

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K/A

CURRENT REPORT

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

Date of Report (Date of earliest event reported): MAY 23, 1996

BAY APARTMENT COMMUNITIES, INC.
(Exact name of Registrant as specified in charter)

----- MARYLAND ----- (State or other jurisdiction of incorporation)	----- 1-72612 ----- (Commission file number)	----- 77-0404318 ----- (IRS employer identification no.)
---	---	--

4340 STEVENS CREEK BOULEVARD, SUITE 275, SAN JOSE, CA 95129

(Address of principal executive offices) (Zip Code)

(408) 983-1500

(Registrant's telephone number, including area code)

ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

On May 16, 1996, Bay Apartment Communities, Inc. (the "Company") purchased from C. Gemma Hwang and K. Philip Hwang a 208 apartment home community located in Union City, California ("Park Centre Apartments") for approximately \$11.4 million. The Company plans to invest approximately \$2.9 million in a major redevelopment program which will include exterior repairs (such as a new roof, entry gate and exterior painting) and upgrades of apartment interiors (including new appliances, plumbing fixtures, cabinet faces and floor and wall coverings). In addition, the Company intends to add a new fitness center and upgrade the community's leasing office, landscaping and lighting. The occupancy rate of Park Centre Apartments was approximately 94% as of May 16, 1996.

On May 16, 1996, the Company purchased from TCR #706 Parkside, Limited, a Texas limited partnership, a 192 apartment home community located in Sunnyvale, California ("Parkside Commons") for approximately \$25.5 million. The occupancy rate of Parkside Commons was approximately 100% as of May 16, 1996.

On May 23, 1996, the Company purchased from Consolidated Sunset Limited Partnership a 243 apartment home community located in San Francisco, California ("Sunset Towers") for approximately \$24.3 million. The Company plans to invest approximately \$2 million in a major redevelopment program which will include upgrading of apartment interiors, community lobbies and hallways, the replacement of some mechanical systems and the repair and improvement of the structure's exterior. The occupancy rate of Sunset Towers was approximately 99% as of May 23, 1996.

The Company financed the acquisitions of Park Centre Apartments, Parkside Commons and Sunset Towers through draws in the aggregate of approximately \$61.2 million from the Company's \$150 million unsecured line of credit (the "UBS Acquisition Loan") provided by Union Bank of Switzerland for acquisition and construction purposes. The UBS Acquisition Loan is for a term of three years and bears interest at the rate of 1.55% over LIBOR.

The Company has entered into contracts to acquire two apartment home communities, Countrybrook in San Jose, CA and Villa Marguerite in Mission Viejo, CA. Countrybrook has 360 apartment homes and Villa Marguerite has 166 apartment homes. There can be no assurance that the Company will acquire these communities.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial Statements under Rule 3-14 of Regulation S-X

Financial Statements of Businesses Acquired. See Index to Financial Statements (page F- 1).

(b) Pro Forma Financial Statements

Pro Forma Financial Information. See Index to Financial Statements (page F-1).

(c) Exhibits

- 10.1 Purchase and Sale Agreement and Escrow Instructions, dated as of March 22, 1996, by and between K. Philip Hwang and C. Gemma Hwang and Bay Apartment Communities, Inc. The exhibits and schedules to this Agreement are listed in, but not filed with, this exhibit. Such exhibits and schedules have been omitted for purposes of this filing, but will be furnished to the Commission supplementally upon request.
- 10.2 Purchase and Sale Agreement and Escrow Instructions, dated as of April 24, 1996, by and between TCR #706 Parkside Limited Partnership and Bay Apartment Communities, Inc. The exhibits and schedules to this Agreement are listed in, but not filed with, this exhibit. Such exhibits and schedules have been omitted for purposes of this filing, but will be furnished to the Commission supplementally upon request.
- 10.3 Purchase and Sale Agreement and Escrow Instructions, dated as of April 20, 1996, by and between Consolidated Sunset Limited Partnership and Bay Apartment Communities, Inc. The exhibits and schedules to this Agreement are listed in, but not filed with, this exhibit. Such exhibits and schedules have been omitted for purposes of this filing, but will be furnished to the Commission supplementally upon request.
- 10.4 Revolving Loan Agreement, dated as of May 8, 1996, among Bay Apartment Communities, Inc. as Borrower, Union Bank of Switzerland (New York Branch) as Co-Agent and Bank, and Union Bank of Switzerland (New York Branch) as Administrative Agent. The exhibits and schedules to this Agreement are listed in, but not filed with, this exhibit. Such exhibits and schedules have been omitted for purposes of this filing, but will be furnished to the Commission supplementally upon request.
- 10.5 Form of Agreement of Limited Partnership of Bay Countrybrook, L.P., by and among, Bay GP, Inc., Bay Apartment Communities, Inc. and certain other defined Persons. The exhibits and schedules to this Agreement are listed in, but not filed with, this exhibit. Such exhibits and schedules have been omitted for purposes of this filing, but will be furnished in the Commission supplementally upon request.
- 10.6 Agreement to Contribute, dated as of March 27, 1996, by and between Countrybrook of Berryessa Associates and Bay Apartment Communities, Inc. The exhibits and schedules to this Agreement are listed in, but not filed with, this exhibit. Such exhibits and schedules have been omitted for purposes of this filing, but will be furnished to the Commission supplementally upon request.
- 23.1 Independent Accountants Consent

SIGNATURES

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

BAY APARTMENT COMMUNITIES, INC.

Dated: July 5, 1996

By: /s/ Gilbert M. Meyer

Gilbert M. Meyer
Chairman of the Board and President

BAY APARTMENT COMMUNITIES, INC.

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See notes to the pro forma financial statements

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BAY APARTMENT COMMUNITIES, INC.

PRO FORMA CONSOLIDATED BALANCE SHEET

MARCH 31, 1996

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(UNAUDITED)

FORMA	ASSETS	HISTORICAL	1996 ACQUI- SITIONS	OTHER TRANSACTIONS	PRO
-----		-----	-----	-----	-----
<S>		<C>	<C>	<C>	<C>
Real estate assets		\$ 493,564	\$ 128,390	\$ -	\$
621,954					
Less accumulated depreciation		(38,280)	-		
(38,280)					
-----		-----	-----	-----	-----
Real estate assets, net		455,284	128,390 A	-	
583,674					
Construction in progress		11,676	-	-	
11,676					
-----		-----	-----	-----	-----
		466,960	128,390	-	
595,350					
Cash and cash equivalents		1,214	(2,651) B	8,002 G	
6,565					
Other assets		13,408	71 C	(288) H	
13,191					
-----		-----	-----	-----	-----
Total assets		\$ 481,582	\$ 125,810	\$ 7,714	\$
615,106					
=====		=====	=====	=====	

Notes payable	\$ 233,934	\$ 117,932 D	\$ (41,500) I	\$
310,366				
Accounts payable and accrued expenses	4,130	-	-	
4,130				
Dividends payable	5,574	-	-	
5,574				
Other liabilities	2,560	578 E	-	
3,138				
	-----	-----	-----	-----

Total liabilities	246,198	118,510	(41,500)	
323,208				

Preferred stock, \$.01 par value; 25,000,000
 shares authorized; 2,308,800 shares of Series A
 outstanding at March 31, 1996 and March 31, 1996
 pro forma, respectively; no shares and 405,022
 shares of Series B outstanding at
 March 31, 1996, and March 31, 1996
 pro forma, respectively

23 - 4 J

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Paid-in capital	251,345	-	49,481 K
300,826			
Dividends in excess of accumulated earnings	(16,100)	-	(288) H
(16,388)			

615,106	Total liabilities and shareholders' equity	\$ 481,582	\$ 125,810	\$ 7,714	\$
---------	--	------------	------------	----------	----

</TABLE>

See notes to the pro forma financial statements

F-3
BAY APARTMENT COMMUNITIES, INC.

PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS

FOR THE THREE MONTHS ENDED MARCH 31, 1996

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(UNAUDITED)

<TABLE>
<CAPTION>

	HISTORICAL	1996 ACQUISSI- TIONS	OTHER TRANSAC- TIONS	PRO FORMA
<S>	<C>	<C>	<C>	<C>
Revenues:				
Rental	\$ 16,094	\$ 3,388 L	\$ -	\$ 19,482
Other	378	105 L	-	483
Total revenue	16,472	3,493	-	19,965
Expenses:				
Property operating	3,737	798 M	-	4,535
Property taxes	1,222	286 N	-	1,508
General and administrative	860	122 O	-	982
Interest and financing	3,472	1,724 P	(437) R	4,759
Depreciation and amortization	3,971	802 Q	-	4,773
	13,262	3,732	(437)	16,557
Income before minority interest	3,210	(239)	437	3,408
Minority interest	15	-	-	15
Net income	\$ 3,195	\$ (239)	\$ 437	\$ 3,393
Net income per share				\$.17

</TABLE>

See notes to the pro forma financial statements

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BAY APARTMENT COMMUNITIES, INC.

PRO FORMA CONSOLIDATED STATEMENT OF OPERATIONS

FOR THE YEAR ENDED DECEMBER 31, 1995

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(UNAUDITED)

<TABLE>
<CAPTION>

	HISTORICAL	1996 ACQUISSI- TIONS	OTHER TRANSAC- TIONS	PRO FORMA
<S>	<C>	<C>	<C>	<C>
Revenues:				
Rental	\$ 52,110	\$ 12,797 L	\$ -	\$ 64,907
Other	1,411	374 L	-	1,785

Total revenue	53,521	13,171	-	66,692
Expenses:				
Property operating	12,452	2,962 M	-	15,414
Property taxes	4,349	1,120 N	-	5,469
General and administrative	2,467	600 O	-	3,067
Interest and financing	11,472	6,896 P	(64) R	18,304
Depreciation and amortization	13,714	3,224 Q	-	16,938
Total expenses	44,454	14,802	(64)	59,192
Income before minority interest	9,067	(1,631)	64	7,500
Minority interest	19	-	-	19
Income before gain on sale	9,048	(1,631)	64	7,481
Gain on sale	2,412	-	-	2,412
Net income	\$ 11,460	\$ (1,631)	\$ 64	\$ 9,893
Net income per share				\$.63

</TABLE>

See notes to the pro forma financial statements

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BAY APARTMENT COMMUNITIES, INC.

NOTES TO THE PRO FORMA FINANCIAL STATEMENTS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(UNAUDITED)

1. BASIS OF PRESENTATION:

The pro forma financial statements of Bay Apartment Communities (the "Company"), which are unaudited, have been prepared based on the historical financial statements of the Company. The pro forma consolidated balance sheet has been prepared as if the acquisition of the three apartment communities in May, 1996 (the "1996 Acquired Communities"), the closing of the three probable acquisitions (the "Acquisition Communities"), the acquisition of a land parcel (the "Land Parcel"), the Company's private placement offering in May, 1996 (the "May 1996 Offering"), borrowings under the \$150 million unsecured line of credit (the "1996 Credit Facility"), and the retirement of the \$80 million and \$47 million lines of credit (the "Acquisition Loans") had occurred on March 31, 1996. The pro forma consolidated statements of operations for the three months ended March 31, 1996, and the year ended December 31, 1995, have been prepared as if the above mentioned events had occurred on January 1, 1995. In management's opinion, all adjustments necessary to reflect the effects of these transactions have been made. The pro forma financial statements should be read in conjunction with the historical financial statements of the Company.

The pro forma financial statements are not necessarily indicative of what the actual results of operations of the Company would have been for the three months ended March 31, 1996 or for the year ended December 31, 1995 had the 1996 Acquired Communities, the Acquisition Communities, the May 1996 Offering, and the borrowings under the 1996 Credit Facility and corresponding retirement of the Acquisition Loans occurred on January 1, 1995, nor do they purport to represent the results of operations for future periods.

2. PRO FORMA ADJUSTMENTS:

- A. Additional real estate assets are attributable to the 1996 Acquired Communities, the Acquisition Communities, and the Land Parcel. The 1996 Acquired Communities consists of the \$11.4 million acquisition of the Park Centre Apartments, the \$25.5 acquisition of Parkside Apartments, and the \$24.3 acquisition of Sunset Apartments. The Acquisition Communities consists of the probable acquisitions of Martinique Gardens for approximately \$7.5 million, Countrybrook Apartments for approximately \$28.8 million, and Villa Marguerite Apartments for approximately \$10.1 million. The Land Parcel was purchased in May, 1996 for approximately \$20.7 million.

- B. Decrease in cash and cash equivalents is attributable to cash used to acquire the 1996 Acquired Communities, the Acquisition Communities, and the Land Parcel.

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BAY APARTMENT COMMUNITIES, INC.

NOTES TO THE PRO FORMA FINANCIAL STATEMENTS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(UNAUDITED)

2. PRO FORMA ADJUSTMENTS, continued:

- C. Increase in other assets, net is attributable to prepaid property taxes from the 1996 Acquired Communities.
- D. Increase in notes payable is attributable to the \$90 million draw on the 1996 Credit Line and the \$28 million increase in tax exempt debt from the acquisition of the 1996 Acquired Communities, the Acquisition Communities, and the Land Parcel. Two of the communities in the Acquisition Communities are encumbered by first deeds of trust which collateralize housing bond issues, totaling \$28 million in aggregate.
- E. Increase in other liabilities is attributable to resident deposits from the 1996 Acquired Communities and the Acquisition Communities.
- F. Increase due to partnership units issued to seller in acquisition of Countrybrook Apartments.
- G. Increase in cash and cash equivalents is attributable to \$49.5 million in net proceeds from the May, 1996 Offering offset by the \$41.5 million retirement of the Acquisition Loans.
- H. Decrease in other assets, net and corresponding increase in dividends in excess of accumulated earnings is attributable to write-off of capitalized loan fees related to the retirement of the Acquisition Loans.
- I. Decrease in notes payable is attributable to the retirement of the Acquisition Loans.
- J. Increase in preferred and common stock is attributable to the issuance of shares from the May, 1996 Offering.
- K. Additional paid in capital is attributable to the net proceeds from the May 1996 Offering.
- L. Additional rental and other revenue is attributable to the 1996 Acquired Communities and the Acquisition Communities.
- M. Additional property operating expense is attributable to the 1996 Acquired Communities and the Acquisition Communities.
- N. Additional property taxes expense is attributable to the 1996 Acquired Communities, the Acquisition Communities, and the Land Parcel.

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BAY APARTMENT COMMUNITIES, INC.

NOTES TO THE PRO FORMA FINANCIAL STATEMENTS

(IN THOUSANDS, EXCEPT SHARE AND PER SHARE DATA)

(UNAUDITED)

2. PRO FORMA ADJUSTMENTS, continued:

- O. General and administrative expense is adjusted to reflect an increase in staff at the corporate level as well as additional expense at the 1996 Acquired Communities and the Acquisition Communities.

- P. Additional interest expense relating to the debt incurred in connection with the acquisition of the 1996 Acquired Communities, the Acquisition Communities, and the Land Parcel has been computed based upon the 30-day London Interbank Offered Rate ("LIBOR") plus a 1.55% margin on the \$90 million aggregate draw on the Company's 1996 Credit Facility.
- Q. Depreciation expense attributable to the 1996 Acquired Communities and the Acquisition Communities has been computed using the straight-line method of cost recovery over 30 years for buildings and 7 years for furniture, fixtures and equipment.
- R. Decrease in interest expense reflects the reduction in historical interest from the assumed retirement of the Acquisition Loans.

F-8
REPORT OF INDEPENDENT ACCOUNTANTS

Board of Directors
Bay Apartment Communities, Inc.:

We have audited the accompanying Historical Summary of Revenues and Direct Operating Expenses (the Historical Summary) of Countrybrook Apartments, San Jose, California (the Property) for the year ended December 31, 1995 and for the three-month period ended March 31, 1996. The Historical Summary is the responsibility of the Property's owner. Our responsibility is to express an opinion on the Historical Summary based on our audit.

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

The accompanying Historical Summary was prepared for the purpose of complying with rules and regulations of the Securities and Exchange Commission, as described in Note A, and is not intended to be a complete presentation of the Property's revenues and expenses and may not be comparable to results from proposed future operations of the Property.

In our opinion, the Historical Summary referred to above presents fairly, in all material respects, the revenues and direct operating expenses, described in Note A, of Countrybrook Apartments, San Jose, California, for the year ended December 31, 1995 and for the three-month period ended March 31, 1996, in conformity with generally accepted accounting principles.

San Francisco, California
July 3, 1996

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COUNTRYBROOK APARTMENTS

HISTORICAL SUMMARY OF REVENUES AND
DIRECT OPERATING EXPENSES

<TABLE>
<CAPTION>

	Year Ended December 31, 1995 -----	Three Months Ended March 31, 1996 -----
<S>	<C>	<C>
Revenues:		

Rental income	\$3,512,640	\$927,130
Other	33,708	14,024
	-----	-----
	3,546,348	941,154
	-----	-----
Direct operating expenses:		
On-site management	270,228	72,541
Real property tax	355,020	90,139
Utilities	171,987	39,185
Repairs and maintenance	406,973	128,443
Other	148,546	21,578
	-----	-----
	1,352,754	351,886
	-----	-----
Revenue in excess of direct operating expenses	\$2,193,594	\$589,268
	=====	=====

</TABLE>

The accompanying note is an integral
part of this Historical Summary.

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COUNTRYBROOK APARTMENTS

NOTE TO HISTORICAL SUMMARY OF REVENUES
AND DIRECT OPERATING EXPENSES

A. Property and Basis of Accounting:

The accompanying Historical Summary of Revenues and Direct Operating Expenses has been prepared in accordance with Rule 3-14 of Regulation S-X of the Securities and Exchange Commission and relates to the operations of Countrybrook Apartments, an apartment community, located in San Jose, California with 208 apartment homes.

In accordance with Rule 3-14, direct operating expenses are presented exclusive of depreciation, interest, management fees, and income taxes.

Rental income attributable to residential leases is recorded when due from tenants.

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REPORT OF INDEPENDENT ACCOUNTANTS

Board of Directors
Bay Apartment Communities, Inc.:

We have audited the accompanying Historical Summary of Revenues and Direct Operating Expenses (the Historical Summary) of Parkside Commons Apartments, Sunnyvale, California (the Property) for the year ended December 31, 1995 and for the three-month period ended March 31, 1996. The Historical Summary is the responsibility of the Property's owner. Our responsibility is to express an opinion on the Historical Summary based on our audit.

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

The accompanying Historical Summary was prepared for the purpose of complying with rules and regulations of the Securities and Exchange Commission, as described in Note A, and is not intended to be a complete presentation of the Property's revenues and expenses and may not be comparable to results from proposed future operations of the Property.

In our opinion, the Historical Summary referred to above presents fairly, in

all material respects, the revenues and direct operating expenses, described in Note A, of Parkside Commons Apartments, Sunnyvale, California, for the year ended December 31, 1995 and for the three-month period ended March 31, 1996, in conformity with generally accepted accounting principles.

San Francisco, California
July 3, 1996

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PARKSIDE COMMONS APARTMENTS
HISTORICAL SUMMARY OF REVENUES AND
DIRECT OPERATING EXPENSES

<TABLE>
<CAPTION>

	Year Ended December 31, 1995	Three Months Ended March 31, 1996
	-----	-----
<S>	<C>	<C>
Revenues:		
Rental income	\$2,722,758	\$ 729,247
Other	87,194	29,002
	-----	-----
	2,809,952	758,249
	-----	-----
Direct operating expenses:		
On-site management	112,478	23,096
Real property tax	151,012	46,761
Utilities	116,381	28,470
Repairs and maintenance	212,883	51,011
Other	82,754	27,058
	-----	-----
	675,508	176,396
	-----	-----
Revenue in excess of direct operating expenses	\$2,134,444	\$ 581,853
	=====	=====

</TABLE>

The accompanying note is an integral
part of this Historical Summary.

F-13
PARKSIDE COMMONS APARTMENTS
NOTE TO HISTORICAL SUMMARY OF REVENUES
AND DIRECT OPERATING EXPENSES

A. Property and Basis of Accounting:

The accompanying Historical Summary of Revenues and Direct Operating Expenses has been prepared in accordance with Rule 3-14 of Regulation S-X of the Securities and Exchange Commission and relates to the operations of Parkside Commons Apartments, an apartment community, located in Sunnyvale, California with 192 apartment homes.

In accordance with Rule 3-14, direct operating expenses are presented exclusive of depreciation, interest, management fees, and income taxes.

Rental income attributable to residential leases is recorded when due from tenants.

F-14
REPORT OF INDEPENDENT ACCOUNTANTS

Board of Directors
Bay Apartment Communities, Inc.:

We have audited the accompanying Historical Summary of Revenues and Direct Operating Expenses (the Historical Summary) of Villa Marguerite Apartments, Mission Viejo, California (the Property) for the year ended December 31, 1995 and for the three-month period ended March 31, 1996. The Historical Summary is the responsibility of the Property's owner. Our responsibility is to express an opinion on the Historical Summary based on our audit.

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

The accompanying Historical Summary was prepared for the purpose of complying with rules and regulations of the Securities and Exchange Commission, as described in Note A, and is not intended to be a complete presentation of the Property's revenues and expenses and may not be comparable to results from proposed future operations of the Property.

In our opinion, the Historical Summary referred to above presents fairly, in all material respects, the revenues and direct operating expenses, described in Note A, of Villa Marguerite Apartments, Mission Viejo, California, for the year ended December 31, 1995 and for the three-month period ended March 31, 1996, in conformity with generally accepted accounting principles.

San Francisco, California
July 3, 1996

F-15
VILLA MARGUERITE APARTMENTS
HISTORICAL SUMMARY OF REVENUES AND
DIRECT OPERATING EXPENSES

<TABLE>
<CAPTION>

	Year Ended December 31, 1995	Three Months Ended March 31, 1996
	-----	-----
<S>	<C>	<C>
Revenues:		
Rental income	\$1,191,365	\$317,688
Other	28,870	9,529
	-----	-----
	1,220,235	327,217
	-----	-----
Direct operating expenses:		
On-site management	63,882	17,757
Real property tax	121,745	25,937
Utilities	108,938	27,573
Repairs and maintenance	203,856	59,438
Other	75,805	18,154
	-----	-----
	574,226	148,859
	-----	-----
Revenues in excess of direct operating expenses	\$ 646,009	\$178,358
	=====	=====

</TABLE>

The accompanying note is an integral
part of this Historical Summary.

F-16
VILLA MARGUERITE APARTMENTS

NOTE TO HISTORICAL SUMMARY OF REVENUES
AND DIRECT OPERATING EXPENSES

A. Property and Basis of Accounting:

The accompanying Historical Summary of Revenues and Direct Operating Expenses has been prepared in accordance with Rule 3-14 of Regulation S-X of the Securities and Exchange Commission and relates to the operations of Villa Marguerite Apartments, an apartment community, located in Mission Viejo, California with 208 apartment homes.

In accordance with Rule 3-14, direct operating expenses are presented exclusive of depreciation, interest, management fees, and income taxes.

Rental income attributable to residential leases is recorded when due from tenants.

F-17
REPORT OF INDEPENDENT ACCOUNTANTS

Board of Directors
Bay Apartment Communities, Inc.:

We have audited the accompanying Historical Summary of Revenues and Direct Operating Expenses (the Historical Summary) of Sunset Towers Apartments, San Francisco, California (the Property) for the year ended December 31, 1995 and for the three-month period ended March 31, 1996. The Historical Summary is the responsibility of the Property's owner. Our responsibility is to express an opinion on the Historical Summary based on our audit.

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

The accompanying Historical Summary was prepared for the purpose of complying with rules and regulations of the Securities and Exchange Commission, as described in Note A, and is not intended to be a complete presentation of the Property's revenues and expenses and may not be comparable to results from proposed future operations of the Property.

In our opinion, the Historical Summary referred to above presents fairly, in all material respects, the revenues and direct operating expenses, described in Note A, of Sunset Towers Apartments, San Francisco, California, for the year ended December 31, 1995 and for the three-month period ended March 31, 1996, in conformity with generally accepted accounting principles.

San Francisco, California
July 3, 1996

F-18
SUNSET TOWERS APARTMENTS
HISTORICAL SUMMARY OF REVENUES AND

DIRECT OPERATING EXPENSES

<TABLE>
<CAPTION>

	Year Ended December 31, 1995	Three Months Ended March 31, 1996
	-----	-----
<S>	<C>	<C>
Revenues:		
Rental income	\$2,795,189	\$722,901
Other	125,844	27,621
	-----	-----
	2,921,033	750,522
	-----	-----
Direct operating expenses:		
On-site management	114,689	24,393
Real property tax	210,419	52,894
Utilities	349,786	90,216
Repairs and maintenance	246,512	84,065
Other	208,574	32,296
	-----	-----
	1,129,980	283,864
	-----	-----
Revenue in excess of direct operating expenses	\$1,791,053	\$466,658
	=====	=====

</TABLE>

The accompanying note is an integral
part of this Historical Summary.

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SUNSET TOWERS APARTMENTS

NOTE TO HISTORICAL SUMMARY OF REVENUES
AND DIRECT OPERATING EXPENSES

A. Property and Basis of Accounting:

The accompanying Historical Summary of Revenues and Direct Operating Expenses has been prepared in accordance with Rule 3-14 of Regulation S-X of the Securities and Exchange Commission and relates to the operations of Sunset Towers Apartments, an apartment community, located in San Francisco, California with 243 apartment homes.

In accordance with Rule 3-14, direct operating expenses are presented exclusive of depreciation, interest, management fees, and income taxes.

Rental income attributable to residential leases is recorded when due from tenants.

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the 22nd day of March, 1996, by and between K. PHILIP HWANG and C. GEMMA HWANG, husband and wife, jointly and severally (collectively, "Seller"), and BAY APARTMENT COMMUNITIES, INC., a Maryland corporation, or its nominee ("Buyer").

IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer hereby agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

(a) that certain real property located at 2175 Decoto Road, Union City, California, more particularly described in Schedule 1 to the "Deed" (as hereinafter defined) attached hereto as Exhibit A and incorporated herein by this reference (the "Land");

(b) all rights, privileges and easements appurtenant to the Land, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under and that may be produced from the Land, as well as all development rights, land use entitlements, including without limitation building permits, licenses, permits and certificates, utilities commitments, air rights, water, water rights, riparian rights, and water stock relating to the Land and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and all of Seller's right, title and interest in and to all roads, easements, rights of way and alleys adjoining or servicing the Land (collectively, the "Appurtenances");

(c) all improvements and fixtures located on the Land and Appurtenances, including, without limitation, the building(s) located on the Land, containing two hundred eight (208) units, and all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land and Appurtenances, such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal, recreation or other services on the Land and Appurtenances, and along with all on-site parking (collectively, the "Improvements", and together with the Land and Appurtenances, the "Real Property");

(d) all tangible personal property owned by Seller located on or in or used in connection with the Real Property as of the date hereof and as of the "Closing Date" (as defined in Paragraph 8(b) below) including, without limitation, (i) all laundry equipment, recreation equipment, pool and spa furniture and equipment, furnishings in the on-site leasing facility, clubhouse and fitness center, and all air conditioners, refrigerators, dishwashers, ovens/ranges, microwaves and washer/dryer units located in the rental units, and (ii) all those items described in Schedule 2 to the "Bill of Sale" (as hereinafter defined) attached hereto as Exhibit B (collectively, the "Tangible Personal Property"); and

(e) any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation or development of the Real Property, and Tangible Personal Property, including, without limitation, the right to use the names "Park Centre Apartments" and "Cherrywood Apartments" and any other trade name now used in connection with the Real Property and, to the extent approved by Buyer pursuant to this Agreement, any contract or lease rights (including, without limitation, the lessor's interest in and to all tenant leases, rental agreements, subleases and tenancies, including all amendments, modifications, agreements, records, substantive correspondence, and other documents affecting in any way a right to occupy any portion of the Real Property (individually and collectively, the "Leases"), and Seller's interest in all security deposits and prepaid rent, if any, under the Leases (provided that Seller's interest in such security deposits and prepaid rent shall not be paid in cash to Buyer upon the Closing but instead shall be transferred in the form of a credit against the Purchase Price pursuant to Paragraph 8(f) below) and any and all guaranties of the Leases, utility contracts or other agreements or rights relating to the ownership, use and operation of the Real Property or Tangible Personal Property (collectively, the "Intangible Property", and together with the Tangible Personal Property, the "Personal Property").

All of the items referred to in Subparagraphs (a), (b), (c), (d) and (e) above are collectively referred to herein as the "Property".

2. Purchase Price.

(a) The purchase price of the Property is Eleven Million Four Hundred Thousand Dollars (\$11,400,000.00), subject to reduction by any credits due Buyer hereunder (the "Purchase Price").

(b) The Purchase Price shall be paid as follows:

(i) Concurrently with the execution of this Agreement and the opening of an escrow in connection herewith ("Escrow"), which will be opened at Commonwealth Land Title Company, 888 W. 6th Street, Los Angeles, CA 90017 ("Escrow Holder"), Buyer shall deposit into Escrow cash in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Initial Deposit"). The Initial Deposit shall be held by Escrow Holder in an interest-bearing account for Buyer's benefit. Upon the expiration of the Due Diligence Period, if this Agreement is not earlier terminated, Buyer shall deposit into Escrow cash in the amount of Fifty Thousand Dollars (\$50,000.00) (the "Additional Deposit"). The Additional Deposit shall be held by Escrow Holder in an interest-bearing account for Buyer's benefit. As used in this Agreement, the "Deposit" shall mean the Initial Deposit, plus, if and when made pursuant hereto, the Additional Deposit. The Deposit and all interest earned thereon shall be applied towards the Purchase Price at Closing; provided, however, if this Agreement is terminated for any reason other than a default by Buyer, the Deposit along with all interest earned thereon shall be returned to Buyer.

(ii) On or before the Closing, if this Agreement has not been earlier terminated, Buyer shall deposit into Escrow cash in the amount of the balance of the Purchase price, less any credits due Buyer hereunder (the "Closing Amount"). The Closing Amount shall be applied towards the Purchase Price at Closing; provided, however, that if this Agreement is terminated for any reason other than a default by Buyer, the Closing Amount shall be returned to Buyer.

3. Title to the Property.

(a) At the Closing, Seller shall convey to Buyer marketable and insurable fee simple title to the Real Property and Improvements, by duly executed and acknowledged grant deed substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the "Deed"). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by Commonwealth Land Title Company (the "Title Company") to Buyer of an ALTA Owner's Policy of Title Insurance (Form B, rev. 10/17/70) in the amount of the Purchase Price, insuring fee simple title to the Real Property and Improvements in Buyer, subject only to such exceptions as Buyer shall have approved pursuant to

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Paragraph 4 below and without boundary, encroachment or survey exceptions (the "Title Policy"). The Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall contain such special endorsements as Buyer may reasonably require, including, without limitation, any endorsements required as a condition to Buyer's approval of any title exceptions pursuant to Paragraph 4 below (the "Endorsements").

(b) At the Closing, Seller shall transfer title to the Tangible Personal Property by a bill of sale in the form attached hereto as Exhibit B and incorporated herein by this reference (the "Bill of Sale"), such title to be free of any liens, encumbrances or interests.

(c) At the Closing (i) Seller shall transfer title to the Intangible Property, the "Assigned Contracts" (as hereinafter defined) and the "Permits" (as hereinafter defined) by an assignment of intangible property in the form attached hereto as Exhibit C and incorporated herein by this reference (the "Assignment of Intangible Property") and (ii) Seller shall transfer title to the Leases by an assignment of Leases in the form attached hereto as Exhibit D and incorporated herein by this reference (the "Assignment of Leases"), such title in each case to be free of any liens, encumbrances or interests.

4. Due Diligence. As used herein, the term "Due Diligence Period" shall refer to a period of time to expire thirty (30) days after the date of this Agreement, provided that such thirty (30) day period shall be extended on a day for day basis for each day following the date of this Agreement until the delivery by Seller to Buyer of all of the items specified for Seller's delivery in Paragraph 5 below (excluding the Other Documents referenced in the last paragraph of Paragraph 5 below). Buyer may elect, by written notice to Seller at any time prior to the expiration of the Due Diligence Period, to terminate this Agreement, which election shall be in Buyer's sole and absolute discretion. If Buyer desires to proceed with the purchase of the Property subject to the remaining conditions set forth in this Agreement (including, without limitation, pursuant to Paragraph 6 below), then on or before the expiration of the Due Diligence Period, Buyer shall deliver written notice to Seller of such election to proceed (the "Buyer's Notice to Proceed"), electing to waive Buyer's right of termination pursuant to this Paragraph 4 and proceed with the Closing subject to the remaining conditions set forth in this Agreement. Buyer's Notice to Proceed shall specify in writing the requirements for the Title Policy (including, without limitation, approved exceptions and any required Endorsements), and Title Company's unconditional commitment to issue the Title Policy in such approved form at the Closing shall be a Condition Precedent to Buyer's obligation to proceed with the Closing in addition to the other Conditions Precedent set forth in Paragraph 6 below. In any event, Seller, at Seller's sole

cost (including, without limitation, costs of any prepayment and/or yield maintenance fees), covenants to cause to be released and reconveyed from the Property, and to remove as exceptions to title prior to the Closing, any mortgages, deeds of trust, or other monetary encumbrances, assessments or indebtedness shown on the Preliminary Report except for real property taxes not delinquent. In addition, Seller shall reasonably cooperate with Buyer and use Seller's reasonable efforts to cause the removal as exceptions to the Title Policy of any items identified in the Preliminary Report or any survey and specified by Buyer to Seller during the Due Diligence Period as items which shall be disapproved by Buyer. If Buyer fails to deliver Buyer's Notice to Proceed to Seller prior to the expiration of the Due Diligence Period electing to waive Buyer's right of termination pursuant to this Paragraph 4, then Buyer shall be deemed to have elected to terminate this Agreement. In the event of the termination of this Agreement pursuant to this Paragraph 4, the Deposit plus all interest accrued thereon shall be returned to Buyer and neither party shall have any further obligations to the other hereunder (except under provisions of this Agreement which specifically state that they survive termination).

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5. Seller's Deliveries. Seller shall deliver or cause to be delivered to Buyer all of the following (collectively, the "Due Diligence Materials") at Seller's sole cost and expense prior to the date of this Agreement:

(a) a current extended coverage preliminary title report on the Real Property, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report");

(b) copies of any and all existing and proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Preliminary Report;

(c) to the extent in Seller's possession or control: any existing survey(s) of the Real Property (including, without limitation, any "as-built" survey of the Real Property;

(d) copies of the most recent property tax bills and assessments for the Property;

(e) to the extent in Seller's possession or control: all presently effective warranties or guaranties from any contractors, subcontractors, suppliers, servicemen or materialmen in connection with any of the Tangible Personal Property or any construction, renovation, repairs or alterations of the Improvements or any tenant improvements (collectively, the "Warranties");

(f) a schedule (the "Schedule of Agreements") setting forth a list of all of the service contracts, utility contracts, maintenance contracts, management contracts, leasing contracts, equipment leases, and brokerage and leasing commission agreements in any way related to the Property (collectively, the "Service Contracts"), together with copies of all such Service Contracts. From this Schedule of Agreements, Buyer shall designate those contracts that Seller shall assign to Buyer as of Closing (such designated Service Contracts together with the Warranties and any "Other Documents" (as hereinafter defined) designated by Buyer for assignment are collectively referred to herein as the "Assigned Contracts"). Without limiting the effectiveness of the foregoing general provisions with respect to such Service Contracts, unless Buyer specifically provides Seller with "written notice to the contrary" (as hereinafter defined), in the event of the Closing of the purchase of the Property, Buyer shall not retain the existing employees and management agents of Seller for the Property, and, accordingly, on or prior to the Closing, Seller shall (i) cause all employment and management agreements respecting the Property to be terminated, and deliver evidence of such termination to Buyer, (ii) remove all employees and management personnel from the Property, and (iii) deliver any rental units within the Property previously occupied by such employees and/or management personnel in a vacant and tenant-ready condition. Buyer's "written notice to the contrary" pursuant hereto shall be made only by delivery to Seller of a copy of a written agreement or letter of employment with or to such employee and/or management agent executed by Buyer;

(g) to the extent in Seller's possession or control: reports of insurance carriers insuring the Property, and each portion thereof, respecting the claims history of the Property, if any, certificates of insurance and insurance policies; insurance claims history for the three (3) most recent calendar years prior to Closing and, to the extent available, for the current year;

(h) to the extent in Seller's possession or control: environmental reports, environmental audits, soils reports, site plans (with dimensions), engineering reports and plans, traffic reports, demographic information, landscape plans, structural calculations, floor plans (identifying tenant and vacancy locations), certified copies of the as-built plans and specifications, without limiting any of the

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foregoing, all items with respect to any remodeling or renovation of the

Property, construction contracts, a current inspection report by a licensed Structural Pest Control Operator, and other reports or documents of significance to the Property, copies of the zoning description applicable to the Property, and copies of final certificates of occupancy for all improvements;

(i) a complete inventory of all Tangible Personal Property used at or in connection with the Property;

(j) a complete list of Seller's and/or Seller's property manager's employees at the Property, specifying the current compensation of each;

(k) all income and expense statements, year-end financial and monthly operating statements and year to date statements for the three (3) most recent calendar years prior to Closing and, to the extent available, the current year, all of which shall either be (i) certified by an independent certified public accountant as having been prepared in accordance with generally accepted accounting principles (except to the extent specified as prepared on a cash basis), or (ii) certified by Seller as true and correct and an accurate representation of the financial condition of the Property;

(l) a copy of the budget for the current year;

(m) (i) copies of all existing and pending Leases, and, to the extent in Seller's possession or control, lease files and tenant correspondence; (ii) a schedule of leasing commissions on a space by space basis; (iii) a copy of the current standard lease form; and (iv) a current rent roll of the Property, listing for each tenant the name, location of leased premises, rent, obligation for reimbursement of expenses, amount of security deposit and rent paid more than thirty (30) days in advance, lease commencement date, lease termination date, lease extension options, any free rent, or other unexpired concessions, if any, any refurbishment or renovation obligations owed to tenants, and a description of any uncured defaults (the "Rent Roll"), specifically identifying any changes from the Rent Roll attached hereto as Exhibit E and incorporated herein by this reference, or a certificate of Seller that there have been no such changes; and

(n) to the extent in Seller's possession or control: all governmental permits and approvals relating to the construction, operation, use or occupancy of the Property, including without limitation, all certificates of occupancy (individually and collectively "Permits").

In addition, Seller shall promptly deliver to Buyer such other information relating to the Property that is specifically requested by Buyer of Seller in writing during the Due Diligence Period to the extent such information either is in the possession or control of Seller, or any affiliate of Seller, or may be obtained by Seller, or any affiliate of Seller, through the exercise of commercially reasonable efforts (collectively, the "Other Documents").

6. Conditions Precedent to Closing. The following are conditions precedent to Buyer's obligation to purchase the Property (the "Conditions Precedent"). The Conditions Precedent are intended solely for the benefit of Buyer and may be waived only by Buyer in writing. In the event any condition precedent is not satisfied, Buyer may, in its sole and absolute discretion, terminate this Agreement, and, subject to the provisions of Paragraphs 4 and 7, all obligations of Buyer and Seller hereunder (except provisions of this Agreement which recite that they survive termination) shall terminate and be of no further force or effect.

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(a) Buyer's inspection, review and approval, within the Due Diligence Period, of all of the following:

(i) The structural, mechanical, electrical and other physical characteristics and condition of the Property (including without limitation the condition of the soils);

(ii) The Due Diligence Materials and the Other Documents;

(iii) An examination for the presence or absence of "Hazardous Materials" (as hereinafter defined), which shall be performed or arranged by Buyer at Buyer's sole expense;

(iv) All housing, zoning, land-use, subdivision, environmental, life safety, handicapped codes (including without limitation the Americans With Disabilities Act of 1990 ("ADA") and the Fair Housing Amendments Act of 1988 ("FHAA")), building and construction laws and regulations restricting or regulating or otherwise affecting the use, occupancy or enjoyment of the Property; and

(v) Three (3) years' audited financial statements of the Seller, which (if the same do not exist) may, at Buyer's option, be performed or arranged at Buyer's cost (provided that Seller shall and hereby agrees to fully cooperate with Buyer and its representatives and provide them

with all necessary or desirable information and materials in connection therewith).

(b) All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(c) The physical condition of the Property shall be substantially the same on the day of Closing as on the date of Buyer's execution of this Agreement, reasonable wear and tear and loss by casualty (subject to the provisions of Paragraph 13 below) excepted.

