the other Banks shall be promptly notified thereof. Upon any such removal, the Required Banks shall have the right to appoint a successor Administrative Agent which successor Administrative Agent, so long as it is reasonably acceptable to the Required Banks, shall be that Bank then having the greatest Loan Commitment. If no successor

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Administrative Agent shall have been so appointed by the Required Banks and shall have accepted such appointment within thirty (30) days after the Required Banks' removal of the retiring Administrative Agent, then the retiring Administrative Agent may, on behalf of the Banks, appoint a successor Administrative Agent, which shall be one of the Banks. The Required Banks or the retiring Administrative Agent, as the case may be, shall upon the appointment of a successor Administrative Agent promptly so notify Borrower and the other Banks. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. After any retiring Administrative Agent's removal hereunder as Administrative Agent, the provisions of this Article X shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

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

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

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

Section 10.12 Non-Receipt of Funds by Administrative Agent. (a) Unless Administrative Agent shall have received notice from a Bank or Borrower (either one as appropriate being the "Payor") prior to the date on which such Bank is to make payment hereunder to Administrative Agent of the proceeds of a Loan or Borrower is to make payment to Administrative Agent, as the case may be (either such payment being a "Required Payment"), which notice shall be effective upon receipt, that the Payor will not make the Required Payment in full to Administrative Agent, Administrative Agent may assume that the Required Payment has been made in full to Administrative Agent on such date, and Administrative Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make the amount thereof available to the intended recipient on such date. If and to the extent the Payor shall not have in fact so made the Required Payment in full to Administrative Agent, the recipient of such payment shall repay to Administrative Agent forthwith on demand such amount made available to it together with interest thereon, for each day from the date such amount was so made available by Administrative Agent until the date Administrative Agent recovers such amount, at the customary rate set by Administrative Agent for the correction of errors among Banks for three (3) Banking Days and thereafter at the Base Rate.

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

Section 10.13 Withholding Taxes. Each Bank represents that it is entitled to receive any payments to be made to it hereunder without the withholding of any tax and will furnish to Administrative Agent such forms, certifications, statements and other documents as Administrative Agent may request from time to time to evidence such Bank's exemption from the withholding of any tax imposed by any jurisdiction or to enable Administrative Agent or Borrower to comply with any applicable Laws or regulations relating thereto. Without limiting the effect of the foregoing, if any Bank is not created or organized under the laws of the United States of America or any state thereof, such Bank will furnish to Administrative Agent a United States Internal Revenue Service Form 4224 in respect of all payments to be made to such Bank by Borrower or Administrative Agent under this Agreement or any other Loan Document or a United States Internal Revenue Service Form 1001 establishing such Bank's complete exemption from United States withholding tax in respect of payments to be made to such Bank by Borrower or Administrative Agent under this Agreement or any other Loan Document, or such other forms, certifications, statements or documents, duly executed and completed by such Bank as evidence of such Bank's exemption from the withholding of U.S. tax with respect thereto. Administrative Agent shall not be obligated to make any payments hereunder to such Bank in respect of any Loan or participation or such Bank's Loan Commitment or obligation to purchase participations until such Bank shall have furnished to Administrative Agent the requested form, certification, statement or document.

Section 10.14 Minimum Commitment by Co-Agents. Subsequent to the Closing Date and provided there exists no Event of Default, Fleet agrees to maintain a Loan Commitment in an amount no less than \$25,000,000. Fleet further agrees to hold and not to participate or assign any of such amount other than an assignment to a Federal Reserve Bank or to its Parent or a majority-owned subsidiary. In addition, each of Morgan and UBS agrees that, in the event it sells its individual Loan Commitment down to zero, it may be removed as a Co-Agent and either Syndication Agent or Documentation Agent, as the case may be, by the Required Banks.

Section 10.15 Pro Rata Treatment. Except to the extent otherwise provided, (1) each advance of proceeds of the Ratable Loans shall be made by the Banks; (2) each reduction of the amount of the Total Loan Commitment under Section 2.10 shall be applied to the Loan Commitments of the Banks; and (3) each payment of the fee accruing under paragraph (b) of Section 2.07 and clause (1) of Section 2.16(f) shall be made for the account of the Banks, ratably according to the amounts of their respective Loan Commitments.

Section 10.16 Sharing of Payments Among Banks. If a Bank shall obtain payment of any principal of or interest on any Loan made by it through the exercise of any right of setoff, banker's lien, counterclaim, or by any other means (including direct payment), and such

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

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

ARTICLE XI

NATURE OF OBLIGATIONS

Section 11.01 Absolute and Unconditional Obligations. Borrower acknowledges and agrees that its obligations and liabilities under this Agreement and under the other Loan Documents shall be absolute and unconditional irrespective of (1) any lack of validity or enforceability of any of the Obligations, any Loan Documents, or any agreement or instrument relating thereto; (2) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from any Loan Documents or any other documents or instruments executed in connection with or related to the Obligations; (3) any exchange or release of any collateral, if any, or of any other Person from all or any of the Obligations; or (4) any other circumstances which might otherwise constitute a defense available to, or a discharge of, Borrower or any other Person in respect of the Obligations.