(d) As of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened, which after Closing would, in Buyer's sole discretion, materially adversely affect the value of the Property or the ability of Buyer to operate the Property in the manner in which it is currently being operated, and no proceedings shall be pending or threatened which could or would cause the redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(e) Seller shall have provided Buyer with an accurate and current updated Rent Roll dated within five (5) days prior to Closing, which updated Rent Roll will be used to identify all Leases of space at the Property for purposes of this Agreement. Seller shall specifically identify any changes from the Rent Roll attached hereto as Exhibit E, and a certificate executed by Seller and the property manager for the Property certifying that such updated Rent Roll is true and correct (including, without limitation, the amount of Security Deposits and description of uncured tenant defaults and delinquencies listed thereon), and stating whether there exist any events which with the passage of time and/or the giving of notice would constitute a tenant default under a Lease.

(f) Seller shall have fully complied with all of Seller's duties and obligations contained in this Agreement.

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(g) There shall have been no material adverse change, in Buyer's determination, in the information or items reviewed and approved by Buyer during the Due Diligence Period.

(h) Buyer shall have confirmed that at least ninety percent (90%) of the apartment units on the Property are physically occupied by tenants ("Qualified Tenants") who (1) are not in default under their respective Leases, (2) meet Seller's reasonable credit standards for tenancy at the Property, and (3) are paying rental at commercially reasonable rates without any special concessions.

7. Remedies.

(a) IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF THE FAILURE OF ANY CONDITION OR ANY OTHER REASON EXCEPT A DEFAULT UNDER THIS AGREEMENT SOLELY ON THE PART OF BUYER, THE DEPOSIT PLUS INTEREST ACCRUED THEREON SHALL IMMEDIATELY BE RETURNED TO BUYER. IF SAID SALE IS NOT CONSUMMATED SOLELY BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, THE DEPOSIT (BUT NOT THE INTEREST ACCRUED THEREON) SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES (WITH ANY ACCRUED INTEREST THEREON TO BE PAID TO BUYER). THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. SELLER HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

INITIALS: Seller _____ Buyer _____

(b) In the event the sale of the Property is not consummated due to Seller's default under this Agreement, Buyer may, in its sole and absolute discretion, avail itself of any and all other legal and equitable remedies available under California law to a buyer of real property upon a default by a seller, including, without limitation, the right to terminate the contract and recover all damages and the right to continue this Agreement pending Buyer's action for specific performance and/or damages hereunder, and no such remedy shall be deemed exclusive or to preclude the pursuit of any other remedy.

8. Escrow; Closing.

(a) Upon mutual execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Escrow Holder and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer shall execute such supplemental Escrow instructions as may be appropriate to

enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental Escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary Escrow instructions signed by Buyer and Seller, the terms of this Agreement shall control.

(b) The parties intend for the Closing to take place on a date mutually reasonably agreed upon by the parties within twenty (20) days following the expiration of the Due Diligence Period

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(the "Closing Date"). In the event the Closing does not occur on or before the Closing Date, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which were deposited hereunder. Any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to Close.

(c) At or before the Closing, Seller shall deliver to Escrow Holder or Buyer the following:

(i) a duly executed and acknowledged Deed;

(ii) a duly executed Bill of Sale;

(iii) originals of all Leases and a duly executed and acknowledged Assignment of Leases;

(iv) originals of the Assigned Contracts and a duly executed Assignment of Intangible Property;

(v) a duly executed affidavit that Seller is not a "foreign person" within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986 in the form attached as Exhibit F and incorporated herein by this reference together with a duly executed California Franchise Tax Board Form 590;

(vi) originals of the building permits and certificates of occupancy for the Improvements and all tenant-occupied space included within the Improvements not previously delivered to Buyer;

(vii) notices to the Tenants of the occurrence of the sale of the Property in a form designated by Buyer and reasonably approved by Seller during the Due Diligence Period;

(viii) such resolutions, authorizations, bylaws or other corporate and/or partnership documents or agreements relating to Seller and its partners as shall be reasonably required by Buyer;

(ix) a full release and reconveyance of all monetary encumbrances affecting the Property and of any mechanics' liens, and such bond, indemnity or other arrangements as shall be necessary to cause the Title Company to insure title to the Property as vested in Buyer without any exception for such matters;

(x) a closing statement in form and content satisfactory to Buyer and Seller (the "Closing Statement") duly executed by Seller;

(xi) any documents or agreements required by the Title Company to issue the Title Policy; and

(xii) any other instruments, records or correspondence called for hereunder which have not previously been delivered.

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(xiii) Buyer may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

(d) At or before the Closing, Buyer shall deliver to Escrow Holder or Seller the following:

(i) the Closing Statement, duly executed by Buyer; and

(ii) the Closing Amount.

(e) Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

(f) (i) The following are to be apportioned as of the Closing Date, as follows:

(1) Rent. Rent under the Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been received by Seller. With respect to any rent arrearages arising under the Leases, after Closing, Buyer shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by Buyer shall be applied first to all unpaid rent accruing after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. Buyer shall not be obligated to take any steps to recover any rent arrearages. Seller shall be permitted to pursue its own remedies for collection of any rent arrearages applicable to the period prior to the Closing Date against tenants no longer in occupancy of the Property provided that Buyer shall incur no cost, expense or liability in connection therewith, but Seller shall not be permitted to take any action or enforce any legal or equitable remedies (specifically including commencing eviction procedures) against tenants remaining in occupancy of the Property.

(2) Leasing Costs. Seller shall pay as of the Closing all leasing commission and tenant improvement costs, if any, in connection with any Lease executed on or before the Closing that are or will become due and payable as of the Closing. Buyer shall be entitled to a credit against the Purchase Price for any such commissions or costs incurred in connection with any lease executed on or before the Closing.

(3) Security Deposits. Buyer shall be entitled to a credit against the Purchase Price for the total sum of all security deposits paid to Seller by tenants under any Leases, and any interest earned thereon.

(4) Free Rent, Abatements or Other Unexpired Concessions. Buyer shall be entitled to a credit against the Purchase Price for any free rent, abatements, or other unexpired concessions under any Leases to the extent they apply to any period after the Closing.

(5) Utility Charges. Seller shall provide written notice to the utility companies of the pending change of ownership of the Property not less than five (5) days prior to the Closing and shall concurrently therewith deliver copies of such notices to Buyer. Seller shall cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date, except to the extent such utility charges are billed to and paid by tenants directly.

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(6) Real Estate Taxes and Special Assessments. General real estate taxes payable for the fiscal year in which the Closing occurs shall be prorated by Seller and Buyer as of the day following the Closing Date. Seller shall pay on or before Closing the full amount of any bonds or assessments against the Property including interest payable therewith, including any bonds or assessments that may be payable after the Closing Date as a result of or in relation to the construction or operation of any Improvements or any public improvements that took place or for which any assessment was levied prior to the Closing Date. Buyer shall pay the full amount of any bonds or assessments incurred after the Closing Date that are not subject to the immediately preceding sentence.

(7) Other Apportionments. Amounts payable under the Assigned Contracts, annual or periodic permit and/or inspection fees (calculated on the basis of the period covered), and liability for other Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date. Seller shall provide Buyer with written notice of amounts to be so apportioned not less than five (5) days prior to the Closing.

(8) Preliminary Closing Statement. Not less than two (2) business days prior to the Closing, Seller and Buyer shall jointly prepare and approve a preliminary Closing Statement on the basis of the Leases and other sources of income and expenses, and shall deliver such computation to Escrow Holder prior to Closing.

(9) Post-Closing Reconciliation. If any of the aforesaid prorations cannot be definitely calculated on the Closing Date, then they shall be estimated at the Closing and definitely calculated as soon after the Closing Date as feasible. As soon as the necessary information is available, Buyer shall conduct a post-Closing audit to determine the accuracy of all prorations made to the Purchase Price (the "Post-Closing Audit"). Either party owing the other party a sum of money based on such subsequent proration(s) or the Post-Closing Audit shall promptly pay said sum to the other party, together with interest thereon at the rate of two percent over the "prime rate" (as announced from time to time in the Wall Street Journal) per annum from the Closing Date to the date of payment if payment is not made within ten (10) days after delivery of a bill therefor.

(ii) Closing Costs. Seller shall pay any City and/or County transfer taxes and/or transfer fees applicable to the sale of the Property. In addition, Seller shall be liable for any prepayment fee or other

charge payable in connection with the payoff of any existing indebtedness. Buyer shall pay the premium for the Title Policy, the cost of the ALTA survey, recording fees for recording of the Deed and fees of Escrow Holder. All other costs and charges in connection with the purchase and sale of the Property contemplated by this Agreement not otherwise provided for in this Agreement shall be allocated in accordance with the closing customs for the County where the Property is located. Buyer and Seller shall each be responsible for their respective legal fees to negotiate and execute this Agreement.

(iii) Occupancy Credit. In the event that the "Actual Occupancy Level" (as hereinafter defined) of the Property as of the Closing is less than ninety-three percent (93%) (193 units), Buyer shall be entitled to a credit (the "Occupancy Credit") against the Purchase Price in an amount equal to the product obtained by multiplying the "Vacant Unit Rental Amount" (as hereinafter defined) by a fraction, the numerator of which is the amount by which the Actual Occupancy Level is less than ninety-three percent (93%) and the denominator of which is the amount by which the Actual Occupancy Level is less than one hundred percent (100%). As used herein, the "Actual Occupancy Level" shall mean the percentage of the total apartment units on the Property that as of the Closing are physically occupied by Qualified Tenants. As used herein, the "Vacant Unit Rental Amount" shall mean the aggregate sum of one month's rental for each apartment unit on the Property that as of the Closing is not physically occupied by

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a Qualified Tenant, which rental amount shall be based on the monthly rental last payable under a lease for each such apartment unit.

(iv) Survival. The provisions of this Subparagraph (f) shall survive the Closing.

9. Representations, Warranties and Covenants of Seller. As of the date hereof and again as of Closing, Seller represents and warrants to, and covenants with, Buyer as follows:

(a) Seller has not received written notice of, and otherwise has no actual knowledge of, any material physical or mechanical defects of the Property, including, without limitation, the structural and load-bearing components of the Property, the parking lots, the plumbing, heating, air conditioning and electrical and life safety systems and building roofs.

(b) Seller has not received written notice of, and otherwise has no actual knowledge of, (i) any non-compliance of the Property or the operation thereof with applicable housing and building codes, environmental, zoning, life safety, laws, rules and regulations related to handicapped or disabled (including without limitation the ADA and the FHAA), land use laws and regulations, and other applicable local, state and federal laws and regulations (collectively, the "Laws"), or (ii) any order or directive of the applicable Department of Building and Safety, Health Department or any other municipal, county, state or federal authority that any work or repair, maintenance or improvement is required to be performed on the Property.

(c) To Seller's actual knowledge, the Property is not subject to any applicable rent control ordinance or law and no such ordinance or law is pending by any governmental authority, agency or quasi-governmental entity with jurisdiction over the Property.

(d) Seller has not received written notice of, and otherwise has no actual knowledge of, any inaccuracy or misstatement contained in any of the Due Diligence Materials or Other Documents. Seller has not received written notice of, and otherwise has no actual knowledge of, any defaults by any of the parties to any of the contracts or agreements respecting the Property to be assigned to Buyer at Closing, except as set forth on Exhibit G attached hereto.

(e) Seller has not received written notice of, and otherwise has no actual knowledge of, (i) any condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the Property, or (ii) any special assessment proceedings affecting the Property. Seller shall notify Buyer promptly of any such proceedings of which Seller becomes aware.

(f) To Seller's actual knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are installed to the property lines of the Land pursuant to valid permits.

(g) There is no litigation pending or, to Seller's actual knowledge, threatened in writing, against Seller arising out of the ownership or operation of the Property or that might detrimentally affect the value or the use or operation of the Property for its intended purpose or the ability of Seller to perform its obligations under this Agreement. Seller shall notify Buyer promptly of any such litigation of which Seller becomes aware.

(h) There are no outstanding written or oral contracts made by Seller for any improvements to the Property which have not been fully paid.

(i) Seller has disclosed to Buyer that there was previously located at the Property an underground diesel fuel storage tank (the "Tank") toward the creek side of the Property, which Tank has been removed by Seller. The parties agree that the indemnity and hold harmless provisions of this Agreement shall not apply with respect to any further investigative or curative action required (whether by individual or governmental action) with respect to the Tank, provided that the parties shall retain and rights and remedies with respect thereto at law and/or in equity. Except as provided above with respect to the Tank, neither Seller nor, to Seller's actual knowledge, any prior owner or occupant of the Property has engaged in or permitted any activity on the Property involving the handling, manufacture, treatment, storage, use, release, or disposal of any "Hazardous Materials" (as hereinafter defined). Seller has not received written notice, and otherwise has no actual knowledge, that removal or other remedial action with respect to Hazardous Materials in, on, under or about the Property is required by any governmental authority having jurisdiction over the Property. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws.

(j) Seller has not received written notice of, and otherwise has no actual knowledge of any existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Preliminary Report.

(k) The Land is a separate and distinct legal parcel. Such parcel has been created by way of a subdivision of land completed in accordance with all applicable laws, rules and regulations. Such parcel contains no property which is part of a real property tax parcel which is not entirely included in the Real Property.

(l) There are no free rent, abatements, incomplete tenant improvements, rebates, allowances, or other unexpired concessions or rights under any existing or pending Leases (with the exception of those specifically excepted in Exhibit E attached hereto and incorporated herein by this reference). Seller has paid in full any of landlord's leasing costs or obligations.

(m) No brokerage, finder's fee or commission or similar fee or commission is due or unpaid by Seller with respect to any Lease.

(n) The copies of the Leases delivered by Seller to Buyer contain all of the information pertaining to any rights of any parties to occupy the Property, including without limitation all information regarding any rent concessions, tenant improvements, or other inducements to lease.

(o) The Rent Roll is true, complete and accurate and there exist no defaults or events which, with the giving of notice or passage of time, or both, would constitute a default by Seller as landlord under the Leases listed thereon. To Seller's actual knowledge, except as specifically provided in Exhibit

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E, there exist no defaults and no events which, with the giving of notice or passage of time, or both, would constitute a default by any tenants thereon.

(p) To Seller's actual knowledge, the Property is properly zoned for its intended use, all Improvements comply with applicable building codes, all final certificates of occupancy for the Improvements have been issued, and the Property is not dependent on any other property for compliance with zoning regulations.

(q) This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are and at the time of Closing will be duly executed and delivered by Seller, are and at the time of Closing will be legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, are and at the time of Closing will be sufficient to convey title (if they purport to do so), and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Seller or the Property is subject. Seller has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(r) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the

foregoing, Seller has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Property.

For purposes of this Agreement, whenever the phrase "to Seller's actual knowledge" or words of similar import are used, they shall be deemed to refer to the actual knowledge, after due inquiry, of K. Philip Hwang and Gemma Hwang, and such of Seller's and its property manager's employees, agents and management personnel who would, in the ordinary course of their responsibilities, receive notice from other persons of any of the matters described in the representations and warranties in this Agreement which are limited by the knowledge of Seller.

10. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows: Buyer is a corporation duly organized and validly existing and in good standing under the laws of the State of Maryland and in good standing under the laws of the State of California; this Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are or at the time of Closing will be duly authorized, executed and delivered by Buyer, and are or at the Closing will be legal, valid and binding obligations of Buyer, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Buyer is subject.

11. Continuation and Survival. All representations, warranties and covenants by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and again at the Closing, shall be deemed to be material, and unless expressly provided to the contrary shall survive the execution and delivery of this Agreement, the Deed and the Closing.

12. Indemnity.

(a) Except for "Losses and Liabilities" (as hereinafter defined) arising directly or indirectly from a breach of any of Buyer's representations or warranties, Seller shall hold harmless, indemnify and defend Buyer, its successors and assigns and their respective agents, employees, officers and directors, and the Property from and against any and all obligations, liabilities, claims, liens, encumbrances, demands, losses, damages, causes of action, judgments, costs and expenses (including,

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without limitation, attorneys' fees and expenses), whether direct, contingent or consequential and no matter how arising ("Losses and Liabilities") in any way (i) related to the Property and arising or accruing with respect to the period prior to the Closing (except to the extent arising as a result of the acts of Buyer and/or any of Buyer's employees, agents or representatives); and/or (ii) resulting from any misrepresentation of Seller or any inaccuracy in or breach of any representations and warranties by Seller.

(b) Except for Losses and Liabilities arising directly or indirectly from a breach of any of Seller's representations or warranties, Buyer shall hold harmless, indemnify and defend Seller, its successors and assigns and their respective agents, employees, officers and partners, from and against any and all Losses and Liabilities in any way (i) related to the Property and arising or accruing with respect to the period from and after the Closing during Buyer's period of ownership of the Property (except to the extent arising as a result of the acts of Seller and/or any of Seller's employees, agents or representatives); or (ii) resulting from any misrepresentation of Buyer or any inaccuracy in or breach of any representation or warranty of Buyer.

(c) The provisions of this Paragraph 12 shall survive the Closing.

13. Casualty or Condemnation.

(a) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing Date, and the cost to repair and/or restore such damage and/or destruction (which cost, for purposes of this Paragraph 13, shall be deemed to include reasonably anticipated postClosing rental loss through to completion of such repair and/or restoration) exceeds One Hundred Thousand Dollars (\$100,000.00), then Buyer shall have the right to terminate this Agreement by written notice to Seller within ten (10) business days after Buyer's first learning of the occurrence of such casualty and the cost of such repair and/or restoration. In the event of any such termination, the Deposit, together with all interest accrued thereon, shall be returned to Buyer, Buyer and Seller shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

(b) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing Date where (i) the cost to repair and/or restore such damage and/or destruction does not exceed One Hundred Thousand Dollars (\$100,000.00), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds One Hundred Thousand Dollars (\$100,000.00) but this Agreement is not terminated pursuant to Paragraph 13(a) above as a result thereof, then the Closing Date shall occur as scheduled

notwithstanding such damage; provided, however, that Seller's interest in all proceeds of insurance payable by reason of such casualty shall be assigned to Buyer as of the Closing Date or credited to Buyer if previously received by Seller, and Seller shall be responsible for any cost of repair not covered by such insurance (whether by reason of insurance deductible, uninsured casualty or otherwise). Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

(c) In the event a governmental entity commences eminent domain proceedings to take any portion of the Property after the date hereof and prior to the Closing Date, then Buyer shall have the option to terminate this Agreement by written notice to Seller within ten (10) business days after Buyer first learns of such commencement. In the event of any such termination, the Deposit, together with all interest accrued thereon, shall be returned to Buyer, Buyer and Seller shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

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(d) In the event a governmental entity commences eminent domain proceedings to take any part of the Property after the date hereof and prior to the Closing Date and this Agreement is not terminated pursuant to Paragraph 13(c) above as a result thereof, then the Closing Date shall occur as scheduled notwithstanding such proceeding; provided, however, that Seller's interest in all awards arising out of such proceedings shall be assigned to Buyer as of the Closing Date or credited to Buyer if previously received by Seller. Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

14. Possession. Possession of the Property (together with all keys to the Property) shall be delivered to Buyer on the Closing Date, provided, however, that prior to the Closing Date Seller shall afford authorized representatives of Buyer access to the Property for purposes of satisfying Buyer with respect to the representations, warranties and covenants of Seller contained herein and with respect to satisfaction of any Conditions Precedent to the Closing contained herein, including without limitation an environmental investigation.

15. Maintenance of the Property and Property Personnel. Between Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted, shall perform all work required to be performed by the landlord under the terms of any Lease, and shall make all repairs, maintenance and replacements of the Improvements and any Tangible Personal Property and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property. Prior to and as of the Closing Date, Seller shall cause all vacant units vacated more than five (5) days prior to the Closing to be made tenant ready and available for occupancy, with carpet and vinyl replaced, if appropriate in accordance with Seller's reasonable operating policies. After full execution of this Agreement and until the Closing, Seller shall maintain all existing personnel on the Property in their current employment positions at their current (or an increased) rate of compensation. Except as otherwise provided in this Agreement, the Property is being sold on an "as is" basis, and the reference above to Seller's obligation to "otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property" shall be defined to mean usual daily maintenance not involving capital expenditures for such items as roof replacement or structural repairs.

16. Leasing; Buyer's Consent to New Contracts Affecting the Property; Termination of Existing Contracts. Seller shall use commercially reasonable efforts until Closing to lease any vacant space, or space becoming vacant, in the Real Property to tenants utilizing the criteria Seller used prior to execution of this Agreement. Seller shall not, after the date of Seller's execution of this Agreement, enter into any lease (other than a lease of apartment space in accordance with the immediately preceding sentence) or contract affecting the Property, or any amendment thereof, or permit any Tenant to enter into any sublease, assignment or agreement pertaining to the Property, or waive, compromise or settle any rights of Seller under any contract or Lease, or agree to return any security deposit, or modify, amend, or terminate any Assigned Contract, without in each case obtaining Buyer's prior written consent thereto. Seller shall terminate prior to the Closing, at no cost or expense to Buyer, any and all management agreements or contracts affecting the Property that are not Assigned Contracts and deliver evidence of such termination to Buyer.

17. Insurance. Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense:

(a) a policy or policies of insurance in amounts equal to the full replacement value of the Improvements and the Tangible Personal Property, insuring against all insurable risks, including,

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without limitation, fire, vandalism, malicious mischief, lightning, windstorm,

water, earthquake and other perils customarily covered by casualty insurance and the costs of demolition and debris removal; and

(b) a policy or policies of workers' compensation and employers' liability insurance, commercial general liability insurance, and automobile liability insurance, each in the amount and form maintained by Seller prior to the date of this Agreement.

18. Cooperation with Buyer. Seller shall cooperate and do all acts as may be reasonably required or requested by Buyer with regard to the fulfillment of any Condition Precedent but Seller's representations and warranties to Buyer shall not be affected or released by Buyer's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes Buyer and its agents to make all inquiries with and applications to any third party, including any governmental authority, as Buyer may reasonably require to complete its due diligence.

19. Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein except for Realty Investments ("Broker"), whose entire commission shall be the responsibility of Seller (pursuant to separate agreement between Seller and Broker). In the event that any other broker or finder claims a commission or finder's fee based upon any contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for said commission or fee and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the other party in defending against the same. The party through whom any other broker or finder makes a claim shall hold harmless, indemnify and defend the other party hereto, its successors and assigns, agents, employees, officers and directors, and the Property from and against any and all obligations, liabilities, claims, demands, liens, encumbrances and losses (including, without limitation, attorneys' fees), whether direct, contingent or consequential, arising out of, based on, or incurred as a result of such claim. The provisions of this Paragraph shall survive the Closing or termination of this Agreement.

20. Marketing. Seller agrees not to market or show the Property to any other prospective purchasers during the term of this Agreement.

21. Publicity and Confidentiality. Seller and the Title Company each agree that the terms of the transaction contemplated by this Agreement, the identity of Buyer and all information made available by Buyer to Seller or the Title Company or in any way relating to the Buyer's interest in that transaction, shall be maintained in strict confidence and no disclosure of such information will be made by Seller or the Title Company, whether or not the transaction contemplated by this Agreement shall close, except to such attorneys, accountants, investment advisors, lenders and others as are reasonably required to evaluate and consummate that transaction. Seller and the Title Company for themselves each further agree that nothing in this Paragraph shall prevent Buyer, Seller or the Title Company from disclosing or accessing any information otherwise deemed confidential under this Paragraph (a) in connection with that party's enforcement of its rights hereunder; (b) pursuant to any legal requirement, any statutory reporting requirement or any accounting or auditing disclosure requirement; (c) in connection with performance by either party of its obligations under this Agreement (including, but not limited to, the delivery and recordation of instruments, notices or other documents required hereunder); or (d) to potential investors, participants or assignees in or of the transaction contemplated by this Agreement or such party's rights therein.

22. Miscellaneous.

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(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service or next day delivery or transmitted by facsimile transmission, or (iii) two business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Seller: K. Philip Hwang and C. Gemma Hwang
- ----- 21070 Homestead Road, Suite 105
Cupertino, CA 95014
Attention: _____
Phone: () -
Fax: () -

If to Buyer: Bay Apartment Communities, Inc.
- ----- 4340 Stevens Creek Boulevard, Suite 275
San Jose, California 95129
Attention: Mr. Gilbert M. Meyer, President
Phone: (408) 983-1500
Fax: (408) 984-7060

With a copy to: Cox, Castle & Nicholson
2049 Century Park East, Suite 2800
Los Angeles, California 90067
Attention: Scott D. Brooks, Esq.
Phone: (310) 284-2295
Fax: (310) 277-7889

or such other address as either party may from time to time specify in writing to the other.

(b) Successors and Assigns. Buyer shall have the right to assign this Agreement without the consent or approval of Seller. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

(c) Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including without limitation, that certain Letter of Intent dated February 6, 1996 (the "Letter of Intent") which shall be of no further force or effect upon execution of this Agreement by Buyer.

(f) Time of the Essence. Time is of the essence of this Agreement.

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(g) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

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

BUYER:

SELLER:

BAY APARTMENT COMMUNITIES, INC.,
a Maryland corporation

/s/ K. Philip Hwang

K. PHILIP HWANG

By:/s/ Geoffrey L. Baker

/s/ C. Gemma Hwang

GEOFFREY L. BAKER,
Chief Development & Acquisition Officer

C. GEMMA HWANG

[BUYER AND SELLER TO INITIAL SUB-PARAGRAPH 7(a)]

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PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the 24th day of April, 1996, by and between TCR #706 PARKSIDE LIMITED PARTNERSHIP, a Texas limited partnership ("Seller"), and BAY APARTMENT COMMUNITIES, INC., a Maryland corporation ("Buyer").

IN CONSIDERATION of the respective agreements hereinafter set forth, Seller and Buyer hereby agree as follows:

1. Property. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following:

(a) that certain real property located at 355 N. Wolfe Road, Sunnyvale, California, more particularly described in Schedule 1 to the "Deed" (as hereinafter defined) attached hereto as Exhibit A and incorporated herein by this reference (the "Land");

(b) all rights, privileges and easements appurtenant to the Land, including, without limitation, all minerals, oil, gas and other hydrocarbon substances on and under and that may be produced from the Land, as well as Seller's interest in all development rights, land use entitlements, including without limitation building permits, licenses, permits and certificates, utilities commitments, air rights, water, water rights, riparian rights, and water stock relating to the Land and all of Seller's right, title and interest in and to all roads, easements, rights of way and alleys adjoining or servicing the Land (collectively, the "Appurtenances");

(c) all improvements and fixtures located on the Land, including, without limitation, the building(s) located on the Land, containing one hundred ninety-two (192) units, and all Seller's right, title and interest in and to all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land, such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal, recreation or other services on the Land, and along with all on-site parking (collectively, the "Improvements", and together with the Land and Appurtenances, the "Real Property");

(d) all tangible personal property owned by Seller located on or in or used in connection with the Real Property as of the date hereof and as of the "Closing Date" (as defined in Paragraph 8(b) below) including, without limitation, (i) all laundry equipment (to the extent owned and not leased), recreation equipment, pool and spa furniture and equipment, furnishings in the on-site leasing facility, clubhouse and fitness center, and all air conditioners, refrigerators, dishwashers, ovens/ranges, microwaves and washer/dryer units located in the rental units, and (ii) all those items described in Schedule 2 to the "Bill of Sale" (as hereinafter defined) attached hereto as Exhibit B (collectively, the "Tangible Personal Property"); and

(e) Seller's right, title and interest in and to the right to use the name "Parkside Commons Apartments", the lessor's interest in and to all tenant leases, rental agreements, subleases and tenancies granting a right to use or occupy any portion of the Real Property and all amendments, modifications, agreements, records, substantive correspondence, and other documents affecting the same in any way (individually and collectively, the "Leases"), and Seller's interest in all security deposits and prepaid rent, if any, under the Leases (provided that Seller's interest in such security deposits and prepaid rent shall not be paid in cash to Buyer upon the Closing but instead shall be transferred in the form of a credit against the Purchase Price pursuant to Paragraph 8(e) below) and any and all guaranties of the Leases, and Seller's interest under all "Warranties", "Service Contracts" and assignable "Permits", as such terms are hereinafter defined (collectively, the "Intangible Property", and together with the Tangible Personal Property, the "Personal Property").

All of the items referred to in Subparagraphs (a), (b), (c), (d) and (e) above are collectively referred to herein as the "Property".

2. Purchase Price.

(a) The purchase price of the Property is Twenty-Five Million Five Hundred Thousand Dollars (\$25,500,000.00), subject to reduction by any credits due Buyer hereunder (the "Purchase Price").

(b) The Purchase Price shall be paid as follows:

(i) Within three (3) business days following the execution of this Agreement. Buyer shall open an escrow in connection herewith ("Escrow"), at First American Title Guaranty Company, at 1850 Mt. Diablo

Boulevard, Suite 300, Walnut Creek, California 94596 ("Escrow Holder"), and deposit into Escrow cash in the amount of Two Hundred Thousand Dollars (\$200,000.00) (the "Initial Deposit"). Upon the expiration of the Due Diligence Period, if this Agreement is not earlier terminated, Buyer shall deposit into Escrow cash in the amount of One Hundred Thousand Dollars (\$100,000.00) (the "Additional Deposit"). As used in this Agreement, the "Deposit" shall mean the Initial Deposit, plus, if and when made pursuant hereto, the Additional Deposit. The Deposit shall be held by Escrow Holder in an interest-bearing account for Buyer's benefit. The Deposit and all interest earned thereon shall be applied towards the Purchase Price at Closing; provided, however, if this Agreement is terminated for any reason other than a default by Buyer, the Deposit along with all interest earned thereon shall be returned to Buyer.

(ii) On or before the Closing, if this Agreement has not been earlier terminated, Buyer shall deposit into Escrow cash in the amount of the balance of the Purchase Price, less any credits due Buyer hereunder (the "Closing Amount"). The Closing Amount shall be applied towards the Purchase Price at Closing; provided, however, that if this Agreement is terminated for any reason other than a default by Buyer, the Closing Amount shall be returned to Buyer.

3. Title to the Property.

(a) At the Closing, Seller shall convey to Buyer marketable and insurable fee simple title to the Real Property and Improvements, by duly executed and acknowledged grant deed substantially in the form attached hereto as Exhibit A and incorporated herein by this reference (the "Deed"). Evidence of delivery of marketable and insurable fee simple title shall be the issuance by First American Title Guaranty Company (the "Title Company") to Buyer of an ALTA Owner's Policy of Title Insurance (Form B, rev. 10/17/70) in the amount of the Purchase Price, insuring fee simple title to the Real Property and Improvements in Buyer, subject only to such exceptions as allowed by Paragraph 4 below and without boundary, encroachment or survey exceptions (the "Title Policy"). The Title Policy shall provide full coverage against mechanics' and materialmen's liens and shall contain such special endorsements as Buyer may reasonably require, including, without limitation, any endorsements required as a condition to Buyer's approval of any title exceptions pursuant to Paragraph 4 below, provided that the Title Company will issue such endorsements (the "Endorsements").

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(b) At the Closing, Seller shall transfer title to the Tangible Personal Property by a bill of sale in the form attached hereto as Exhibit B and incorporated herein by this reference (the "Bill of Sale"), such title to be free of any liens, encumbrances or interests.

(c) At the Closing (i) Seller shall transfer title to the Intangible Property (except the Leases) by an assignment of intangible property in the form attached hereto as Exhibit C and incorporated herein by this reference (the "Assignment of Intangible Property") and (ii) Seller shall transfer title to the Leases by an assignment of Leases in the form attached hereto as Exhibit D and incorporated herein by this reference (the "Assignment of Leases"), such title in each case to be free of any liens, encumbrances or interests.

4. Due Diligence. As used herein, the term "Due Diligence Period" shall refer to a period of time to expire thirty (30) days after the date of this Agreement. Buyer may elect, by written notice to Seller at any time prior to the expiration of the Due Diligence Period, to terminate this Agreement, which election shall be in Buyer's sole and absolute discretion. If Buyer desires to proceed with the purchase of the Property subject to the remaining conditions set forth in this Agreement (including, without limitation, pursuant to Paragraph 6 below), then on or before the expiration of the Due Diligence Period, Buyer shall deliver written notice to Seller of such election to proceed (the "Buyer's Notice to Proceed"), electing to waive Buyer's right of termination pursuant to this Paragraph 4 and proceed with the Closing subject to the remaining conditions set forth in this Agreement. Buyer's Notice to Proceed shall specify in writing the terms for the Title Policy (including, without limitation, approved exceptions and any required Endorsements) consistent with this Agreement. In any event, Seller, at Seller's sole cost (including, without limitation, costs of any prepayment and/or yield maintenance fees), covenants to cause to be released and reconveyed from the Property, and to remove as exceptions to title prior to the Closing, any mortgages, deeds of trust, or other monetary encumbrances or indebtedness shown on the Preliminary Report except for real property taxes and assessments not delinquent. If Buyer fails to deliver Buyer's Notice to Proceed to Seller prior to the expiration of the Due Diligence Period electing to waive Buyer's right of termination pursuant to this Paragraph 4, then Buyer shall be deemed to have elected to terminate this Agreement. In the event of the termination of this Agreement pursuant to this Paragraph 4, the Deposit plus all interest accrued thereon shall be returned to Buyer and neither party shall have any further obligations to the other hereunder (except under provisions of this Agreement which specifically state that they survive termination).

5. Seller's Deliveries. Seller shall deliver or cause to be delivered

to Buyer all of the following (collectively, the "Due Diligence Materials") at Seller's sole cost and expense by not later than three (3) days after the date of this Agreement:

(a) a current extended coverage preliminary title report on the Real Property, issued by Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report");

(b) to the extent in Seller's possession or control and to the extent Seller has actual knowledge of the existence of any of the same, copies of any and all existing and proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Preliminary Report;

(c) any existing survey(s) of the Real Property in Seller's possession or control, including, without limitation, any "as-built" survey of the Real Property (the parties agreeing that to the extent that Seller does not have a survey within its possession or control sufficient to provide the basis for

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the issuance of the Title Policy, Buyer shall promptly obtain any necessary update or new survey required to provide the basis for the issuance of the Title Policy, and Seller and Buyer shall each be responsible for fifty percent (50%) of the costs thereof);

(d) copies of the most recent property tax and assessment bills for the Property;

(e) all presently effective warranties or guaranties from any contractors, subcontractors, suppliers, servicemen or materialmen not affiliated with Seller in connection with any of the Tangible Personal Property or any construction, renovation, repairs or alterations of the Improvements that can be assigned by Seller (collectively, the "Warranties");

(f) a schedule (the "Schedule of Agreements") setting forth a list of all of the service contracts, utility contracts, maintenance contracts, equipment leases, and brokerage and leasing commission agreements in any way related to the Property (collectively, the "Service Contracts"), together with copies of all such Service Contracts. Unless Buyer specifically provides Seller with "written notice to the contrary" (as hereinafter defined), in the event of the Closing of the purchase of the Property, Buyer shall not retain the existing employees and leasing and management agents of Seller for the Property, and, accordingly, on or prior to the Closing, Seller shall (i) cause all employment, management and leasing agreements respecting the Property to be terminated, and deliver evidence of such termination to Buyer, (ii) remove all employees and management and leasing personnel from the Property, and (iii) deliver any rental units within the Property previously occupied by such employees and/or management and/or leasing personnel in a vacant and tenant-ready condition. Buyer's "written notice to the contrary" pursuant hereto shall be made only by delivery to Seller of a copy of a written agreement or letter of employment with or to such employee and/or management and/or leasing agent executed by Buyer;

(g) to the extent available, insurance claims history for the three (3) most recent calendar years prior to Closing and for the current year;

(h) to the extent in Seller's possession or control, environmental reports, environmental audits, soils reports, site plans (with dimensions), engineering reports and plans, traffic reports, landscape plans, structural calculations, floor plans, as-built plans and specifications, and copies of final certificates of occupancy for all improvements;

(i) a complete inventory of all Tangible Personal Property;

(j) a complete list of Seller's and/or Seller's property manager's employees at the Property, specifying the current compensation of each;

(k) operating statements for the three (3) most recent calendar years prior to Closing and, to the extent available, the current year through March 31, 1996, all of which shall be certified by Seller as true and correct in all material respects;

(l) a copy of the budget for the current year;

(m) (i) a copy of the current standard lease form; and (ii) a current rent roll of the Property, listing for each tenant the name, unit number of leased premises, rent, amount of security deposit and rent paid more than thirty (30) days in advance, lease commencement date, lease termination date, any free rent or other unexpired concessions, if any, any refurbishment or renovation obligations owed to tenants, and a description of any uncured monetary defaults (the "Rent Roll"); and, in addition to the

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foregoing, Buyer shall have the right to review at Seller's management office

for the Property, copies of all existing and pending Leases, lease files and tenant correspondence; and

(n) all governmental permits and approvals held by Seller relating to the construction, operation, use or occupancy of the Property, including without limitation, all certificates of occupancy (in dividually and collectively "Permits").

In addition, Seller shall promptly deliver to Buyer such other non-confidential information relating to the Property that is specifically requested by Buyer of Seller in writing during the Due Diligence Period to the extent such information is in the possession or control of Seller (collectively, the "Other Documents").

6. Conditions Precedent to Closing. The following are conditions precedent to Buyer's obligation to purchase the Property (the "Conditions Precedent"). The Conditions Precedent are intended solely for the benefit of Buyer and may be waived only by Buyer in writing. In the event any condition precedent is not satisfied, Buyer may, in its sole and absolute discretion, terminate this Agreement, and, subject to the provisions of Paragraphs 4 and 7, all obligations of Buyer and Seller hereunder (except provisions of this Agreement which recite that they survive termination) shall terminate and be of no further force or effect.

(a) Buyer's inspection, review and approval, within the Due Diligence Period, of all of the following:

(i) The structural, mechanical, electrical and other physical characteristics and condition of the Property (including without limitation the condition of the soils);

(ii) The Due Diligence Materials and the Other Documents;

(iii) An examination for the presence or absence of "Hazardous Materials" (as hereinafter defined), which shall be performed or arranged by Buyer at Buyer's sole expense;

(iv) All housing, zoning, land-use, subdivision, environmental, life safety, handicapped, building and construction laws and regulations restricting or regulating or otherwise affecting the use, occupancy or enjoyment of the Property (including without limitation the Americans With Dis abilities Act of 1990 ("ADA") and the Fair Housing Amendments Act of 1988 ("FHAA")); and

(v) Three (3) years' audited financial statements of the Seller, which (if the same do not exist) may, at Buyer's option, be performed or arranged by Buyer at Buyer's cost (provided that Seller shall and hereby agrees to provide reasonable cooperation with Buyer and its representatives and provide them with access to Seller's records containing necessary information in connection therewith).

By delivery of the Notice to Proceed, Buyer shall be deemed to have satisfied the Condition Precedent set forth in this subparagraph (a).

(b) The physical condition of the Property shall be substantially the same on the day of Closing as on the date of Buyer's execution of this Agreement, reasonable wear and tear and loss by casualty (subject to the provisions of Paragraph 13 below) excepted.

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(c) As of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened against Seller or the Property, which after Closing would, in Buyer's reasonable judgment, materially adversely affect the value of the Property or the ability of Buyer to operate the Property in the manner in which it is currently being operated, and no proceedings shall be pending or threatened which could or would cause the redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(d) Seller shall have provided Buyer with an accurate and current updated Rent Roll dated within five (5) days prior to Closing, which updated Rent Roll will be used to identify all Leases of space at the Property for purposes of this Agreement, and a certificate executed by Seller certifying that such updated Rent Roll is true and correct in all material respects (including, without limitation, the amount of Security Deposits and description of uncured tenant defaults in payment of rent listed thereon).

(e) Seller shall have fully complied with all of Seller's duties and obligations contained in this Agreement.

(f) All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct in all material respects when made and shall be true and correct in all material

respects as of the Closing Date and Seller shall have delivered to Buyer a certificate to such effect.

(g) Title Company shall have unconditionally committed to issue the Title Policy at the Closing in the form approved by Buyer during the Due Diligence Period in accordance with this Agreement.

7. Remedies.

(a) IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF THE FAILURE OF ANY CONDITION OR ANY OTHER REASON EXCEPT A DEFAULT UNDER THIS AGREEMENT SOLELY ON THE PART OF BUYER, THE DEPOSIT PLUS INTEREST ACCRUED THEREON SHALL IMMEDIATELY BE RETURNED TO BUYER. IF SAID SALE IS NOT CONSUMMATED SOLELY BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER, THE DEPOSIT AND THE INTEREST ACCRUED THEREON SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF A DEFAULT BY BUYER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT PLUS INTEREST ACCRUED THEREON HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT THE SALE OF THE PROPERTY IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. SELLER HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

INITIALS: Seller _____ Buyer _____

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(b) In the event the sale of the Property is not consummated due to Seller's default under this Agreement, Buyer may, in its sole and absolute discretion, avail itself of any and all other legal and equitable remedies available under California law to a buyer of real property upon a default by a seller, including, without limitation, the right to terminate the contract and recover all damages and the right to continue this Agreement pending Buyer's action for specific performance and/or damages hereunder, and no such remedy shall be deemed exclusive or to preclude the pursuit of any other remedy.

(c) Buyer agrees that under no circumstance shall Buyer be entitled to have recovery in respect of Seller's obligations under this Agreement from the limited partners of Seller or, except to the extent of their obligations for funding under promissory notes issued to Seller's general partner, the shareholders of Seller's general partner. Buyer hereby waives any right that it otherwise would have to proceed for recovery in respect of Seller's obligations under this Agreement against the limited partners of Seller or, except as specifically provided above, the shareholders of Seller's general partner.

8. Escrow; Closing.

(a) Upon mutual execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with Escrow Holder and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer shall execute such supplemental Escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental Escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary Escrow instructions signed by Buyer and Seller, the terms of this Agreement shall control.

(b) The parties intend for the Closing to take place on May 21, 1996 or an earlier date mutually agreed upon by the parties (the "Closing Date"). Subject to the provisions of Paragraph 7 above, in the event the Closing does not occur on or before the Closing Date, Escrow Holder shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which were deposited hereunder (except that the Deposit shall be applied or refunded, as applicable, as otherwise provided in this Agreement). Any such return shall not, however, relieve either party of any liability it may have for its wrongful failure to Close.

(c) At or before the Closing, Seller shall deliver to Escrow Holder or Buyer the following:

(i) a duly executed and acknowledged Deed;

(ii) a duly executed Bill of Sale;

(iii) originals of all Leases and two duly executed and acknowledged counterpart originals of the Assignment of Leases;

(iv) originals of the Assigned Contracts and two duly

executed counterpart originals of the Assignment of Intangible Property;

(v) a duly executed affidavit that Seller is not a "foreign person" within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986 in the form attached as Exhibit F and

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incorporated herein by this reference together with a duly executed California Franchise Tax Board Form 590;

(vi) originals of the certificates of occupancy for the Improvements and, to the extent existing in Seller's possession or control, originals of the building permits for the Improvements;

(vii) notices to the Tenants of the occurrence of the sale of the Property in a form designated by Buyer and reasonably approved by Seller during the Due Diligence Period;

(viii) such resolutions, authorizations, bylaws or other corporate and/or partnership documents or agreements relating to Seller and its partners as shall be reasonably required by the Title Company;

(ix) a full release and reconveyance of all monetary encumbrances affecting the Property and of any mechanics' liens, and such bond, indemnity or other arrangements as shall be necessary to cause the Title Company to insure title to the Property as vested in Buyer without any exception for such matters;

(x) a closing statement in form and content satisfactory to Buyer and Seller (the "Closing Statement") duly executed by Seller; and

(xi) any other instruments, records or correspondence called for hereunder which have not previously been delivered.

Buyer may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

(d) At or before the Closing, Buyer shall deliver to Escrow Holder or Seller the following:

(i) the Closing Statement, duly executed by Buyer;

(ii) the Closing Amount;

(iii) two duly executed counterpart originals of the Assignment of Leases; and

(iv) two duly executed counterpart originals of the Assignment of Intangible Property.

(e) (i) The following are to be apportioned as of the Closing Date, with Buyer being deemed to own the Property for the entire day of the Closing Date, as follows:

(1) Rent. Rent under the Leases shall be apportioned as of the Closing Date, based upon actual collections. With respect to any rent arrearages arising under the Leases, after Closing, Buyer shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by Buyer shall be applied first to all unpaid rent accruing after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. Buyer shall not be obligated to take any steps to recover any rent arrearages. Seller shall be permitted to pursue its own remedies for collection of any rent arrearages applicable to the period prior to the Closing Date against tenants no longer in occupancy of the Property provided that Buyer shall incur no cost, expense

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or liability in connection therewith, but Seller shall not be permitted to take any action or enforce any legal or equitable remedies (specifically including commencing eviction procedures) against tenants remaining in occupancy of the Property.

(2) Leasing Costs. Seller shall pay as of the Closing all leasing commission and tenant improvement costs, if any, in connection with any Lease executed on or before the Closing that are or will become due and payable as of the Closing. Buyer shall be entitled to a credit against the Purchase Price for any such commissions or costs incurred in connection with any Lease executed on or before the Closing.

(3) Security Deposits. Buyer shall be entitled to a credit against the Purchase Price for the total sum of all refundable security deposits paid to Seller by tenants under any Leases, and any interest earned thereon, less the portion thereof, if any, which has theretofore been returned to the applicable tenants or applied against the applicable tenants'

obligations in accordance with their respective Leases.

(4) Free Rent, Abatements or Other Unexpired Concessions. Buyer shall be entitled to a credit against the Purchase Price for any free rent, abatements, or other unexpired concessions under any Leases to the extent they relate to any period after the Closing.

(5) Utility Charges. Seller shall provide written notice to the utility companies of the pending change of ownership of the Property not less five (5) days prior to the Closing and shall concurrently therewith delivery copies of such notices to Buyer. Seller shall cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date, except to the extent such utility charges are billed to and paid by tenants directly.

(6) Real Estate Taxes and Special Assessments. General real estate taxes and assessments payable for the fiscal year in which the Closing occurs shall be prorated by Seller and Buyer as of the Closing Date, with Seller being liable for all such real estate taxes and assessments with respect to the period before the Closing Date and Buyer being liable for all such real estate taxes and assessments with respect to the period on or after the Closing Date.

(7) Other Apportionments. Amounts payable under the Assigned Contracts, annual or periodic permit and/or inspection fees (calculated on the basis of the period covered), and liability for other Property operation and maintenance expenses and other recurring costs shall be apportioned as of the Closing Date. Seller shall provide Buyer with written notice of amounts to be so apportioned not less than five (5) days prior to the Closing.

(8) Preliminary Closing Statement. Not less than two (2) business days prior to the Closing, Seller and Buyer shall jointly prepare and approve a preliminary Closing Statement on the basis of the Leases and other sources of income and expenses, and shall deliver such computation to Escrow Holder prior to Closing.

(9) Post-Closing Reconciliation. If any of the aforesaid prorations cannot be definitely calculated on the Closing Date, or if after the Closing Date any error in prorations is discovered, then they shall be estimated at the Closing and definitely calculated as soon after the Closing Date as feasible. As soon as the necessary information is available, Buyer shall conduct a post-Closing audit to determine the accuracy of all prorations (the "Post-Closing Audit"). Either party owing the other party a sum of money based on such subsequent proration(s) or the Post-Closing Audit shall promptly pay

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said sum to the other party, together with interest thereon at the rate of two percent over the "prime rate" (as announced from time to time in the Wall Street Journal) per annum from the Closing Date to the date of payment if payment is not made within ten (10) days after delivery of a bill therefor.

(ii) Closing Costs. Seller shall pay any City and/or County transfer taxes and/or transfer fees applicable to the sale of the Property, and the portion of the premium for the Title Policy allocable to CLTA coverage (with no endorsements). Buyer shall pay the portion of the premium for the Title Policy allocable to ALTA coverage and the cost of any Endorsements requested by Buyer. Buyer and Seller shall each pay fifty percent (50%) of the cost of the ALTA survey or survey update (as applicable) in connection with the issuance of the Title Policy, the fees of Escrow Holder, and recording fees for recording of the Deed. In addition, Seller shall be liable for any prepayment fee or other charge payable in connection with the payoff of any existing indebtedness. All other costs and charges in connection with the purchase and sale of the Property contemplated by this Agreement not otherwise provided for in this Agreement shall be allocated in accordance with the closing customs for Santa Clara County. Buyer and Seller shall each be responsible for their respective legal fees to negotiate and execute this Agreement, to complete the transfer of the Property and, in the case of Buyer, to perform its due diligence review.

(iii) Survival. The provisions of this Subparagraph (e) shall survive the Closing.

9. Representations, Warranties and Covenants of Seller.

(a) As of the date hereof, Seller represents and warrants to, and covenants with, Buyer as follows:

(i) Seller has not received written notice of, and otherwise has no actual knowledge of, any material structural, building-system or mechanical defects of the Property, including, without limitation, the load-bearing components of the Property, the parking lots, the plumbing, heating, air conditioning and electrical and life safety systems and building roofs.

(ii) Seller has not received written notice of, and otherwise has no actual knowledge of, (A) any non-compliance of the Property or the operation thereof with applicable housing and building codes, environmental, zoning and life safety laws, laws, rules and regulations related to handicapped or disabled (including without limitation the ADA and the FHAA), land use laws and regulations, and other applicable local, state and federal laws, codes, requirements and/or regulations (collectively, the "Laws"), or (B) any order or directive of the applicable Department of Building and Safety, Health Department or any other municipal, county, state or federal authority that any work or repair, maintenance or improvement is required to be performed on the Property.

(iii) Seller has not received written notice of, and otherwise has no actual knowledge of, any material misstatement contained in any of the Due Diligence Materials provided by Seller for Buyer's review. Except as set forth on Exhibit E attached hereto, Seller has not received written notice of, and otherwise has no actual knowledge of any default in payment of rent under the Leases or any material defaults by any of the parties to any of the contracts or agreements respecting the Property to be assigned to Buyer at Closing. The Rent Roll is true and correct in all material respects and there are no free rent, abatements, rebates, allowances, or other unexpired concessions or rights under any existing Leases except as specifically set forth in the Rent Roll. No brokerage, finder's or similar fee or commission is due or unpaid by Seller with respect to any Lease of the Property. The Lease files

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maintained at the Property contain all of the information pertaining to any rights of any parties to occupy all or any part of the Property.

(iv) Seller has not received written notice of, and otherwise has no actual knowledge of, (A) any litigation or condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, against Seller or the Property which would materially and adversely affect the ownership, use, operation or value of the Property, or (B) any special assessment proceedings affecting the Property. Seller shall notify Buyer promptly of any such litigation or proceedings of which Seller becomes aware prior to the Closing.

(v) Except as disclosed in the reports listed on Exhibit G, neither Seller nor, to Seller's actual knowledge, any prior owner or occupant of the Property has engaged in or permitted any activity on the Property involving the handling, manufacture, treatment, storage, use, release, or disposal of any "Hazardous Materials" (as hereinafter defined) in violation of applicable federal, state or local Laws relating to the protection of the environment. Except as disclosed in the reports listed on Exhibit G, Seller has not received written notice, and otherwise has no actual knowledge, that removal or other remedial action with respect to Hazardous Materials in, on, under or about the Property is required by any governmental authority having jurisdiction over the Property. For purposes of this Agreement, the term "Hazardous Materials" shall mean any asbestos, petroleum, petroleum products, underground storage tanks now or previously containing Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws relating to the protection of the environment and/or in any regulations and publications promulgated pursuant to said laws.

(vi) Seller is a limited partnership, duly organized and validly existing and in good standing under the laws of the State of Texas and in good standing under the laws of the State of California; this Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are and at the time of Closing will be duly executed and delivered by Seller, and do not and at the time of Closing will not violate any provision of any material agreement or any judicial order to which Seller or the Property is subject. Seller has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(vii) Seller has not granted any option or right of first refusal or first opportunity to any party to acquire any interest in any of the Property.

(b) For purposes of this Agreement, whenever the phrase "to Seller's actual knowledge" or words of similar import are used, they shall be deemed to refer to the actual knowledge of Bruce Dorfman, William W. Thompson and Bob Talbott.

(c) BUYER ACKNOWLEDGES THAT, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER SET FORTH IN THIS AGREEMENT, THE PROPERTY IS BEING PURCHASED ON AN "AS IS" BASIS, AND THAT NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY SELLER EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT. IN CONNECTION WITH THE PURCHASE OF THE PROPERTY, BUYER WAIVES ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR USE OR PURPOSE. EXCEPT TO THE EXTENT RELATING TO (A) ANY BREACH OF ANY OF SELLER'S REPRESENTATIONS, WARRANTIES AND/OR COVENANTS UNDER THIS AGREEMENT AND/OR (B) ANY GOVERNMENTAL OR OTHER THIRD PARTY CLAIMS OR ACTIONS AGAINST BUYER, BUYER (ON BEHALF OF ITSELF AND ALL SUCCESSOR OWNERS OF THE PROPERTY) WAIVES ALL RECOURSE (INCLUDING, WITHOUT LIMITATION, RIGHTS TO INDEMNITY, CONTRIBUTION, REIMBURSEMENT, EQUITABLE APPORTIONMENT AND RECOVERY FOR DIMINUTION IN VALUE OF THE PROPERTY, REGARDLESS OF WHETHER SUCH RIGHTS OTHERWISE WOULD BE AVAILABLE BY STATUTE, AS A MATTER OF COMMON LAW, BASED UPON TORT PRINCIPLES OR OTHERWISE) AGAINST SELLER AND ITS AFFILIATES (INCLUDING THE GENERAL CONTRACTOR FOR THE ORIGINAL CONSTRUCTION OF THE PROPERTY), FOR LOSSES, DAMAGES, COSTS, EXPENSES AND OTHER MATTERS ARISING OUT OF OR RELATING TO (1) THE CONDITION OF THE PROPERTY OR ANY LATENT DEFECTS IN THE PROPERTY OR (2) HAZARDOUS MATERIALS OR ENVIRONMENTALLY-SENSITIVE CONDITIONS EXISTING IN, ON, UNDER OR ABOUT THE PROPERTY (INCLUDING IN THE SOIL, SOIL VAPOR OR GROUND WATER UNDER THE PROPERTY) OR VIOLATIONS OF APPLICABLE FEDERAL, STATE OR LOCAL LAWS RELATING TO THE PROTECTION OF THE ENVIRONMENT. BUYER WAIVES APPLICATION OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF BUYER HAS INITIALED BELOW, ON BEHALF OF BUYER, TO SPECIFICALLY INDICATE SUCH WAIVER.

Initials of Buyer

10. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows: Buyer is a corporation duly organized and validly existing and in good standing under the laws of the State of Maryland and in good standing under the laws of the State of California; this Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are or at the time of Closing will be duly authorized, executed and delivered by Buyer, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Buyer is subject; and Buyer has obtained all necessary authorizations, approvals and consents to the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

11. Continuation and Survival. All representations, warranties and covenants by the respective parties contained herein are intended to and shall be deemed made as of the date of this Agreement, shall be deemed to be material, and unless expressly provided to the contrary shall survive the execution and delivery of this Agreement and the Deed and the Closing but only for a period of twelve (12) months after the Closing Date.

12. Indemnity.

(a) Except for "Losses and Liabilities" (as hereinafter defined) arising directly or indirectly from a breach of any of Buyer's representations or warranties and subject to the provisions of

Paragraph 9(c) above, Seller shall hold harmless, indemnify and defend Buyer, its successors and assigns and their respective agents, employees, officers and directors, from and against any and all obligations, liabilities, claims, liens, encumbrances, demands, losses, damages, causes of action, judgments, costs and expenses (including, without limitation, attorneys' fees and expenses), whether direct, contingent or consequential and no matter how arising ("Losses and Liabilities") in any way (i) related to the Property and attributable to the period prior to the Closing (except to the extent arising as a result of the acts of Buyer and/or any of Buyer's employees, agents or representatives); and/or (ii) resulting from any breach of any representations and warranties by Seller set forth in this Agreement.

(b) Except for Losses and Liabilities arising directly or indirectly from a breach of any of Seller's representations or warranties, Buyer shall hold harmless, indemnify and defend Seller and each person who holds a direct or indirect ownership interest in Seller, their respective successors and assigns, and their respective agents, employees, officers and directors, from and against any and all Losses and Liabilities in any way (i) related to the Property and attributable to the period from and after the Closing during Buyer's period of ownership of the Property (except to the extent arising as a result of the acts from and after the Closing of Seller and/or any of Seller's employees, agents or representatives); (ii) resulting from any breach of any representations and warranties by Buyer set forth in this Agreement; and/or (iii) resulting from the entry onto the Property prior to the Closing by Buyer, its contractors and/or their respective employees, agents, and/or representatives (other than as to the discovery of pre-existing conditions).

(c) As a condition to the obligation of a party (an "Indemnitor") to provide indemnity, defense or reimbursement of defense-related costs pursuant

to this Agreement (including, without limitation, under Paragraph 12(a) or Paragraph 12(b) above), the person seeking indemnity, defense or reimbursement (an "Indemnatee") shall give the Indemnitor prompt notice of any claim or proceeding in respect of which indemnity, defense or reimbursement will be sought; provided that the failure to provide such notice will excuse performance by the Indemnitor only to the extent that the Indemnitor's defense against the related claim is prejudiced. An Indemnitor will have the right to assume and control (with counsel selected by Indemnitor, subject to the reasonable approval of the Indemnatee) the investigation, defense and settlement of any claim in respect of which the Indemnitor is obligated to provide indemnity, defense or reimbursement of defense-related costs. In any case, an Indemnitor will not be liable for any settlement made without its consent.

(d) The provisions of this Paragraph 12 shall survive the Closing or earlier termination of this Agreement.

13. Casualty or Condemnation.

(a) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing Date, and the cost to repair and/or restore such damage and/or destruction (which cost, for purposes of this Paragraph 13, shall be deemed to include reasonably anticipated post-Closing rental loss not compensated by insurance through completion of such repair and/or restoration) exceeds One Hundred Thousand Dollars (\$100,000.00), then Buyer shall have the right to terminate this Agreement by written notice to Seller within ten (10) business days after Buyer's first learning of the occurrence of such casualty. In the event of any such termination, the Deposit, together with all interest accrued thereon, shall be returned to Buyer, Buyer and Seller shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement (except under provisions of this Agreement which specifically state that they survive termination).

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(b) In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing Date where (i) the cost to repair and/or restore such damage and/or destruction does not exceed One Hundred Thousand Dollars (\$100,000.00), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds One Hundred Thousand Dollars (\$100,000.00) but this Agreement is not terminated pursuant to Paragraph 13(a) above as a result thereof, then the Closing Date shall occur as scheduled notwithstanding such damage; provided, however, that Seller's interest in all proceeds of insurance payable by reason of such casualty (except proceeds applied to the repair or restoration of the Property and rental loss insurance proceeds attributable to the period prior to the Closing) shall be assigned to Buyer as of the Closing Date or credited to Buyer if previously received by Seller, and Seller shall be responsible for any insurance deductible (but not any uninsured casualty). Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

(c) In the event a governmental entity commences eminent domain proceedings to take any portion of the Property after the date hereof and prior to the Closing Date, then Buyer shall have the option to terminate this Agreement by written notice to Seller within ten (10) business days after Buyer first learns of such commencement. In the event of any such termination, the Deposit, together with all interest accrued thereon, shall be returned to Buyer, Buyer and Seller shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement (except under provisions of this Agreement which specifically state that they survive termination).

(d) In the event a governmental entity commences eminent domain proceedings to take any part of the Property after the date hereof and prior to the Closing Date and this Agreement is not terminated pursuant to Paragraph 13(c) above as a result thereof, then the Closing Date shall occur as scheduled notwithstanding such proceeding; provided, however, that Seller's interest in all awards arising out of such proceedings shall be assigned to Buyer as of the Closing Date or credited to Buyer if previously received by Seller. Seller's obligations pursuant to the immediately preceding sentence shall survive the Closing.

14. Possession. Possession of the Property (together with all keys to the Property in Seller's possession or control) shall be delivered to Buyer on the Closing Date, subject to the rights of tenants under the Leases. Prior to the Closing Date Seller shall afford authorized representatives of Buyer access to the Property for purposes of satisfying Buyer with respect to the representations, warranties and covenants of Seller contained herein and with respect to satisfaction of any Conditions Precedent to the Closing contained herein, including without limitation an environmental investigation, provided that any intrusive or destructive testing (including any soil borings in connection with Buyer's environmental review) must be approved by Seller in advance.

15. Maintenance of the Property and Property Personnel. Between Seller's execution of this Agreement and the Closing, Seller shall maintain the

Property in good order, condition and repair, reasonable wear and tear and casualty losses excepted, shall perform all work required to be performed by the landlord under the terms of any Lease, and shall make all repairs, maintenance and replacements of the Improvements and any Tangible Personal Property and otherwise operate the Property in a manner consistent with Seller's operating policies as before the making of this Agreement, as if Seller were retaining the Property. Prior to and as of the Closing Date, Seller shall cause all vacant units vacated more than five (5) days prior to the Closing to be made tenant ready and available for occupancy, with carpet and vinyl replaced, if appropriate, in accordance with Seller's operating policies. After full execution of this Agreement and until the Closing, Seller shall maintain all existing personnel on the Property (except personnel who resign) in their current employment positions at their current (or an increased) rate of compensation.

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16. Leasing; Buyer's Consent to New Contracts Affecting the Property. Seller shall not, after the date of Seller's execution of this Agreement, enter into any lease (other than a lease of apartment space on terms consistent with Seller's current leasing policies) or contract affecting the Property, or any amendment thereof, or waive, compromise or settle any rights of Seller under any contract or Lease, or agree to return any security deposit (except as required by the applicable Lease), or modify, amend, or terminate any Service Contract, without in each case obtaining Buyer's prior written consent thereto.

17. Insurance. Through the Closing Date, Seller shall maintain or cause to be maintained, its current insurance coverage at Seller's sole cost and expense.

18. Cooperation with Buyer. Seller shall reasonably cooperate and do all acts as may be reasonably required or requested by Buyer with regard to the fulfillment of any Condition Precedent, without cost to Seller, but Seller's representations and warranties to Buyer shall not be affected or released by Buyer's waiver or fulfillment of any Condition Precedent. Seller hereby authorizes Buyer and its agents to make all reasonable inquiries with and applications to any third party, including any governmental authority, as Buyer may reasonably require to complete its due diligence.

19. Brokers and Finders. In the event that any broker or finder claims a commission or finder's fee based upon any contact, dealings or communication with a party, the party through whom the broker or finder makes its claim shall be responsible for said commission or fee and all costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by the other party in defending against the same. The party through whom any broker or finder makes a claim shall hold harmless, indemnify and defend the other party hereto, its successors and assigns, and their respective agents, employees, officers and directors, from and against any and all obligations, liabilities, claims, demands, liens, encumbrances and losses (including, without limitation, attorneys' fees), whether direct, contingent or consequential, arising out of, based on, or incurred as a result of such claim. The provisions of this Paragraph shall survive the Closing or termination of this Agreement.

20. Marketing. During the term of this Agreement, Seller agrees not to market or show the Property to any other prospective purchasers or accept any back-up offers for the Property from any other prospective purchasers.

21. Publicity and Confidentiality. Seller and Buyer each agrees that the terms of the transaction contemplated by this Agreement, the existence of this Agreement and all information made available by one party to the other shall be maintained in strict confidence and no disclosure of such information will be made by Seller or Buyer, whether or not the transaction contemplated by this Agreement shall close, except to such attorneys, accountants, investment advisors, lenders and others as are reasonably required to evaluate and consummate that transaction. Nothing in this Paragraph shall prevent Seller or Buyer from disclosing or accessing any information otherwise deemed confidential under this Paragraph (a) in connection with that party's enforcement of its rights hereunder; (b) pursuant to any legal requirement, any statutory reporting requirement or any accounting or auditing disclosure requirement; (c) in connection with performance by either party of its obligations under this Agreement (including, but not limited to, the delivery and recordation of instruments, notices or other documents required hereunder); or (d) to potential investors, participants or assignees in or of the transaction contemplated by this Agreement.

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22. Miscellaneous.

(a) Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) actual delivery, (ii) one business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, (iii) upon facsimile transmission (except that if the date of such transmission is not a business day, then such notice shall be deemed to be given on the first business day following such transmission), or (iv) two business days after being deposited in the United States mail, registered or certified

mail, postage prepaid, return receipt required, and addressed as follows:

If to Seller: TCR #706 Parkside Limited Partnership
c/o Thompson Residential Company
591 Redwood Highway, Suite 5275
Mill Valley, California 94941
Attention: Mr. Bruce Dorfman
Phone: (415) 381-3001
Fax: (415) 381-3046

with a copy to: Jones, Day, Reavis & Pogue
2001 Ross Avenue, Suite 2300
Dallas, Texas 75201
Attn: Michael K. Ording, Esq.
Phone: (214) 220-3939
Fax: (214) 969-5100

If to Buyer: Bay Apartment Communities, Inc.
4340 Stevens Creek Boulevard, Suite 275
San Jose, California 95129
Attention: Mr. Gilbert M. Meyer, President
Phone: (408) 983-1500
Fax: (408) 984-7060

With a copy to: Cox, Castle & Nicholson, LLP
2049 Century Park East, Suite 2800
Los Angeles, California 90067
Attention: Scott D. Brooks, Esq.
Phone: (310) 284-2295
Fax: (310) 277-7889

or such other address as either party may from time to time specify in writing to the other.

(b) Successors and Assigns. Buyer shall have the right to assign this Agreement prior to Closing to any entity controlling, controlled by or under common control with Buyer without Seller's consent or approval, and Buyer shall have the right to assign this Agreement prior to Closing to any other person or entity subject to Seller's prior written consent, which consent shall not be unreasonably withheld or delayed. Except as allowed by the preceding sentence, neither this Agreement nor the rights of either party hereunder may be assigned by either party. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and permitted assigns.

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(c) Amendments. This Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including without limitation, that certain Letter of Intent dated March 25, 1996 (the "Letter of Intent") which shall be of no further force or effect upon full execution and delivery of this Agreement by the parties.

(f) Time of the Essence. Time is of the essence of this Agreement.

(g) Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

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

BUYER:	SELLER:
BAY APARTMENT COMMUNITIES, INC., a Maryland corporation	TCR #706 PARKSIDE LIMITED PARTNERSHIP, a Texas limited partnership

By: /s/ Gilbert M. Meyer ----- GILBERT M. MEYER, President	By: TC RESIDENTIAL SOUTH BAY ASSOCIATES, INC., a Texas corporation, its general partner
--	---

By: /s/ Clifford Brerring

Print Name: Clifford Brerring

Its: Vice President

[BUYER AND SELLER TO INITIAL SUB-PARAGRAPH 7(a)
AND BUYER TO INITIAL SUB-PARAGRAPH 9(c)]

AGREEMENT FOR PURCHASE AND SALE

AGREEMENT made this day of April, 1996, between CONSOLIDATED SUNSET LIMITED PARTNERSHIP, a California limited partnership, with offices at 10670 North Central Expressway, Dallas, Texas 75231 ("Seller"), and BAY APARTMENT COMMUNITIES, INC., a Maryland corporation, with offices at 4340 Stevens Creek Blvd., Ste. 275, San Jose, California 95129 ("Purchaser");

WITNESSETH THAT PURCHASER AND SELLER HAVE AGREED AS FOLLOWS:

ARTICLE I

AGREEMENT FOR PURCHASE AND SALE

Seller agrees to sell and cause to be conveyed to Purchaser, and Purchaser agrees to purchase, the following property (collectively, the "Project"):

(a) The real property located in the City and County of San Francisco, State of California, described on EXHIBIT 1.1 (the "Land") together with the existing improvements thereon situated and all appurtenances thereto (together, the "Property");

(b) The Seller's interest in any leases affecting the Property;

(c) Seller's right, if any, to the use of the name "Sunset Towers" in connection with the Property; and

(d) All fixtures and articles of personal property attached or appurtenant to or used in connection with the Property which are owned by Seller and located at the Property.

ARTICLE 2

PURCHASE PRICE

2.1 The purchase price (the "Purchase Price") for the Project is Twenty Four Million One Hundred Thousand AND 00/100 DOLLARS (\$24,100,000.00), payable in federal funds for immediate credit to Seller on the Closing Date, in such manner, place and account as Seller may, by prior notice, instruct.

2.2 (a) Within three (3) business days after the execution of this Agreement, Purchaser shall deliver the sum of \$150,000 (the "Initial Deposit") to the Title Company named in Article 5 below ("Escrow Agent") to be held in escrow pursuant to the terms of this Agreement pending the Closing. Upon the expiration of the Inspection Period, Purchaser shall deliver an additional \$250,000 (the "Additional Deposit") to the Escrow Agent to be held as part of the Deposit pursuant to the terms of this Agreement pending the Closing.

(b) As used in this Agreement, the term "Deposit" shall mean, when made pursuant hereto, the Initial Deposit and the Additional Deposit and accrued interest thereon, if any, held by Escrow Agent hereunder. Except as otherwise provided in this Agreement, if Purchaser desires to terminate this Agreement pursuant to a specific right granted to Purchaser in any section of this Agreement, Purchaser shall effect such termination by giving written notice thereof to Seller and Escrow Agent within any applicable time period provided therefore in this Agreement, and upon receipt of such notice, the Escrow Agent shall return the Deposit to Purchaser, this Agreement shall wholly cease and terminate, no party to this Agreement shall have any further claim against, or obligation to, any other party to this Agreement, and the lien, if any, of Purchaser against the Project shall automatically cease and terminate.

ARTICLE 3

PHYSICAL CONDITION OF PROJECT

Purchaser has inspected the Project and will continue to inspect the Project during the hereinafter described Inspection Period to the extent Purchaser deems necessary in connection with the transactions contemplated by this Agreement. Purchaser acknowledges that Seller has not made and does not make and is

unwilling to make any express or implied representations or warranties as to the present, past or future physical condition, income, expenses, operation, legality of occupancy or any other matter affecting or related to the Project except as specifically set forth in this Agreement. No representation, warranty or covenant made by Seller in this Agreement or any document delivered pursuant hereto shall survive the Closing except as expressly provided in this Agreement. Purchaser agrees to purchase the Project in its "AS IS" condition on the Closing Date. Purchaser has not relied upon, and Seller is not liable or bound in any manner, by any verbal or written statements, representations, real estate

brokers' "setups" or information pertaining to the Project furnished by any real estate broker, agent, employee, servant or other persons unless the same are expressly set forth in this Agreement. The delivery of the deed by Seller, and the acceptance of the deed by Purchaser, shall be deemed to be the full performance and discharge of every obligation of Seller to be performed under this Agreement prior to the Closing Date and the truth or waiver of every representation or warranty made by Seller in this Agreement or in any Exhibit attached hereto or in any document, certificate, affidavit or other instrument delivered by Seller or its agents at or in connection with the Closing, except for those warranties, representations and obligations of Seller which this Agreement expressly provides are to survive the Closing.

Seller represents to Purchaser as follows:

(a) to Seller's knowledge, the Project has no material structural defects;

(b) to Seller's knowledge, Seller has not received any notices of violation of any laws, statutes, ordinances, rules or regulations with respect to the Project that remain uncured;

(c) the Project is not subject to any outstanding agreements of sale, rights of first refusals, or other rights of third parties to acquire the Project;

(d) Seller is the legal and equitable owner of fee simple title to the Project;

(e) Seller is not a party to any litigation, arbitration or administrative proceeding relating to the Project other than litigation which has been turned over to Seller's insurance carrier and in which such carrier has accepted defense of such action without reservation of right;

(f) Seller is duly organized, validly existing and in good standing under the laws of the state of California;

(g) Seller has all requisite power and authority, has taken all actions required by its organizational documents and applicable law, and has obtained all consents which are necessary to authorize or enable it to execute and deliver this Agreement, and upon obtaining the approval described in Section 15.12 to consummate the transactions contemplated in this Agreement, and to perform all of its obligations under this Agreement;

(h) to Seller's knowledge, Seller has not received any notices of violation (and Seller has no knowledge of any violation) of any laws, statutes, ordinances, rules or regulations with respect to the environmental condition of the Project; and

(i) all management contracts and employment contracts with respect to the Project will be terminated as of Closing.

As used herein, the term "Seller's knowledge" shall mean the current actual knowledge, without investigation other than reasonable inquiry of the property manager, of the Seller's "asset manager" for the Project, being the officer of Seller's general partner with direct oversight responsibility for the Project.

ARTICLE 4

PERMITTED ENCUMBRANCES TO TITLE

Purchaser agrees to accept title to the Property subject to the following matters (collectively, the "Permitted Encumbrances"):

(a) written leases for apartment space within the Property.

(b) Liens securing payment of all non-delinquent ad valorem, intangible and other non-delinquent real and personal property taxes, special and general assessments, school taxes, and water and sewer

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charges against the Property or the personal property covered by this Agreement for the tax year in which the Closing Date occurs and subsequent years.

(c) Zoning ordinances and regulations and building restrictions and regulations affecting the Property on the Closing Date.

ARTICLE 5

CONDITION OF TITLE, TITLE INSURANCE

5.1 Seller shall promptly deliver a copy of its existing survey for the Project, if any, to Purchaser. Seller shall promptly obtain from Commonwealth Land Title Insurance Company or its agent, (the "Title Company") a preliminary

title report or commitment (the "Title Commitment") to issue an ALTA Owner's Extended Coverage Policy of Title Insurance (1970 Form B, Rev. 10/17/70) (the "Title Policy") insuring Purchaser's title to the Property in the amount of the Purchase Price, subject only to the Permitted Encumbrances and other liens and encumbrances not constituting objections to title in accordance herewith. A copy of the Title Commitment and the documents of record reflected therein shall be furnished to the Purchaser. On or before the expiration of the Inspection Period, Purchaser shall give written notice (the "Objection Notice"), which may be included in Purchaser's Ratification Notice (defined in Article 14), to the attorneys for Seller of any conditions of title which Purchaser is not obligated to take the Property subject to pursuant to the provisions of this Agreement (the "Objections") separately specifying and setting forth each of such Objections. If Purchaser timely gives Seller an Objection Notice, then all matters disclosed on the Title Commitment which are not objected to in such Objection Notice shall be deemed to be Permitted Encumbrances. If Purchaser fails to timely give Seller an Objection Notice, then all matters disclosed on the Title Commitment shall be deemed to be Permitted Encumbrances.

5.2 Seller shall not be required, however, to expend any money or bring any action or proceeding or do any other thing in order to deliver the Project or title to the Property as required by this Agreement; provided, however, that Seller agrees to pay off any deeds of trust and satisfy or caused to be released any other monetary liens on or before Closing. If Seller gives Purchaser notice (the "Response Notice") that Seller is unable to convey the Project or title to the Property as required by this Agreement, Purchaser may, as its exclusive remedy, elect by written notice given to Seller within five (5) days after the Response Notice is given, either (a) to accept such title as Seller is able to convey without any reduction or abatement of the Purchase Price, or (b) to terminate this Agreement in which event the Deposit shall be returned to Purchaser.

If Purchaser fails to give notice of its election to accept Seller's title within such five (5) day period, Purchaser shall be deemed to have elected to terminate this Agreement and the Deposit shall be returned to Purchaser.

5.3 The existence of liens or encumbrances other than the Permitted Encumbrances or those which are permitted by this Agreement shall be deemed to be Permitted Encumbrances if the Title Company will insure Purchaser's title clear of the matter or will insure against the enforcement of such matter out of the Property in a manner reasonably acceptable to Purchaser. Unpaid liens for real estate and personal property taxes for years prior to the fiscal year in which the Closing Date occurs and any other matter which Seller is obligated to pay and discharge at the Closing shall not be deemed objections to title, but the amount thereof chargeable to Seller, plus interest and penalties thereon, if any, shall be deducted from the Purchase Price on the Closing Date and paid to the Title Company for the payment of such matters.

5.4 Seller shall pay the deed transfer tax and one half of the escrow fees of the Title Company. Purchaser shall pay the cost of obtaining the Title Commitment, Title Policy, and the recording costs and expenses in connection with the Closing.

ARTICLE 6

CLOSING

6.1 The consummation of the transactions described in this Agreement (the "Closing") shall occur on June 14, 1996, provided, however, that if such date falls on a Saturday, Sunday, or holiday on which banks

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located in the vicinity of the Property are closed, the Closing shall occur on the second business day thereafter (the "Closing Date") commencing at 10:00 A.M. local time, at the offices of the Escrow Agent. TIME IS OF THE ESSENCE IN REGARD TO THE PERFORMANCE BY PURCHASER AND SELLER OF ALL OF THE PROVISIONS OF THIS AGREEMENT.

6.2 Upon Purchaser's delivery of all required documents and instruments and its payment of the Purchase Price and other amounts required herein, Purchaser and Seller shall prepare and sign a closing statement reflecting the adjustments and payments made and agreements in connection therewith. The parties shall deliver a copy of the closing statement and all of the aforesaid documents to the Title Company which shall do the following:

(a) Record the deed.

(b) Deliver to Seller and Purchaser or other appropriate party the documents and payments delivered to it as escrow holder for delivery to such party.

(c) Pay all recording taxes and transfer fees and all filing fees reflected on the closing statement.

6.3. It is a condition to Purchaser's obligation to close that at Closing

(i) the Purchaser receives the Title Company's commitment to insure Purchaser's title subject only to the Permitted Encumbrances and other matters not deemed objections to title hereunder, and (ii) Seller is not in default under this Agreement.

ARTICLE 7

DOCUMENTS REQUIRED ON CLOSING DATE

7.1 At or prior to the Closing, Seller shall execute and/or deliver the following to Purchaser:

(a) Grant Deed.

(b) Bill of Sale and Assignment of Leases, Warranties and Service Contracts, pursuant to which Seller assigns and conveys to Purchaser (i) all personal property covered by this Agreement, (ii) all service contracts and all other service agreements relating to the Project, (iii) Seller's interest as landlord in and to all tenant leases of portions of the Property, and (iv) to the extent transferable, any warranties, operating permits, and the Seller's right, if any, to the use of the name "Sunset Towers" in connection with the Property.

(c) Plans and specifications for the Property, if in the possession of Seller, which shall be delivered to Purchaser at the Property.

(d) A rent roll for the Property certified by Seller (the "Rent Roll") listing each tenant, the monthly base rent payable, lease expiration date and unapplied security deposit as of the Closing Date, and any unexpired tenant concessions.

(e) The originals or copies (to the extent the originals cannot be located) of the leases described in the Rent Roll, and all tenant files, which shall be delivered to Purchaser at the Property.

(f) Authority documents of Seller authorizing the execution, delivery and performance by Seller of this Agreement and each document to be executed and delivered by Seller in connection with this Agreement and designating one or more officers to execute documents in the Seller's name in connection herewith, certified as correct and complete by Seller together with an incumbency certificate for each person executing documents on behalf of Seller.

(g) All costs and fees required to be paid by Seller pursuant to ARTICLE 8.

(h) Such other documents and instruments as may be required by this Agreement or by the Title Company in order to consummate the transactions described in this Agreement and to issue the Title Policy to Purchaser.

(i) A non foreign affidavit for Seller complying with the requirements of Internal Revenue Code Section 1445(f)(3) and the regulations promulgated thereunder, and California withholding Form 590.

(j) A written notice of the acquisition of the Property by Purchaser, originally executed by Seller and Purchaser, which Seller shall transmit to all tenants and to other parties affected by the sale and

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purchase of the Property. Such notice shall be prepared by the Seller and shall be subject to Purchaser's reasonable approval, and shall inform the addressees of the sale and transfer of the Property to Purchaser and contain appropriate instructions relating to the payment of future rentals, the giving of future notices, and other matters reasonably required by Purchaser. The said notices shall specify that unapplied security deposits under the tenant leases have been delivered to the Purchaser and that the Purchaser is responsible for the refund thereof and shall be adequate under local law to relieve Seller of all liability for return of such deposits.

7.2 At or prior to the Closing, Purchaser shall execute and/or deliver the following to Seller:

(a) The Purchase Price.

(b) Assumption by Purchaser of Seller's obligations under the leases and service contracts with respect to the period from and after Closing.

(c) Authority documents of Purchaser authorizing the execution, delivery and performance by Purchaser of this Agreement and each document to be executed and delivered by Purchaser in connection with this Agreement and designating one or more officers to execute documents in the Purchaser's name in connection herewith, certified as correct and complete by Purchaser together with an incumbency certificate for each person executing documents on behalf of Purchaser.

(d) All costs and fees required to be paid by Purchaser pursuant to ARTICLE 8.

(e) A written notice of the acquisition of the Property by Purchaser, originally executed by Seller and Purchaser, which Seller shall transmit to all tenants and to other parties affected by the sale and purchase of the Property. Such notice shall be prepared by the Seller and shall be subject to Purchaser's reasonable approval, and shall inform the addressees of the sale and transfer of the Property to Purchaser and contain appropriate instructions relating to the payment of future rentals, the giving of future notices, and other matters reasonably required by Purchaser. The said notices shall specify that unapplied security deposits under the tenant leases have been delivered to the Purchaser and that the Purchaser is responsible for the refund thereof and shall be adequate under local law to relieve Seller of all liability for return of such deposits.