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

Section 11.02 Non-Recourse to Borrower's Principals. Notwithstanding anything to the contrary contained herein, in any of the other Loan Documents, or in any other instruments, certificates, documents or agreements executed in connection with the Loans (all of the foregoing, for purposes of this Section, hereinafter referred to, individually and collectively, as the "Relevant Documents"), no recourse under or upon any Obligation, representation, warranty, promise or other matter whatsoever shall be had against any of Borrower's Principals and each Bank expressly waives and releases, on behalf of itself and its successors and assigns,

all right to assert any liability whatsoever under or with respect to the Relevant Documents against, or to satisfy any claim or obligation arising thereunder against, any of Borrower's Principals or out of any assets of Borrower's Principals, provided, however, that nothing in this Section shall be deemed to (1) release Borrower from any personal liability pursuant to, or from any of its respective obligations under, the Relevant Documents, or from personal liability for its fraudulent actions or fraudulent omissions; (2) release any of Borrower's Principals from personal liability for its or his own fraudulent actions or fraudulent omissions; (3) constitute a waiver of any obligation evidenced or secured by, or contained in, the Relevant Documents or affect in any way the validity or enforceability of the Relevant Documents; or (4) limit the right of Administrative Agent and/or the Banks to proceed against or realize upon any collateral hereafter given for the Loans or any and all of the assets of Borrower (notwithstanding the fact that any or all of Borrower's Principals have an ownership interest in Borrower and, thereby, an interest in the assets of Borrower) or to name Borrower (or, to the extent that the same are required by applicable law or are determined by a court to be necessary parties in connection with an action or suit against Borrower or any collateral

hereafter given for the Loans, any of Borrower's Principals) as a party defendant in, and to enforce against any collateral hereafter given for the Loans and/or assets of Borrower any judgment obtained by Administrative Agent and/or the Banks with respect to, any action or suit under the Relevant Documents so long as no judgment shall be taken (except to the extent taking a judgment is required by applicable law or determined by a court to be necessary to preserve Administrative Agent's and/or Banks' rights against any collateral hereafter given for the Loans or Borrower, but not otherwise) or shall be enforced against Borrower's Principals or their assets.

ARTICLE XII

MISCELLANEOUS

Section 12.01 Binding Effect of Request for Advance. Borrower agrees that, by its acceptance of any advance of proceeds of the Loans under this Agreement, it shall be bound in all respects by the request for advance submitted on its behalf in connection therewith with the same force and effect as if Borrower had itself executed and submitted the request for advance and whether or not the request for advance is executed and/or submitted by an authorized person.

Section 12.02 Amendments and Waivers. No amendment or any material waiver of any provision of this Agreement or any other Loan Document nor consent to any material departure by Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Banks and, solely for purposes of its acknowledgment thereof, Administrative Agent, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, provided, however, that no amendment, waiver or consent shall, unless in writing and signed by all the Banks do any of the following: (1) reduce the principal of, or interest on, the Notes or any fees due hereunder or any other amount due hereunder or under any Loan Document; (2) postpone any date fixed for any payment of principal of, or interest on, the Notes or any fees due hereunder or under any Loan Document; (3) change the definition of Required Banks; (4) amend this Section or any other provision requiring the consent of all the Banks; or (5) waive any default under paragraph (5) of Section 9.01. Any advance of proceeds of the Loans made prior to or without the fulfillment by Borrower of all of the conditions precedent thereto, whether or not known to Administrative

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Agent and the Banks, shall not constitute a waiver of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances. No failure on the part of Administrative Agent or any Bank to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. All communications from Administrative Agent to the Banks requesting the Banks' determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Bank, (ii) shall be accompanied by a description of the matter or thing as to which such determination, approval, consent or disapproval is requested and (iii) shall include Administrative Agent's recommended course of action or determination in respect thereof. Each Bank shall reply promptly, but in any event within ten (10) Banking Days (or five (5) Banking Days with respect to any decision to accelerate or stop acceleration of the Loan) after receipt of the request therefor by Administrative Agent (the "Bank Reply Period"). Unless a Bank shall give written notice to Administrative Agent that it objects to the recommendation or determination of Administrative Agent (together with a written explanation of the reasons behind such objection) within the Bank Reply Period, such Bank shall be deemed to have approved or consented to such recommendation or determination.

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

Section 12.04 Expenses; Indemnification. Borrower agrees to reimburse Co-Agents and Administrative Agent on demand for all costs, expenses, and charges (including, without limitation, all reasonable fees and charges of engineers, appraisers and legal counsel) incurred by any of them in connection with the Loans and to reimburse each of the Banks for reasonable legal costs, expenses and charges incurred by each of the Banks in connection with the performance or enforcement of this Agreement, the Notes, or any other Loan Documents; provided, however, that Borrower is not responsible for costs, expenses and charges incurred by the Bank Parties in connection with the administration or syndication of the Loans (other than the fees required by the Supplemental Fee Letter). Borrower agrees to indemnify Administrative Agent and each Bank and their respective directors, officers, employees and agents from,

and hold each of them harmless against, any and all losses, liabilities, claims, damages or expenses incurred by any of them arising out of or by reason of (x) any claims by brokers due to acts or omissions by Borrower, or (y) any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by Borrower of the proceeds of the Loans, including without limitation, the reasonable fees and disbursements of counsel incurred in connection with any such investigation or litigation or other proceedings (but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the gross negligence or willful misconduct of the Person to be indemnified).

The obligations of Borrower under this Section shall survive the repayment of all amounts due under or in connection with any of the Loan Documents and the termination of the Loans.