(f) Such other documents and instruments as may be required in this Agreement or by the Title Company in order to consummate the transactions described in this Agreement.

(g) Such other instruments, affidavits and tax returns as are customarily executed by the purchaser of an interest in real property in connection with the recording of a deed.

ARTICLE 8

APPORTIONMENTS AND ADJUSTMENTS

8.1 Seller shall be responsible for and pay all accrued expenses with respect to the Project accruing up to 11:59 P.M. on the day prior to the Closing Date (the "Adjustment Date") and shall be entitled to receive and retain all revenue from the Project with respect to the period accruing up to the Adjustment Date. Purchaser shall be responsible for and pay all accrued expenses with respect to the Project accruing after the Adjustment Date and shall be entitled to receive and retain all revenue from the Project with respect to the period accruing after the Adjustment Date.

8.2 On the Closing Date, the following adjustments and apportionments shall be made in cash as of the Adjustment Date:

(a) (i) Rents for the month in which the Closing Date occurs (the "Closing Month"). If past due rents are owing by tenants for any period prior to the Closing Month (the "Rent Arrearages"), then promptly after the Closing Date Purchaser shall bill all tenants for such sums and shall use its reasonable efforts to collect all Rent Arrearages. Rents collected by Purchaser after the Closing shall be applied first to current rents due and then to Rent Arrearages. In determining the amounts required to be paid to Seller, Purchaser shall not be permitted to accept any rentals or other amounts from tenants in advance of the due dates therefor. If, as and when the Purchaser collects payments

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from a tenant on account of Rent Arrearages, Purchaser shall hold such funds as trustee for Seller and shall pay an amount equal to the Rent Arrearages collected during a given month to Seller on or before the tenth day of the next following month.

(ii) After the Closing, Purchaser shall deliver to Seller a monthly collection report for any month in which Rent Arrearages were collected or after Seller's request, showing the sum, if any, paid by each tenant at the Property and the unpaid balance owed by such tenant pursuant to its lease through the end of such calendar month; such collection report shall be delivered to Seller within ten (10) days after the last day of any month in which Rent Arrearages, were collected or within ten days after Seller's request until Seller has received all Rent Arrearages. The Seller shall have the right to review and audit the Purchaser's records with respect to the tenants who have Rent Arrearages at Closing.

(b) Real estate taxes, ad valorem taxes, school taxes, assessments and personal property, intangible and use taxes, in any.

(c) Charges under service contracts affecting the Project on the Closing Date and utility charges and deposits relating to the Project.

(d) Water and sewer charges on the basis of the period for which assessed.

8.3 At the Closing, Purchaser will receive a credit against the Purchase Price in an amount equal to all unapplied security deposits payable to tenants and interest thereon, if required by applicable law or the terms of the leases, and prepaid rents paid by tenants under leases in effect on the Closing Date against Purchaser's receipt and indemnification therefor. Upon making such credit, Purchaser will be deemed to have received all such security deposits and

shall be fully responsible for the same as if a cash amount equal to such security deposits were actually delivered to Purchaser. Prior to the Closing, Seller reserves the right to apply all security deposits as provided under the respective leases.

8.4 The provisions of this ARTICLE 8 shall survive the Closing.

ARTICLE 9

REMEDIES

9.1 IN THE EVENT THE SALE OF THE PROJECT IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF PURCHASER, THE DEPOSIT SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A DEFAULT BY PURCHASER, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF PURCHASER. SELLER HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

<TABLE>	
<S>	
/s/ BAE	<C> /s/ GMM
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Seller's Initials	Purchaser's Initials
</TABLE>	

9.2 If the sale contemplated by this Agreement is not consummated because of Seller's failure to perform its obligations hereunder, Purchaser shall be entitled, as its exclusive remedies, to elect either (a) to terminate this Agreement and have the Deposit returned to it or (b) to enforce specific performance of Seller's obligations under this Agreement; provided, however, that Seller shall not be required to expend any money other than the amounts provided in ARTICLE 8, or take any action other than delivery of the items provided in ARTICLE 7, in connection with such specific performance, or (c) to terminate this Agreement

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and have the Deposit returned to it and seek damages for reimbursement of Purchaser's actual out-of-pocket expenses not in excess of \$50,000.

9.3 The non breaching party shall also be entitled to recover against the breaching party its costs and expenses, including reasonable attorneys fees and court costs, incurred by such non breaching party in enforcing any of the its remedies hereunder.

ARTICLE 10

DAMAGE, DESTRUCTION OR CONDEMNATION

10.1 Seller agrees to maintain its present policies of fire insurance covering the Project in full force and effect from the date of this Agreement through and including the Closing Date.

10.2 If on or before the Closing Date either (a) all or a substantial part of the improvements on the Land is damaged or destroyed by fire or the elements or by any other cause, or (b) all or a substantial part of the Property is taken by condemnation or other power of eminent domain, Purchaser may, by written notice given to the Seller within ten (10) days after Purchaser shall have notice of the occurrence or the taking (but in no event after the Closing Date), elect to terminate this Agreement.

10.3 If either (a) a substantial part of the improvements on the Land is damaged or destroyed or a substantial part of the Property is taken by condemnation or other power of eminent domain but this Agreement is not canceled as provided in Section 10.2, or (b) on or before the Closing Date, an insubstantial part of the improvements on the Land is damaged or destroyed or an insubstantial part of the Property is so taken, then neither Seller nor Purchaser shall have the right to terminate this Agreement based upon such damage, destruction or taking, and on the Closing Date,

(i) Seller shall credit the Purchase Price with an amount equal to any sums of money collected by Seller under its policies of insurance or renewals thereof insuring against the loss in question (after deducting (1) any expenses incurred by Seller in collecting such insurance and (2) any amount that Seller shall have paid, agreed to pay, or shall have been obligated to pay for repairs or restoration of the damage), and Seller shall assign, transfer and set over to Purchaser all of Seller's right, title and interest in and to said policies with respect to the Property and any further sums payable under said policies, and

(ii) Seller shall assign, transfer and set over to Purchaser all of Seller's right, title and interest in and to any awards that may be made for any taking by condemnation or other power of eminent domain.

10.4 For the purposes of this Article, a substantial part of the Property or the improvements on the Land shall be deemed to mean a portion having a value of \$100,000 or more or which would require expenditure of \$100,000 or more for repair or restoration.

ARTICLE 11

BROKER

11.1 Purchaser represents and warrants to Seller that neither Purchaser nor any entity related to Purchaser has dealt with any broker or other person or entity claiming by, through or under Purchaser, who would be entitled to a commission or other brokerage fee from Seller in connection with the transactions described in this Agreement. Purchaser agrees to indemnify, defend and hold the Seller harmless of and from any loss, cost, damage or expense (including reasonable attorneys' fees and court costs) arising out of any inaccuracy in the representation or warranty made by Purchaser in this Section 11.1.

11.2 Seller represents and warrants to Purchaser that neither Seller nor any entity related to Seller has dealt with any broker or other person or entity claiming by, through or under Seller who would be entitled to a commission or other brokerage fee from Purchaser in connection with the transactions described in this Agreement. Seller agrees to indemnify, defend and hold the Purchaser harmless of and from any loss, cost, damage or expense (including reasonable attorneys' fees and court costs) arising out of any inaccuracy in the representation or warranty made by Seller in this Section 11.2.

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11.3 Notwithstanding any other provision of this Agreement to the contrary, the provisions of this Article shall survive the Closing and any prior termination of this Agreement for any reason whatsoever.

ARTICLE 12

NOTICES

Any notice given or required to be given pursuant to any provision of this Agreement shall be in writing and shall either be personally delivered or sent by facsimile or reputable commercial courier service guaranteeing overnight delivery, and shall be deemed to have been given upon receipt if personally delivered or sent by facsimile, or, upon delivery to such courier, with delivery charges prepaid, if sent by such a courier, in either case addressed as follows:

Purchaser: Bay Apartment Communities, Inc.
4340 Stevens Creek Blvd., Ste. 275
San Jose, California 95129
Attn: Geoffrey Baker
Fax: 408-984-7060
Phone: 408-983-1500

with a copy to: Scott Brooks, Esq.
Cox, Castle & Nicholson
2327 Green Street, #2
San Francisco, California 94123
Fax: 415-775-5053
Phone: 415-775-3937

Seller: Consolidated Sunset Limited Partnership
10670 North Central Expressway
Dallas, Texas 75231
Attn: Mark Nardizzi
Fax: 214-696-2567
Phone: 214-692-4788

with a copy to: Cary L. Newburger, Esq.
333 East 49th Street, #3T
New York, New York 10017
Fax: 212-317-0725
Phone: 212-355-3135

Either party may, by giving notice to the other in the manner set forth above, change the address to which notices shall be sent to it, provided that any such change of address shall be effective three (3) days after it is given. The attorney for each party to this Agreement may give notices on behalf of his client with the same force and effect as if such notice was given directly by such party.

ARTICLE 13

ASSIGNMENT

Neither the rights of Purchaser hereunder, nor any portion thereof, may be assigned; provided, however, that upon not less than ten (10) days' prior written notice, which notice to be effective must be accompanied by an executed instrument of assignment and assumption, Purchaser may assign all of its interest in this Agreement and the Deposit to a partnership, corporation or limited liability company owned by the Purchaser.

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ARTICLE 14

INSPECTION PERIOD

Purchaser intends to continue its physical inspection of the Project through and including May 9, 1996 ("Inspection Period"), which inspection shall be at the sole cost and expense of Purchaser. Seller shall assist with such inspection and shall deliver to Purchaser copies of rent rolls, service contracts, and other materials in Seller's possession that Purchaser reasonably requests. Leases, tenant files and certain other information will be made available for Purchaser's inspection at the Project or other place where such information is maintained. Seller shall not be obligated to incur any material cost or expense in obtaining items for Purchaser's inspection. All information received by Purchaser relating to the Project, Seller or its affiliates shall be kept in strict confidence and used solely for the purpose of determining the advisability of proceeding with the transaction described in this Agreement. Purchaser shall have the right to terminate this Agreement if Purchaser, in its sole and absolute discretion, deems the Project or any aspect thereof, to be unsatisfactory. Purchaser may exercise such right to terminate on or before the last day of the Inspection Period (i) by giving Seller written notice of such termination or (ii) by failing to give Seller notice that Purchaser has approved the purchase of the Project and has elected to ratify this Agreement ("Ratification Notice").

If Purchaser does not give Seller a Ratification Notice on or before the last day of the Inspection Period, Purchaser shall be deemed to have irrevocably and absolutely terminated this Agreement pursuant to the provisions of this Article.

ARTICLE 15

MISCELLANEOUS

15.1 This Agreement is binding upon and shall inure to the benefit of the parties hereto, their respective heirs, successors, legal representatives and permitted assigns.

15.2 Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the second business day thereafter.

15.3 This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been executed by each of the parties hereto and delivered to each of the other parties hereto.

15.4 The captions at the beginning of the several paragraphs, Sections and Articles are for convenience in locating the context, but are not part of the context. Unless otherwise specifically set forth in this Agreement to the contrary, all references to Exhibits contained in this Agreement refer to the Exhibits which are attached to this Agreement, all of which Exhibits are incorporated in, and made a part of, this Agreement by reference. Unless otherwise specifically set forth in this Agreement to the contrary, all references to Articles, Sections, paragraphs and clauses refer to portions of this Agreement.

15.5 If any term or provision of this Agreement shall be held to be illegal, invalid, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such remaining term and provision shall be valid and shall remain in full force and effect.

15.6 This Agreement and the other writings referred to in, or delivered pursuant to, this Agreement, embody the entire understanding and contract between the parties hereto with respect to the Project and supersede any and all prior agreements and understandings between the parties hereto, whether written or oral, formal or informal, with respect to the subject matter of this Agreement. This Agreement has been entered into after full investigation by each party and its professional advisors, and neither party is relying upon any statement, representation or warranty made by or on behalf of the other which is not expressly set forth in this Agreement.

15.7 No extensions, changes, waivers, modifications or amendments to or of this Agreement, of any kind whatsoever, shall be made or claimed by Seller or

Purchaser, and no notices of any extension, change, waiver, modification or amendment made or claimed by Seller or Purchaser shall have any force or effect whatsoever,

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unless the same is contained in a writing and is fully executed by the party against whom such matter is asserted.

15.8 This Agreement shall be governed and interpreted in accordance with the laws of the State of California.

15.9 Each party hereto shall pay all charges specified to be paid by them pursuant to the provisions of this Agreement and their own attorney's fees in connection with the negotiation, drafting and closing of this Agreement.

15.10 Purchaser warrants and represents to Seller that, subject to any provisions hereof to the contrary, Purchaser has full power and authority to enter into this Agreement and to perform all of Purchaser's obligations under this Agreement, and that the person executing this Agreement on Purchaser's behalf has been duly authorized and is empowered to bind Purchaser to this Agreement.

15.11 Purchaser and Seller agree that this Agreement has been entered into solely for the benefit of Purchaser and Seller and no other person or entity, it being the intention of Purchaser and Seller that no person or entity not a party to this Agreement shall have any right or standing to (a) bring any action against Purchaser or Seller based on this Agreement, or (b) assume that any provision of this Agreement will be enforced or remain unmodified or unwaived, or (c) assert that it or he is or should be or was intended to be a beneficiary of any provision of this Agreement.

15.12 This Agreement is subject to the approval of the Board of Trustees of Seller's general partner. If such approval is not obtained on or before April 26, 1996, then this Agreement shall be terminated and the Deposit returned to Purchaser.

15.13 Seller agrees not to market or show the Project to any other prospective purchasers during the term of this Agreement.

15.14 Purchaser and Seller each agree that prior to Closing, the terms of the transaction contemplated by this Agreement, the identity of the parties and all information made available by Purchaser to Seller or by Seller to Purchaser or in any way relating to the Purchaser's or Seller's interest in the transaction, shall be maintained in strict confidence and prior to Closing, no disclosure of such information will be made by Purchaser or Seller, whether or not the transaction contemplated by this Agreement shall close, except to such attorneys, accountants, investment advisors, lenders and others as are reasonably required to evaluate and consummate this transaction. Purchaser and Seller further agree that nothing in this Section shall prevent them from disclosing or accessing any information otherwise deemed confidential under this Section (a) in conjunction with that parties enforcement of its rights hereunder; (b) pursuant to any legal requirement, any statutory reporting requirement or any accounting or auditing disclosure requirement; (c) in connection with performance by either party of its obligations under this Agreement (including, but not limited to, the delivery and recordation of instruments, notices or other documents required hereunder); or (d) to potential investors, participants or permitted assignees in or of the transaction contemplated by this Agreement or such party's rights therein.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names by their respective duly authorized representatives on the day and year first above written.

SELLER:	Consolidated Sunset Limited Partnership, a California limited partnership
	By: Continental Mortgage and Equity Trust, a California business trust, its general partner
	By: /s/ BRUCE A. ENDENDYLE ----- Name: Bruce A. Endendyle Title: Executive Vice President
PURCHASER:	Bay Apartment Communities, Inc., a Maryland corporation
	By: /s/ GILBERT M. MEYER ----- Name: Gilbert M. Meyer Title: President

SUNSET TOWER

FIRST AMENDMENT
TO
AGREEMENT FOR PURCHASE AND SALE

THIS FIRST AMENDMENT AGREEMENT (this "Amendment") dated effective as of April 26, 1996, is made between CONSOLIDATED SUNSET LIMITED PARTNERSHIP, a California limited partnership, with offices at 10670 North Central Expressway, Dallas, Texas 75231 ("Seller"), and BAY APARTMENT COMMUNITIES, INC., a Maryland corporation, with offices at 4340 Stevens Creek Blvd., Ste. 275, San Jose, California 95129 ("Purchaser").

WITNESSETH:

Whereas, Purchaser and Seller have entered into a certain Agreement for Purchase and Sale dated April , 1996 (the "Agreement") for the sale and purchase of an apartment project known as Sunset Towers, San Francisco, California (the "Project"); and

Whereas, the parties, have agreed to modify the Agreement, as set forth herein.

Now, therefore, the Purchaser and Seller agree as follows:

1. Seller has received the approval of the Board of Trustees of Seller's general partner pursuant to the provisions of Section 15.12.

2. At Purchaser's request, Seller agrees not to rent apartment units at the Project to new tenants following May 9, 1996. Nothing herein shall prohibit the renewal of any existing lease. Purchaser shall pay Seller the market rent shown on Seller's Rent Roll for each such unrented unit covering the period from the date the unit became available for rental to the earlier of (a) the Closing Date, or (b) the termination of the Agreement. Such payment shall be due and payable on the earlier of the Closing Date or the date of termination of the Agreement. Purchaser's obligations in this paragraph shall survive any termination of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names by their respective duly authorized representatives.

SELLER:	Consolidated Sunset Limited Partnership, a California limited partnership
	By: Continental Mortgage and Equity Trust, a California business trust, its general partner
	By: _____
	Name: _____
	Title: _____

PURCHASER:	Bay Apartment Communities, Inc., a Maryland corporation
	By: /s/ GEOFFREY L. BAKER _____
	Name: Geoffrey L. Baker
	Title: Chief Development and Acquisition Officer

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SECOND AMENDMENT
TO
AGREEMENT FOR PURCHASE AND SALE

THIS SECOND AMENDMENT TO AGREEMENT (this "Amendment") dated effective as of May 7, 1996, is made between CONSOLIDATED SUNSET LIMITED PARTNERSHIP, a California limited partnership, with offices at 10670 North Central Expressway, Dallas, Texas 75231 ("Seller"), and BAY APARTMENT COMMUNITIES, INC., a Maryland corporation, with offices at 4340 Stevens Creek Blvd., Ste. 275, San Jose, California 95129 ("Purchaser").

WITNESSETH:

Whereas, Purchaser and Seller have entered into a certain Agreement for Purchase and Sale dated April , 1996 as amended by First Amendment to Agreement for Purchase and Sale (as amended, the "Agreement") for the sale and purchase of an apartment project known as Sunset Towers, San Francisco, California (the "Project"); and

Whereas, the parties have agreed to modify the Agreement, as set forth herein.

Now, therefore, the Purchaser and Seller agree as follows:

1. The Inspection Period (as defined in Article 14 of the Agreement) shall expire at 5:00 P.M. Dallas, Texas time on May 10, 1996.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names by their respective duly authorized representatives.

SELLER: Consolidated Sunset Limited Partnership,
a California limited partnership

By: Continental Mortgage and Equity Trust,
its general partner

By: /s/ BRUCE A. ENDENDYLE

PURCHASER: Bay Apartment Communities, Inc.,
a Maryland corporation

By: /s/ GILBERT M. MEYERS

President

REVOLVING LOAN AGREEMENT

dated as of May 8, 1996

among

BAY APARTMENT COMMUNITIES, INC.,
as Borrower,UNION BANK OF SWITZERLAND
(New York Branch),
as Co-Agent and Bank

and

UNION BANK OF SWITZERLAND
(New York Branch),
as Administrative Agent

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REVOLVING LOAN AGREEMENT dated as of May 8, 1996 among BAY APARTMENT COMMUNITIES, INC., a corporation organized and existing under the laws of the State of Maryland ("Borrower"), UNION BANK OF SWITZERLAND (New York Branch), (in its individual capacity and not as Administrative Agent, "UBS") and UNION BANK OF SWITZERLAND (New York Branch), as administrative agent for the Banks (in such capacity, together with its successors in such capacity, "Administrative Agent"; UBS and the other lenders who from time to time become Banks pursuant to Section 3.07 or 12.05, each a "Bank" and collectively, the "Banks").

Borrower desires that each Co-Agent (as hereinafter defined) and the other Banks extend credit as provided herein, and each Co-Agent and the other Banks are prepared to extend such credit. Accordingly, Borrower, each Co-Agent, each other Bank and Administrative Agent 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):

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

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

"Administrative Agent's Office" means Administrative Agent's address located at 299 Park Avenue, New York, NY 10171, or such other address in the United States as Administrative Agent may designate by written notice to Borrower and the Banks.

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

"Agreement" means this Revolving Loan Agreement.

"Applicable Lending Office" means, for each Bank and for its LIBOR Loan 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 or Base Rate Loan, as applicable, is to be made and maintained.

"Applicable Margin" means, with respect to the LIBOR Interest Rate 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/ Other Agency Ratings) -----	Applicable Margin (% per annum) -----
<S>	<C>
below BBB-/below Baa3/ other agency equivalent (or unrated)	1.55
BBB-/Baa3/ other agency equivalent	1.45
BBB/Baa2/ other agency equivalent	1.30
BBB+/Baa1/ other agency equivalent	1.15
A-or higher/A3 or higher/ other agency equivalent	1.00.

</TABLE>

"Assignee" has the meaning 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 Loan Commitment" means with respect to each Bank, at any time, such Bank's Pro Rata Share of the Available Total Loan Commitment.

"Available Total Loan Commitment" means (1) the lesser of the Total Loan Commitment or the Borrowing Base less (2) the Mark Apartments Holdback.

"Bank" and "Banks" have the respective meanings specified in the preamble.

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"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, an Interest Period with respect to a LIBOR Loan, or notice with respect to any LIBOR Loan, 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 Loan which shall accrue interest at a rate determined in relation to the Base Rate.

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

"Borrower's Credit Rating" means the rating (or, if more than one, the lower of the ratings) assigned from time to time to Borrower's unsecured and unsubordinated long-term indebtedness by, respectively, S+P, Moody's and/or another rating agency acceptable to Administrative Agent in its sole discretion.

"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.

"Borrowing Base" means, at any time, Combined EBITDA from Restricted Properties at such time divided by (1) in the event Unencumbered Combined EBITDA for the most recently ended calendar quarter for which Borrower is required to have reported financial results pursuant to Section 6.09, annualized (i.e., multiplied by four (4)) is less than \$10,000,000, 15% or (2) otherwise, 12%; provided, however, that the Borrowing Base shall be recalculated from time to time pursuant to Section 2.17, and such recalculated Borrowing Base shall be effective until the next regular quarterly calculation thereof.

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"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 8.25% per annum (i.e., divided by 8.25%), 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 marketable securities 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) 25% 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.

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

"Co-Agent" means UBS, and following such time as Union Bank of California, N.A. ("UBC") becomes a Bank in accordance with Section 12.05 with a Loan Commitment of \$50,000,000, means each of UBS and UBC and "Co-Agents" means UBS and UBC collectively.

"Code" means the Internal Revenue Code of 1986.

"Combined Debt Service" means, for any period of time, (1) 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) 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 plus (b) a deemed annual capital expense charge of \$150 per apartment unit owned by the UJVs.

"Combined EBITDA" means, for any period of time, the sum, without duplication, of (1) revenues less operating expenses and property taxes before Interest Expense, general and administrative expenses (for purposes of this calculation, such general and administrative expenses not to exceed 5% of total revenues), 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 (2) Borrower's beneficial interest in revenues less operating expenses and property taxes before Interest Expense, general and administrative expenses (for purposes of this calculation, such general and administrative expenses not to exceed 5% of total revenues), income taxes, gains or losses

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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, in all cases as reflected in Borrower's Consolidated Financial Statements.

"Combined EBITDA from Restricted Properties" means, at any time, the contribution by the Restricted Properties to Combined EBITDA for the most recently ended calendar quarter for which Borrower is required to have delivered

the certificate required by paragraph (3) of Section 6.09, annualized (i.e., multiplied by four (4)).

"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 Outstanding Indebtedness" means, as of any time, 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.

"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 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.

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"Default Rate" means a rate per annum equal to: (1) with respect to Base Rate Loans, a variable rate 3% above the rate of interest then in effect thereon; and (2) with respect to LIBOR Loans, a fixed rate 3% above the rate(s) of interest in effect thereon (including the Applicable Margin) 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.

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

"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 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.

"Equity Value" means, at any time, (1) Capitalization Value less (2) Total Outstanding Indebtedness.

"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.

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

"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.

"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.

"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.

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

"Interest Expense" means, for any period of time, 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 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, 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.

"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.

"LIBOR Base Rate" means, with respect to any Interest Period therefor, the rate per annum (rounded upwards if necessary to the nearest 1/16 of 1%) quoted at approximately 11:00 a.m., New York time, by the principal New York branch of UBS two (2) Banking Days prior to the first day of such Interest Period for the offering to leading banks in the London interbank market of Dollar deposits in immediately available funds, for a period, and in an amount, comparable to such Interest Period and principal amount of the LIBOR Loan in question outstanding during such Interest Period.

"LIBOR Interest Rate" means, for any LIBOR 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 for the Interest Period therefor divided by (2) one minus the LIBOR Reserve Requirement for such LIBOR Loan for such Interest Period.

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

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"LIBOR Reserve Requirement" means, for any LIBOR 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 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, 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).

"Loan" and "Loans" have the respective meanings specified in Section 2.01.

"Loan Commitment" means, with respect to each Bank, the obligation to make a Loan in the principal amount set forth below:

<TABLE>
<CAPTION>

Bank	Loan Commitment
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<S>	<C>
UBS	\$150,000,000
Total	\$150,000,000

</TABLE>

(subject, however, to the provisions of the third paragraph of Section 2.01)

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

"Majority Banks" means at any time the Banks holding at least 51% of the then aggregate unpaid principal amount of the Loans.

"Mark Apartments" means the 709-unit apartment project owned by Borrower, known as the Mark Apartments, currently under construction on an approximately 17.8-acre parcel of land in Sunnyvale, California.

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"Mark Apartments Holdback" means, at any time (1) prior to completion of the Mark Apartments, the amount by which the estimated costs to complete the Mark Apartments (as determined by Administrative Agent) exceeds the budget for such costs submitted to and approved by Administrative Agent pursuant to Section

4.01(13) and (2) after such completion, zero.

"Material Adverse Change" means either (1) a material adverse change in the status of the business, results of operations or financial condition of Borrower or (2) any event or occurrence of whatever nature which is likely to have a material adverse effect on the ability of Borrower to repay the Loans and otherwise perform its obligations under the Loan Documents.

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

"Maturity Date" means May 1, 1999.

"Moody's" means Moody's Investor Service, Inc.

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

"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.

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"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 that rate of interest from time to time announced by UBS at its Principal Office as its prime commercial lending rate.

"Principal Office" means the principal office of UBS in the United States, presently located at 299 Park Avenue, New York, New York 10171.

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

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

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

"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

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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 holding at least 66 2/3% of the then aggregate unpaid principal amount of the Loans.

"Restricted Properties" means those properties listed in EXHIBIT F.

"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.

"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 Corporation.

"Supplemental Fee Letter" means that certain letter, dated the date hereof, between Administrative Agent and Borrower.

"Total Loan Commitment" means an amount equal to the aggregate amount of all Loan Commitments.

"Total Outstanding Indebtedness" means the sum, without duplication, of (1) Consolidated Outstanding Indebtedness and (2) Borrower's Share of UJV Combined Outstanding Indebtedness.

"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.

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"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 assets, reflected on Borrower's Consolidated Financial Statements, wholly owned, directly or indirectly, by Borrower and not subject to any Lien to secure all or any portion of Secured Indebtedness.

"Unsecured Debt Yield" means, for any calendar quarter, the ratio of (1) Unencumbered Combined EBITDA for such quarter, annualized (i.e., multiplied by four (4)) 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.

ARTICLE II. THE LOANS

Section 2.01 The Loans. Subject to the terms and conditions of this Agreement, each of the Banks severally agrees to make a loan to Borrower (each such loan by

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a Bank, a "Loan"; such loans, collectively, the "Loans") pursuant to which the Bank shall from time to time advance and re-advance to Borrower an amount equal to the excess of such Bank's Available Loan Commitment over all previous advances made by such Bank which remain unpaid. Within the limits set forth herein, Borrower may borrow from time to time under this Section 2.01 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 Section 2.01. The 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 and Base Rate Loan of each Bank shall be maintained at such Bank's Applicable Lending Office for its LIBOR Loan and Base Rate Loan, respectively.

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.

Notwithstanding anything to the contrary contained in this Agreement, UBS shall have no obligation hereunder in respect of a Loan Commitment in excess of \$100,000,000. It is anticipated by UBS and Borrower that, within a short period of time following the Closing Date, UBC will become a Bank pursuant to Section 12.05 with a \$50,000,000 Loan Commitment. Until such time, the Total Loan Commitment hereunder shall be deemed to be \$100,000,000, and at such time the respective Loan Commitments of UBS and UBC shall be \$100,000,000 and \$50,000,000. It is understood that the foregoing does not constitute a commitment by UBC to become a Bank hereunder.

Section 2.02 Purpose. Borrower shall use the proceeds of the Loans for general capital and working capital requirements of Borrower and its Consolidated Businesses and UJVs and for Acquisitions or real estate development, construction or reconstruction costs. In no event shall proceeds of the Loans be used in a manner that would violate Regulation U.

Section 2.03 Advances, Generally. The Initial Advance shall be in the minimum amount of \$1,000,000 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 \$1,000,000 (unless less than \$1,000,000 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.

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Section 2.04 Procedures for Advances. Borrower shall submit to Administrative Agent a request for each advance hereunder, stating the amount requested and certifying the purpose, in reasonable detail, 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. Administrative Agent, upon its receipt and approval of the request for advance, will so notify the Banks. Not later than 11:00 a.m. (New York time) on the date of each advance, each Bank 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, 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; (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; and (3) only five (5) discrete segments of a Bank's 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 Loan corresponding to a proportionate segment of each of the other Banks' 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.

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; and (2) for LIBOR Loans at a rate equal to the applicable LIBOR Interest Rate plus the Applicable Margin. 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 and LIBOR Loans shall not exceed the maximum amount

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permitted under applicable law. Interest shall be calculated for the actual number of days elapsed on the basis of, in the case of both Base Rate Loans and LIBOR 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, for both Base Rate Loans and LIBOR Loans, on the first Banking Day of each calendar month; 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 Administrative Agent, for the accounts of the parties specified therein, the fees provided for in the Supplemental Fee Letter.

(b) Borrower shall, during the term of the Loans, pay to Administrative Agent for the account of each Bank a commitment fee computed on the daily unused Loan Commitment of such Bank, at a rate per annum equal to .15%, calculated on the basis of a year of three hundred sixty (360) days for the actual number of days elapsed. The accrued commitment fee shall be due and payable quarterly in arrears on the tenth (10th) day of August, November, February and May of each year, commencing on the first such date after the Closing Date, and upon the Maturity Date or earlier termination of the Loan Commitments.

Section 2.08 Notes. The 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 "Note"; all such notes, as so amended, modified, extended, severed, assigned, renewed, restated and substituted, collectively, the "Notes"). Each Note shall mature, and all outstanding principal and other sums thereunder shall be paid in full, on the Maturity Date.

Each Bank is hereby authorized by Borrower to endorse on the schedule attached to the 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 Loan, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of the Loan made by such Bank; provided, however, that the failure to make such notation with respect to the Loan or each advance or payment shall not limit or otherwise affect the obligations of Borrower under this Agreement or the Note held by such Bank.

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

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Administrative Agent in the case of the Base Rate Loans, and at least three (3) Banking Days' notice to Administrative Agent in the case of LIBOR Loans, prepay the Loans, provided that (1) any partial prepayment under this Section shall be in integral multiples of \$1,000,000; (2) a LIBOR Loan may be prepaid only on the last day of the applicable Interest Period for such LIBOR Loan; and (3) each prepayment under this Section shall include all interest accrued on the amount of principal prepaid through the date of prepayment.

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, in whole or in part, from time to time, provided that: (1) Borrower shall give notice of each such termination to Administrative Agent 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 must be terminated ratably and simultaneously with those of the other Banks; and (3) each partial termination of the Loan Commitments as a whole (and corresponding reduction of the Total Loan Commitment) shall be in an integral multiple of \$1,000,000.

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

Section 2.11 Method of Payment. Borrower shall make each payment under this Agreement and under the Notes not later than 11:00 A.M. (New York time) on the date when due in Dollars to Administrative Agent at Administrative Agent's Office in immediately available funds. Administrative Agent will thereafter, on the day of its receipt of each such payment, cause to be distributed to each Bank (1) such Bank's ratable 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. 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 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

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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 Loan in accordance with its Pro Rata Share.

Section 2.13 Minimum Amounts. With respect to the 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 \$100,000.

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 10:00 a.m. (New York time) on the number of Banking Days prior to the date of the relevant Election, Conversion or Continuation specified below:

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

Promptly following its receipt of any such notice, Administrative Agent shall so advise the Banks. 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 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.

Section 2.15 Late Payment Premium. Borrower shall, at Administrative Agent's option, pay to Administrative Agent for the account of the Banks a late payment

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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 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) \$50,000,000 less the aggregate amount of all Letters of Credit theretofore issued or (y) the amount of proceeds of the Loans available to be advanced pursuant to Section 2.01 (including taking into account the Mark Apartments Holdback), it being understood that the amount of each Letter of Credit issued and outstanding shall (1) effect a reduction, by an equal amount, of proceeds available to Borrower under the Loans as a whole (such reduction to be allocated to each Bank's Loan ratably in accordance with the Banks' respective Pro Rata Shares) and (2) be treated as advanced as of the date of issuance of the Letter of Credit for purposes of calculating the commitment fee under Section 2.07(b).

(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.

(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 each payable quarterly in arrears (on the first Banking Day of each calendar quarter following the issuance of the Letter of Credit): (1) a fee 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) a fee, for Administrative Agent's own account, computed daily on the amount of the Letter of Credit issued and outstanding at a rate per annum equal to 0.125%. For purposes of this Agreement, the "Banks' L/C Fee Rate" shall mean, at any time, a rate per annum equal to

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the Applicable Margin 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.

(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 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.

Section 2.17 Special Provisions Regarding Advances in Connection with Acquisitions. In the case of each advance relating to an Acquisition, the Borrowing Base shall be recalculated, and adjustments shall be made with respect to determinations of compliance with the covenants contained in Article VIII, all as set forth in this Section, and the making of the advance shall be subject, in addition to the limitations and conditions applicable to advances of the Loans generally, to the satisfaction of the conditions set forth in this Section. As conditions to each advance relating to an Acquisition, Borrower shall be required to submit to Administrative Agent, no later than five (5) Banking Days prior to the date such advance is to be made: (1) a certificate, from the officer of Borrower specified in paragraph (3) of Section 6.09, containing (x) a computation of the Borrowing Base and the Available Total Loan Commitment as specified in clause (b) of said paragraph (3) and (y) covenant compliance calculations as specified in clause (c) of said paragraph (3), except including, in each case, the pro-forma adjustments described below, which certificate shall (a) indicate that the outstanding principal amount under the Notes, together with the amount of the requested advance, does not exceed the Available Total Loan Commitment and (b) demonstrate Borrower's compliance, as of the end of the most recently ended calendar quarter for which financial results are required under Section 6.09 to have been reported by Borrower (the "Reference Date"), with all covenants enumerated in said clause (c) of said paragraph (3), and (2) a certificate by the same officer setting forth the income projected to be generated from such Acquisition for purposes of determining Combined EBITDA and the type of income so generated.

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In connection with each advance of Loan proceeds relating to an Acquisition, the following pro-forma adjustments shall be made to the Borrowing Base/Available Total Loan Commitment and covenant compliance calculations:

(i) Total Outstanding Indebtedness shall be adjusted by adding thereto all indebtedness that is assumed or incurred by Borrower in connection with the Acquisition (and any other Acquisition since the Reference Date);

(ii) Combined EBITDA, for the relevant period(s), shall be adjusted by adding thereto (or subtracting therefrom, in the case of a loss) actual revenues less operating costs before interest expense, income taxes, depreciation, amortization and extraordinary items, for the same period(s), from the acquired property (and any other property acquired since the Reference Date);

(iii) If, upon its Acquisition, the acquired property would become (or any other property acquired since the Reference Date shall have become) part of Unencumbered Wholly-Owned Assets, Unencumbered Combined EBITDA, for the relevant period(s), shall be adjusted by adding thereto (or subtracting therefrom, in the case of a loss) actual income before interest expense, income taxes, depreciation, amortization and extraordinary items, for the same period(s), from the acquired property (and such other acquired property); and

(iv) Interest Expense, Unsecured Interest Expense and Combined Debt Service for the relevant period(s), shall be adjusted by adding thereto interest expense incurred on, respectively, all indebtedness and unsecured indebtedness that is assumed and/or incurred by Borrower in connection with the Acquisition (and any other property acquired since the Reference Date), assuming, for purposes of this calculation, that such indebtedness were to bear interest for the entire relevant period(s) at a rate per annum equal to the LIBOR Interest Rate for an Interest Period of one (1) month, plus 1.55% per annum, as of the date of the Acquisition and would be amortized over a twenty-five (25)-year period.

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 its obligation to

make or maintain a LIBOR 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 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:

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(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 (other than changes in the rate of general corporate, franchise, branch profit, net income or other income tax imposed on such Bank or its Applicable Lending Office by the jurisdiction in which such Bank has its principal office or such Applicable Lending Office); or

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

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

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

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

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

(1) Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the

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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 as provided in this Agreement; or

(2) a Bank reasonably determines (which determination shall be conclusive) 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 for such Interest Period is to be determined do not adequately cover the cost to such Bank of making or maintaining such LIBOR Loan for such Interest Period;

then Administrative Agent shall give Borrower prompt notice thereof, and so long as such condition remains in effect, the Banks (or, in the case of the circumstances described in clause (2) above, the affected Bank) shall be under no obligation to permit Elections of LIBOR Loans, to Convert Base Rate Loans into LIBOR Loans or to Continue LIBOR Loans and Borrower shall, on the last day(s) of the then current Interest Period(s) for the affected outstanding LIBOR Loans, either prepay the affected LIBOR Loans or Convert the affected LIBOR Loans into Base Rate Loans in accordance with 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 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, 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.

Section 3.04 Treatment of Affected Loans. If the obligations of any Bank 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 so affected being herein called an "Affected Loan"), such Bank's Affected Loan shall be automatically Converted into a Base Rate Loan on the last day of the then current Interest Period for the Affected Loan (or, in the case of a 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, 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 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

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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, prepayment, Conversion or Continuation of a LIBOR Loan made by such Bank on a date other than the last day of an applicable Interest Period for such LIBOR Loan 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 therefor in the relevant notice under Section 2.14; or

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

Without limiting the foregoing, such compensation shall include an amount equal to the present value (using as the discount rate an interest rate equal to the rate determined under (2) below) of the excess, if any, of (1) the amount of interest which otherwise would have accrued on the principal amount so paid, prepaid, Converted or Continued (or not Converted, Continued or borrowed) for the period from the date of such payment, prepayment, Conversion or Continuation (or failure to Convert, Continue or borrow) to the last day of the then current applicable Interest Period for the LIBOR Loan (or, in the case of a failure to Convert, Continue or borrow, to the last day of the applicable Interest Period for the LIBOR Loan which would have commenced on the date specified therefor in the relevant notice) at the applicable rate of interest for the LIBOR Loan provided for herein, over (2) the amount of interest (as reasonably determined by such Bank) based upon the interest rate which such Bank would have bid in the London interbank market for Dollar deposits, for amounts comparable to such principal amount and maturities comparable to such period. 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 its LIBOR Loan as a result of a condition described in Section 3.03 or clause (2) of Section 3.02, Borrower may, within ninety (90) days of receipt of such demand or notice (or the occurrence of such other event causing Borrower to be required to pay Additional Costs or causing said Section 3.03 or clause (2) of Section 3.02 to be applicable), as the case may be, give written notice (a "Replacement Notice") to Administrative Agent and to each Bank of Borrower's intention either (x) to prepay in full the Affected Bank's Note and to terminate the Affected Bank's entire Loan Commitment or (y) to replace the Affected Bank with another financial institution (the "Replacement Bank") designated in such Replacement Notice.

In the event Borrower opts to give the notice provided for in clause (x) above, and if the Affected Bank shall not agree within thirty (30) days of its receipt thereof to waive the payment of the Additional Costs in question or the effect of the circumstances described in Section 3.03 or clause (2) of Section 3.02, then, so long as no Default or Event of Default shall exist, Borrower may (notwithstanding the provisions of clause (2) of Section 2.10(a)) terminate the Affected Bank's entire Loan Commitment, provided that in connection therewith it pays to the Affected Bank all outstanding principal and accrued and unpaid interest under the Affected Bank's Note, together with all other amounts, if any, due from Borrower to the Affected Bank, including all amounts properly demanded and unreimbursed under Section 3.01.

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

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amounts properly demanded and unreimbursed under Section 3.01. 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 note shall be issued to the Replacement Bank by Borrower, in exchange for the return of the Affected Bank's Note. Such substitute note shall constitute a "Note" and the obligations evidenced by such substitute note shall constitute "Obligations" for all purposes of this Agreement and the other Loan Documents. In connection with Borrower's execution of substitute notes as aforesaid, Borrower shall deliver to Administrative Agent evidence, satisfactory to Administrative Agent, of all requisite corporate action to authorize Borrower's execution and delivery of the substitute notes and any related documents. If the Replacement Bank is not incorporated under the laws of the United States of America or a state thereof, it shall, prior to the first date on which interest or fees are payable hereunder for its account, deliver to Borrower and Administrative Agent certification as to exemption from deduction or withholding of any United States federal income taxes in accordance with Section 10.13. Each Replacement Bank shall be deemed to have made the representations contained in, and shall be bound by the provisions of, Section 10.13.

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

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

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;

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(2) Notes. The Note in the amount of \$150,000,000 for UBS, duly executed by Borrower;

(3) Financials of Borrower. Audited Borrower's Consolidated Financial Statements as of and for the year ended December 31, 1995;

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

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

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

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

(8) Opinion of Counsel for Borrower. A favorable opinion, dated the Closing Date, of Goodwin, Procter & 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;

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

(13) Mark Apartments. A complete project budget regarding the construction of the Mark Apartments;

(14) Covenant Compliance. A covenant compliance certificate of the sort required by paragraph (3) of Section 6.09; and

(15) Additional Materials. Such other approvals, documents, instruments or opinions as Administrative Agent or either 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;

(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 as of the date of the advance;

(4) Administrative Agent shall have received a request for an advance in accordance with Section 2.04; and

(5) In the case of each advance in connection with an Acquisition, the conditions set forth in Section 2.17 shall have been satisfied.

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:

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

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

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

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

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 December 31, 1995 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.

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.

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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. 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. Borrower's Consolidated Financial Statements most recently delivered to the Banks pursuant to the terms of this Agreement are in all material respects complete and correct and fairly present the financial condition of the 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 Borrower's Consolidated Financial Statements.

Section 5.14 Valid Existence of Affiliates. At the Closing Date, the only Material Affiliates of Borrower are listed on EXHIBIT C. Each Material Affiliate is a corporation duly organized and existing in good standing under the laws of the jurisdiction of its formation. As to each Material Affiliate, its correct name, the jurisdiction of its formation, Borrower's

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

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

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

ARTICLE VI. AFFIRMATIVE COVENANTS

So long as any of the Notes shall remain unpaid or the Loan Commitments remain in effect, or any other amount is owing by Borrower to any Bank 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.

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.

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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. The foregoing shall include, without limitation, the right of inspection and review by Administrative Agent, its agents and representatives (including an engineering firm selected by it) of the Mark Apartments and of all project work and budget compliance in respect thereof.

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 each of the Banks:

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

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

(3) Certificate of No Default and Financial Compliance. Within 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) setting forth the computation of the Borrowing Base and the Available Total Loan Commitment; (c) stating that the covenants contained in Sections 7.02, 7.03 and

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7.04 and in Article VIII have been complied with (or specifying those that have not been complied with) and including computations demonstrating such compliance (or non-compliance); (d) setting forth the details of all items comprising Total Outstanding Indebtedness (including amount, maturity, interest rate and amortization requirements), Secured Indebtedness, Unencumbered Combined EBITDA, Interest Expense and Unsecured Indebtedness; (e) containing a schedule of the calculation, prepared by property, of Combined EBITDA for Restricted Properties; and (f) 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 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) in excess of \$25,000,000 together with, in the case of any acquisition of such an asset, copies of all material agreements governing the acquisition and historical financial information and Borrower's projections with respect to the property acquired;

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

(9) Intentionally Omitted.

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(10) Offices. Thirty (30) days' prior written notice of any

change in the chief executive office or principal place of business of Borrower;

(11) 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;

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

(13) 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;

(14) Rent Rolls, Etc.. As soon as available and in any event within forty-five (45) days after the end of each calendar quarter, a rent roll and operating statement for each property directly or indirectly owned in whole or in part by Borrower;

(15) 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;

(16) Mark Apartments. As soon as available and in any event within fifteen (15) days after the end of each calendar quarter, construction progress and budget compliance reports in respect of the Mark Apartments, certified by Borrower to be accurate and complete; and

(17) 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 Available Loan Commitment. If, as a result of a reduction in the Available Total Loan Commitment, the outstanding principal amount under the Notes at any time exceeds the Available 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) (or enter into any agreement to do any of the foregoing).

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.

Section 7.04 Encumbrance of Restricted Properties. At any time, (1) effect a Disposition of, mortgage, hypothecate or otherwise encumber to secure a Debt any of the Restricted Properties or (2) enter into a pledge or agreement not to encumber any of the Restricted Properties.

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 Equity Value. At any time, Equity Value to be less than \$225,000,000.

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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 such calendar quarter and annualized, i.e., multiplied by four (4)), to be less than 2.50 to 1.00.

Section 8.04 Relationship of Combined EBITDA to Combined Debt Service. For any calendar quarter, the ratio of (1) Combined EBITDA to (2) Combined Debt Service (each for such quarter and annualized, i.e., multiplied by four (4)), 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 such calendar quarter annualized (i.e., multiplied by four (4)) to (2) Total Outstanding Indebtedness as of the end of such calendar quarter to be less than 15%.

Section 8.06 Unsecured Debt Yield. For any calendar quarter, Unsecured Debt Yield for such calendar quarter to be less than 12%.

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 and annualized, i.e., multiplied by four (4)), to be less than 1.50 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.

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 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 the due date of such amount; 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 \$10,000,000, 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

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it, in which an adjudication or appointment is made or order for relief is entered, or which petition, application or proceeding remains undismissed or unstayed for a period of sixty (60) days or more; or (e) be the subject of any proceeding under which all or a substantial part of its assets may be subject to seizure, forfeiture or divestiture; or (f) by any act or omission indicate its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or trustee for all or any substantial part of its property; or (g) suffer any such custodianship, receivership or trusteeship for all or any substantial part of its property, to continue undischarged for a period of sixty (60) days or more; or

(6) If one or more judgments, decrees or orders for the payment of money in 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 there shall occur a Material Adverse Change.

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

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such interest, and all such amounts due under this Agreement and under any other Loan Document shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Borrower; and/or (2) exercise any remedies provided

in any of the Loan Documents or by law.

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. Administrative Agent shall not 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 or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Borrower shall pay any fee agreed to by Borrower and Administrative Agent with respect to Administrative Agent's services hereunder.

Section 10.02 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certification, notice or other communication (including any thereof by telephone, telex, telegram or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. Administrative Agent may deem and treat each Bank as the holder of the Loan made by it for all purposes hereof and shall not be required to deal with any Person who has acquired a participation in any Loan or participation from a Bank. As to any matters not expressly provided for by this Agreement or any other Loan Document, Administrative Agent

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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.

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

Section 10.05 Indemnification of Administrative Agent. Each

Bank agrees to indemnify Administrative Agent (to the extent not reimbursed under Section 12.04 or under the applicable provisions of any other Loan Document, but without limiting the obligations of Borrower under Section 12.04 or such provisions), for its Pro Rata Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against Administrative Agent in any way relating to or arising out of this Agreement, any other Loan Document or any other documents contemplated by or referred to herein or the transactions contemplated hereby or thereby (including, without limitation, the costs and expenses which Borrower is obligated to pay under Section 12.04) or under the applicable provisions of any other Loan Document or the enforcement of any of the terms hereof or thereof or of any such other documents or instruments; provided that no Bank shall be liable for (1) any of the foregoing to the extent they arise from the gross negligence or willful

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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.

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 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

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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.

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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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, each of the Co-Agents hereby agrees to maintain a Loan Commitment in an amount no less than 16.67% of the Total Loan Commitment, as the same may be decreased from time to time in accordance with the provisions hereof, and 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 the Parent or a majority-owned subsidiary of such Co-Agent.

Section 10.15 Pro Rata Treatment. Except to the extent otherwise provided, (1) each advance of proceeds of the 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 commitment fee accruing under Section 2.07(b) and clause (i) 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

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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 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,

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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. Amendments to EXHIBIT F may be made by written agreement among Borrower and Co-Agents. No other 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,

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whether or not known to Administrative Agent and the Banks, shall not constitute a waiver of the requirement that all conditions, including the non-performed conditions, shall be required with respect to all future advances. 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.

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 and other than reasonable legal and other costs, fees and charges in connection with the addition of UBC and/or other lenders as Banks pursuant to Section 12.05 having, in the aggregate, a Loan Commitment of \$50,000,000). 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.

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.

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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"), provided, however, that each Participation shall be in the minimum amount of \$10,000,000. In the event of any such grant by a Bank of a

participating interest 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 having a Loan Commitment in an amount of \$30,000,000 or more may at any time assign to any bank or other institution with the acknowledgment of Administrative Agent and the consent of Co- Agents and Borrower, which consent 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 Bank, provided that, in each case, after giving effect to such assignment each Bank's and each Assignee's portion of the Loan will be equal to or greater than \$15,000,000. Upon execution and delivery of such instrument and payment by such Assignee to the Bank of an amount equal to the purchase price agreed between the Bank and such Assignee, 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 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 notes shall be issued to the assigning Bank and Assignee by Borrower, in exchange for the return of the original Note. All such substitute notes shall constitute "Notes" and 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

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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.

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

Section 12.07 Notices. Unless the party to be notified otherwise notifies the other party in writing as provided in this Section, and except as otherwise provided in this Agreement, notices shall be given to Administrative Agent by telephone, confirmed by writing, and to the Banks and to Borrower by ordinary mail or overnight courier, receipt confirmed, addressed to such party at its address on the signature page of this Agreement. Notices shall

be effective (1) if by telephone, at the time of such telephone conversation, (2) if given by mail, three (3) days after mailing; and (3) if given by overnight courier, upon receipt.

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

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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 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

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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 LOAN.

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

BAY APARTMENT COMMUNITIES, INC.

By: /s/ Gilbert M. Meyer

Name: Gilbert M. Meyer

Title: President

Address for Notices:

4340 Stevens Creek Blvd.

Suite 275

San Jose, CA 95129

Attention: Gilbert M. Meyer, President and CEO

Telephone: (408) 556-1815

UNION BANK OF SWITZERLAND

(New York Branch)

(as Co-Agent, Bank and Administrative Agent)

By: /s/ Joseph Bassil

Name: Joseph Bassil

Title: Vice President

By: /s/ Albert Rabil, III

Name: Albert Rabil, III

Title: Vice President

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Address for Notices and Applicable Lending Office for Base Rate Loan and LIBOR Loan:

Union Bank of Switzerland

299 Park Avenue

38th Floor

New York, New York 10171-0026

Attention: Xiomara Martez

Telephone: (212) 821-3872

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AGREEMENT OF LIMITED PARTNERSHIP

OF

BAY COUNTRYBROOK L.P.

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AGREEMENT OF LIMITED PARTNERSHIP OF BAY COUNTRYBROOK L.P.

THIS AGREEMENT OF LIMITED PARTNERSHIP OF BAY COUNTRYBROOK L.P. (this "Agreement"), dated as of __, 1996, is entered into by Bay GP, Inc. a Maryland corporation (the "General Partner"), the Persons (as defined below) whose names are set forth on Exhibit A as attached hereto (as it may be amended from time to time) and Bay Apartment Communities, Inc., a Maryland corporation ("Bay") (for purposes of Articles 8 and 11 and 16.5 only).

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, and do hereby agree as follows:

ARTICLE 1 DEFINED TERMS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement.

"Act" means the Delaware Revised Uniform Limited Partnership Act, as it may be amended from time to time, and any successor to such statute.

"Adjusted Capital Account" means, with respect to any Partner, such Partner's Capital Account maintained in accordance with Section 6.1 hereof, as of the end of the relevant fiscal year of the Partnership, after giving effect

to the following adjustments:

A. Credit to such Capital Account that portion of any deficit Capital Account balance that such Partner is obligated to restore under the terms of this Agreement or any other document, such Partner's share of Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(g)(1) and such Partner's share of Partner Nonrecourse Debt Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(5).

B. Debit to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Treasury Regulations Sections 1.704-1(b)(2) and 1.704-2, and shall be interpreted consistently therewith.

"Adjusted Capital Account Deficit" means, with respect to any Partner, the deficit balance, if any, in that Partner's Adjusted Capital Account as of the end of the relevant fiscal year of the Partnership.

"Adjustment Factor" means 1.0; provided, however, that in the event Bay or its successors in interest (i) declares or pays a dividend on its outstanding REIT Shares in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares in REIT Shares, (ii) splits or subdivides its outstanding REIT Shares, (iii) effects a reverse stock split or otherwise combines its outstanding REIT Shares into a smaller number of REIT Shares or (iv) engages in any Transaction as defined in Article 11 hereof, the effect of which results in a change in the number of outstanding REIT Shares, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction, (1) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination (assuming for such purposes that such dividend, distribution, split, subdivision, reverse split or combination has occurred as of such time) and (2) the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination. Any adjustments to the Adjustment Factor shall become effective immediately after the effective date of such event, retroactive to the record date, if any, for such event; provided, however, that any Limited Partner may waive, by written notice to the General Partner and with the consent of the General Partner, which may be given or withheld in its sole and absolute discretion, the effect of any adjustment to the Adjustment Factor applicable to the Limited Partnership Units held by such Limited Partner, and, thereafter, such adjustment will not be effective as to such Limited Partnership Units.

"Affiliate" means, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting interests of such Person; (iii) any Person of which such Person owns or controls ten percent (10%) or more of the voting interests; or (iv) any officer, director, general partner or trustee of such Person or of any Person referred to in clauses (i), (ii), and (iii) above.

"Agreed Value" means, in the case of any (i) one of the Contributed Properties, the fair market value of such property at the time of contribution as set forth on the Exhibit [-] attached hereto, and (ii) Partnership assets other than cash or the REIT Shares (which shall be valued as provided in Section 8.5 hereof) distributed to a Partner by the Partnership, the Partnership's Book Value of such property at the time such property is distributed, reduced by any indebtedness either assumed by such Partner upon such distribution or to which such asset is subject at the time of distribution as determined under Code Section 752 and the Treasury Regulations thereunder.

"Agreement" means this Agreement of Limited Partnership, as it may be amended, supplemented or restated from time to time.

"Assignee" means a Person to whom one or more Limited Partnership Units have been transferred in a manner permitted under this Agreement, but who has not become a Substituted Limited Partner, and who has the rights set forth in Section 11.5.

"Available Cash" means, with respect to any period for which such

calculation is being made, (a) all cash revenues and funds received by the Partnership from whatever source (excluding the proceeds of any Capital Contribution to the Partnership pursuant to Sections 4.1, 4.3 or 8.5 hereof and excluding Terminating Capital Transaction proceeds) plus the amount of any reduction (including, without limitation, a reduction resulting because the General Partner determines in its sole and absolute discretion such amounts are no longer necessary) in reserves of the Partnership, which reserves are referred to in clause (b) (iv) below;

(b) less the sum of the following (except to the extent made with the proceeds of any Capital Contribution and except to the extent taken into account in determining Capital Transaction Proceeds):

(i) all interest, principal and other debt payments made during such period by the Partnership,

(ii) all cash expenditures (including capital expenditures with respect to tangible and intangible assets) made by the Partnership during such period,

(iii) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clauses (b) (i) or (ii), and

(iv) the amount of any increase in reserves established during such period which the General Partner determines in its sole and absolute discretion are necessary or appropriate.

Notwithstanding the foregoing, Available Cash shall not include any cash received or reductions in reserves, or take into account any disbursements made or reserves established, after commencement of the dissolution and liquidation of the Partnership.

"Bay" means Bay Apartment Communities, Inc., a Maryland corporation.

"Book-Tax Disparity" means, with respect to any item of the Contributed Properties, as of the date of determination, the difference between the Book Value of such property and the adjusted basis of such property for federal income tax purposes.

"Book Value" means, with respect to any of the Contributed Properties, the Agreed Value of such property reduced (but not below zero) by all Depreciation with respect to such property properly charged to the Partners' Capital Accounts and with respect to any other Partnership asset, the asset's adjusted basis for federal income tax purposes; provided, however, (a) the Book Value of all Partnership assets which may be adjusted in the event of a revaluation of Partnership assets in accordance with Treasury Regulations Section 1.704(b) (2) (iv) (f), such fair market value as shall be determined by the General Partner in its reasonable judgment; (b) the Book Value of any Partnership asset other than cash distributed to any Partner shall be the fair market value of such asset on the date of distribution as determined by the General Partner in its reasonable judgment and (c) such Book Value of any Partnership asset shall be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

"Business Day" means any day except a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

"Capital Contribution" means, with respect to any Partner, the aggregate amount of cash and fair market value of any property which such Partner contributes or is deemed to contribute to the Partnership pursuant to Sections 4.1, 4.3 and 8.5 hereof, as reflected in Exhibit A hereto, which shall be appropriately amended from time to time.

"Cash Amount" means the Value of a REIT Shares on the Valuation Date, plus the aggregate amount of any distributions owed to such Qualifying Party pursuant to Section 5.1 hereof with respect to each Limited Partnership Unit tendered which are owed but unpaid.

"Cash Option" has the meaning set forth in Section 8.5.A.

"Certificate" means the Certificate of Limited Partnership relating to the Partnership to be filed simultaneously herewith in the office of the Delaware Secretary of State, as amended from time to time in accordance with the terms hereof and the Act.

"Charter" means the Articles of Incorporation of the General Partner filed with the Maryland State Department of Assessments and Taxation, as amended, supplemented or restated from time to time.

"Code" means the Internal Revenue Code of 1986, as amended and in effect from time to time, as interpreted by the applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"Company" shall mean Bay GP, Inc., the General Partner of the Partnership.

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"Consent" means the consent or approval of a proposed action by a Partner given in accordance with Section 14.2 hereof.

"Contributed Properties" shall mean the properties contributed to the Partnership by the Contributor.

"Contribution Agreement" shall mean the Contribution Agreement dated the ____ of March, 1996, by and among Bay and the Contributor.

"Contribution Date" shall mean the date of the contribution of the Contributed Properties to the Partnership.

"Contributor" shall mean Countrybrook of Berryessa Associates, a California limited partnership.

"Control" means the ability, whether through ownership of partnership interests, of voting securities, or otherwise, to direct the policies and management of any business entity.

"Delivery Date" has the meaning set forth in Section 8.5.B.

"Depreciation" means, for each fiscal year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period for federal income tax purposes, except that if an asset has a Book- Tax Disparity at the beginning of such year or other period (as a result of property contributions or adjustments to such values), Depreciation shall be adjusted as necessary so as to be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to the beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation for such year or other period shall be determined with reference to such beginning Book Value using any reasonable method approved by the General Partner.

"Exchange" has the meaning set forth in Section 8.5.A.

"Exchange Right" has the meaning set forth in Section 8.5.A.

"Exchange Shares" has the meaning set forth in Section 8.5.B hereof.

"Family Member" means, with respect to any natural Person, such natural Person's spouse, children, grandchildren, parents, grandparents, aunts, uncles, nephews and nieces, any person who receives property pursuant to a testamentary transfer of such property or the entities in which all of the beneficial interests are held by such individuals.

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"Final Adjustment" has the meaning set forth in Section 10.3.B(2).

"Fiscal Period" has the meaning set forth in Section 5.1.A.

"General Partner" means the Company, in its capacity as the general

partner of the Partnership, or its successors as general partner of the Partnership.

"General Partner Priority Return" has the meaning set forth in the definition of "Priority Return."

"General Partner Interest" means a Partnership Interest held by the General Partner, in its capacity as general partner.

"Immediate Family" means, with respect to any natural Person, such natural Person's spouse and such natural Person's natural or adoptive parents, descendants, nephews, nieces, brothers, and sisters.

"Incapacity" or "Incapacitated" means, (i) as to any individual Partner, death, total physical disability or entry by a court of competent jurisdiction adjudicating him incompetent to manage his Person or his estate; (ii) as to any corporation which is a Partner, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; (iii) as to any partnership which is a Partner, the dissolution and commencement of winding up of the partnership; (iv) as to any estate which is a Partner, the distribution by the fiduciary of the estate's entire interest in the Partnership; (v) as to any trustee of a trust which is a Partner, the termination of the trust (but not the substitution of a new trustee); or (vi) as to any Partner, the bankruptcy of such Partner. For purposes of this definition, bankruptcy of a Partner shall be deemed to have occurred when (a) the Partner commences a voluntary proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect; (b) the Partner is adjudged as bankrupt or insolvent, or a final and nonappealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Partner; (c) the Partner executes and delivers a general assignment for the benefit of the Partner's creditors; (d) the Partner files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Partner in any proceeding of the nature described in clause (b) above; (e) the Partner seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for the Partner or for all or any substantial part of the Partner's properties; (f) any proceeding seeking liquidation, reorganization or other relief of or against such Partner under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof; (g) the appointment without the Partner's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment; or (h) an appointment referred to in clause (g) which has been stayed is not vacated within ninety (90) days after the expiration of any such stay.

"Indemnitee" means (i) any Person made a party to a proceeding by reason of (A) his status as the General Partner, or as a director, trustee or officer of the Partnership or the General Partner, or (B) his or its liabilities, pursuant to a loan guarantee or otherwise, for any indebtedness of the Partnership or any Subsidiary of the Partnership (including, without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken assets subject to); and (ii) such other Persons (including Affiliates of the General Partner or the Partnership) as the General Partner may designate from time to time (whether before or after the event giving rise to potential liability) in its sole and absolute discretion.

"Initial Limited Partners" shall mean Countrybrook of Berryessa Associates, a California limited partnership and the other Initial Limited Partners listed in Exhibit A.

"IRS" means the Internal Revenue Service, which administers the internal revenue laws of the United States.

"Investment Documents" shall have the meaning set forth in Section 11.4 hereof.

"Limited Partner" shall mean each of the Initial Limited Partners in its capacity as an initial Limited Partner of the Partnership, or its successors as the Limited Partners of the Partnership, or any Substituted Limited Partner, in such Person's capacity as a Limited Partner of the Partnership.

"Limited Partner Interest" means a Partnership Interest of the Limited Partner in the Partnership representing a fractional part of the Partnership Interests of all Partners and includes any and all benefits to which the holder

of such a Partnership Interest may be entitled, as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

"Limited Partnership Units" means the Limited Partnership Interests issued to the Initial Limited Partners.

"Limited Partnership Unit Holders" has the meaning set forth in Section 11.6.

"Liquidating Event" has the meaning set forth in Section 13.1.

"Liquidator" has the meaning set forth in Section 13.2.

"Minimum Gain" shall have the meaning of such term as set forth in Treasury Regulations Section 1.704-2(d), and shall generally mean the amount by which the nonrecourse liabilities secured by any assets of the Partnership exceed the adjusted tax basis of such assets as of the date of determination. A Partner's share of Minimum Gain (and any net

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decrease thereof) at any time shall be determined in accordance with Treasury Regulations Section 1.704-2(g).

"Notice of Exchange" has the meaning set forth in Section 8.5.A.

"Ownership Limit" means the applicable restriction on ownership of shares of Bay imposed under its charter.

"Partner" means a General Partner or a Limited Partner, and "Partners" means the General Partner and the Limited Partners collectively.

"Partner Nonrecourse Debt" shall have the meaning of such term set forth in Treasury Regulations Section 1.704-2(b)(4).

"Partner Nonrecourse Debt Minimum Gain" shall have the meaning of such term set forth in Treasury Regulations Section 1.704-2(i).

"Partner Nonrecourse Deductions" means, the meaning of such term set forth in Treasury Regulations Section 1.704-2(i). Subject to the immediately preceding sentence, Partner Nonrecourse Deductions shall consist of, with respect to any partner nonrecourse debt (as such term is defined in Treasury Regulations Section 1.704-2(b)(4)), the increase in Partner Nonrecourse Debt Minimum Gain during the tax year plus any increase in Partner Nonrecourse Debt Minimum Gain for a prior tax year which has not previously generated a Partner Nonrecourse Deduction hereunder. The determination of which Partnership items constitute Partner Nonrecourse Deductions shall be made in a manner consistent with the manner in which Partnership Nonrecourse Deductions are determined hereunder.

"Partnership" means the limited partnership formed under the Act and pursuant to this Agreement, as it may be amended and restated, and any successor thereto.

"Partnership Interest" means an ownership interest in the Partnership representing a Capital Contribution by either a Limited Partner or the General Partner and includes any and all benefits to which the holder of such a Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement.

"Partnership Year" means the fiscal year of the Partnership, which shall be the calendar year.

"Percentage Interest" with respect to a Limited Partner means the amount determined by dividing such Limited Partner's Unrecovered Capital Amount by the aggregate Unrecovered Capital Amounts of all Limited Partners.

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"Person" means an individual or a corporation, partnership, trust, unincorporated organization, association or other entity.

"Priority Return" means with respect to any Limited Partner an annual rate of return of 7 1/2% on the Unrecovered Capital Amount of such Partner (the "Limited Partners Priority Return") and with respect to the General Partner an annual rate of return of 20% on the Unrecovered Capital Amount of the General Partner (the "General Partner Priority Return").

"Profits and Losses" means, for each fiscal year or other period, an amount equal to the Partnership's taxable income or loss (as the case may be) for such year or period, determined in accordance with Code Section 703(a) (for this period, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

- (1) Any income of the Partnership that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to such taxable income or loss;
- (2) Any expenditures of the Partnership described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition, shall be subtracted from such taxable income or loss (including amounts paid or incurred to organize the Partnership (unless an election is made pursuant to Code Section 709(b)) or to promote the sale of interests in the Partnership and by treating deductions for any losses incurred in connection with the sale or exchange of Partnership property disallowed pursuant to Section 267(a)(1) or Section 707(b) of the Code as expenditures described in Section 705(a)(2)(B) of the Code);
- (3) Gain or loss resulting from any disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of notwithstanding that the adjusted tax basis of such property differs from such Book Value;
- (4) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with the definition of "Depreciation" herein;
- (5) In the event that any item of income, gain, loss or deduction that has been included in the initial computation of Profit or Loss is subject to the special

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allocation rules of Section 6.2.D hereof, Profit or Loss shall be recomputed without regard to such item; and

- (6) In the event of an adjustment of the Book Value of any Partnership asset which requires that the Capital Accounts of the Partnership be adjusted pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(e), (f) and (m), the amount of such adjustment is to be taken into account as additional Profits or Losses pursuant to Section 6.2 hereof.

"Qualified Assignee" has the meaning set forth in Section 11.5 hereof.

"Qualifying Party" means (i) any Limited Partner; (ii) a Substituted Limited Partner; (iii) a Family Member who is the assignee in a permitted transfer under Section 11.3 hereof; or (iv) a Qualified Assignee.

"Regulations" means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"REIT" means a real estate investment trust qualifying under Code Section 856.

"REIT Partner" means a Partner or Assignee that is, or has made an

election to qualify as, a REIT.

"REIT Share" means a share of Bay's Common Stock, par value \$.01 per share, or a share of the common stock of a successor to Bay pursuant to a Transaction.

"REIT Shares Amount" means a number of REIT Shares equal to the product of (i) the number of Tendered Units and (ii) the Adjustment Factor; provided, however, that if Bay issues to all holders of REIT Shares as of a certain record date rights, options, warrants or convertible or exchangeable securities entitling Bay's shareholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, the "Rights"), with the record date for such Rights issuance falling within the period starting on the date of the Notice of Exchange and ending on the day immediately preceding the Specified Exchange Date, which Rights will not be distributed before the relevant Specified Exchange Date, then the REIT Shares Amount shall also include such Rights that a holder of that number of REIT Shares would be entitled to receive, expressed, where relevant hereunder, in a number of REIT Shares determined by the General Partner in good faith.

"Related Party" means, with respect to any Person, any other Person whose ownership of shares of the General Partner's or Bay's capital stock, as applicable, would be attributed to the first such Person under either Code Section 544 (as modified by Code Section 856(h)(1)(B)) or Code Section 318 (as modified by Code 856(d)(5)).

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"Rights" has the meaning set forth in the definition of "REIT Shares Amount."

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Specified Exchange Date" means the date of receipt by Bay of a Notice of Exchange from a Qualifying Party pursuant to the terms and subject to the conditions set forth in Article 8 hereof.

"Subsidiary" means, with respect to any Person, any corporation, partnership or other entity of which a majority of (i) the voting power of the voting equity securities; or (ii) the outstanding equity interests, is owed, directly or indirectly, by such Person.

"Substituted Limited Partner" means a Person who is admitted as a Limited Partner to the Partnership pursuant to Section 11.4.

"Tendered Units" has the meaning set forth in Section 8.5.A hereof.

"Tendering Party" has the meaning set forth in Section 8.5.A hereof.

"Terminating Capital Transaction" means any sale or other disposition of all or substantially all of the assets of the Partnership or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Partnership.

"Transaction" has the meaning set forth in Section 11.2 hereof.

"Transfer," when used with respect to a Limited Partnership Unit or all or any portion of a Partnership Interest, means any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary or involuntary or by operation of law; provided, however, that when the term is used in Article 11 hereof, Transfer does not include (a) any Exchange of Limited Partnership Units by the Partnership, or acquisition of Tendered Units from the Limited Partners by the General Partner, pursuant to Section 8.5 hereof or (b) any exchange of Limited Partnership Units pursuant to Section 8.6 or Section 8.7 hereof. The terms "Transferred" and "Transferring" have correlative meanings.

"Unitholder" means the Holder of Limited Partnership Units.

"Unrecovered Capital Amount" means with respect to the General Partner or a Limited Partner, the Capital Contribution of such Partner less (i) the aggregate distributions to such

Partner pursuant to Section 5.1.B(3) and (ii) with respect to any cash or other distributions made to such Partner or the transfer of REIT Shares to such Partner pursuant to the provisions of Article 8 hereof, an amount equal to the initial Unrecovered Capital Amount of such Partner (or Assignee, Qualified Assignee or Substituted Limited Partner), multiplied by a fraction the numerator of which is the aggregate number of Limited Partnership Units which have been transferred by such Partner (or Assignee, Qualified Assignee or Substituted Limited Partner) to the Partnership or the General Partner in exchange for such cash or REIT Shares and the denominator of which is the total number of Limited Partnership Units initially owned by such Limited Partner (or Assignee, Qualified Assignee or Substituted Limited Partner).

"Valuation Date" means (a) the Specified Exchange Date or, if such date is not a Business Day, the immediately preceding Business Day or (b) in any other case, the date specified in this Agreement.

"Value" means, on any Valuation Date with respect to a REIT Share, the average of the daily market prices for ten (10) consecutive trading days immediately preceding the Valuation Date. The market price for any such trading day shall be the Closing price on the New York Stock Exchange, on such day.

ARTICLE 2 ORGANIZATIONAL MATTERS

Section 2.1 Formation

The Partners hereby form a limited partnership under and pursuant to the Act. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Act. The Partnership Interest of each Partner shall be personal property for all purposes.

Section 2.2 Name

The name of the Partnership shall be Bay Countrybrook L.P. The Partnership's business may be conducted under any other name or names deemed advisable by the General Partner, including the name of the General Partner or any Affiliate thereof. The words "Limited Partnership," "L.P.," "Ltd." or similar words or letters shall be included in the Partnership's name where necessary for the purposes of complying with the laws of any jurisdiction that so requires. The General Partner in its sole and absolute discretion may change the name of the Partnership at any time and from time to time and shall notify the Limited Partners of such change in the next regular communication to the Limited Partners.

Section 2.3 Registered Office and Agent; Principal Office

The address of the registered office of the Partnership in the State of Delaware and the name and address of the registered agent for service of process on the Partnership in the State of Delaware is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801. The principal office of the Partnership shall be 4800 Hampden Lane, Suite 500, Bethesda, MD 20814, or such other place as the General Partner may from time to time designate by notice to the Limited Partners. The Partnership may maintain offices at such other place or places within or outside the State of Delaware as the General Partner deems advisable.

Section 2.4 Power of Attorney

A. Each Limited Partner and each Assignee hereby constitutes and appoints the General Partner, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

- (1) execute, swear to, acknowledge, deliver, file and

record in the appropriate public offices (a) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments or restatement thereof) that the General Partner or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Partnership as a limited partnership (or a partnership in which the Limited Partners have limited liability) in the State of Delaware and in all other jurisdictions in which the Partnership may or plans to conduct business or own property; (b) all instruments that the General Partner deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (c) all conveyances and other instruments or documents that the General Partner or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Partnership pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (d) all instruments relating to the admission, withdrawal, removal or substitution of any Partner pursuant to, or other events described in, Article 11, 12 or 13 hereof or the Capital Contribution of any Partner; and (e) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges of Partnership Interests; and

- (2) execute, swear to, seal, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or

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necessary, in the sole and absolute discretion of the General Partner or any Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action which is made or given by the Partners hereunder or is consistent with the terms of this agreement or appropriate or necessary, in the sole and absolute discretion of the General Partner or any Liquidator, to effectuate the terms or intent of this Agreement.

Nothing contained herein shall be construed as authorizing the General Partner or any Liquidator to amend this Agreement except in accordance with Article 14 hereof or as may be otherwise expressly provided for in this Agreement.

B. The foregoing power of attorney is hereby declared to be irrevocable and a power coupled with an interest, in recognition of the fact that each of the Partners will be relying upon the power of the General Partner and any Liquidator to act as contemplated by this agreement in any filing or other action by it on behalf of the Partnership, and it shall survive and not be affected by the subsequent Incapacity of any Limited Partner or Assignee and the transfer of all or any portion of such Limited Partner's or Assignee's Limited Partnership Units and shall extend to such Limited Partner's or Assignee's heirs, successors, assigns and personal representatives. Each such Limited Partner or Assignee hereby agrees to be bound by any representation made by the General Partner or any Liquidator, acting in good faith pursuant to such power of attorney, and each such Limited Partner or Assignee hereby waives any and all defenses which may be available to contest, negate or disaffirm the action of the General Partner or any Liquidator, taken in good faith under such power of attorney. Each Limited Partner or Assignee shall execute and deliver to the General Partner or the Liquidator, within fifteen (15) days after receipt of the General Partner's or Liquidator's request therefor, such further designation, powers of attorney and other instruments as the General Partner or the Liquidator, as the case may be, deems necessary to effectuate this Agreement and the purposes of the Partnership.

Section 2.5 Term

The term of the Partnership shall commence on the date hereof and shall continue until December 31, 2095, unless, the Partnership is dissolved sooner pursuant to the provisions of Article 13 or as otherwise provided by law.

ARTICLE 3
PURPOSE

Section 3.1 Purpose and Business

The purpose and nature of the business to be conducted by the Partnership is (i) to conduct any business that may be lawfully conducted by a limited partnership organized pursuant to the Act; (ii) to enter into any partnership, joint venture or other similar arrangement to engage in any of the foregoing or to own interests in any entity engaged in any of the foregoing; and (iii) to do anything necessary or incidental to the foregoing.

Section 3.2 Powers

The Partnership is empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Partnership, provided that the Partnership shall not take any action which, in the judgment of the General Partner, in its sole and absolute discretion, (a) could adversely affect the ability of Bay to continue to qualify as a REIT, (b) could subject the General Partner or Bay to any additional taxes under Section 857 or Section 4981 of the Code, or (c) could violate any law or regulation of any governmental body or agency having jurisdiction over its or Bay's securities or the General Partner, unless such action (or inaction) shall have been specifically consented to by the General Partner in writing.

ARTICLE 4
CAPITAL CONTRIBUTIONS

Section 4.1 Capital Contributions of the Partners

At the time of the execution of this Agreement of Limited Partnership, the Partners shall make the Capital Contributions set forth in Exhibit A to this Agreement. The Limited Partners shall own Limited Partnership Units in the amounts set forth on Exhibit A. Except as provided in Sections 4.3, 8.5 and 10.5, the Partners shall have no obligation to make any additional Capital Contributions or loans to the Partnership.

Section 4.2 Issuances of Additional Partnership Interests

The General Partner shall not cause the Partnership to issue additional Partnership Interests to the Partners or other Persons.

Section 4.3 General Partner's Mandatory Capital Contribution to Fund Unpaid Limited Partners' Priority Returns and Discretionary Capital Contributions.

If the Partnership is unable to pay the Limited Partners' Priority Returns in any given fiscal year of the Partnership, the General Partner shall make additional Capital Contributions to the Partnership to enable the Partnership to fund such unpaid Limited Partners' Priority Returns. Except as provided in this Section 4.3 and Section 8.5 the General Partner shall have no obligation to make Capital Contributions to the Partnership in excess of the amount set forth in Exhibit A. Notwithstanding the foregoing the General Partner shall have the right to make Capital Contributions to the Partnership in excess of the amount set forth in Exhibit A, and any such Capital Contributions shall be, as of the date contributed, included in the General Partner's Unrecovered Capital Amount.

Section 4.4 No Guaranteed Payment Within The Meaning of Section 707(c) of the Internal Revenue Code.

Notwithstanding the provisions of Section 4.3 the parties agree that neither the Limited Partners' Priority nor the General Partner's Priority is intended to be a guaranteed payment within the meaning of Section 707(c) of the

Section 4.5 No Preemptive Rights

No Person shall have any preemptive, preferential or other similar right with respect to (i) additional Capital Contributions or loans to the Partnership; or (ii) issuance or sale of any Partnership Interests.

ARTICLE 5
DISTRIBUTIONS

Section 5.1 Requirement and Characterization of Distributions

A. The General Partner shall distribute at least quarterly an amount equal to 100% of Available Cash generated by the Partnership during each quarter or shorter period, (a "Fiscal Period") such distribution to be made within thirty (30) days after the end of each calendar quarter. Cash distributions pursuant to this Section 5.1 shall be made to the Partners who are Partners of record on the record date for the regular quarterly dividend paid by Bay to its shareholders for such quarter ("Partner Record Date") and such distribution shall be payable to Partners on the payment date for such dividend for such quarter. In the event that Bay does not declare a dividend with respect to any quarter, the Partner Record Date for such quarter shall be the last day of such quarter and such distribution shall be paid no later than the 20th day of the next following quarter. Such distributions shall be made to the Partners in accordance with the following order of priority:

- (1) First, to the Limited Partners in proportion to the Limited Partners aggregate accrued and unpaid Priority Returns, until each Limited Partner has received an amount that, when aggregated with all previous distributions to such Limited Partner pursuant to this Section 5.1.A(1) and Section 5.1.A(3) below is equal to (but not in excess of) the sum of such Limited Partners' aggregate accrued but unpaid Priority Returns, plus for any and all accrued but unpaid Priority Returns for all previous Fiscal Periods, interest thereon compounded quarterly at 7 1/2%;
- (2) Second, to the General Partner until the General Partner has received an amount that, when aggregated with all previous distributions to the General Partner pursuant to this Section 5.1.A(2) is equal to (but not in excess of) the sum of the General Partner's aggregate accrued but unpaid Priority Return, plus for any and all accrued but unpaid Priority Returns for all previous Fiscal Periods, interest thereon compounded quarterly at 20%;
- (3) Thereafter, 99% to the General Partner and 1% in the aggregate and among the Limited Partners in proportion to the Percentage Interests of the Limited Partners.

B. Terminating Capital Transaction Proceeds shall be distributed to the Partners to the extent determined in the sole and absolute discretion of the General Partner. Distributions of Terminating Capital Transaction Proceeds shall be made to those Partners who are

Partners on the date of the Terminating Capital Transaction in accordance with the following order of priority:

- (1) First, to the Limited Partners in proportion to the Limited Partners aggregate accrued and unpaid Priority Returns, until each Limited Partner has

received an amount that, when aggregated with all previous distributions to such Limited Partner pursuant to Sections 5.1.A(1) and (3) and this Section 5.1.B(1), is equal to (but not in excess of) the sum of such Limited Partners' Priority Returns, plus for any and all accrued but unpaid Priority Returns for all previous Fiscal Periods, interest thereon compounded quarterly at 7 1/2%;

- (2) Second, to the General Partner until the General Partner has received an amount that, when aggregated with all previous distributions to the General Partner pursuant to 5.1.A(2) and this Section 5.1.B(2) is equal to (but not in excess of) the sum of the General Partner's aggregate accrued but unpaid Priority Returns, plus for any and all accrued but unpaid Priority Returns for all previous Fiscal Periods, interest thereon compounded quarterly at 20%;
- (3) Third, to the Partners in proportion to their Unrecovered Capital Amounts until the Partners have received an aggregate amount equal to their aggregate Unrecovered Capital Amounts; and
- (4) Thereafter, 1% to the Limited Partners in proportion to their Percentage Interests and 99% to the General Partner.

Section 5.2 Amounts Withheld

All amounts withheld pursuant to the Code or any provisions of any state or local tax law and Section 10.5 hereof with respect to any allocation, payment or distribution to the Partners or Assignees shall be treated as amounts distributed to the Partners or Assignees pursuant to Section 5.1 for all purposes under this Agreement.