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

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

Subject to the provisions of Section 10.14, any Bank may at any time assign to any bank or other institution with the acknowledgment of Administrative Agent and the consent of Co-Agents and, provided there exists no Event of Default, Borrower, which consents shall not be unreasonably withheld or delayed (such assignee, a "Consented Assignee"), or to one or more banks or other institutions which are majority owned subsidiaries of a Bank or to the Parent of a Bank (each Consented Assignee or subsidiary bank or institution, an "Assignee") all, or a proportionate part of all, of its rights and obligations under this Agreement and its Note, and such Assignee shall assume rights and obligations, pursuant to an Assignment and Assumption Agreement executed by such Assignee and the assigning Bank, provided that, in each case, after giving effect to such assignment the Assignee's Loan Commitment, and, in the case of a partial assignment, the assigning Bank's Loan Commitment, each will be equal to or greater than \$10,000,000, provided, further, however, that the assigning Bank shall not be required to maintain a Loan Commitment in the minimum amount aforesaid in the event it assigns all of its rights and obligations under this Agreement and its Note. Notwithstanding the provisions of the immediately preceding sentence, the consents of Co-Agents and Borrower shall not be required in the case of assignments by any Bank provided that the Assignee thereunder (or a guarantor of such Assignee's obligations under this Agreement) has a credit rating of AA (or its equivalent) or better from a nationally recognized rating agency, and provided, further, however, that assignments by the Co-Agents shall remain subject to the provisions of Section 10.14. Upon (i) execution and delivery of such instrument, (ii) payment by such Assignee to the Bank of an amount equal to the purchase price agreed between the Bank and such Assignee and (iii) payment by such Assignee to Administrative Agent of a fee, for Administrative Agent's own account, in the amount of \$2,500, such Assignee shall be a Bank Party to this Agreement and shall have all the rights and obligations of a Bank as set forth in such Assignment and Assumption Agreement, and the assigning Bank shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this paragraph, substitute Ratable Loan Notes (and, if applicable, Swing Loan Notes) shall be issued to the assigning Bank and Assignee by

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Borrower, in exchange for the return of the original Ratable Loan Note (and, if applicable, Swing Loan Note). The obligations evidenced by such substitute notes shall constitute "Obligations" for all purposes of this Agreement and the other Loan Documents. In connection with Borrower's execution of substitute notes as

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

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

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

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

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

Section 12.08 Setoff. Borrower agrees that, in addition to (and without limitation of) any right of setoff, bankers' lien or counterclaim a Bank may otherwise have, each Bank shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or

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final) held by it for the account of Borrower at any of such Bank's offices, in Dollars or in any other currency, against any amount payable by Borrower to such Bank under this Agreement or such Bank's Note, or any other Loan Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower and Administrative Agent thereof; provided that such Bank's failure to give such notice shall not affect the validity thereof. Payments by Borrower hereunder or under the other Loan Documents shall be made without setoff or counterclaim.

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

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

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

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

statements or agreements with respect to such transactions.

Section 12.13 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York.

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

Section 12.15 Jurisdiction; Immunities. Borrower, Administrative Agent and each Bank hereby irrevocably submit to the jurisdiction of any New York State or United States

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

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

To the extent that Borrower, Administrative Agent or any Bank have or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Borrower, Administrative Agent and each Bank hereby irrevocably waive such immunity in respect of its obligations under this Agreement, the Notes and any other Loan Document.

BORROWER, ADMINISTRATIVE AGENT AND EACH BANK WAIVE ANY RIGHT EACH SUCH PARTY MAY HAVE TO JURY TRIAL IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT WITH RESPECT TO THIS AGREEMENT, THE NOTES OR THE LOANS.

Section 12.16 Designated Lender. Any Bank (other than a Bank who is such solely because it is a Designated Lender) (each, a "Designating Lender") may at any time designate one (1) Designated Lender to fund Bid Rate Loans on behalf of such Designating Lender subject to the terms of this Section and the provisions in Section 12.05 shall not apply to such designation. No Bank may designate more than one (1) Designated Lender. The parties to each such designation shall execute and deliver to Administrative Agent for its acceptance a Designation Agreement. Upon such receipt of an appropriately completed Designation Agreement executed by a Designating Lender and a designee representing that it is a Designated Lender, Administrative Agent will accept such Designation Agreement and give prompt notice thereto to Borrower, whereupon, (i) from and after the "Effective Date" specified in the Designation Agreement, the Designated Lender shall become a party to this Agreement with a right to make Bid Rate Loans on behalf of its Designating Lender pursuant to Section 2.02 after Borrower has accepted the Bid Rate Quote of the Designating Lender and (ii) the Designated Lender shall not be required to make payments with respect to any obligations in this Agreement except to the extent of excess cash flow of such Designated Lender which is not otherwise

required to repay obligations of such Designated Lender which are then due and payable; provided, however, that regardless of such designation and assumption by the Designated Lender, the Designating Lender shall be and remain obligated to Borrower, Administrative Agent and the Banks for each and every of the obligations of the Designating Lender and its related Designated Lender with respect to this Agreement, including, without limitation, any indemnification obligations under Section 10.05. Each Designating Lender shall serve as the administrative agent of its Designated Lender and shall on behalf of, and to the exclusion of, the Designated Lender: (i) receive any and all payments made for the benefit of the Designated Lender and (ii) give and receive all communications and notices and take all actions hereunder, including, without limitation, votes, approvals, waivers and consents under or relating to this Agreement and the other Loan Documents. Any such notice, communication, vote, approval, waiver or consent shall be signed by the Designating Lender as administrative agent for the Designated Lender and shall not be signed by the Designated Lender on its own behalf, but shall be binding on the Designated Lender to the same extent as if actually signed by the Designated Lender. Borrower, Administrative Agent and the Banks may rely thereon without any requirement that the Designated Lender sign or acknowledge the same. No Designated Lender may assign or transfer all or any portion of its interest hereunder or under any other Loan Document, other than assignments to the Designating Lender which originally designated such Designated Lender.