ARTICLE 6 ALLOCATIONS OF PROFIT AND LOSS

Section 6.1 Capital Accounts.

A. The Partnership shall establish and maintain a separate Capital Account for each Partner in accordance with Code Section 704 and Treasury Regulations Section 1.704-1(b)(2)(iv). Subject to the immediately preceding sentence, the Capital Account of each Partner shall be credited with (i) the amount of all Capital Contributions made to the Partnership by such Partner in accordance with this Agreement; plus (ii) all income and gain of the Partnership allocated to such Partner pursuant to Article 6 hereof (including for purposes of this Section 6.1 income and gain exempt from tax); and shall be debited with the sum of: (x) all losses or deductions of the Partnership allocated to such Partner pursuant to Article 6 hereof, (y) such Partner's distributive share of expenditures of the Partnership described in Code Section 705(a)(2)(B), and (z) all cash and the Agreed Value of any property actually distributed or deemed distributed by the Partnership to such Partner pursuant to the terms of this Agreement. Any reference in any section or subsection of this Agreement to the Capital Account of a Partner shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time as set forth above.

B. The foregoing provisions of this Section 6.1 are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event the General Partner shall determine that it is prudent to modify the manner in which the Partners' Capital Accounts are computed hereunder in order to comply with such Treasury Regulations, the General Partner may make such modification if such modification will not have any effect whatsoever on the amount distributable to any Partner under the terms of this Agreement and the General Partner notifies the Limited Partners in writing of such modification prior to making such modification.

Section 6.2 Profits, Losses and Distributive Shares.

A. Operating Profits. Subject to Section 6.2.C below, and after giving effect to the special allocations, if any, provided in Sections 6.2.D and E hereof, Profits in each fiscal year of the Partnership shall be allocated

in the following order:

- (1) First, to each Partner in proportion to the cumulative Losses allocated to such Partner under Section 6.2.B hereof, until the cumulative Profits allocated to such Partner under this Section 6.2.A(1) equal the cumulative Losses allocated to such Partner under Section 6.2.B hereof;
- (2) Second, to each Limited Partner in the amount, if any, that the cumulative prior and concurrent distributions of the Limited Partner's Priority Return pursuant to Section 5.1.A(1) hereof exceeds the

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cumulative amounts of Profits previously allocated to such Partner pursuant to this Section 6.2.A(2), and among the Limited Partners in proportion to such amounts;

- (3) Third, to the General Partner in the amount, if any, that the cumulative prior and concurrent distributions of the General Partner's Priority Return pursuant to Section 5.1.A(2) hereof exceeds the cumulative amounts of Profits previously allocated to the General Partner pursuant to this Section 6.2.A(3); and
- (4) Thereafter, 99% to the General Partner and 1% to the Limited Partners in the aggregate and among the Limited Partners in proportion to their respective Percentage Interests.

B. Operating Losses. Subject to Section 6.2.C below, and after giving effect to the special allocations, if any, provided in Section 6.2.D and E hereof, Losses in each fiscal year of the Partnership shall be allocated in the following order:

- (1) First, to and among those Partners having positive balances in their Capital Accounts, in proportion to and to the extent of, such positive Capital Account balances; and
- (2) Thereafter, 99% to the General Partner and 1% to the Limited Partners in the aggregate and among the Limited Partners in proportion to their respective Percentage Interests.

C. Profits and Losses From Terminating Capital Transaction. Notwithstanding anything contained in Sections 6.2.A and B hereof, after giving effect to the special allocations, if any, provided in Sections 6.2.D and E hereof, all items of Partnership Profits and Losses arising from a Terminating Capital Transaction shall be allocated among the Partners so as to insure to the maximum extent possible that, after giving effect to the allocation of such Profits and Losses in the Capital Accounts of the Partners, the Capital Account balance of each Partner is positive in the amount of cash that such Partner is required to receive pursuant to Section 5.1.B from such Terminating Capital Transaction.

D. Special Allocations. Except as otherwise provided in this Agreement, the following special allocations will be made in the following order and priority:

- (1) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article 6, if there is a net decrease in Minimum Gain during any tax year or other period for which allocations are made, the Partners will be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in an amount

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equal to such Partner's share of the net decrease in Minimum Gain during such tax year or other period determined in accordance with Treasury Regulations Section 1.704-2(g)(2). Allocations pursuant to the preceding sentence shall be made in proportion to the respective amounts required to be allocated to each Partner pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2)(i). This Section 6.2.D(1) is intended to comply with the minimum gain chargeback requirements set forth in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith, including the exceptions to the minimum gain chargeback requirement set forth in Treasury Regulations Sections 1.704-2(f)(2) and (3).

- (2) Partner Nonrecourse Debt Minimum Gain Chargeback. Notwithstanding any other provision of this Section 6.2 (other than Section 6.2.D(1) which shall be applied before this Section 6.2.D(2)), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain during any tax year or other period for which allocations are made, each Partner with a share of Partner Nonrecourse Debt Minimum Gain determined in accordance with Treasury Regulations Section 1.704-2(i)(5) shall be specially allocated items of Partnership income and gain for that period (and, if necessary, subsequent periods) in an amount equal to the Partner's share of the net decrease in the Partner Nonrecourse Debt Minimum Gain determined in accordance with Treasury Regulation 1.704-2(i). The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2)(ii). This Section 6.2.D(2) is intended to comply with the minimum gain chargeback requirements of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith, including the exceptions set forth in Treasury Regulations Section 1.704-(f)(2) and (3) to the extent such exception apply to Treasury Regulations Section 1.704-2(i)(4).
- (3) Qualified Income Offset. A Partner who unexpectedly receives any adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), respectively, will be specially allocated items of Partnership income and gain (consisting of a pro rata portion of each item of partnership income, including gross income, and gain for the relevant tax year) in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of the Partner as quickly as possible, provided that an allocation pursuant to this Section 6.2.D(3) shall be made only to the extent that such Partner would have an Adjusted

Capital Account Deficit after all other allocations provided for in Section 6.2 have been made in the first instance without regard to this Section 6.2.

- (4) Partner Nonrecourse Deductions. Notwithstanding anything to the contrary in this Agreement, any Partner Nonrecourse Deductions for any taxable year or other period for which allocations are made will be allocated to the Partner who bears the economic risk of loss with respect to the liability to which the Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

- (5) Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Partnership asset under Code Section 734(b) or 743(b) is required to be taken into account in determining Capital Accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m), the amount of the adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset), and the gain or loss will be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted under Treasury Regulations Section 1.704-1(b)(2)(iv)(m).
- (6) Depreciation Recapture. In the event there is any recapture of Depreciation or investment tax credit, the allocation thereof shall be made among the Partners in the same proportion as the deduction for such Depreciation or investment tax credit was allocated.
- (7) Interest In Partnership. Notwithstanding any other provision of this Agreement, no allocation of Profit or Loss (or item of Profit or Loss) will be made to a Partner if the allocation would not have "economic effect" under Treasury Regulations Section 1.704-1(b)(2)(ii) or otherwise would not be in accordance with the Partner's interest in the Partnership within the meaning of Treasury Regulations Section 1.704-1(b)(3) or 1.704-1(b)(4)(iv).

E. Curative Allocations. The allocations set forth in Sections 6.2.D(1) through (5) hereof (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations may not be consistent with the manner in which the Partners intend to divide Partnership distributions. Accordingly, the General Partner is authorized to further allocate Profits, Losses, and other items among the Partners in a reasonable manner so as to prevent the Regulatory Allocations from distorting the manner in which Partnership distributions would be divided among the Partners under Section 5.1 hereof, but for application of the Regulatory Allocations. In

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general, such reallocation will be accomplished by specially allocating other Profits, Losses and items of income, gain, loss and deduction, to the extent they exist, among the Partners so that the net amount of the Regulatory Allocations and the special allocations to each Partner is zero. The General Partner may accomplish this result in any reasonable manner that is consistent with Code Section 704 and the related Treasury Regulations.

F. Tax Allocations - Code Section 704(c). Notwithstanding anything contained in this Agreement to the contrary, taxable income, gain, loss, and deduction with respect to any Partnership property (including, but not limited to, the Contributed Properties) that is subject to Code Section 704(c), the Treasury Regulations thereunder and/or Treasury Regulations Section 1.704-1(b)(2)(iv)(f) shall be determined and allocated among the Partners, and the Capital Accounts of the Partners shall be determined, in accordance with such Code Section and/or the Treasury Regulations, as the case may be. The General Partner hereby agrees that the Partnership shall elect the traditional method under Treasury Regulation Section 1.704-3(b) to eliminate the Book-Tax Disparity with respect to the Contributed Properties, and such election shall be binding on all of the Partners.

G. Other Allocation Rules. The following rules will apply to the calculation and allocation of Profits, Losses and other items:

- (1) Unless otherwise determined by the General Partner, for purposes of determining the Profits, Losses or any other item allocable to any period, Profits, Losses and other items will be determined on a daily basis under Code Section 706 and the related Treasury Regulations.
- (2) Except as otherwise provided in this Agreement, all items of Partnership income, gain, loss, deduction,

and other allocations not provided for in this Agreement will be divided among the Partners in the same proportions as they share Profits and Losses, provided that any credits shall be allocated in accordance with Treasury Regulations Section 1.704-1(b) (4) (ii).

H. Partner Acknowledgment. The Partners agree to be bound by the provisions of this Section 6.2 in reporting their shares of Partnership income, gain, loss, deduction and credit for income tax purposes.

I. Regulatory Compliance. The foregoing provisions of this Section 6.2 relating to the allocation of Profits, Losses and other items for federal income tax purposes are intended to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2, and shall be interpreted and applied in a manner consistent with such Treasury Regulations.

J. Effect of Treasury Regulations; Liquidation. In the event the Partnership is "liquidated" within the meaning of Treasury Regulations Section 1.704-1(b) (2) (ii) (g),

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distributions shall be made pursuant to Section 5.1.B. If any Partner has a deficit balance in his Capital Account (after giving effect to all contributions, distributions and allocations), such Partner shall have no obligation to make any contribution to the capital of the Partnership. In the event the Partnership is "liquidated" within the meaning of Treasury Regulations Section 1.704-1(b) (2) (ii) (g) but there has been no dissolution of the Partnership, then the Partnership assets shall not be liquidated, the Partnership's liabilities shall not be paid or discharged and the Partnership's affairs shall not be wound up. In the event of such a liquidation there shall be deemed to have been a distribution of Partnership assets in kind to the Partners in accordance with their respective Capital Accounts followed by a recontribution of the Partnership assets by the Partners also in accordance with their respective Capital Accounts.

ARTICLE 7 MANAGEMENT AND OPERATIONS OF BUSINESS

Section 7.1 Management

A. Except as otherwise expressly provided in this Agreement, all management powers over the business and affairs of the Partnership are and shall be exclusively vested in the General Partner, and no Limited Partner shall have any right to participate in or exercise control or management power over the business and affairs of the Partnership. The General Partner may not be removed by the Limited Partners with or without cause. In addition to the powers now or hereafter granted a general partner of a limited partnership under applicable law or which are granted to the General Partner under any other provision of this Agreement, the General Partner, subject to Section 7.3 hereof, shall have full power and authority to do all things deemed necessary or desirable by it to conduct the business of the Partnership, to exercise all powers set forth in Section 3.2 hereof and to effectuate the purposes set forth in Section 3.1 hereof, including, without limitation:

- (1) the making of any expenditures, the lending or borrowing of money (including, without limitation, making prepayments on loans), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidence of indebtedness (including the securing of the same by deed, mortgage, deed of trust or other lien or encumbrance on the Partnership's assets) and the incurring of any obligations it deems necessary for the conduct of the activities of the Partnership;
- (2) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Partnership;

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- (3) the acquisition, disposition, mortgage, pledge, encumbrance, hypothecation or exchange of any assets of the Partnership (including the exercise or grant of any conversion, option, privilege, or subscription right or other right available in connection with any assets at any time held by the Partnership) or the merger or other combination of the Partnership with or into another entity (all of the foregoing subject to any prior approval only to the extent required by Section 7.3 hereof);
- (4) the use of the assets of the Partnership (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms it sees fit, including, without limitation, the financing of the conduct of the operations of the Partnership or any of the Partnership's Subsidiaries, the lending of funds to other Persons (including, without limitation, the Subsidiaries of the Partnership and the repayment of obligations of the Partnership and its Subsidiaries and any other Person in which it has an equity investment, and the making of capital contributions to its Subsidiaries;
- (5) the management, operation, leasing, landscaping, repair, alteration, demolition or improvement of any real property or improvements owed by the Partnership or any Subsidiary of the Partnership;
- (6) the negotiation, execution, and performance of any contracts, conveyances or other instruments that the General Partner considers useful or necessary to the conduct of the Partnership's operations or the implementation of the General Partner's powers under this Agreement, including contracting with contractors, developers, consultants, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation out of the Partnership's assets;
- (7) the distribution of Partnership cash or other Partnership assets in accordance with this Agreement;
- (8) holding, managing, investing and reinvesting cash and other assets of the Partnership;
- (9) the collection and receipt of revenues and income of the Partnership;
- (10) the establishment of one or more divisions of the Partnership, the selection and dismissal of employees of the Partnership (including, without limitation, employees having titles such as "president," "vice president," "secretary" and "treasurer" of the Partnership), and agents,

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outside attorneys, accountants, consultants and contractors of the Partnership, and the determination of their compensation and other terms of employment or hiring;

- (11) the maintenance of such insurance for the benefit of the Partnership and the Partners as it deems necessary or appropriate;
- (12) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnerships, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, its Subsidiaries and any other Person in which it has

an equity investment from time to time);

- (13) the control of any matters affecting the rights and obligations of the Partnership, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment of, any claim, cause of action, liability, debt or damages, due or owing to or from the Partnership, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitration or other forms of dispute resolution, and the representation of the Partnership in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;
- (14) the undertaking of any action in connection with the Partnership's direct or indirect investment in its Subsidiaries or any other Person (including, without limitation, the contribution or loan of funds by the Partnership to such Persons);
- (15) the determination of the fair market value of any Partnership property distributed in kind using such reasonable method of valuation as the General Partner may adopt;
- (16) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Partnership;
- (17) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of or in connection with any Subsidiary of the

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Partnership or any other Person in which the Partnership has a direct or indirect interest, or jointly with any such Subsidiary or other Person;

- (18) the exercise of any of the powers of the General Partner enumerated in this Agreement on behalf of any Person in which the Partnership does not have an interest pursuant to contractual or other arrangements with such Person;
- (19) the making, execution and delivery of any and all deeds, leases, notes, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases or legal instruments or agreements in writing necessary or appropriate, in the judgment of the General Partner, for the accomplishment of any of the powers of the General Partner enumerated in this Agreement; and
- (20) the issuance of additional Partnership Interests, as appropriate, in connection with additional Capital Contributions by Partners pursuant to Article 4 hereof.

B. Each of the Limited Partners agrees that the General Partner is authorized to execute, deliver and perform the above-mentioned agreements and transactions on behalf of the Partnership without any further act, approval or vote of the Partners, notwithstanding any other provision of this Agreement (except as provided in Section 7.3), the Act or any applicable law, rule or regulation, to the fullest extent permitted under the Act or other applicable law, rule or regulation. The execution, delivery or performance by the General Partner or the Partnership of any agreement authorized or permitted under this Agreement shall not constitute a breach by the General Partner of any duty that the General Partner may owe the Partnership or the Limited Partners or any other Persons under this Agreement or of any duty stated or implied by law or equity.

C. At all times from and after the date hereof, the General Partner may cause the Partnership to establish and maintain at any and all times working capital accounts and other cash or similar balances in such amounts as the General Partner, in its sole and absolute discretion, deems appropriate and reasonable from time to time.

D. Except as provided in Section 7.3, in exercising its authority under this Agreement, the General Partner may, but shall be under no obligation to, take into account the tax consequences to any Partner of any action taken by it. The General Partner and the Partnership shall not have liability to a Limited Partner under any circumstances as a result of an income tax liability incurred by such Limited Partner as a result of an action (or inaction) by the General Partner taken pursuant to its authority under this Agreement and in accordance with the terms of Section 7.3.

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Section 7.2 Certificate of Limited Partnership

The General Partner shall file, simultaneously herewith, the Certificate with the Secretary of State of Delaware as required by the Act. The General Partner shall use all reasonable efforts to cause to be filed such other certificates or documents as may be reasonable and necessary or appropriate for the formation, continuation, qualification and operation of a limited partnership (or a partnership in which the limited partners have limited liability) in the State of Delaware and any other state, or the District of Columbia, in which the Partnership may elect to do business or own property. To the extent that such action is determined by the General Partner to be reasonable and necessary or appropriate, the General Partner shall file amendments to and restatements of the Certificate and do all of the things to maintain the Partnership as a limited partnership (or a partnership in which the limited partners have limited liability) under the laws of the State of Delaware and each other state, or the District of Columbia, in which the Partnership may elect to do business or own property. The General Partner shall not be required, before or after filing, to deliver or mail a copy of the Certificate or any amendment thereto to any Limited Partner.

Section 7.3 Restrictions on General Partner Authority

A. The General Partner may not take any action in contravention of an express prohibition or limitation of this Agreement without the written Consent of Limited Partners holding a majority of the Percentage Interests of the Limited Partners or such other percentage of the Limited Partners as may be specifically provided for under a provision of this Agreement.

B. Except as provided in Article 11 or 13 hereof or to the extent that the transaction is treated as a wholly tax-free exchange with no boot under Code Section 1031, the General Partner shall not, prior to April 1, 2002, (i) cause the Partnership to engage in a sale or exchange with respect to any Contributed Properties (including by way of taxable merger, consolidation or other combination with any other Person), (ii) cause a tax termination of the Partnership within the meaning of Section 708(b)(1)(B) of the Code; or (iii) fail to maintain an amount of non-recourse debt secured by the Contributed Properties which is at least equal to the principal amount of the non-recourse debt secured by the Contributed Properties on the Contribution Date, less regularly scheduled principal payments.

C. The General Partner agrees that neither it nor any other Person who may be related to the General Partner under Regulation Section 1.752-4(b) will purchase or otherwise acquire the non-recourse debt secured by the Contributed Properties such that such non-recourse debt will become Partner Nonrecourse Debt.

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Section 7.4 Reimbursement of the General Partner

A. Except as provided in this Section 7.4 and elsewhere in this Agreement (including the provisions of Articles 5 and 6 regarding distributions, payments, and allocations to which it may be entitled), the

General Partner shall not be compensated for its services as general partner of the Partnership.

B. The General Partner shall be reimbursed on a monthly basis, or such other basis as it may determine in its sole and absolute discretion, for all expenses that it incurs relating to the ownership and operation of, or for the benefit of, the Partnership;

Section 7.5 Contracts with Affiliates

A. The Partnership may lend or contribute funds or other assets to its Subsidiaries or other Persons in which it has an equity investment and such Persons may borrow funds from the Partnership, on terms and conditions established in the sole and absolute discretion of the General Partner. The foregoing authority shall not create any right or benefit in favor of any Subsidiary or any other Person.

B. The Partnership may transfer assets to joint ventures, other partnerships, corporations or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law as the General Partner, in its sole and absolute discretion, believes are advisable.

C. Except as expressly permitted by this Agreement, neither the General Partner nor any of its Affiliates shall sell, transfer or convey any property to, or purchase any property from, the Partnership, directly or indirectly, or enter into any other transaction with the Partnership except pursuant to transactions that are determined by the General Partner in good faith to be fair and reasonable.

D. The General Partner and its Affiliates may perform services to the Partnership and shall be entitled to receive compensation therefore determined on an arms length, fair market value basis.

Section 7.6 Indemnification

A. To the fullest extent permitted by Delaware law, the Partnership shall indemnify each Indemnitee from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including, without limitation, attorneys fees and other legal fees and expenses), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership or the Company as set forth in this Agreement, in which such Indemnitee may be involved, or is threatened to be involved, as a party or

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otherwise. Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise for any indebtedness of the Partnership or any Subsidiary of the Partnership (including without limitation, any indebtedness which the Partnership or any Subsidiary of the Partnership has assumed or taken subject to), and the General Partner is hereby authorized and empowered, on behalf of the Partnership, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.6 in favor of any Indemnitee having or potentially having liability for any such indebtedness. Any indemnification pursuant to this Section 7.6 shall be made only out of the assets of the Partnership, and neither the General Partner nor any Limited Partner shall have any obligation to contribute to the capital of the Partnership, or otherwise provide funds, to enable the Partnership to fund its obligations under this Section 7.6.

B. Reasonable expenses incurred by an Indemnitee who is a party to a proceeding shall be paid or reimbursed by the Partnership in advance of the final disposition of the proceeding.

C. The indemnification provided by this Section 7.6 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity unless otherwise provided in a written agreement pursuant to which such Indemnities are indemnified.

D. The Partnership may, but shall not be obligated to, purchase and maintain insurance, on behalf of the Indemnities and such other Persons as the General Partner shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Partnership's activities, regardless of whether the Partnership would have the

power to indemnify such Person against such liability under the provisions of this Agreement.

E. For purposes of this Section 7.6, the Partnership shall be deemed to have requested an Indemnatee to serve as fiduciary of an employee benefit plan whenever the performance by it of its duties to the Partnership also imposes duties on, or otherwise involves services by, it to the plan or participants or beneficiaries of the plan; excise taxes assessed on an Indemnatee with respect to an employee benefit plan pursuant to applicable law shall constitute fines within the meaning of Section 7.6; and actions taken or omitted by the Indemnatee with respect to an employee benefit plan in the performance of its duties for a purpose reasonably believed by it to be in the interest of the participants and beneficiaries of the plan shall be deemed to be for a purpose which is not opposed to the best interests of the Partnership.

F. In no event may an Indemnatee subject any of the Partners to personal liability by reason of the indemnification provisions set forth in this Agreement.

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G. An Indemnatee shall not be denied indemnification in whole or in part under this Section 7.6 because the Indemnatee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

H. The provisions of this Section 7.6 are for the benefit of the Indemnities, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.6 or any provision hereof shall be prospective only and shall not in any way affect the Partnership's liability to any Indemnatee under this Section 7.6, as in effect immediately prior to such amendment, modification, or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

Section 7.7 Liability of the General Partner

A. Notwithstanding anything to the contrary set forth in this Agreement, the General Partner and its officers and directors shall not be liable for monetary damages to the Partnership, any Partners or any Assignees for losses sustained or liabilities incurred as a result of errors in judgment or of any act or omission if the General Partner acted in good faith.

B. The Limited Partners expressly acknowledge that the General Partner is acting on behalf of the Partnership and its shareholder collectively, that the General Partner is under no obligation to consider the separate interests of the Limited Partners (except as otherwise provided herein) in deciding whether to cause the Partnership to take (or decline to take) any actions, and that the General Partner shall not be liable for monetary damages for losses sustained, liabilities incurred, or benefits not derived by Limited Partners in connection with such decisions, provided that the General Partner has acted in good faith.

C. Subject to its obligations and duties as General Partner set forth in Section 7.1.A hereof, the General Partner may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents. The General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

D. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the General Partner's and its officers' and directors' liability to the Partnership and the Limited Partners under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

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Section 7.8 Other Matters Concerning the General Partner

A. The General Partner may rely and shall be protected in acting, or refraining from acting, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties.

B. The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers, architects, engineers, environmental consultants and other consultants and advisers selected by it, and any act taken or omitted to be taken in reliance upon the opinion of such Persons as to matters which such General Partner reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion.

C. The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through any of its duly authorized officers and duly appointed attorneys-in-fact. Each such attorney shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform all and every act and duty which is permitted or required to be done by the General Partner hereunder.

D. Subject to any agreements entered into by a General Partner or its Affiliates with the Partnership or any of its Subsidiaries, the General Partner and any officer, director, employee, agent, trustee, Affiliate or shareholder of the General Partner shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities that are in direct competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partners shall have any rights by virtue of this Agreement in any business ventures of the General Partner or its Affiliates. None of the Limited Partners nor any other Person shall have any rights by virtue of this Agreement or the Partnership relationship established hereby in any business ventures of any other Person and such Person shall have no obligation pursuant to this Agreement to offer any interest in any such business ventures to the Partnership, any Limited Partner or any such other Person, even if such opportunity is of a character which, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such Person.

Section 7.9 Title to Partnership Assets

Title to Partnership assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner, individually or collectively, shall have any ownership interest in such Partnership assets or any portion thereof. Title to any or all of the Partnership assets may be held in the name of the Partnership, the General Partner or one or more nominees, as the General Partner may determine, including Affiliates of the General Partner. The General Partner hereby declares

and warrants that any Partnership assets for which legal title is held in the name of the General Partner or any nominee or Affiliate of the General Partner shall be held by the General Partner for the use and benefit of the Partnership in accordance with the provisions of this Agreement. All Partnership assets shall be recorded as the property of the Partnership in its books and records, irrespective of the name in which legal title to such Partnership assets is held.

Section 7.10 Reliance by Third Parties

Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Partnership shall be entitled to assume that the General Partner has full power and authority, without consent or approval of any other Partner or Person, to encumber, sell or otherwise use in any manner any and all assets of the Partnership and to enter into any contracts on behalf of the Partnership, and take any and all actions on behalf of the Partnership and such Person shall be entitled to deal with the General Partner as if the General Partner were the Partnership's sole party in interest, both legally and beneficially. Each Limited Partner hereby waives any and all defenses or other remedies which may be available against such Person to contest, negate or disaffirm any action of the General Partner in connection with any such

dealing. In no event shall any Person dealing with the General Partner or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expedience of any act or action of the General Partner or its representatives. Each and every certificate, document or other instrument executed on behalf of the Partnership by the General Partner or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (i) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect; (ii) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Partnership; and (iii) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Partnership.

Section 7.11 General Partner's Capital Contribution to Fund the Contributor's Prorations and Other Expenses under the Contribution Agreement.

The General Partner's Capital Contribution made at the time of the execution of this Agreement (pursuant to Section 4.1) shall be used by the General Partner to fund (i) the Contributor's prorations described in Article 6 of the Contribution Agreement, (ii) the brokerage commission described in Section 9.1 of the Contribution Agreement, (iii) the Contributor's expenses described in Section 9.4 of the Contribution Agreement, (iv) the Contributor's title insurance, survey and UCC costs as described in Section 9.5 of the Contribution Agreement, (v) any other adjustments which are the responsibility of the Contributor under the Contribution Agreement, (vi) all obligations of Bay Countrybrook under the Contribution Agreement and (vii), to the extent there shall be funds remaining, shall be

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used by the General Partner for any other purpose in accordance with the terms of this Agreement.

ARTICLE 8
RIGHTS AND OBLIGATIONS OF LIMITED PARTNERS

Section 8.1 Limitation of Liability

Subject to any separate agreements entered into between the Limited Partners and the Partnership or its Affiliates, the Limited Partners shall have no liability under this Agreement except as expressly provided in this Agreement, including Section 10.5 hereof, or under the Act.

Section 8.2 Management of Business

No Limited Partner or Assignee (other than the General Partner, any of its Affiliates or any officer, director, employee, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such) shall take part in the operation, management or control (within the meaning of the Act) of the Partnership's business, transact any business in the Partnership's name or have the power to sign documents for or otherwise bind the Partnership. The transaction of any such business by the General Partner, any of its Affiliates or any officer, director, employee, partner, agent or trustee of the General Partner, the Partnership or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Limited Partners or Assignees under this Agreement.

Section 8.3 Outside Activities of Limited Partners

Subject to any agreements entered into by a Limited Partner or its Affiliates with the Partnership or any of its Subsidiaries, any Limited Partner (other than the Company) and any officer, director, employee, agent, trustee, Affiliate or shareholder of any Limited Partner (other than the Company) shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Partnership, including business interests and activities that are in direct competition with the Partnership or that are enhanced by the activities of the Partnership. Neither the Partnership nor any Partners shall have any rights by virtue of this Agreement in any business ventures of any Limited Partner or Assignee. None of the Limited Partners nor any other Person shall have any rights by virtue of this Agreement or the Partnership relationship established hereby in any business ventures of any other Person and such Person shall have no obligation pursuant to this Agreement to offer any interest in any such business ventures to the

Partnership, any Limited Partner or any such other Person, even if such opportunity is of a character which, if presented to the Partnership, any Limited Partner or such other Person, could be taken by such Person.

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Section 8.4 Return of Capital

No Limited Partner shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon termination of the Partnership as provided herein. Except as otherwise expressly provided in this Agreement, including any amendments hereto in accordance with Section 12.2, no Limited Partner or Assignee shall have priority over any other Limited Partner or Assignee, either as to the return of Capital Contributions or as to profits, losses or distributions.

The General Partner may keep confidential from the Limited Partners, for such period of time as the General Partner determines in its sole and absolute discretion to be reasonable, any information that (i) the General Partner reasonably believes to be in the nature of trade secrets or other information, the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or could damage the Partnership or its business; or (ii) the Partnership is required by law or by agreements with an unaffiliated third party to keep confidential.

Section 8.5 Exchange Rights of Qualifying Parties

A. After ninety 90 days following the Closing Date (as that term is defined in the Contribution Agreement), a Qualifying Party shall have the right (the "Exchange Right") (subject to the terms and conditions set forth herein) to require (except as set forth in Section 8.5.B hereof) the Partnership to redeem all or a portion of the Limited Partnership Units held by the Qualifying Party (such Limited Partnership Units being hereinafter call "Tendered Units") in exchange for the Cash Amount multiplied by the REIT Shares Amount with respect to the Tendered Units (the "Cash Option"), which product shall be due and shall be paid within fifteen (15) Business Days following the Specified Exchange Date relating to such Tendered Units. In such event, Bay shall contribute to the General Partner, and the General Partner shall contribute to the Partnership such Cash Amount, and the Tendering Party's Tendered Units shall be redeemed in exchange for such Cash Amount in the following manner and with the following consequences: such redemption, to the extent it does not represent distributions required to be paid pursuant to Section 5.1 hereof which are owed but unpaid, shall be treated as a distribution to such Limited Partner which reduces such Limited Partner's Unrecovered Capital Amount as of the date of the redemption by the amount set forth in the definition of Unrecovered Capital Amount in Article 1 hereof, and the amount of the actual cash contribution shall be added to the General Partner's Unrecovered Capital Amount as of the date of the contribution.

Any such exchange or redemption shall be exercised pursuant to a notice of exchange (which notice shall include (i) representations and warranties by the Qualifying Party that the Tendered Units will be delivered free and clear of all claims, liens and encumbrances, (ii) investment representations and warranties by the Qualifying Party and (iii) representations and warranties regarding the Qualifying Party's accreditation status under state and federal

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securities laws) in substantially the form attached hereto as Exhibit B (a "Notice of Exchange") delivered to the Partnership and Bay by the Qualifying Party when exercising the Exchange Right (the "Tendering Party"). A Notice of Exchange may be given by a Qualifying Party at any time after ninety (90) days following the date of this Agreement.

B. Notwithstanding the provisions of Section 8.5.A hereof, upon an election by a Tendering Party of its Exchange Right, the General Partner may, in its sole and absolute discretion but subject to the Ownership Limit, acquire the Tendered Units from the Tendering Party in exchange for REIT Shares. In the event Bay elects this option, (i) Bay shall send notice of such

election to the Tendering Party at the address listed on the Notice of Exchange not later than ten (10) Business Days following the Specified Exchange Date and (ii) within fifteen (15) Business Days following the Specified Exchange Date, the General Partner shall deliver such number of REIT Shares as are equal to the REIT Shares Amount (the "Exchange Shares") in exchange for such number of Tendered Units plus any owed but unpaid distributions; provided, however, that in lieu of any fractional REIT Share resulting from such calculation, Bay may contribute to the General Partner and the General Partner may contribute to the Partnership the Cash Amount attributable to such fractional REIT Share. Such exchange shall be treated as a sale of such Limited Partnership Units to the General Partner for federal income tax purposes and such exchange shall be deemed to have the following consequences hereunder: the General Partner's Unrecovered Capital Account as of the date of exchange shall be increased by the Value of the REIT Shares Amount. In the event cash is used in lieu of fractional REIT Shares, the consequences hereunder shall be identical to those under Section 8.5.A. In determining whether to elect to exchange for REIT Shares in addition to the Notice of Exchange, Bay may require, in its sole and absolute discretion, that the Tendering Party submit to Bay (i) such information, certification or affidavit as Bay may reasonably require in connection with the application of the Ownership Limit or as required by the Contribution Agreement or (ii) such other written representations, investment letters, legal opinions or other instruments necessary, in Bay's good faith opinion, to effect compliance with the Securities Act. The Exchange Shares shall be delivered by Bay as duly authorized, validly issued, fully paid and nonassessable REIT Shares, free of any pledge, lien, encumbrance or restriction, other than the Ownership Limit and other restrictions provided in Bay's charter, the bylaws of Bay, the Securities Act and relevant state securities or "blue sky" laws. REIT Shares issued pursuant to this Section 8.5.B may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as Bay in good faith determines to be necessary or advisable in order to ensure compliance with such laws. Upon delivery by the General Partner of the REIT Shares to the Tendering Party, such holder of REIT Shares shall automatically be entitled to the rights and be subject to the obligations and conditions under the Registration Rights Agreement attached hereto as Appendix A (the "Registration Rights Agreement").

C. If a Partner Record Date with respect to any Tendered Unit precedes the date on which a Tendering Party receives cash or REIT Shares (the "Delivery Date") pursuant to this Article 8, such Tendering Party shall be entitled to distributions pursuant to this Agreement

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with respect to the Limited Partnership Units exchanged or redeemed. If the Delivery Date with respect to any Tendered Unit is on or after the Partner Record Date with respect to any such quarter, and the Tendering Party receives REIT Shares in connection with such exchange, the Tendering Partner shall not be entitled to distributions pursuant to this Agreement with respect to the Limited Partnership Units exchanged but shall be entitled to any dividends payable to any record holders of REIT Shares on or after the Delivery Date.

D. Notwithstanding anything herein to the contrary, with respect to any exchange or redemption of Tendered Units pursuant to this Article 8 hereof:

(1) Subject to the Ownership Limit, no Tendering Party may effect an Exchange for less than One Thousand (1,000) Limited Partnership Units or, if such Tendering Party holds less than One Thousand (1,000) Limited Partnership Units, all of the Limited Partnership Units held by such Tendering Party.

(2) The consummation of any exchange or redemption of Tendered Units shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(3) Except as provided in Section 8.5.B hereof, the Tendering Party shall continue to own (subject, in the case of a Substituted Limited Partner or a Qualified Assignee, to the provisions of Section 11.5 hereof) all Limited Partnership Units subject to any Exchange or Cash Option, and be treated as a Limited Partner or a Qualified Assignee, as applicable, with respect such Limited Partnership Units for all purposes of this Agreement, until such Limited Partnership Units are either exchanged for REIT Shares, pursuant to Section 8.5.B hereof or redeemed for cash pursuant to Section 8.5.A hereof. Except as otherwise provided in this Agreement, upon the date of delivery of REIT Shares or the Cash Amount to the Tendering Party (the "Delivery Date"), all rights and obligations of

the Tendering Party with respect to the Limited Partnership Units exchanged or redeemed hereunder shall cease and, to the extent such Tendering Party elects to exchange all Limited Partnership Units held by such Tendering Party, the Tendering Party shall no longer be a Limited Partner, Substituted Limited Partner, Qualified Assignee or an Assignee, as the case may be, with respect to this Agreement. Except as provided in Section 8.5.B hereof, until an exchange of the Tendered Units by Bay pursuant to Section 8.5.B hereof and the receipt by a Qualifying Party of REIT Shares, the Tendering Party shall have no rights as a shareholder of Bay with respect to the REIT Shares issuable in connection with such Exchange Right.

For purposes of determining compliance with the restrictions set forth in this Section 8.5.D, all Limited Partnership Units beneficially owned by a Related Party of a Tendering Party shall be considered to be owned or held by such Tendering Party.

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E. In connection with an exercise of an Exchange Right pursuant to this Article 8, each Tendering Party shall represent or covenant the following to Bay, which representations and covenants shall be included within the Notice of Exchange:

(1) A written affidavit disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6), 856(h), 856(d)(2)(B) and 856(d)(5), of REIT Shares by (i) such Tendering Party and (ii) any Related Party;

(2) A written representation that neither the Tendering Party nor any Related Party has any intention to acquire any additional REIT Shares prior to the closing of an Exchange pursuant to Section 8.5.A following the Specified Exchange Date; and

(3) A covenant, as a condition to the closing of an Exchange, that the actual and constructive ownership of REIT Shares by the Tendering Party and any Related Party will remain unchanged from that disclosed above.

F. Notwithstanding any other provisions of this Agreement, a Qualifying Party (i) shall not be entitled to effect an exchange or redemption, whether in REIT Shares or for cash, to the extent the ownership or right to acquire REIT Shares pursuant to which the exercise of the Exchange Right by such Qualifying Party would cause such Qualifying Party or any other Person to violate the Ownership Limit and (ii) shall have no rights under this Agreement which would otherwise be prohibited under Bay's charter. To the extent any attempted exchange would be in violation of this Section 8.5.F, it shall be null and void ab initio and such Qualifying Party shall not acquire any rights or economics interests in REIT Shares otherwise issuable upon such Exchange.

G. If the General Partner or the Partnership is unable to consummate an exchange or redemption, whether in REIT Shares or for cash, pursuant to Sections 8.5.A or 8.5.B due to operation of law pursuant to the terms of this Article 8 for any reason, Bay shall either pay or cause to be paid to each Tendering Party the Cash Amount attributable to such Tendered Units in the manner and with the consequences described in Section 8.5.A hereof or, in Bay's sole and absolute discretion, Bay shall cause the Tendered Units to be exchanged for REIT Shares in the manner and with the consequences described in Section 8.5.B hereof. In addition, as long as any Limited Partnership Units are outstanding, Bay agrees to have authorized but unissued that number of REIT Shares equal to the number of Limited Partnership Units outstanding.

Section 8.6 Bay's Right to Call Limited Partnership Interests

Notwithstanding any other provision of this Agreement, on and after the earlier of April 1, 2002 or the date on which more than 75% of the Limited Partnership Units have been exchanged, whether in REIT Shares or for cash, pursuant to Section 8.5 hereof, Bay shall have the right, but not the obligation, from time to time and at any time to exchange any and all

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outstanding Limited Partnership Units by treating any Qualifying Party as a Tendering Party who has delivered a Notice of Exchange pursuant to Section 8.5.A hereof for the amount of Limited Partnership Units to be specified by Bay, in its sole and absolute discretion, by notice to such Qualifying Party that Bay has elected to exercise its rights under this Section 8.6. Such notice given by Bay to a Limited Partner pursuant to this Section 8.6 shall be treated as if it were a Notice of Exchange delivered to Bay by such Limited Partner. For purposes of this Section 8.6, any Limited Partner, any Substituted Limited Partner, any Qualified Assignee or any Assignee (whether or not otherwise a Qualifying Party) shall be treated as a Qualifying Party that is a Tendering Party.

Section 8.7 Other Exchanges

Notwithstanding the provisions of Sections 8.5 or 8.6 hereof, nothing in this Agreement shall preclude the exchange, whether in REIT Shares or cash, of Limited Partnership Units by any Qualifying Party upon such terms and conditions as may be negotiated between the Qualifying Party holding such Limited Partnership Units, on the one hand, and Bay, on the other hand, in their sole and absolute discretion. Such an exchange may include the payment of cash by Bay to the Qualifying Party, in a lump sum or in installments, or the distribution in kind of Bay assets to such Qualifying Party (which assets may be encumbered), including assets to be designated by the Qualifying Party and acquired (with or without debt financing) by Bay. In effecting any such exchange by negotiated agreement, neither Bay nor the Qualifying Party, shall incur any liability to any other holder of Limited Partnership Units or have any duty to offer the same or similar terms for exchange of any other Qualifying Party.

ARTICLE 9 BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 Records and Accounting

The General Partner shall keep or cause to be kept at the principal office of the Partnership those records and documents required to be maintained by the Act and other books and records deemed by the General Partner to be appropriate with respect to the Partnership's business, including, without limitation, all books and records necessary to provide to the Limited Partners any information, lists and copies of documents required to be provided pursuant to Section 9.3 hereof. Any records maintained by or on behalf of the Partnership in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics or any other information storage device. The books of the Partnership shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or such other basis as the General Partner determines to be necessary or appropriate.

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Section 9.2 Fiscal Year

The fiscal year of the Partnership shall be the calendar year.

Section 9.3 Reports

A. As soon as practicable, but in no event later than one hundred twenty (120) days after the close of each Partnership Year, the General Partner shall cause to be mailed to each Limited Partner as of the close of the Partnership Year, an annual report containing unaudited financial statements of the Partnership, for such Partnership Year, presented in accordance with generally accepted accounting principles.

B. As soon as practicable, but in no event later than sixty (60) days after the close of each calendar quarter (except the last calendar quarter of each year), the General Partner shall cause to be mailed to each Limited Partner as of the last day of the calendar quarter, a report containing unaudited financial statements of the Partnership, and such other information as may be required by applicable law or regulation, or as the General Partner determines to be appropriate.

ARTICLE 10 TAX MATTERS

Section 10.1 Preparation of Tax Returns

The General Partner shall arrange for the preparation and timely (including valid extensions) filing of all returns of Partnership income, gains, deductions, losses and other items required of the Partnership for federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year, the tax information required to be furnished to the Limited Partners for federal income tax reporting purposes.

Section 10.2 Tax Elections

Except as otherwise provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make any available election pursuant to the Code. The General Partner shall have the right to seek to revoke any tax election it makes (including, without limitation, the election under Section 754 of the Code) upon the General Partner's determination, in its sole and absolute discretion, that such revocation is in the best interests of the Partners.

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Section 10.3 Tax Matters Partner

A. The General Partner shall be the "tax matters partner" of the Partnership for federal income tax purposes. Pursuant to Section 6230(e) of the Code, upon receipt of notice from the IRS of the beginning of an administrative proceeding with respect to the Partnership, the tax matters partner shall furnish the IRS with the name, address, taxpayer identification number, and profit interest of each of the Limited Partners and the Assignees; provided, however, that such information is provided to the Partnership by the Limited Partners and the Assignees.

B. Except to the extent any action described below conflicts with the General Partner's prohibition on causing a tax termination of the Partnership as described in Section 7.3.B hereof, the tax matters partner is authorized, but not required:

- (1) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Partnership items required to be taken into account by a Partner for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the tax matters partner may expressly state that such agreement shall bind all Partners, except that such settlement agreement shall not bind any Partner (i) who (within the time prescribed pursuant to the Code and Regulations) files a statement with the IRS providing that the tax matters partner shall not have the authority to enter into a settlement agreement on behalf of such Partner; or (ii) who is a "notice partner" (as defined in Section 6231(a)(8) of the Code) or a member of a "notice group" (as defined in Section 6223(b)(2) of the Code);
- (2) in the event that a notice of a final administrative adjustment at the Partnership level of any item required to be taken into account by a Partner for tax purposes (a "final adjustment") is mailed to the tax matters partner, to seek judicial review of such final adjustment, including the filing of a petition for readjustment with the Tax Court or the filing of a complaint for refund with the United States Claims Court or the District Court of the United States for the district in which the Partnership's principal place of business is located;
- (3) to intervene in any action brought by any other Partner for judicial review of a final adjustment;
- (4) to file a request for an administrative adjustment with the IRS and, if any part of such request is not allowed by the IRS, to file an appropriate

pleading (petition or complaint) for judicial review with respect to such request;

- (5) to enter into an agreement with the IRS to extend the period for assessing any tax which is attributable to any item required to be taken account of by a Partner for tax purposes, or an item affected by such item; and
- (6) to take any other action on behalf of the Partners or the Partnership in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the tax matters partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the tax matters partner and the provisions relating to indemnification of the General Partner set forth in Section 7.6 of this Agreement shall be fully applicable to the tax matters partner in its capacity as such.

C. The tax matters partner shall receive no compensation for its services. All third party costs and expenses incurred by the tax matters partner in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Partnership. Nothing herein shall be construed to restrict the Partnership from engaging an accounting firm to assist the tax matters partner in discharging its duties hereunder, so long as the compensation paid by the Partnership for such services is reasonable.

Section 10.4 Organizational Expenses

The Partnership shall elect to deduct expenses, if any, incurred by it in organizing the Partnership ratably over a sixty (60) month period as provided in Section 709 of the Code.

Section 10.5 Withholding

Each Limited Partner hereby authorizes the Partnership to withhold from, or pay on behalf of or with respect to, such Limited Partner any amount of federal, state, local, or foreign taxes that the General Partner determines that the Partnership is required to withhold or pay with respect to any amount distributable or allocable to such Limited Partner pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Partnership pursuant to Sections 1441, 1442, 1445, or 1446 of the Code. Any amount paid on behalf of or with respect to a Limited Partner shall constitute a loan by the Partnership to such Limited Partner, which loan shall be repaid by such Limited Partner within fifteen (15) days after notice from the General Partner that such payment must be made unless (i) the Partnership withholds such payment from a distribution which would otherwise be made to the Limited Partner; or (ii) the General Partner determines, in its sole and absolute discretion, that

such payment may be satisfied out of the available funds of the Partnership which would, but for such payment, be distributed to the Limited Partner. Any amounts withheld pursuant to the foregoing clauses (i) or (ii) shall be treated as having been distributed to such Limited Partner. Each Limited Partner hereby unconditionally and irrevocably grants to the Partnership a security interest in such Limited Partner's Partnership Interest to secure such Limited Partner's obligation to pay to the Partnership any amounts required to be paid pursuant to this Section 10.5. In the event that a Limited Partner fails to pay any amounts owed to the Partnership pursuant to this Section 10.5 when due, the General Partner may, in its sole and absolute discretion, elect to make the payment to the Partnership on behalf of such defaulting Limited Partner, and in such event shall be deemed to have loaned such amount plus the amount of its attorneys' fees incurred in connection with making and enforcing the terms of such loan, to such defaulting Limited Partner and shall succeed to all rights and remedies of the Partnership as against such defaulting Limited Partner. Without limitation, in such event the General Partner shall have the right to

receive distributions that would otherwise be distributable to such defaulting Limited Partner until such time as such loan, together with all interest thereon, has been paid in full, and any such distributions so received by the General Partner shall be treated as having been distributed to the defaulting Limited Partner and immediately paid by the defaulting Limited Partner to the General Partner in repayment of such loan. Any amounts payable by a Limited Partner hereunder shall bear interest at the lesser of (A) the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal, plus four (4) percentage points, or (B) the maximum lawful rate of interest on such obligation, such interest to accrue from the date such amount is due (i.e., fifteen (15) days after demand) until such amount is paid in full. Each Limited Partner shall take such actions as the Partnership or the General Partner shall request in order to perfect or enforce the security interest created hereunder.

ARTICLE 11
TRANSFERS AND WITHDRAWALS

Section 11.1 Transfer

A. The term "transfer," when used in this Agreement with respect to a Partnership Interest, shall mean a transaction in which a Partner assigns all or any part of his, her or its Partnership Interest to another Person and includes any sale, assignment, gift, pledge, mortgage, exchange, hypothecation, encumbrance or other disposition required by law (such as, but not limited to, a statutory merger) or otherwise; provided, however, that the term "transfer" does not include any exchange of Partnership Interests by the Partnership from a Limited Partner.

B. No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions of this Agreement. Any transfer or purported

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transfer of a Partnership Interest not made in accordance with this Article 11 shall be null and void.

Section 11.2 Transfer of the General Partner Interest

A. The General Partner may not transfer any of its General Partner Interest or withdraw as General Partner except as provided in this Section 11.2 unless the Limited Partners holding a majority of the Percentage Interests of the Limited Partners Interests consent to such transfer or withdrawal.

B. Both the General Partner and/or Bay may engage in any merger, consolidation or other combination with or into another Person regardless of whether such other person is a REIT, or sell all or substantially all of their assets, or effect any reclassification or recapitalization or change of outstanding REIT Shares, all without the prior approval of any Limited Partners, (a "Transaction"), provided that following any such Transaction any Qualifying Party continues to be entitled to exchange all or any portion of the Limited Partnership Units held by such Qualifying Parties for REIT Shares, taking into account following such Transaction any adjustments to the Adjustment Factor, and such REIT Shares are publicly traded on a nationally recognized securities exchange.

C. Notwithstanding any other provision in this Agreement to the contrary, if in connection with any Transaction described in Section 11.2.B (i) a purchase or cash tender offer shall have been made to and accepted by the holders of more than fifty percent (50%) of the outstanding REIT Shares, each holder of Limited Partnership Units shall be entitled to elect to receive in connection with (and prior to the Closing of) such Transaction the greatest of an amount of cash or other property (other than securities of the acquiring Person) which such holder would have received had it exercised its Exchange rights and received REIT Shares in exchange for its Limited Partnership Units immediately prior to the expiration of such purchase or tender offer and had thereupon accepted such purchase or tender offer; and (ii) if in such Transaction an exchange offer shall have been made and accepted pursuant to which the holders of more than fifty percent of the outstanding REIT Shares exchange their REIT Shares for equity securities of the acquiring Person, which are publicly traded on a nationally recognized securities exchange, then the Adjustment Factor shall be adjusted to reflect such Transaction and each holder of Limited Partnership Units who is a Qualifying Party shall continue to be entitled to exchange all or any portion of the Limited Partnership Units held

Section 11.3 Limited Partners' Rights to Transfer

No Limited Partner shall have the right to transfer its Partnership interest or any of such Limited Partner's economic rights without the consent of the General Partner which consent may be withheld in its sole and absolute discretion, except that a Limited Partner shall have the right, without the consent of the General Partner, to assign its economic rights (but not the right to substitute such assignee as a Substituted Limited Partner), to his/her Family Members and such Family Member shall be a Qualified Assignee for purposes of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, a Substituted Limited Partner or Qualifying Party shall have the right, without the consent of the General Partner, to pledge or otherwise encumber all or any portion of its Partnership interest, subject to any applicable securities laws, to any recognized financial institution with assets in excess of \$100,000,000. Any such financial institution or its assignee shall upon foreclosure of any such pledged or encumbered interest be recognized as a Qualified Assignee under this Agreement, shall be deemed to be and have all of the rights of a Qualifying Party under this Agreement and shall be deemed to be and have all of the rights of a Holder for all purposes of the Registration Rights Agreement. The General Partner and Bay agree to execute such documents in connection with any such pledges as such financial institution may reasonably require acknowledging the rights of such financial institution hereunder and the obligations of the Partnership and Bay hereunder.

Section 11.4 Substituted Limited Partners

A. No Limited Partner shall have the right to substitute a transferee (including a permitted assignee under Section 11.3) as a Limited Partner in his place. The General Partner shall, however, have the right to consent to the admission of a transferee of the interest of a Limited Partner pursuant to this Section 11.4 as a Substituted Limited Partner, which consent may be given or withheld by the General Partner in its sole and absolute discretion, provided that such consent by the General Partner shall not be effective until such transferee executes and delivers to the General Partner the following investment documents (collectively, the "Investment Documents"):

- (i) a signed copy of this Limited Partnership Agreement (and the Assignee agrees to be bound to all rights and responsibilities of a Limited Partner hereof);
- (ii) a Prospective Subscriber Questionnaire in the form attached hereto as Exhibit C and
- (iii) a certificate representing and warranting to Bay and the General Partner the investment representations and warranties as set forth in Section 3.1(m) of the Contribution Agreement with respect to such Assignee. The General Partner's failure or refusal to permit a transferee of any such interests to become a Substituted Limited Partner shall not give rise to any cause of action against the Partnership or any Partner.

B. A transferee who has been admitted as a Substituted Limited Partner in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Limited Partner under this Agreement.

C. Upon the admission of a Substituted Limited Partner, the General Partner shall amend Exhibit A to reflect the name, address, and Percentage Interest of such Substituted Limited Partner and to eliminate or adjust, if necessary, the name, address and interest of the predecessor of such Substituted Limited Partner.

Section 11.5 Assignees

If the General Partner, in its sole and absolute discretion, does not consent to the admission of any permitted transferee as a Substituted Limited Partner, as described in Section 11.4, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be deemed to have had assigned to it, the share of Net Income, Net Losses, Recapture Income, and

any other items, gain, loss deduction and credit of the Partnership attributable to the Partnership Interest assigned to such transferee, but shall not be entitled to receive distributions from the Partnership, shall not be deemed to be a holder of a Partnership Interest for any other purpose under this Agreement, shall not have the right to exchange or redeem its Limited Partnership Units pursuant to Article 8 hereof (except pursuant to Section 8.6 hereof), and shall not be entitled to vote such Partnership Interest in any matter presented to the Limited Partners for a vote (such Partnership Interest being deemed to have been voted on such matter in the same proportion as all other Partnership Interest held by Limited Partners are voted); provided, however, that if an Assignee executes and delivers the Investment Documents and if the General Partner fails to consent to the admission of such Assignee as a Substituted Limited Partner for any reason other than a good faith belief that the Investment Documents have not been duly executed and delivered, such qualified Assignee (the "Qualified Assignee") shall have all rights of an Assignee as stated above, shall be entitled to receive distributions from the Partnership and shall have the right to exchange or redeem pursuant to Article 8 (including the rights and obligations under the Registration Rights Agreement), but such Qualified Assignee shall not be entitled to vote as a Limited Partner under this Agreement or be deemed a holder of Limited Partnership Units for any other purpose under this Agreement. In the event any such transferee desires to make a further assignment of any such Partnership Interest, such transferee shall be subject to all of the provisions of this Article 11 to the same extent and in the same manner as any Limited Partner desiring to make an assignment of Partnership Interest.

Section 11.6 Distributions to Limited Partnership Unit Holders.

With respect to all Persons who are listed on the Limited Partnership Unit Schedule to the Contribution Agreement (each, a "Limited Partnership Unit Holder" and collectively, the

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"Limited Partnership Unit Holders"), the General Partner shall, upon notice by Contributor of Berryessa Associates to the Partnership that it has distributed the Limited Partnership Units pursuant to such Limited Partnership Unit Schedule and in accordance with the terms of the Contribution Agreement, withhold all distributions under this Agreement with respect to each Limited Partnership Unit Holder until such time, if any, as such Limited Partnership Unit Holder becomes a Substituted Limited Partner or a Qualified Assignee. At such time as each Limited Partnership Unit Holder becomes a Substituted Limited Partner or a Qualified Assignee, the General Partner shall distribute to such Limited Partnership Unit Holder all accrued distributions withheld pursuant to this Section. A Limited Partnership Unit Holder may become a Qualified Assignee by executing and delivering an Acknowledgment, Consent and Power of Attorney in the form attached hereto as Exhibit D or by following the procedures set forth herein.

Section 11.7 General Provisions

A. No Limited Partner may withdraw from the Partnership other than as a result of a permitted transfer of all of such Limited Partner's Partnership Interest in accordance with this Article 11.

B. Any Limited Partner who shall transfer all of its Partnership Interest in a transfer permitted pursuant to this Article 11 shall cease to be a Limited Partner upon the admission of all Assignees of such Partnership Interest as Substitute Limited Partners.

C. Transfers pursuant to this Article 11 may only be made on the first day of a fiscal quarter of the Partnership, unless the General Partner otherwise agrees.

D. If any Partnership Interest is transferred or assigned during any quarterly segment of the Partnership's fiscal year in compliance with the provisions of this Article 11 on any day other than the first day of a Partnership Year, then Net Income, Net Losses, each item thereof and all other items attributable to such interest for such Partnership Year shall be divided and allocated between the transferor Partner and the transferee Partner by taking into account their varying interests during the Partnership Year in accordance with Section 706(d) of the Code, using the interim closing of the books method. Solely for purposes of making such allocations, each of such items for the calendar month in which the transfer or assignment occurs shall be allocated to the transferee Partner; provided, however, that the General Partner may adopt such other conventions relating to allocations in connection

with transfers, assignments or exchanges as it determines are necessary or appropriate. All distributions of Available Cash attributable to such Partnership Interest before the date of such transfer, assignment, or redemption shall be made to the transferor Partner, and in the case of a transfer or assignment other than a redemption, all distributions of Available Cash thereafter attributable to such Partnership Interest shall be made to the transferee Partner.

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ARTICLE 12
ADMISSION OF PARTNERS

Section 12.1 Admission of Successor General Partner

A successor to all of the General Partner Interest pursuant to Section 11.2 hereof who is proposed to be admitted as a successor General Partner shall be admitted to the Partnership as the General Partner, effective upon such transfer. Any such transferee shall carry on the business of the Partnership without dissolution. In each case, the admission shall be subject to the successor General Partner executing and delivering to the Partnership an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission. In the case of such admission on any day other than the first day of a Partnership Year, all items attributable to the General Partner Interest for such Partnership Year shall be allocated between the transferring General Partner and such successor as provided in Section 11.6.D hereof.

Section 12.2 Amendment of Agreement and Certificate of Limited Partnership

For the admission to the Partnership of any Partner, the General Partner shall take all steps necessary and appropriate under the Act to amend the records of the Partnership and, if necessary, to prepare as soon as practical an amendment of this Agreement (including an amendment of Exhibit A) and, if required by law, shall prepare and file an amendment to the Certificate and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

ARTICLE 13
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 Dissolution

The Partnership shall not be dissolved by the admission of Substituted Limited Partners or by the admission of a successor General Partner in accordance with the terms of this Agreement. Upon the withdrawal of the General Partner, any successor General Partner shall continue the business of the Partnership. The Partnership shall dissolve, and its affairs shall be wound up, only upon the first to occur of any of the following ("Liquidating Events"):

A. the expiration of its term as provided in Section 2.5 hereof;

B. an event of withdrawal of the General Partner, as defined in the Act (other than an event of bankruptcy), unless, within ninety (90) days after such event of withdrawal a majority in interest of the remaining Partners agree in writing to continue the business of the

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Partnership and to the appointment, effective as of the date of withdrawal, of a successor General Partner;

C. from and after the date of this Agreement through December 31, 2095 an election to dissolve the Partnership made by the General Partner with the Consent of Partners holding 85% of the Percentage Interests of the Limited Partners;

D. entry of a decree of judicial dissolution of the Partnership pursuant to the provisions of the Act;

E. the sale of all or substantially all of the assets and properties of the Partnership; or

F. a final and non-appealable judgment is entered by a court of competent jurisdiction ruling that the General Partner is bankrupt or insolvent, or a final and non-appealable order for relief is entered by a court with appropriate jurisdiction against the General Partner, in each case under any federal or state bankruptcy or insolvency laws as now or hereafter in effect, unless prior to the entry of such order or judgment all of the remaining Partners agree in writing to continue the business of the Partnership and to the appointment, effective as of a date prior to the date of such order or judgment, of a substitute General Partner.

Section 13.2 Winding Up

A. Upon the occurrence of a Liquidating Event, the Partnership shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Partners. No Partner shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Partnership's business and affairs. The General Partner, or, in the event there is no remaining General Partner, any Person elected by a majority in interest of the Limited Partners (the General Partner or such other Person being referred to herein as the "Liquidator"), shall be responsible for overseeing the winding up and dissolution of the Partnership and shall take full account of the Partnership's liabilities and property and the Partnership property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom shall be applied and distributed in the following order:

- (1) First, to the payment and discharge of all of the Partnership's debts and liabilities to creditors other than the Partners;
- (2) Second, to the payment and discharge of all of the Partnership's debts and liabilities to the General Partner;

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- (3) Third, to the payment and discharge of all of the Partnership's debts and liabilities to the other Partners; and
- (4) The balance, if any, to the General Partner and Limited Partners in accordance with Section 5.1.B.

The General Partner shall not receive any additional compensation for any services performed pursuant to this Article 13.

B. Notwithstanding the provisions of Section 13.2.A hereof which require liquidation of the assets of the Partnership, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Partnership the Liquidator determines that an immediate sale of part or all of the Partnership's assets would be impractical or would cause undue loss to the Partners, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Partnership (including to those Partners as creditors) and/or distribute to the Partners, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2.A hereof, undivided interests in such Partnership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Partners, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

C. In the discretion of the Liquidator, a pro rata portion of the distributions that would otherwise be made to the General Partner and Limited Partners pursuant to this Article 13 may be:

- (1) distributed to a trust established for the benefit of the General Partner and Limited Partners for the

purposes of liquidating Partnership assets, collecting amounts owed to the Partnership, and paying any contingent or unforeseen liabilities or obligations of the Partnership or the General Partner arising out of or in connection with the Partnership. The assets of any such trust shall be distributed to the General Partner and Limited Partners from time to time, in the reasonable discretion of the Liquidator, in the same proportions as the amount distributed to such trust by the Partnership would otherwise have been distributed to the General Partner and Limited Partners pursuant to this Agreement; or

- (2) withheld or escrowed to provide a reasonable reserve for Partnership liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Partnership, provided that

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such withheld or escrowed amounts shall be distributed to the General Partner and Limited Partners in the manner and order of priority set forth in Section 13.2.A as soon as practicable.

Section 13.3 Rights of Limited Partners

Each Limited Partner shall look solely to the assets of the Partnership for the return of its Capital Contributions and shall have no right or power to demand or receive property other than cash from the Partnership. Except as otherwise provided in this Agreement or an amendment to the Agreement pursuant to Sections 4.2 and 14.1.B(3) hereof, no Limited Partner shall have priority over any other Partner as to the return of its Capital Contributions, distributions, or allocations.

Section 13.4 Notice of Dissolution

In the event a Liquidating Event occurs or an event occurs that would, but for the provisions of an election or objection by one or more Partners pursuant to Section 13.1, result in a dissolution of the Partnership, the General Partner shall, within thirty (30) days thereafter, provide written notice thereof to each of the Partners. Notwithstanding any provision herein to the contrary, each Limited Partnership Unit Holder who has not become a Qualified Assignee or a Substituted Limited Partner pursuant to the terms of this Agreement shall have the right to redeem any Limited Partnership Units assigned to such Limited Partnership Unit Holder for the Cash Amount pursuant to and under the conditions set forth in Section 8.5.A hereof for a period of thirty (30) days prior to any dissolution of the Partnership.

Section 13.5 Termination of Partnership and Cancellation of Certificate of Limited Partnership

Upon the completion of the liquidation of the Partnership's assets, as provided in Section 13.2 hereof, the Partnership shall be terminated, a certificate of cancellation shall be filed, and all qualifications of the Partnership as a foreign limited partnership in jurisdictions other than the State of Delaware shall be cancelled and such other actions as may be necessary to terminate the Partnership shall be taken.

Section 13.6 Reasonable Time for Winding-Up

A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between the Partners during the period of liquidation.

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Section 13.7 Waiver of Partition

Each Partner hereby waives any right to partition of the Partnership property.

ARTICLE 14
AMENDMENT OF PARTNERSHIP AGREEMENT; MEETINGS

Section 14.1 Amendments

A. Amendments to this Agreement may be solely proposed by the General Partner. Following such proposal, the General Partner shall submit any proposed amendment to the Limited Partners. The General Partner shall seek the written vote of the Limited Partners on the proposed amendment or shall call a meeting to vote thereon and to transact any other business that it may deem appropriate. For purposes of obtaining a written vote, the General Partner may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a vote which is consistent with the General Partner's recommendation with respect to the proposal. Except as provided in Section 7.3.A, 7.3.B, 13.1.C or 14.1.B, a proposed amendment shall be adopted and be effective as an amendment hereto if it is approved by the General Partner and it receives the consent of Limited Partners holding a majority of the Percentage Interests of the Limited Partners, provided, however, no amendment shall be adopted if it would (i) convert a Limited Partner Interest into a General Partner Interest, (ii) increase the liability of a Limited Partner under this Agreement, (iii) except as otherwise permitted in this Agreement, alter any of the Partners' rights to distributions set forth in Article 5, or the allocations set forth in Article 6, (iv) alter or modify any aspect of the Limited Partners' Exchange Rights as set forth in Article 8 hereof, (v) cause the early termination of this Limited Partnership (other than pursuant to the terms hereof) or (vi) amend this Section 14.A.1, in each case without the consent of each Limited Partner adversely affected thereby.

B. Notwithstanding the foregoing, amendments may be made to this Agreement by the General Partner, without the consent of any Limited Partner, to (i) add to the representations, duties or obligations of the General Partner or surrender any right or power granted to the General Partner herein; (ii) cure any ambiguity, correct or supplement any provision herein which may be inconsistent with any other provision herein or make any other provisions with respect to matters or questions arising hereunder which will not be inconsistent with any other provision hereof; (iii) reflect the admission, substitution, termination or withdrawal of Partners in accordance with this Agreement; or (iv) satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law. The General Partner shall reasonably promptly notify the Limited Partners whenever it exercises its authority pursuant to this Section 14.1.B.

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C. Within ten (10) days of the making of any proposal to amend this Agreement, the General Partner shall give all Partners notice of such proposal (along with the text of the proposed amendment and a statement of its purposes).

Section 14.2 Meetings of the Partners

A. Meetings of Partners may be called by the General Partner. The General Partner shall give all Partners Notice of the purpose of such proposed meeting not less than seven (7) days nor more than thirty (30) days prior to the date of the meeting. Meetings shall be held at a reasonable time and place selected by the General Partner. Whenever the vote or consent of Limited Partners is permitted or required hereunder, such vote or consent shall be requested by the General Partner and may be given by the Limited Partners in the same manner as set forth for a vote with respect to an amendment to this Agreement in Section 14.1.A.

B. Any action required or permitted to be taken at a meeting of the Partners may be taken without a meeting if a written consent setting forth the action to be taken is signed by the Partners owning the percentage interests required to vote in favor of such action, which consent may be evidenced in one or more instruments. Consents need not be solicited from any other Partner if the written consent of a sufficient number of Partners has been obtained to take the action for which such solicitation was required.

C. Each Limited Partner may authorize any Person or Persons, including without limitation the General Partner, to act for him by proxy on

all matters on which a Limited Partner may participate. Every proxy (i) must be signed by the Limited Partner or his attorney-in-fact, (ii) shall expire eleven (11) months from the date thereof unless the proxy provides otherwise and (iii) shall be revocable at the discretion of the Limited Partner granting such proxy.

ARTICLE 15 GENERAL PROVISIONS

Section 15.1 Addresses and Notice

Any notice, demand, request or report required or permitted to be given or made to a Partner or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written communication to the Partner or Assignee at the address set forth in Exhibit A or such other address of which the Partner shall notify the General Partner in writing.

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Section 15.2 Titles and Captions

All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically provided otherwise, references to "Articles" and "Sections" are to Articles and Sections of this Agreement.

Section 15.3 Pronouns and Plurals

Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.4 Further Action

The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.5 Acknowledgment of Bay's Consideration.

Bay and the Partners hereby acknowledge and agree that Bay is a party to this Agreement solely for purposes of Articles 8 and 11 and this Section 16.5 and that Bay derives substantial benefit in exchange for Bay's obligations under Articles 8, 11 and 15 and this Section 16.5 from (i) the execution of the Contribution Agreement by the Initial Limited Partner and (ii) as a result of Bay's one hundred percent (100%) ownership of the capital stock of the General Partner.

Section 15.6 Binding Effect

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.7 Creditors

Other than as expressly set forth herein with respect to the Indemnities, none of the provisions of this Agreement shall be for the benefit of, or shall be enforceable by, any creditor of the Partnership.

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Section 15.8 Waiver

No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

Section 15.9 Counterparts

This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all of the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.10 Applicable Law

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law.

Section 15.11 Invalidity of Provisions

If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.12 Entire Agreement

This Agreement contains the entire understanding and agreement among the Partners with respect to the subject matter hereof and supersedes any other prior written or oral understandings or agreements among them with respect thereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Limited Partnership as of the date first written above.

GENERAL PARTNER:

BAY GP, INC., a Maryland corporation

By: _____
Name: _____
Title: _____

[CORPORATE SEAL]

BAY APARTMENT COMMUNITIES, INC.,
a Maryland corporation

(for purposes of Articles 8 and 11
and Section 16.5 only)

By: _____
Name: _____
Title: _____

INITIAL LIMITED PARTNERS:

COUNTRYBROOK OF BERRYESSA
ASSOCIATES, a California limited
partnership

By: _____
Name: Donald H. Tishman
Title: General Partner

By: HOUSING ASSOCIATES OF SAN JOSE,

INC., a California corporation

By:

Name: Donald H. Tishman
Title: President

HOUSING ASSOCIATES OF SAN JOSE, INC.

By:

Name: Donald H. Tishman
Title: President

Donald H. Tishman, an individual

AGREEMENT TO CONTRIBUTE
 BETWEEN
 COUNTRYBROOK OF BERRYESSA ASSOCIATES
 AND
 BAY APARTMENT COMMUNITIES, INC.
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EXHIBITS

A Permits and Other Rights
B Personal Property
C Real Property
D Tax-Exempt Debt
E Security Deposits and Other Deposits
F Rent Roll
G Form of Prospective Subscriber Questionnaire
H Good Cost/Bad Cost Certificate
I Limited Partnership Unit Holders
L Insurance

(iii)

AGREEMENT TO CONTRIBUTE

This AGREEMENT TO CONTRIBUTE (this "Agreement") is entered into as of this ____ day of _____, 1996 by and among Countrybrook of Berryessa Associates, a California limited partnership (the "Contributor") and Bay Apartment Communities, Inc., a Maryland corporation ("Bay").

RECITALS

Bay, a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "Code"), and the Contributor wish to cause a Delaware limited partnership to be known as Bay Countrybrook, L.P. ("Bay Countrybrook") to be formed on or before Closing (as defined below), having Bay GP, Inc., a Maryland corporation and a subsidiary of Bay (the "General Partner") as its general partner and the Contributor as its initial limited partner.

Bay wishes to cause the General Partner to contribute One Million Dollars (\$1,000,000) to Bay Countrybrook in exchange for the acquisition by the General Partner of the general partnership interest in Bay Countrybrook (the "General Partner Interest").

The Contributor wishes to contribute the Property (as defined below) to Bay Countrybrook in exchange for limited partnership interests in Bay Countrybrook (collectively, the "Limited Partnership Units"), as more particularly provided below. Bay Countrybrook wishes to accept and assume the Property and to issue to the Contributor the Limited Partnership Units in exchange for the contribution of the Property to Bay Countrybrook.

Bay and the Contributor also desire that contemporaneously with the Closing, the Contributor shall distribute the Limited Partnership Units to certain partners of the Contributor, including, without limitation, to certain portions of the Contributor (the "Partner Creditors") who hold indebtedness of the Contributor in the amount of \$[FULL AMOUNT OF INDEBTEDNESS OWED BY THE PARTNER CREDITORS] (the "Partner Debt") in satisfaction of such indebtedness (the "Limited Partnership Unit Holders") whose names will be furnished by the Contributor to Bay Countrybrook no later than five (5) business days prior to the Closing.

Bay and the Contributor also desire that, contemporaneously with the admission of the Contributor as a limited partner of Bay Countrybrook, Bay and the Contributor enter into a registration rights agreement (the "Registration Rights Agreement"), as more particularly provided below.

The Contributor has been advised by Bay and acknowledges that Bay would not be entering into this Agreement without the representations, warranties and covenants which are being made and agreed to herein by the Contributor and that Bay is entering into this Agreement in reliance on such representations, warranties and other covenants.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in reliance on all representations, warranties and covenants made by each of the parties hereto, each of the Contributor and Bay agree as follows:

DEFINITIONS

The following terms as used in this Agreement will have the meanings attributed to them as set forth below unless the context clearly requires another meaning. The terms set forth below do not constitute all defined terms set forth in this Agreement. Such other defined terms shall have the meanings ascribed to them elsewhere in this Agreement.

"Action" shall mean, by way of example, any claim, suit, litigation,

labor dispute, arbitration, investigation or other action or proceeding.

"Actual Occupancy Level" has the meaning set forth in Section 1.1.

"Adjusted Contribution Price" has the meaning set forth in Section 9.6.

"Affiliate" shall mean any entity in which Bay owns directly or indirectly more than fifty percent (50%) of any class of securities or interest issued by such entity or any entity controlling, controlled by or under common control with Bay.

"As-Is Acquisition" has the meaning set forth in Section 9.19.

"Assigned Contracts" has the meaning set forth in Section 2.1(a)(vi).

"Authority" shall mean a governmental body or agency having jurisdiction over the Property.

"Bay Documents" has the meaning set forth in Section 3.1(m)(i).

"Closing" or "Closing Date" has the meaning set forth in Section 1.5.

"Contracts" shall mean all contracts, undertakings, commitments, guarantees and warranties relating to the Property, or any portion thereof, to which the Contributor is a party

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or by which it or the Property, or any portion thereof, is bound, including, without limitation, utility contracts, management contracts, maintenance and service contracts, parking contracts, employment contracts, leasing contracts, equipment leases and brokerage and leasing commission agreements, excluding the Tax-Exempt Instruments.

"Contributor Partnership Agreement" has the meaning set forth in Section 2.1(f).

"Contribution Price" has the meaning set forth in Section 1.1.

"Conversion Shares" has the meaning set forth in Section 1.1.

"Deposit" has the meaning set forth in Section 1.6.

"Diligence Period Expiration Date" has the meaning set forth in Section 2.1(a)(xv).

"Escrow Agent" has the meaning set forth in Section 1.6.

"Final Fiscal Year" has the meaning set forth in Section 4.10(i).

"Intangibles" shall mean all intangible property owned and used by the Contributor in connection with the ownership, use, operation or development of the Real Property or the Personal Property, including, without limitation: (i) the right to use the name "Countrybrook of Berryessa" and any other trade name used in connection with the Real Property, (ii) the Assigned Contracts (as defined below), (iii) the Leases (as defined below), all guaranties of the Leases, all security deposits under the Leases (unless Bay elects instead to have them credited to Bay Countrybrook) and any rent prepaid under the Leases and (iv) all Licenses (as defined below) and any warranties, guaranties and other rights relating to the ownership, use, operation or development of the Real Property to the extent transferrable (collectively, the "Other Rights"), including, without limitation, the Other Rights listed on Exhibit A.

"Licenses" has the meaning set forth in Section 3.1(e).

"Limited Partnership Agreement" shall mean the Agreement of Limited Partnership of Bay Countrybrook L.P. to be entered into in accordance with the terms of Section 2.1(n) and dated as of the Closing Date by and among the General Partner and the Contributor.

"Major Casualty" has the meaning set forth in Section 4.6.

"Major Taking" has the meaning set forth in Section 4.6.

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"Notice to Proceed" has the meaning set forth in Section 2.1(a)(xv).

"Occupancy Credit" has the meaning set forth in Section 9.6.

"Partnership Consent" has the meaning set forth in Section 2.1(e).

"Permitted Exceptions" means, with respect to the Property, those exceptions to title which constitute Permitted Exceptions under Section 2.1(a)(i) and any other encumbrances on the Property approved in writing by Bay.

"Person" shall mean an individual or a corporation, partnership, trust, unincorporated organization, association or other entity.

"Personal Property" shall mean all tangible personal property owned by the Contributor located on or in or used in connection with the Real Property as of the date of this Agreement or the Closing Date, including, without limitation, all laundry equipment, recreation equipment, pool and spa furniture and equipment and furnishings in any on-site leasing facility, clubhouse and fitness center, all air conditioners, refrigerators, dishwashers, ovens/ranges, microwaves and washer/dryer units located in the rental units and all other items listed in Exhibit B hereto.

"Preliminary Report" has the meaning set forth in Section 2.1(a)(i).

"Property" shall mean all Real Property, Personal Property and Intangibles.

"Qualified Project Costs" means all costs in connection with the acquisition, construction and installation of the Property, but only to the extent that (i) such costs were paid or incurred by or on account of the Contributor or any related person on or after the applicable inducement date, the date of the first official action by the issuer (the "Issuer") of the Tax-Exempt Debt (as defined below) expressing its intent to issue revenue bonds to assist in financing the Property, (ii) such costs are chargeable to the Property's capital account or would be so chargeable either with a proper election by the Contributor or but for a proper election by the Contributor to deduct such costs, within the meaning of old Treasury Regulation 1.103-8(a)(1), (iii) if any portion of the Property was constructed by a related person of the Contributor (whether as a general contractor or a subcontractor), such costs include only the actual out-of-pocket costs incurred by such related person in constructing the Property (or any portion thereof) and not, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1054 of the Code) participating in the construction of the Property or payments received by such related person due to early

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completion of the Property (or any portion thereof), (iv) such costs do not constitute leasing commissions, costs of advertising for the Property or other costs related to the rental of units in the Property or management fees for the management and operation of the Property after the completion date of such Property, and (v) such costs are used to finance residential rental property described in Section 103(b)(4)(A) of the Code and Section 1.103-8(b) of the Treasury Regulations.

"Qualified Tenants" has the meaning set forth in Section 2.1(m).

"Real Property" shall mean the land located at 1895 N. Capital Avenue, San Jose, California and more particularly described in Exhibit C (the "Land"), together with all rights, privileges and easements appurtenant thereto and licenses including without limitation, all minerals, oil, gas and other hydrocarbon substances on and under and that may be produced from the Land, as well as all development rights, land use entitlements and rights in off-site facilities and amenities servicing the Property, including, without limitation, building permits, licenses, permits and certificates, utilities commitments, air rights, water, water rights, riparian rights and water stock relating to the Land and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and all of the Contributor's right, title and interest in and to all roads, easements, rights of way, strips or gores and alleys adjoining or servicing the Land (collectively, the "Appurtenances") and all improvements and fixtures located on the Land or the Appurtenances, including, without limitation, the building(s) located on the Land, containing 360 apartment units, and all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land, such improvements or the Appurtenances, including, without limitation, heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal, recreation or other services on the land or the Appurtenances or for the improvements, and all on-site parking (collectively, the "Improvements").

"Related Agreements" has the meaning set forth in Section 3.1(a).

"Related Documents" shall mean all documents to be executed in connection with the transactions contemplated by this Agreement.

"Rent Roll" has the meaning set forth in Section 2.1(a)(xiii).

"Schedule of Agreements" has the meaning set forth in Section 2.1(a)(vi).

"Tax-Exempt Debt" shall mean the existing tax exempt financing encumbering the

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Property totaling \$20,424,000, as described on Exhibit D and as reduced by regularly scheduled payments of principal due from and after the date hereof through the Closing Date.

"Tax-Exempt Instruments" shall mean all agreements and other instruments entered into or evidencing the Tax-Exempt Debt.

"Tenant" shall mean a Person leasing, renting or occupying space in the Real Property pursuant to a written or oral agreement.

"To the best of the Contributor's knowledge" has the meaning set forth in Section 3.1.

"Vacant Unit Rental Amount" has the meaning set forth in Section 9.6.

"Warranties" has the meaning set forth in Section 2.1(a)(v).

ARTICLE 1- CONTRIBUTION OF PROPERTY AND CAPITAL

1.1 Contribution of the Property. The Contributor agrees to contribute and transfer the Property to Bay Countrybrook on the Closing Date (as defined below) subject to the Tax-Exempt Debt and the Partner Debt and subject to the terms contained in this Agreement. In consideration of such contribution and transfer and upon reliance on the representations and warranties of the Contributor contained in this Agreement, Bay agrees to cause Bay Countrybrook to issue to the Contributor at Closing the Limited Partnership Units. The total value of the Limited Partnership Units to be transferred to the Contributor in exchange for the contribution of the Property to Bay Countrybrook, calculated as provided below, shall be equal to the following (the "Adjusted Contribution Price"): Twenty Eight Million Eight Hundred Thousand Dollars (\$28,800,000) (the "Contribution Price"), minus all unpaid principal of the Tax-Exempt Debt, minus any prorations described in Article 6 which are the responsibility of the Contributor (including, without limitation, the Occupancy Credit), minus commissions due to the Broker (as defined below) pursuant to Section 9.1, minus any amounts to be credited to Bay Countrybrook pursuant to Section 4.6, minus any security deposits Bay elects to have credited to Bay Countrybrook pursuant to the terms of this Agreement, plus any prorations described in Article 6, which are the responsibility of Bay Countrybrook. The Limited Partnership Units shall be convertible into shares of common stock, .01 par value, of Bay or cash at the option of Bay in accordance with the exchange feature and other rights, preferences and privileges described in the Limited Partnership Agreement. Any shares of stock received upon conversion of the Limited Partnership Units (collectively, "Conversion Shares") shall be subject to the Registration Rights Agreement.

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1.2 Calculation of Number of Limited Partnership Units. For purposes of determining the number of Limited Partnership Units to be delivered in satisfaction of payment of the Adjusted Contribution Price, the Adjusted Contribution Price shall be divided by the weighted average (by daily trading volume) of the closing price of shares of stock in Bay for the ten (10)-business day period immediately preceding the date of this Agreement. Five (5) days prior to Closing, Bay shall prepare a schedule (the "Limited Partnership Unit Schedule") reflecting the aggregate number of Limited Partnership Units to be delivered to Contributor at Closing.