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

Section 12.18 Year 2000. Borrower represents, warrants and covenants that Borrower has taken and shall take all action reasonably necessary to assure that its data processing and information technology systems are capable of effectively processing data and information, including dates on and after January 1, 2000, and shall not cease to perform, or provide, or cause any software and/or system which is material to its operations or any interface therewith to provide, invalid or incorrect results as a result of date functionality and/or data, or otherwise experience any material degradation of performance or functionality arising from, relating to or including date functionality and/or data which represents or references different centuries or more than one century or leap years, and that all such systems shall be reasonably effective and accurate in managing and manipulating data derived from, involving or relating in any way to dates (including single century formulas and multi-century or leap year formulas), and will not cause a material abnormally ending scenario within such systems or in any software and/or system with which such systems interface, or generate materially incorrect values or invalid results involving such dates. At the request of Administrative Agent, Borrower shall provide Administrative Agent with reasonably acceptable assurance of Borrower's year 2000 capability.

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

AVALON BAY COMMUNITIES, INC.

By: /S/ THOMAS J. SARGEANT [SEAL]

Name: Thomas J. Sargeant
Title: CFO

Address for Notices:

15 River Road
Suite 210
Wilton, CT 06897

Attention: Joanne M. Lockridge
Vice President - Finance

Telephone: (203) 761-6545
Telecopy: (203) 761-6560

UNION BANK OF SWITZERLAND

(New York Branch)
(as Co-Agent and Bank)

By: /S/ HOWARD MARGOLIS

Name: Howard Margolis
Title: Vice President Real Estate Finance

By: /S/ JOSEPH M. BASSIL

Name: Joseph M. Bassil
Title: Director

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Address for Notices and Applicable Lending Office:

Union Bank of Switzerland
299 Park Avenue
38th Floor
New York, New York 10171-0026

Attention: Xiomara Martez

Telephone: (212) 821-3872
Telecopy: (212) 821-4138

FLEET NATIONAL BANK (as Co-Agent, Bank and
Administrative Agent)

By: /S/ LISA SANDERS

Name: Lisa Sanders
Title: Vice President

Address for Notices and Applicable Lending Office:

Fleet National Bank
One Landmark Square
12th Floor
P.O. Box 1454
Stamford, CT 06904
Attention: Ms. Lisa Sanders
Telephone: (203) 358-6278
Telecopy: (203) 358-2039

MORGAN GUARANTY TRUST COMPANY OF NEW YORK (as
Co-Agent and Bank)

By: /S/ TIMOTHY V. O'DONOVAN

Name: Timothy V. O'Donovan
Title: Vice President

Address for Notices and Applicable Lending Office:

Morgan Guaranty Trust Company of New York
60 Wall Street, 22/F
New York, New York 10260
Attention: Timothy O'Donovan
Telephone: (212) 648-8111
Telecopy: (212) 648-5014

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AMSOUTH BANK

By: /S/ STEVEN R. CHESTER

Name: Steven R. Chester
Title: Assistant Vice President

Applicable Lending Office and
Address for Notices:

AMSOUTH Bank
1900 5th Avenue North
P.O. Box 11007
Birmingham, AL 35203
Attention: Mr. Steven R. Chester
Telephone: (205) 326-4869
Telecopy: (205) 326-4075

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FIRST UNION NATIONAL BANK

By: /S/ JOHN A. SCHISSEL

Name: John A. Schissel
Title: Director

Applicable Lending Office and
Address for Notices:

First Union National Bank
One First Union Center
301 South College Street
Real Estate Capital Markets - 6th Floor
Charlotte, NC 28288-0166
Attention: Mr. John Schissel
Telephone: (704) 383-1967
Telecopy: (704) 383-6205

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COMMERZBANK AKTIENGESELLSCHAFT

By: /S/ DOUGLAS P. TRAYNOR

Name: Douglas P. Traynor
Title: Vice President

By: /S/ CHRISTINE H. FINKEL

Name: Christine H. Finkel
Title: Assistant Vice President

Applicable Lending Office and :
Address for Notices:

Commerzbank Aktiengesellschaft
2 World Financial Center
New York, New York 10281
Attention: Mr. Douglas Traynor
Telephone: (212) 266-7569
Telecopy: (212) 266-7530

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DRESDNER BANK, AG, New York
Branch

By: /S/ JOHANNES BOECKMANN

Name: Johannes Boeckman
Title: First Vice President

By: /S/ NEIL J. CRAWFORD

Name: Neil J. Crawford
Title: Vice President

Applicable Lending Office and
Address for Notices:

Dresdner Bank AG, New York Branch
75 Wall Street
New York, NY 10005-2889

Attention: Mr. Neil Crawford
Telephone: (212) 429-2657
Telecopy: (212) 429-2781

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NATIONSBANK, N.A.

By /S/ CHERYL D. FITZGERALD

Name: Cheryl D. Fitzgerald
Title: Vice President

Applicable Lending Office
and Address for Notices:

NationsBank, N.A.
6610 Rockledge Drive
6/FL, MD2-600-06-14
Bethesda, MD 20817-1876
Attention: Mr. Mark Monte
Telephone: (301) 493-7188
Telecopy: (301) 493-2885

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THE SUMITOMO BANK, LIMITED

By /S/ YASVO MIYAZAWA

Name: Yasvo Miyazawa
Title: Joint General Manager

By

Name:
Title:

Applicable Lending Office
and Address for Notices:

The Sumitomo Bank, Limited
277 Park Avenue, 6th Floor
New York, NY 10172
Attention: Yasuo Miyazawa
Telephone: (212) 224-4016
Telecopy: (212) 224-4887

with a copy to:

The Sumitomo Bank, Limited
777 South Figueroa Street
Suite 2600
Los Angeles, CA 90017
Attention: Mickey Jannol
Telephone: (213) 955-0875
Telecopy: (213) 623-6832

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THE LONG TERM CREDIT BANK OF JAPAN
(LOS ANGELES AGENCY)

By /S/ BRIAN H. KELLEY

Name: Brian H. Kelley
Title: Deputy General Manager

Applicable Lending Office
and Address for Notices:

The Long Term Credit Bank of Japan
(Los Angeles Agency)
350 South Grande Avenue
Suite 3000

Los Angeles, CA 90071
Attention: Mr. Naoki Oshima
Telephone: (213) 629-6348
Telecopy: (213) 687-3921

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PNC BANK, NATIONAL ASSOCIATION

By /S/ ASHLEY J. SMITH

Name: Ashley J. Smith
Title: Assistant Vice President

Applicable Lending Office
and Address for Notices:

PNC Bank, National Association
One PNC Plaza
249 Fifth Avenue
Mail Stop P1-POPP-19-2
Pittsburgh, PA 15222-2707
Attention: Real Estate Banking
Telephone: (412) 762-8519
Telecopy: (412) 768-5754

with a copy to:

PNC Bank, National Association
1401 Eye Street N.W.
Suite 200
Washington, DC 20005
Attention: Ms. Ashley Smith
Telephone: (202) 393-2752
Telecopy: (202) 393-1545

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SUMMIT BANK

By /S/ AMY L. BROWN

Name: Amy L. Brown
Title: Regional Vice President

Applicable Lending Office
and Address for Notices:

Summit Bank
1800 Chapel Avenue West
Cherry Hill, NJ 08002
Attention: Ms. Amy Brown
Telephone: (609) 486-3678
Telecopy: (609) 486-3717

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EXHIBIT A

AUTHORIZATION LETTER

_____, 1998

Fleet National Bank

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

Re: Revolving Loan Agreement dated as of _____, 1998 (the "Loan Agreement"; capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement) among us, as Borrower, the Banks named therein, and you, as Administrative Agent for said Banks _____

Gentlemen:

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

[NAMES]

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

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

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

Upon notice to us, you may, at your option, refuse to execute any instruction, or part thereof, without incurring any responsibility for any loss, liability or expense arising out of such refusal if you in good faith believe that the person delivering the instruction is not one of the persons designated above or if the instruction is not accompanied by an authentication method that we have agreed to in writing.

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

Very truly yours,

AVALON BAY COMMUNITIES, INC.

By _____
Name:
Title:

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EXHIBIT B

\$ _____

New York, New York
_____, 199_

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

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

This Note is one of the Ratable Loan Notes referred to in the Revolving Loan Agreement dated as of _____, 1998 (as the same may be amended from time to time, the "Loan Agreement") among Borrower, the Banks named therein (including the Bank) and Administrative Agent, as administrative agent for the Banks. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

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

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

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

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

AVALON BAY COMMUNITIES, INC.

By _____ [SEAL]

Name:
Title:

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Date	Amount of Advance	Amount of Payment	Balance Outstanding	Notation By
----	-----	-----	-----	-----

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EXHIBIT B-1

BID RATE LOAN NOTE

\$400,000,000

New York, New York
_____, 199_

For value received, Avalon Bay Communities, Inc., a Maryland corporation ("Borrower"), hereby promises to pay to the order of Fleet National Bank ("Administrative Agent") or its successors or assigns for the account of the respective Banks making Bid Rate Loans or their respective successors or assigns (for the further account of their respective Applicable Lending Offices), at the principal office of Administrative Agent located at _____, the principal sum of Four Hundred Million Dollars (\$400,000,000), or if less, the amount loaned by one or more of said Banks under their respective Bid Rate Loans to Borrower pursuant to the Loan Agreement (as defined below) and actually outstanding, in lawful money of the United States and in immediately available funds, in accordance with the terms set forth in the Loan Agreement. Borrower also promises to pay interest on the unpaid principal balance hereof, for the period such balance is outstanding, in like money, at said office for the account of said Banks for the further account of their respective Applicable Lending Offices, at the times and at the rates per annum as provided in the Loan Agreement. Any amount of principal hereof which is not paid when due, whether at stated maturity, by acceleration, or otherwise, shall bear interest from the date when due until said principal amount is paid in full, payable on demand, at the rate set forth in the Loan Agreement.

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

This Note is the Bid Rate Loan Note referred to in the Revolving Loan Agreement dated as of _____, 1998 (as the same may be amended from time to time, the "Loan Agreement") among Borrower, the Banks named therein and Administrative Agent, as administrative agent for the Banks. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

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

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

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

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

AVALON BAY COMMUNITIES, INC.

By _____ [SEAL]
 Name:
 Title:

B-1-2

Bid Rate Loan #	Bank	Date of Advance	Principal Amount	Interest Rate	Maturity (i.e., Expiration of Interest Period)
-----	----	-----	-----	-----	-----

B-1-3
 EXHIBIT B-2

SWING LOAN NOTE

New York, New York

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

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

This Note is one of the Swing Loan Notes referred to in the Revolving Loan Agreement dated as of _____, 1998 (as the same may be amended from time to time, the "Loan Agreement") among Borrower, the Banks named therein (including the Bank) and Administrative Agent, as administrative agent for the Banks. All of the terms, conditions and provisions of the Loan Agreement are hereby incorporated by reference. All capitalized terms used herein and not defined herein shall have the meanings given to them in the Loan Agreement.

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

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

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

B-2-1

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

AVALON BAY COMMUNITIES, INC.

By _____ [SEAL]
Name:
Title:

B-2-2

Date	Amount of Advance	Amount of Payment	Balance Outstanding	Notation By
----	-----	-----	-----	-----

B-2-3
EXHIBIT C

MATERIAL AFFILIATES

Name	State of Formation	Borrower's % Age Interest	Principal Business
-----	-----	-----	-----

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EXHIBIT D

SOLVENCY CERTIFICATE

The person executing this certificate is the _____ of Avalon Bay Communities, Inc., a Maryland corporation ("Borrower"), and is familiar with its properties, assets and businesses, and is duly authorized to execute this certificate on behalf of Borrower pursuant to Section 4.01(7) of the Revolving Loan Agreement dated the date hereof (the "Loan Agreement") among Borrower, the banks party thereto (each a "Bank" and collectively, the "Banks") and Fleet National Bank, as administrative agent for the Banks (in such capacity, together with its successors in such capacity, "Administrative Agent"). In executing this Certificate, such person is acting solely in his or her capacity as the _____ of Borrower, and not in his or her individual capacity. Unless otherwise defined herein, terms defined in the Loan Agreement are used herein as therein defined.

The undersigned further certifies that he or she has carefully reviewed the Loan Agreement and the other Loan Documents and the contents of this Certificate and, in connection herewith, has made such investigation and inquiries as he or she deems reasonably necessary and prudent therefor. The undersigned further certifies that the financial information and assumptions which underlie and form the basis for the representations made in this Certificate were reasonable when made and were made in good faith and continue to be reasonable as of the date hereof.

The undersigned understands that Administrative Agent, Co-Agents and the Banks are relying on the truth and accuracy of this Certificate in connection with the transactions contemplated by the Loan Agreement.

The undersigned certifies that Borrower is Solvent.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on _____, 1998.

Name:

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EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of _____, 199_, among [INSERT NAME OF ASSIGNING BANK] ("Assignor"), [INSERT NAME OF ASSIGNEE] ("Assignee"), Avalon Bay Communities, Inc., a Maryland corporation ("Borrower") and [INSERT NAME OF ADMINISTRATIVE AGENT], as administrative agent for the Banks referred to below (in such capacity, together with its successors in such capacity, the "Administrative Agent").

Preliminary Statement

1. This Assignment and Assumption Agreement (this "Agreement") relates to the Revolving Loan Agreement dated _____, 1998 (as the same may be amended from time to time, the "Loan Agreement") among Borrower, the banks party thereto (each a "Bank" and, collectively, the "Banks") and the Administrative Agent. All capitalized terms not otherwise defined herein shall have the respective meanings set forth in the Loan Agreement.

2. Subject to the terms and conditions set forth in the Loan Agreement, Assignor has made a Loan Commitment to Borrower in an aggregate principal amount of _____ Dollars (\$_____) ("Assignor's Loan Commitment").

3. The aggregate outstanding principal amount of Assignor's Ratable Loan made pursuant to Assignor's Loan Commitment at commencement of business on the date hereof is _____ Dollars (\$_____). The aggregate outstanding principal amount of Bid Rate Loans made by Assignor to Borrower at the commencement of business on the date hereof is _____ Dollars (\$_____). [IF ASSIGNMENT IS BY

4. Assignor desires to assign to Assignee (a) all of the rights of Assignor under the Loan Agreement in respect of a portion of its (i) Ratable Loan and Loan Commitment thereunder in an amount equal to _____ Dollars (\$ _____) and (ii) Bid Rate Loans in an amount equal to _____ Dollars (\$ _____) [IF SWING LOAN IS TO BE ASSIGNED, SO INDICATE] (collectively, the "Assigned Loan and Commitment"); and Assignee desires to accept assignment of such rights and assume the corresponding obligations from Assignor on such terms.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1. Assignment. Assignor hereby assigns and sells to Assignee all of the rights of Assignor under the Loan Agreement in and to the Assigned Loan and Commitment, and Assignee hereby accepts such assignment from Assignor and assumes all of the obligations

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of Assignor under the Loan Agreement with respect to the Assigned Loan and Commitment. Upon the execution and delivery hereof by Assignor, Assignee, Borrower and the Administrative Agent and the payment of the amount specified in Section 2 hereof required to be paid on the date hereof, (1) Assignee shall, as of the commencement of business on the date hereof, succeed to the rights and obligations of a Bank under the Loan Agreement with a Loan and a Loan Commitment in amounts equal to the Assigned Loan and Commitment, and (2) the Loan and Loan Commitment of Assignor shall, as of the commencement of business on the date hereof, be reduced correspondingly and Assignor released from its obligations under the Loan Agreement to the extent such obligations have been assumed by Assignee. The assignment provided for herein shall be without recourse to Assignor.

SECTION 2. Payments. As consideration for the assignment and sale contemplated in Section 1 hereof, Assignee shall pay to Assignor on the date hereof in immediately available funds an amount equal to _____ Dollars (\$ _____) [insert the amount of that portion of Assignor's Loan being assigned]. It is understood that any fees paid to Assignor under the Loan Agreement are for the account of Assignor. Each of Assignor and Assignee hereby agrees that if it receives any amount under the Loan Agreement which is for the account of the other party hereto, it shall receive the same for the account of such other party to the extent of such other party's interest therein and shall promptly pay the same to such other party.

SECTION 3. [Consent and Acknowledgment] Execution and Delivery of Note. [This Agreement is conditioned upon the consent of Co-Agents and, provided there exists no Event of Default of Borrower, and the acknowledgment by the Administrative Agent pursuant to Section 12.05 of the Loan Agreement. The execution of this Agreement by Co-Agents, Borrower and the Administrative Agent is evidence of this consent and acknowledgment, respectively. ONLY NECESSARY IF ASSIGNEE IS NOT A MAJORITY OWNED SUBSIDIARY OF A BANK OR OF THE PARENT OF A BANK] Pursuant to Section 12.05 of the Loan Agreement, Borrower has agreed to execute and deliver Ratable Loan Notes payable to the respective orders of Assignee and Assignor to evidence the assignment and assumption provided for herein.

SECTION 4. Non-Reliance on Assignor. Assignor makes no representation or warranty in connection with, and shall have no responsibility with respect to, the solvency, financial condition, or statements of Borrower or any other party to any Loan Document, or the validity and enforceability of the obligations of Borrower or any other party to a Loan Document in respect of the Loan Agreement or any other Loan Document. Assignee acknowledges that it has, independently and without reliance on Assignor, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and will continue to be responsible for making its own independent appraisal of the business, affairs and financial condition of Borrower and the other parties to the Loan Documents.

SECTION 5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

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SECTION 6. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

SECTION 7. Certain Representations and Agreements by Assignee. Reference is made to Section 10.13 of the Loan Agreement. Assignee hereby represents that it is entitled to receive any payments to be made to it under the Loan Agreement or hereunder without the withholding of any tax and agrees to furnish the evidence of such exemption as specified therein and otherwise to comply with the provisions of said Section 10.13.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their duly authorized officers as of the date first above written.

[NAME OF ASSIGNOR]

By _____
Name:
Title:

[NAME OF ASSIGNEE]

By _____
Name:
Title:

Applicable Lending Office:

Address for Notices:

[Assignee]
[Address]
Attention: _____
Telephone: () _____
Telecopy: () _____

AVALON BAY COMMUNITIES, INC.

By _____
Name:
Title:

FLEET NATIONAL BANK
(as Administrative Agent and Co-Agent)

By _____
Name:
Title:

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UNION BANK OF SWITZERLAND
(New York Branch)
(as Co-Agent)

By _____
Name:
Title:

By _____
Name:
Title:

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK
(as Co-Agent)

By _____
Name:
Title:

Designation Agreement

Reference is made to that certain Revolving Loan Agreement dated as of _____, 1998 (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement") among Avalon Bay Communities, Inc., a Maryland corporation, the banks parties thereto, and Fleet National Bank, as administrative agent for said banks. Terms defined in the Loan Agreement not otherwise defined herein are used herein with the same meaning.

[BANK] ("Designor") and _____, a _____ ("Designee") agree as follows:

1. Designor hereby designates Designee, and Designee hereby accepts such designation, to have a right to make Bid Rate Loans pursuant to Section 2.02 of the Loan Agreement. Any assignment by Designor to Designee of its rights to make a Bid Rate Loan pursuant to such Section shall be effective at the time of the funding of such Bid Rate Loan and not before such time.
2. Except as set forth in Section 6 below, Designor makes no representation or warranty and assumes no responsibility pursuant to this Designation Agreement with respect to (a) any statements, warranties or representations made in or in connection with any Loan Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of any Loan Document or any other instrument and document furnished pursuant thereto and (b) the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under any Loan Document or any other instrument or document furnished pursuant thereto.
3. Designee (a) confirms that it has received a copy of each Loan Document, together with copies of such financial statements and other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Designation Agreement; (b) agrees that it will independently and without reliance upon Administrative Agent, Designor or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under any Loan Document; (c) represents that it is a Designated Lender; (d) appoints and authorizes Administrative Agent to take such action as agent on its behalf and to exercise such powers and discretion under any Loan Document as are delegated to Administrative Agent by the terms thereof, together with such powers and discretion as are reasonably incidental thereto; and (e) agrees that it will perform in accordance with their terms all of the obligations which by the terms of any Loan Document are required to be performed by it as a Bank.
4. Designee hereby appoints Designor as Designee's agent and attorney-in-fact, and grants to Designor an irrevocable power of attorney, to receive payments made for the benefit of Designee under the Loan Agreement, to deliver and receive all communications and notices under the Loan Agreement and other Loan Documents and to exercise on Designee's behalf all rights to vote and to grant and make approvals, waivers, consents or amendments to or under the Loan Agreement or other Loan Documents. Any document executed by Designor on Designee's behalf in connection with the Loan Agreement or other Loan Documents shall be binding on Designee. Borrower, Administrative Agent and each of the Banks may rely on and are beneficiaries of this Designation Agreement.
5. Following the execution of this Designation Agreement by Designor and Designee, it will be delivered to Administrative Agent for acceptance by Administrative Agent. The effective date for this Designation Agreement (the "Effective Date") shall be the date of acceptance hereof by Administrative Agent.
6. Designor unconditionally agrees to pay or reimburse Designee and save Designee harmless against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed or asserted by any of the parties to the Loan Documents against Designee, in its capacity as such, in any way relating to or arising out of this Agreement or any other Loan Documents or any action taken or omitted by the Designee hereunder or thereunder, provided that Designor shall not be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements if the same results from Designee's gross negligence or willful misconduct.
7. As of the Effective Date, Designee shall be a party to the Loan Agreement with a right to make Bid Rate Loans as a Bank pursuant to Section 2.02 of the Loan Agreement and the rights and obligations of a Bank related

thereto; provided, however, that Designee shall not be required to make payments with respect to such obligations except to the extent of excess cash flow of such Designee which is not otherwise required to repay obligations of such Designated Lender which are then due and payable. Notwithstanding the foregoing, Designor, as administrative agent for Designee, shall be and remain obligated to Borrower, Administrative Agent and the Banks for each and every of the obligations of Designee and its Designor with respect to the Loan Agreement, including, without limitation, any indemnification obligations under Section 10.05 of the Loan Agreement.

8. This Designation Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

9. This Designation Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Designor and Designee have executed and delivered this Designation Agreement as of the date first set forth above.

[DESIGNOR]

By _____
Name:
Title:

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[DESIGNEE]

By _____
Name:
Title:

Applicable Lending Office
and Address for Notices:

Attention: _____
Telephone: () _____
Telecopy: () _____

ACCEPTED AS OF THE ____ DAY OF
_____, 199__.

[ADMINISTRATIVE AGENT], as
Administrative Agent

By _____
Name:
Title:

By _____
Name:
Title:

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EXHIBIT G-1

BID RATE QUOTE REQUEST

[Date]

To: [ADMINISTRATIVE AGENT], as Administrative Agent (the "Administrative Agent")

From: [Borrower]

Re: Revolving Loan Agreement (the "Loan Agreement") dated as of _____, 1998 among [Borrower], the Banks parties thereto and the Administrative Agent

We hereby give notice pursuant to Section 2.02 of the Loan Agreement that we request Bid Rate Quotes for the following proposed Bid Rate Loans:

Date of Borrowing: _____

Principal Amount* Interest Period**
- - - - -

\$

Such Bid Rate Quotes should offer a(n) [LIBOR Bid Margin] [Absolute Bid Rate].

Terms used herein have the meanings assigned to them in the Loan Agreement.

[BORROWER]

By _____
Name:
Title: (1)

- - - - -
* Subject to the minimum amount and other requirements set forth in Section 2.02(a) of the Loan Agreement.
** Subject to the provisions regarding "Interest Period" in the Loan Agreement.

G-1-1
EXHIBIT G-2

INVITATION FOR BID RATE QUOTES

To: [Bank]

Re: Invitation for Bid Rate Quotes to [Borrower] ("Borrower")

Pursuant to Section 2.02 of the Revolving Loan Agreement dated as of _____, 1998 among Borrower, the Banks parties thereto and the undersigned, as Administrative Agent, we are pleased on behalf of Borrower to invite you to submit Bid Rate Quotes to Borrower for the following proposed Bid Rate Loans:

Date of Borrowing: _____

Principal Amount Interest Period
- - - - -

\$

Such Bid Rate Quotes should offer a(n) [LIBOR Bid Margin] [Absolute Bid Rate].

Please respond to this invitation by no later than 2:00 P.M. (New York time) on [date].

[ADMINISTRATIVE AGENT], as
Administrative Agent

By _____
Name:
Title:

By _____

Name:
Title:

G-2-1
EXHIBIT G-3

BID RATE QUOTE

To: [ADMINISTRATIVE AGENT], as Administrative Agent
Re: Bid Rate Quote to [Borrower] ("Borrower") pursuant to the Revolving Loan Agreement dated _____, 1998 among Borrower, the Banks party thereto and Administrative Agent (the "Loan Agreement")

In response to your invitation on behalf of Borrower dated _____, 19__, we hereby make the following Bid Rate Quote on the following terms:

- 1. Quoting Bank:
- 2. Person to contact at quoting Bank:

*

- 3. Date of borrowing: -----
- 4. We hereby offer to make Bid Rate Loan(s) in the following principal amounts, for the following Interest Periods and at the following rates:

<TABLE>
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Principal Amount**	Interest Period***	LIBOR Bid Margin****	Absolute Bid Rate
-----	-----	-----	-----
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\$			
\$			1

</TABLE>

[Provided, that the aggregate principal amount of Bid Rate Loans for which the above offers may be accepted shall not exceed \$_____.]

- 5. LIBOR Reserve Requirement, if any: _____.
- 6. Terms used herein have the meanings assigned to them in the Loan Agreement.

* As specified in the related Invitation for Bid Rate Quotes.
** Principal amount bid for each Interest Period may not exceed principal amount requested. Specify aggregate limitation if the sum of the individual offers exceeds the amount the Bank is willing to lend. Amounts of bids are subject to the requirements of Section 2.02(c) of the Loan Agreement.
*** No more than three (3) bids are permitted for each Interest Period.
**** Margin over or under the LIBOR Interest Rate determined for the applicable Interest Period. Specify percentage (to the nearest 1/1,000 of 1%) and specify whether "PLUS" OR "MINUS".

G-3-1

We understand and agree that the offer(s) set forth above, subject to the satisfaction of the applicable conditions set forth in the Loan Agreement, irrevocably obligates us to make the Bid Rate Loan(s) for which any offer(s) are accepted, in whole or in part.

Very truly yours,
[NAME OF BANK]

Date: _____ By: _____
Authorized Officer

G-3-2
EXHIBIT G-4

ACCEPTANCE OF BID RATE QUOTE

To: [ADMINISTRATIVE AGENT], as Administrative Agent (the "Administrative

Agent")

From: [Borrower]

Re: Revolving Loan Agreement (the "Loan Agreement") dated as of _____, 1998 among [Borrower], the Banks parties thereto and the Administrative Agent

We hereby accept the offers to make Bid Rate Loan(s) set forth in the Bid Rate Quote(s) identified below:

Bank	Date of Bid Rate Quote	Principal Amount	Interest Period	LIBOR Bid Margin	Absolute Bid Rate
-----	-----	-----	-----	-----	-----

Very truly yours,

[BORROWER]

By: _____

Name:
Title:

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