1.3 Capital Contribution of the General Partner. Upon Closing, Bay shall cause the General Partner to contribute to Bay Countrybrook as a capital contribution the sum of One Million Dollars (\$1,000,000). Such sum shall be used to pay certain closing costs of the Contributor and Bay Countrybrook as more particularly provided in the Limited Partnership Agreement and as provided in Article 6.

1.4 Contributor's Ability to Distribute Limited Partnership Units. The Contributor and Bay hereby acknowledge that the Contributor intends to

distribute its Limited Partnership Units to the Limited Partnership Unit Holders immediately upon Closing. Five (5) business days prior to Closing, the Contributor will furnish to Bay Countrybrook the names of the Limited Partnership Unit Holders and each such Limited Partnership Unit Holder's corresponding percentage ownership in the Contributor. Limited Partnership Units calculated as provided in this Agreement equal in value to the Partner Debt will be delivered to the Partner Creditors in satisfaction of the Partner Debt and to the other Limited Partnership Unit Holders in proportion to their ownership interests as set forth in such information provided by the Contributor. The Limited Partnership Unit Holders will be admitted as limited partners in Bay Countrybrook in accordance with the terms of the Limited Partnership Agreement provided that each such Limited Partnership Unit Holders (i) agrees to be bound by and comply with the Limited Partnership Agreement, (ii) makes the investment representations and warranties as listed in Section 3.1(m) hereof and (iii) in the case of the Partner Creditors, releases all indebtedness of the Contributor held by it pursuant to documentation reasonably satisfactory to Bay. The Contributor agrees to cause the Partner Creditors to duly execute and deliver such documentation.

1.5 Closing Date. Unless this Agreement is sooner terminated pursuant to its terms, the closing of all transactions contemplated by this Agreement (the "Closing") shall take place on the date which is fifteen (15) days following the Diligence Period Expiration Date (as it may be extended pursuant to the terms of Article 5, the "Closing Date"). The Closing shall occur in the offices of _____, California on the Closing Date, unless otherwise agreed in writing by the Contributor and Bay. The Closing shall occur pursuant to

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closing arrangements satisfactory to Bay and the Contributor.

1.6 Deposit. Upon the execution and delivery of this Agreement by all parties, Bay shall deliver to Commonwealth Land Title Insurance Company ("Escrow Agent") the sum of Two Hundred Thousand Dollars (\$200,000) (together with all interest earned thereon, the "Deposit") to be held in escrow pursuant to the terms of this Agreement. The Escrow Agent shall hold the Deposit in an interest-bearing segregated account at a bank satisfactory to Bay and the Contributor. The Deposit shall be returned to Bay upon Closing or delivered in accordance with the terms of this Agreement if Closing does not occur in accordance with the terms of this Agreement.

ARTICLE 2 - CONDITIONS TO CLOSING

2.1 Conditions to Bay's Obligations. The obligation of Bay to cause consummation of the transactions contemplated hereunder shall be subject to the satisfaction or waiver by Bay of each of the conditions set forth below.

(a) Due Diligence. Bay, its authorized representatives, its agents and its employees shall have the right to conduct and be satisfied with any and all due diligence relative to the Property as may be deemed necessary or appropriate by Bay in its sole discretion. Without limiting the foregoing, the Contributor shall make available to Bay any and all materials and documents relating to all or any portion of the Property, including, without limitation, Leases, management agreements, service and other contracts, financial reports, Rent Rolls (as defined below), existing surveys permits and other similar or dissimilar materials. The Contributor shall promptly, and in any event within five (5) days of Bay's request therefor, deliver or otherwise make available to Bay true, correct and complete copies of any requested material in the possession of the Contributor or under the Contributor's control and all of the Contributors' other materials, files, books, records and information relating to the Property. Bay shall have the right to interview third-parties (other than tenants) selected by Bay in the performance of its due diligence on the Property. Without limiting the foregoing, the Contributor shall make available to Bay, at the Contributor's sole cost and expense except as otherwise expressly provided in this Agreement, the following:

(i) a current extended coverage preliminary title report on the Real Property, issued by Commonwealth Land Title Company (the "Title Company"), accompanied by complete copies of all documents referred to in the report (collectively, the "Preliminary Report"). Within seven (7) days of receipt of the Preliminary Report and the survey described in Section 2.1(c), Bay shall notify the Contributor of any objections it has to the exceptions

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listed in Schedule B-II of the Preliminary Report and such survey (such

objections, the "Initial Title Objections"). The Contributor shall provide Bay a written proposal for addressing each Initial Title Objection within seven (7) days of receipt of Bay's notice. Any Initial Title Objection which Bay does not approve in writing within seven (7) days of receipt of such proposal shall not constitute a Permitted Encumbrance.

(ii) copies of any and all existing and proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Preliminary Report;

(iii) any existing survey(s) of the Real Property in the Contributor's possession or control, including, without limitation, any "as-built" survey of the Real Property;

(iv) copies of the most recent property tax bills and assessments for the Property;

(v) all presently effective warranties or guaranties from any contractors, subcontractors, suppliers, servicemen or materialmen in connection with any of the Personal Property or any construction, renovation, repairs or alterations of any improvements on the Real Property or any tenant improvements (collectively, the "Warranties");

(vi) a schedule (the "Schedule of Agreements") setting forth a list of all of the Contracts. From this Schedule of Agreements, Bay shall designate those Contracts that the Contributor shall assign to Bay Countrybrook as of Closing if they are assignable (such designated Contracts, together with the Warranties and any other information designated by Bay for assignment are collectively referred to herein as the "Assigned Contracts"). Without limiting, the foregoing, unless Bay specifically informs the Contributor otherwise, Bay Countrybrook shall not retain the existing employees and management agents of the Contributor for the Property, and, accordingly, on or prior to the Closing, the Contributor shall (A) cause all employment and management agreements respecting the Property to be terminated, and deliver to Bay evidence of such termination satisfactory to Bay, (B) remove all employees and management personnel from the Property and (C) deliver any rental units within the Property previously occupied by such employees and/or management personnel in a vacant and tenant-ready condition;

(vii) reports of insurance carriers insuring the Property, and each portion thereof, respecting the claims history of the Property, if any, certificates of insurance and insurance policies and insurance claims history for the three (3) most recent calendar years

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prior to Closing and, to the extent available, for the current year;

(viii) environmental reports, environmental audits, soil reports, site plans (with dimensions), engineering reports and plans, traffic reports, demographic information, landscape plans, structural calculations, floor plans (identifying tenant and vacancy locations), certified copies of the as-built plans and specifications, all items pertaining to any remodeling or renovation of the Property, construction contracts, a current inspection report by a licensed Structural Pest Control Operator, other reports or documents of significance to the Property, copies of the zoning description applicable to the Property, and copies of final certificates of occupancy for all improvements on the Land;

(ix) a complete inventory of all Personal Property used at or in connection with the Property;

(x) a complete list of the Contributor's and the Contributor's property manager's employees at the Property, if any, specifying the current compensation of each;

(xi) all income and expense statements, year-end financial and monthly operating statements and year-to-date statements for the three (3) most recent calendar years prior to Closing and, to the extent available, the current year, all of which shall be certified by the Contributor as, to the best of the Contributor's knowledge, accurately stating the income and expenses for the Property for such period;

(xii) a copy of the budget for the Property for the current year;

(xiii) (A) copies of all existing and pending Leases, lease files and tenant correspondence, (B) a schedule of leasing commissions now or hereafter payable on a space by space basis, (C) a copy of the current standard lease form, and (D) a current rent roll of the Property in the form currently used by the Contributor (the "Rent Roll"); and

- (xiv) all Licenses;
- (xv) all Tax-Exempt Instruments; and
- (xvi) UCC searches from the Secretary of State of the State of California and Santa Clara County showing any and all filings against the Contributor or any of its general partners as debtor or lessor.

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Bay shall have the right in its sole discretion to terminate this Agreement at any time on or before the date which is twenty-five (25) days following the date on which the Contributor delivers to Bay the Partnership Consent (the "Diligence Period Expiration Date"). The Contributor shall use diligent and good faith efforts to obtain the Partnership Consent. If the Partnership Consent has not, despite such efforts, been obtained within forty (40) days of the date of this Agreement, the Contributor and Bay shall each have the right to terminate this Agreement. If Bay desires to proceed with the acquisition of the Property subject to all other terms and conditions of this Agreement, then on or before the Due Diligence Expiration Date, Bay shall deliver written notice of such election to proceed (the "Notice to Proceed") to the Contributor. In the event that Bay fails to deliver the Notice to Proceed to the Contributor electing to waive its right of termination pursuant to this Section prior to the Due Diligence Expiration Date, then Bay shall be deemed to have elected to terminate this Agreement. Upon such termination (including, without limitation, a deemed termination), the Deposit shall be promptly delivered to Bay and all obligations of the parties under this Agreement, other than those in Sections 4.7, 9.1 and 9.16 (collectively, the "Surviving Obligations"), shall terminate without recourse and be of no further effect. If Bay delivers the Notice to Proceed in accordance with the terms of this Section, the Deposit shall become nonrefundable, subject to Bay's right to return of the Deposit pursuant to the terms of this Agreement.

(b) Title Insurance. Bay Countrybrook shall have received from the Contributor an original ALTA's Owner's policy of title insurance (Form B, rev. 10/17/70) issued by the Title Company in the amount of the Contribution Price, insuring fee simple title to the Real Property in Bay Countrybrook, subject only to such exceptions as Bay shall have approved, without boundary, encroachment or survey exceptions and with such endorsements as Bay shall require (the "Title Policy"). The Title Policy shall also provide full coverage against mechanic's and materialman's liens.

(c) Survey. Bay Countrybrook shall have received from the Contributor within ten (10) days of the date hereof a survey of Real Property made in accordance with ALTA standards, certified to Bay Countrybrook and any other parties requested by Bay and in form and substance satisfactory to Bay.

(d) UCC Search. Bay Countrybrook shall have obtained the results of a UCC Search from the Secretary of State of the State of California and Santa Clara County dated no earlier than fifteen (15) days prior to the Closing Date showing any and all filings against the Contributor or any of its general partners as debtor or lessor, and the Contributor shall have removed and released from the public records all such filings with respect to the Property, or any portion thereof, effective as of the Closing Date, other than those constituting Permitted Exceptions.

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(e) Consents. The Contributor shall have obtained all authorizations, consents, approvals and waivers from third parties and Authorities, required to enable the Contributor to transfer the Property to Bay Countrybrook in accordance with all agreements by which it or the Property is bound or to which it or the Property is subject and shall have provided evidence thereof in form and substance satisfactory to Bay. Without limiting the foregoing, the Contributor shall have obtained (and delivered evidence thereof in form and substance satisfactory to Bay as required under the terms of this Agreement) approval of the transactions contemplated by this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and all Related Agreements (as defined below), by a majority in interest of the limited partners and any other necessary partners of the Contributor and valid and binding powers of attorney executed in favor of the Contributor by a majority in interest of the limited partners and other necessary partners of the Contributor enabling the Contributor to execute and deliver documents and instruments relating to the transaction that is the subject of this Agreement on their behalf (such approvals and powers, collectively, the "Partnership Consent").

(f) Contributor Partnership Agreement. The Contributor

shall have delivered to Bay Countrybrook a true, complete and correct copy of the Limited Partnership Agreement of Contributor (the "Contributor Partnership Agreement"), which shall not have been amended and shall be in full force and effect.

(g) Federal National Mortgage Association Approval. Bay Countrybrook shall have received all approvals, consents, acknowledgments agreements and authorizations from Federal National Mortgage Association ("FNMA"), the trustee for the Tax-Exempt Debt, and the Issuer, requested by Bay in connection with the assumption of the Tax-Exempt Debt in form and substance satisfactory to Bay. The Contributor and Bay shall cooperate with each other to obtain the foregoing.

(h) Accuracy of Representations and Warranties. Notwithstanding the terms of this item (h) below, the representations and warranties of the Contributor contained herein shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date. A certificate to such effect shall be executed and delivered by the general partner of the Contributor as of the Closing Date confirming the foregoing and containing any qualifications necessary to cause such representations and warranties to comply with the foregoing sentence, however, it shall remain a condition to Bay's obligations under this Agreement that all the representations and warranties of the Contributor contained herein be true and correct in all material respects as of the Closing Date.

(i) Opinion of Counsel. The Contributor shall have delivered to Bay or the

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General Partner, as requested by Bay, opinions of Rudnick & Wolfe, counsel to the Contributor, dated as of the Closing Date, in form and substance satisfactory to Bay regarding the due organization and authority of the Contributor and its general partner(s), if entities, to execute and deliver this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and all Related Agreements executed by the Contributor or such general partners.

(j) Authority. The Contributor and its general partner(s) shall have delivered to Bay and Bay Countrybrook evidence of the authority of the Contributor to execute and deliver this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and all Related Agreements and to consummate the transactions which are the subject of this Agreement, in form and substance satisfactory to Bay, including, without limitation, organizational documents of the Contributor and the general partners certified by the Secretary of State of the state in which they were organized, certificates of legal existence and good standing, qualifications to do business, if applicable, and the Secretary's certificates as to resolutions and incumbency.

(k) Absence of Litigation.

(i) No Action shall be pending or threatened against the Contributor or the Property, which (i) questions or could reasonably be expected to question the validity or legality of the transactions contemplated hereunder, under the Limited Partnership Agreement, the Registration Rights Agreement or the Related Agreements or (ii) affects or could reasonably be expected to affect the Property or any material portion thereof; and

(ii) No Action by any Authority shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereunder, under the Limited Partnership Agreement, the Registration Rights Agreement or the Related Agreements or which could reasonably be expected to detrimentally affect the ownership, operation, transfer or use of any material portion of the Property or the Property in any other way.

(iii) The general partner of the Contributor on behalf of the Contributor shall so certify, to the best of its knowledge, as to the foregoing items (i) and (ii) of this item (k) at Closing.

(l) Absence of Material Change and Default. Since the date of this Agreement, there shall not have been any material, adverse change in the condition, financial or otherwise, of the Property or the Contributor, and the general partner of the Contributor on

behalf of the Contributor shall so certify at Closing. The Contributor shall have fully complied in all material respects with all of its obligations hereunder and shall not be in default.

(m) Qualified Tenants. At Closing at least ninety percent (90%) of the apartment units on the Property shall be physically occupied by tenants (collectively, "Qualified Tenants") who (i) are not in default under their respective Leases, (ii) meet Bay's reasonable credit standards for tenancy at the Property and (iii) are paying rent at commercially reasonable rates without any special concessions. The Rent Roll as updated through Closing in accordance with the term of this Agreement shall be in form and substance satisfactory to Bay.

(n) Registration Rights Agreement and Limited Partnership Agreement. On or before April 2, 1996, the Contributor and Bay, using reasonable and good faith efforts to agree, shall have agreed upon the form of Limited Partnership Agreement and Registration Rights Agreement to be executed and delivered at Closing.

(o) Delivery of Documents. At the Closing, the Contributor shall have executed and delivered to Bay Countrybrook the following, in form and substance satisfactory to Bay:

(i) Deed. Warranty Deed in form and substance reasonably satisfactory to Bay and the Contributor, executed by the Contributor, in recordable form conveying the Property to Bay Countrybrook free and clear of all liens, claims and encumbrances, except for the Permitted Exceptions;

(ii) Bill of Sale. A warranty assignment and bill of sale in form and substance reasonably satisfactory to Bay and the Contributor, executed by the Contributor, assigning, conveying and warranting to Bay Countrybrook title to the Personal Property, free and clear of all encumbrances, together with the original certificates of title thereto;

(iii) General Assignment. An assignment in form and substance reasonably satisfactory to Bay and the Contributor, executed by the Contributor, to Bay Countrybrook of all right, title and interest of Contributor and its agents in and to the Intangibles to the extent assignable;

(iv) Assignment of Contracts. An assignment in form and substance reasonably satisfactory to Bay and the Contributor, executed by the Contributor, to Bay Countrybrook of Contributor's right, title and interest in and to the Assigned Contracts;

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(v) Assignment of Leases. An assignment, executed by the Contributor, of the Contributor's right, title and interest in and to the Leases (including, without limitation, all security deposits and/or other deposits thereunder not previously applied in accordance with the terms of the applicable Leases and reflected on Exhibit E attached hereto, which security deposits shall be delivered or credited to Bay Countrybrook as it elects);

(vi) Keys. Keys to all locks located at the Property;

(vii) Letters to Tenants. A letter executed by the Contributor and, if applicable, its management agent, addressed to all Tenants, notifying all Tenants of the transfer of ownership of the Property and directing payment of all rents accruing after the Closing Date to be made to the General Partner on behalf of Bay Countrybrook or at its direction;

(viii) Original Documents and Files. To the extent not previously delivered to Bay and in the Contributor's possession, originals of the Leases, the Assigned Contracts, the Tax-Exempt Instruments and the Licenses;

(ix) Tax Bills. Copies of the most currently available tax bills;

(x) Entity Transfer Certificate. Entity transfer certification confirming that the Contributor is a "United States Person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended;

(xi) Rent Roll. An updated Rent Roll within five (5) days prior to Closing, which updated Rent Roll will be used to identify all Leases of space at the Property for purposes of this Agreement as of the Closing Date. The Contributor shall specifically identify any changes from the Rent Roll attached hereto as Exhibit F, and a certificate executed by the

Contributor and the property manager for the Property certifying that such updated Rent Roll is true, complete and correct (including, without limitation, the amount of security deposits and description of uncured tenant defaults and delinquencies listed thereon), stating whether there exist any events which with the passage of time and/or the giving of notice would constitute a tenant default under a Lease dated as of the Closing Date;

(xii) [Intentionally Omitted]

(xiii) Registration Rights Agreement. The Registration Rights Agreement, dated as of the Closing Date, duly executed by the Contributor in the form agreed to in accordance with the terms of Section 2.1(n);

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(xiv) Title Insurance. The Title Policy;

(xv) Survey. A survey meeting the requirements of Section 2.1(c) hereof;

(xvi) Consents. Any consents required pursuant to Section 2.1(e);

(xvii) Certificates. A copy of the Contributor Partnership Agreement certified by the general partner of Contributor as true, complete and correct and any certificates required by Section 2.1(h) hereof.

(xviii) Opinion of Counsel. The opinions of the Contributor's counsel required under pursuant to Section 2.1(i).

(xix) Prospective Subscriber Questionnaires. Within ten (10) days of the date hereof, copies of prospective subscriber questionnaires (including both individual and entity forms) in the form attached hereto as Exhibit G duly authorized, executed and delivered by the Contributor and each of the Limited Partnership Unit Holders.

(xx) Assignment and Assumption of Tax-Exempt Debt. An Assumption Agreement under which the Contributor shall assign to Bay Countrybrook all of its rights under the Tax-Exempt Instruments, and Bay Countrybrook shall assume all obligations of the Contributor under the Tax-Exempt Instruments arising on and after the Closing Date or otherwise required in connection therewith under this Agreement, including, without limitation, as described in Section 2.1(g).

(xxi) Tax-Exempt Instruments. All of the Tax-Exempt Debt Instruments;

(xxii) Bond Counsel Opinion. An opinion of bond counsel in form and substance reasonably acceptable to Bay;

(xxiii) Good Cost/Bad Cost Certificate. A certificate regarding Qualified Project Costs substantially in the form of Exhibit H attached hereto, with such back-up materials as requested by Bay;

(xxiv) Tax-Exempt Instruments' Compliance Reports. All reports filed by the Contributor evidencing compliance with the Tax-Exempt Instruments;

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(o) Execution of the Limited Partnership Agreement. The Contributor and the General Partner shall have executed the Limited Partnership Agreement and made all filings relating to formation and qualification of Bay Countrybrook as the General Partner deems appropriate.

(p) Management Agreement. Evidence of termination of all management agreement(s) in effect prior to the Closing.

(q) Other. Such other documents, instruments, consents, authorizations or approvals as may be required by, and reasonably satisfactory to, Bay, its counsel or the Title Company and that may be reasonably necessary or desirable to consummate the transactions that are the subject of this Agreement and the Limited Partnership Agreement, the Registration Rights Agreement and the Related Agreements and to otherwise effect the agreements of the parties hereto, including, without limitation, as required under Section 2.1(j).

(r) Timing of Certain Document Deliveries. At least

three (3) days prior to the Closing, the Contributor shall make, or cause to be made, all document deliveries required by Sections 2.1(b) through 2.1(m) and Section 2.1(p).

2.2 Conditions to the Contributor's Obligations. The obligations of the Contributor to consummate the transactions contemplated hereunder are subject to the satisfaction or waiver by the Contributor, on or prior to the Closing Date, of each of the conditions set forth below.

(a) Accuracy of Representations and Warranties. Notwithstanding the terms of this item (a) below, the representations and warranties of Bay hereunder shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date. A certificate of such effect shall be executed and delivered by Bay as of the Closing Date confirming the foregoing and containing any qualifications necessary to cause such representations and warranties to comply with the foregoing sentence, however, it shall remain a condition to the Contributor's obligations under this Agreement that all such representations and warranties be true and correct in all material respects as of the Closing Date.

(b) Consents. All authorizations, consents, approvals and waivers from Authorities and other parties necessary to permit the Contributor to transfer the Property to Bay Countrybrook as contemplated hereunder shall have been obtained unless (i) the failure to obtain any such authorization, consent, approval or waiver would not have a material adverse effect upon the Contributor or (ii) the General Partner indemnifies and holds the Contributor harmless from and against any and all liabilities, costs and expenses which may be attributed to

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such failure.

(c) Absence of Litigation.

(i) No Action shall be pending or threatened against Bay, which questions or could reasonably be expected to question the validity or legality of the transactions contemplated hereunder, under the Limited Partnership Agreement, the Registration Rights Agreement or the Related Agreements; and

(ii) No Action by any Authority shall have been instituted or threatened which questions the validity or legality of the transactions contemplated hereunder, under the Limited Partnership Agreement, the Registration Rights Agreement or the Related Agreements.

(d) Absence of Material Change and Default. Since the date of this Agreement, there shall not have been any material, adverse change in the condition, financial or otherwise, of Bay Countrybrook. Bay shall have fully complied in all material respects with all of its obligations hereunder and shall not be in default.

(e) Execution of Limited Partnership Agreement. The General Partner shall execute and deliver the Limited Partnership Agreement.

(f) Financial Condition of Bay. Bay has a minimum book net worth of \$200,000,000 and a minimum of ratio of earnings before interest, taxes, depreciation and amortization ("EPITDA") over interest expense of at least 2.0/1.0.

(g) Opinion of Counsel. The Contributor shall have received an opinion of counsel to Bay as to the authority to execute and deliver this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and all Related Agreements, if any, executed by Bay and that Bay Countrybrook will not be, as of the Closing Date, taxed as a corporation.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Contributor. The Contributor hereby represents and warrants to Bay as of the date of this Agreement as follows, and the Contributor shall, as a condition to Bays' obligations to consummate the transaction that is the subject of this Agreement, be deemed to remake the following representations and warranties as of the Closing Date as if made again thereon:

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(a) Existence and Power. The Contributor has been duly formed and is a validly existing limited partnership under the laws of the

State of California. The Contributor has all power and authority to enter into this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and all other documents to be executed and delivered in connection with the transactions that are the subject of this Agreement, the Limited Partnership Agreement and the Registration Rights Agreement, including, without limitation, all documents referred to in Section 2.1(j), (collectively, the "Related Agreements") to the extent to be executed by the Contributor, and to enter into and deliver and to perform its obligations hereunder and under the Limited Partnership Agreement, the Registration Rights Agreement and the Related Agreements executed by the Contributor.

(b) Authorization; No Contravention. The Contributor represents that the execution and delivery of this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and the Related Agreements executed by it and the performance of its obligations under all of the foregoing will have been duly authorized by all requisite organizational action, including, without limitation, by obtaining the consent of all necessary partners in the Contributor. This Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and the Related Agreements executed by it will constitute the valid, legal and binding obligations of the Contributor. None of this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement or the Related Agreements executed by it will violate any material term of any agreement, order or decree to which it is a party or by which the Contributor is bound. There is no existing or, to the best of the Contributor's knowledge, threatened legal action or governmental proceedings of any kind involving the Contributor, which, if determined adversely to it, would interfere with the Contributor's ability to execute or deliver, or perform its obligations under, this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement or the Related Agreements executed by it or have a material, adverse effect on the use, occupancy, operation or value of the Property.

(c) Descriptive Information; Diligence. To the best of the Contributor's knowledge, the Contributor has made all disclosures to Bay required under applicable California Law (as defined below). To the best of the Contributor's knowledge, all documents delivered by or on behalf of the Contributor to Bay, or made available to Bay for review in connection with the transactions contemplated by this Agreement, the Limited Partnership Agreement, the Registration Rights Agreement and the Related Agreements, including, without limitation, all leases of the Property (collectively, the "Leases") and all other materials delivered pursuant to Section 2.1(a), are, true, correct and complete copies of all such documents in the Contributor's possession or control. The Contributor has delivered or made available to Bay all of the Contributor's books, records and files and all other materials of the

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Contributor relating to the Property.

(d) Defaults and Tax-Exempt Debt. The Contributor is not in monetary, or, to the best of Contributor's knowledge, material nonmonetary default under any of the documents, recorded or unrecorded, encumbering or affecting the Property, including without limitation, the Licenses, Leases and Contracts, any documents referred to in any title commitment delivered to Bay by the Contributor or any documents or instruments executed in connection with all or any of the foregoing. The Contributor has delivered to Bay true, complete and accurate copies of all of the material documents evidencing, securing and otherwise executed in connection with all or any portion of the Tax-Exempt Debt.

(e) Compliance with Law. The Contributor has not received written notice that all or any portion of the Property violates any laws, rules, regulations, ordinances, codes, official interpretation (collectively, "Laws") or any requirement of any insurer or board of fire underwriters or similar entity. The Contributor has not received notice of any special assessment proceedings affecting the Property. To the best of Contributor's knowledge, all licenses, permits, approvals, variances, easements and rights of way, including, without limitation, proof of dedication and authorizations (collectively, the "Licenses") required for the ownership, use or operation of the Property as presently used and operated or otherwise have been validly issued and are in full force and effect, and the Contributor has not received any written notice of proceedings relating to the revocation or modification of any License.

(f) Leases. To the best of the Contributor's knowledge, the Leases are in full force and effect. All brokerage commissions or compensation in respect of any of the Leases have been, or prior to Closing will be, paid by the Contributor. At the Closing, true, complete and correct copies of all of the Leases shall have been provided to Bay. To the best of the Contributor's knowledge, no person or entity has any option or right of first refusal or first opportunity to acquire any interest in any of the Property.

(g) Rent Roll. Attached hereto as Exhibit F is the Rent Roll which, to the best of the Contributor's knowledge, is true, complete and correct as of the date of this Agreement. The Rent Roll attached as Exhibit F shall be updated through Closing. To the best of the Contributor's knowledge, as of the Closing Date such updated Rent Roll is true and correct and in all material respects, and, except as set forth in such updated Rent Roll, no tenant under any of the Leases is in default of any of its material monetary obligations under its Lease.

(h) Contracts. True, complete and correct copies of all Contracts have been provided to Bay. To the best of the Contributor's knowledge, the Contracts (i) are in full

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force and effect and (ii) are terminable on not more than thirty (30) days' prior written notice and without payment of any penalty. The Contributor agrees to terminate prior to Closing, at its own expense, all Contracts other than the Leases, the Assigned Contracts, the Permitted Exceptions and the Licenses. To the best of the Contributor's knowledge, there shall be no agreements or other obligations with respect to all or any portion of the Property that are binding on Bay Countrybrook or the Property following Closing, other than the Leases, the Assigned Contracts, the Permitted Exceptions, the Licenses and other documents executed in connection with the foregoing.

(i) Utilities. To the best of Contributor's knowledge, all water, sewer, gas, electric, telephone and drainage facilities and all other utilities required by Law or for the normal use and operation of the Property are installed to the property lines of the Land, are connected pursuant to valid Licenses. The Contributor has not received notice that any of the foregoing facilities or utilities are inadequate to service the Property or do not meet the requirements of applicable Law.

(j) Hazardous Substances. To the best of the Contributor's knowledge, the Contributor has not generated, stored, released, discharged or disposed of, used or handled Hazardous Substances or Hazardous Wastes (as those terms are defined below) at, upon or from the Property in violation of any Law or in connection with which remedial action would be required under any Law. To the best of Contributor's knowledge, no Hazardous Substances or Hazardous Wastes are or have been generated, stored, released, located, discharged or disposed of, used or handled from, at or upon the Property, and no Hazardous Substance or Hazardous Waste are or have been located on the Property, except for cleaning and maintenance supplies customarily used in connection with properties of the type of the Property and which have been used in compliance with all applicable Laws. As used in this Agreement, the terms "Hazardous Substances" and "Hazardous Wastes" shall have the meanings sets forth in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and the regulations thereunder, the Resource Conservation and Recovery Act, as amended, and the regulations thereunder, and the Federal Clean Water Act, as amended, and the regulations thereunder, and such terms shall also include asbestos, petroleum products, radon, radioactive materials, lead paint, UFFI and any other regulated substances under any Law.

(k) FIRPTA. The Contributor represents that it is not a "foreign person", as defined in Section 1445(f)(3) of the Code.

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(l) Investment Representations and Warranties. The Contributor makes the following representations and warranties as of the date of this Agreement and shall be deemed to remake them as to itself as of Closing, and each Limited Partnership Unit Holder shall make the following representations and warranties as to itself at each time as any such Limited Partnership Unit Holder receives Limited Partnership Units:

(i) The Contributor and each Limited Partnership Unit Holder have had an opportunity to review all registration statements and amendments thereto filed on behalf of Bay (collectively, the "Bay Documents") and understand the risks of, and other considerations relating to, the acquisition of the Limited Partnership Units. The Contributor and each Limited Partnership Unit Holder, by reason of its, his or her business and financial experience, together with the business and financial experience of those persons, if any, retained by it to represent or advise it with respect to its investment in the Limited Partnership Units, has such knowledge, sophistication and experience in financial and business matters and in making investment decisions of this type that it, he or she (A) is capable of evaluating the

merits and risks of an investment in Bay Countrybrook and of making an informed investment decision, (B) is capable of protecting its own interest or has engaged representatives or advisors to assist it in protecting its interests and (C) is capable of bearing the economic risk of such investment.

(ii) The Contributor and each Limited Partnership Unit Holder understand that an investment in Bay Countrybrook involves substantial risks. The Contributor and each Limited Partnership Unit Holder have been given the opportunity to make a thorough investigation of the proposed activities of Bay Countrybrook and have been furnished with materials relating to Bay Countrybrook and its proposed activities, including, without limitation, the Limited Partnership Agreement and the Registration Rights Agreement. The Contributor and each Limited Partnership Unit Holder have been afforded the opportunity to obtain any additional information deemed necessary by any of them to verify the accuracy of any representations made or information conveyed to the Contributor or any Limited Partnership Unit Holder. The Contributor and each Limited Partnership Unit Holder confirm that all documents, records, and books pertaining to its investment in Bay Countrybrook and requested by the Contributor or any Limited Partnership Unit Holder have been made available or delivered to the Contributor or such Limited Partnership Unit Holder, as the case may be. The Contributor and each Limited Partnership Unit Holder have had an opportunity to ask questions of and receive answers from Bay and the General Partner, concerning the terms and conditions of their investment. The Contributor has relied and are making each of their investment decisions upon Bay Countrybrook's charter documents and other written information provided to the Contributor and each Limited Partnership Unit Holder by or on behalf of Bay Countrybrook.

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(iii) The Limited Partnership Units to be issued to the Contributor and subsequently distributed to the Limited Partnership Unit Holders will be acquired by the Contributor and each of such Limited Partnership Unit Holders for its, his or her own account (or if the Contributor is a trustee, for a trust account) for investment only and not with a view to, or with any intention of, a distribution or resale thereof (except, in the case of the Contributor, to the Limited Partnership Unit Holders in accordance with the terms of this Agreement and the Limited Partnership Agreement), in whole or in part, or the grant of any participation therein, without prejudice, however, to the Contributor's and the Limited Partnership Unit Holder's right (subject to the terms of this Agreement and the Limited Partnership Agreement) at all times to sell or otherwise dispose of all or any part of the Limited Partnership Units under an exemption from such registration available under the Securities Act of 1933, as amended (the "Securities Act"), and applicable state securities laws, and subject, nevertheless, to the disposition of its assets being at all times within its control. Neither the Contributor nor any Limited Partnership Unit Holder was formed for the specific purpose of acquiring an interest in Bay Countrybrook or Bay.

(iv) The Contributor and the Limited Partnership Unit Holders acknowledge that (A) the Limited Partnership Units to be issued to the Contributor at Closing have not been registered under the Securities Act or state securities laws by reason of a specific exemption or exemptions from registration under the Securities Act and applicable state securities laws and, if such Limited Partnership Units are represented by certificates, such certificates will bear a legend to such effect, (B) Bay's and Bay Countrybrook's reliance on such exemptions is predicated in part on the accuracy and completeness of the representations and warranties of the Contributor and each Limited Partnership Unit Holder contained herein, (C) such Limited Partnership Units, therefore, cannot be resold unless registered under the Securities Act and applicable state securities laws, or unless an exemption from registration is available, (D) there is no public market for such Limited Partnership Units and (E) Bay Countrybrook has no obligation or intention to register such Limited Partnership Units for resale under the Securities Act or any state securities laws or to take any action that would make available any exemption from the registration requirements of such laws. The Contributor and each Limited Partnership Unit Holder hereby acknowledge that because of the restrictions on transfer or assignment of the Limited Partnership Units to be issued hereunder which are set forth in the Limited Partnership Agreement and the Registration Rights Agreement, the Contributor may have to bear the economic risk of the investment commitment evidenced by this Agreement and any Limited Partnership Units purchased hereby for an indefinite period of time.

(v) The address set forth under the Contributor's and each Limited Partnership Unit Holder's name in Exhibit I is the Contributor's or applicable Limited

Partnership Unit Holder's principal place of business, as the case may be, which address has not changed within the five (5) years immediately preceding the date hereof, except as disclosed in writing to Bay prior to the date hereof, and neither the Contributor nor any Limited Partnership Unit Holder has any present intention of becoming a resident of any country, state or jurisdiction other than the country and state in which such principal place of business or residence is sited.

(m) Financial Statements. All operating statements delivered to Bay by the Contributor were prepared by the Contributor in the ordinary course of its business, and, to the best of the Contributor's knowledge, in all material respects accurately set forth the results of the operation of the Property for the periods covered. Since the date of the most recent internally prepared operating statements referred to above, to the best of Contributor's knowledge, (i) there has been no material adverse change in the condition, financial or otherwise, of the Property or the Contributor whether or not arising in the ordinary course of business and (ii) there has been no material change in the ownership of the Contributor or any increase in the indebtedness of the Contributor.

(n) Taxes. To the best of the Contributor's knowledge, all tax or information returns required to be filed on or before the date hereof by or on behalf of the Contributor (i) have been filed through the date hereof or will be filed on or before the date when due in accordance with all applicable laws and (ii) there is no action, suit or proceeding pending against or with respect to the Contributor or its Property in respect of any tax nor is any claim for additional tax asserted by any such authority. To the best of the Contributor's knowledge, all real estate taxes and assessments relating to the Property have been paid and copies of most recent tax bills have been delivered to Bay.

(o) Insurance. The Contributor currently has in place the public liability casualty and other insurance coverage with respect to its Property set forth in Exhibit J, and each of such insurance policies, to the best of Contributor's knowledge, is in full force and effect and all premiums due and payable thereunder have been fully paid when due.

(p) Existence of Tax Exemption; Good Costs/Bad Costs During Construction. To the best of the Contributor's knowledge, nothing has come to the attention of the Contributor, and the Contributor has no knowledge of any facts or claims, which would lead it to believe that interest on the Tax-Exempt Debt has at any time on or prior to the Closing (i) not been excluded from gross income for federal income tax purposes, (ii) is an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations or (iii) is further not exempt from personal income taxation imposed by the State of California. To the best of the Contributor's knowledge, the

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Contributor has complied with all covenants contained in any and all documents and laws required to be complied with to ensure that such interest payable with respect to the Tax-Exempt Debt is and continues to be excluded from gross income for federal income tax purposes. To the best of the Contributor's knowledge, at least ninety-five percent (95%) of the proceeds of the Tax-Exempt Debt have been expended to pay for Qualified Project Costs.

(q) Authorizations, Approvals and Consents. To the best of the Contributor's knowledge, the Contributor has obtained all authorizations, approvals and consents necessary to enter into this Agreement and the Related Documents, and, prior to Closing, the Contributor will have obtained all authorizations, approvals and consents necessary to perform all obligations associated with the transaction contemplated by this Agreement.

(r) California Blue Sky. Less than twenty-five (25%) percent of the partnership interests in the Contributor are held by Persons who have addresses in the State of California.

(s) Bulk Sales. There are no claims by Creditors of the Contributor (other than claims by a governmental entity or on account of a violation of law) that shall not on or before the Closing Date have been satisfied in full.

For purposes of this Section 3.1, where the terms "to the best of the Contributor's knowledge" are used, such terms shall mean that neither any individual general partner of the Contributor nor Donald H. Tishman or Nancy Sternberg, acting on behalf of the corporate general partner of the Contributor, has actual knowledge of the matter in question as of the date with respect to which the applicable representation or warranty is made. Nothing contained herein shall require either an individual general partner of the Contributor, or Donald Tishman or Nancy Sternberg acting on behalf of a corporate general partner of the Contributor, to make any special inquiry or

review in connection with any representations or warranties contained herein or in connection with any certificate or document executed or issued in connection with the transaction that is the subject of this Agreement.

3.2 Representations and Warranties of Bay. Bay hereby represents and warrants to the Contributor as follows:

(a) Existence and Power. Bay has been duly formed, is validly existing as a Maryland corporation, is duly qualified to do business in all jurisdictions where such qualification is necessary to carry on its business as now conducted and is duly qualified or in the process of becoming duly qualified in all jurisdictions in which the Property is located.

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Bay has all power and authority under its organizational documents to enter into this Agreement, the Registration Rights Agreement and the Related Agreements executed by it.

(b) Authorization; No Contravention. The execution and delivery of this Agreement, the Registration Rights Agreement and the Related Agreements executed by Bay, and the performance of its obligations under this Agreement, the Registration Rights Agreement and such Related Agreements have been duly authorized by all requisite organizational action, and this Agreement has been, and the Registration Rights Agreement and such Related Agreements will on the Closing Date have been, duly executed and delivered by Bay. None of the foregoing requires any action by or in respect of, or filing with, any governmental body, agency or official or contravenes or constitutes a default under any provision of applicable law or regulation, any organizational document of Bay or any agreement, judgment, injunction, order, decree or other instrument binding upon Bay. This Agreement, the Registration Rights Agreement and the Related Agreements executed by Bay constitute the valid and binding obligations of Bay enforceable in accordance with their respective terms, subject to bankruptcy and similar laws affecting the remedies or resources of creditors generally and principles of equity.

(c) Pending Actions. To the best of Bay's knowledge, there is no existing, or, threatened legal action or governmental proceedings of any kind involving Bay, any of its assets or the operation of any of the foregoing, which, if determined adversely to Bay or its assets, would have a material adverse effect on the consolidated financial position, stockholders' equity, results of operations, business or prospects of Bay or its assets or which would interfere with Bay's ability to execute or deliver, or perform its obligations under this Agreement, the Registration Rights Agreement or any of the Related Agreements executed by it.

(d) Taxes. Bay has filed all federal, state and local income and franchise tax returns required to be filed through the date hereof and has paid all taxes due thereon, and no tax deficiency has been determined adversely to Bay which has had (nor does Bay have any knowledge of any tax deficiency which, if determined adversely to Bay might have) a material adverse effect on the consolidated financial position, stockholders' equity, results of operations, business or prospects of Bay.

(e) Investment Company Act of 1940. Bay is not an "investment company" or an entity "controlled" by an "investment company" as such terms are defined under the Investment Company Act of 1940 and the rules and regulations of the Commission thereunder.

(f) Bay Qualification. Bay is organized and operates, and intends to

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continue to operate, in a manner so as to qualify as a "real estate investment trust" under Sections 856 through 860 of the Code.

For purposes of this Section where the terms "to the best of Bay's knowledge" are used, such terms shall mean that _____ has no actual knowledge of the matter in question as of the date with respect to which the representation or warranty is made. Nothing contained herein shall require Bay or _____ to make any special inquiry or review in connection with any of the representations or warranties contained herein or in connection with any certificate or document executed or issued in connection with the transaction that is the subject of this Agreement.

3.3 Representations and Warranties of the General Partner and Bay. It shall be a condition to the Contributor's obligations under this Agreement that the General Partner and Bay shall make the representations and warranties set forth below to the Contributor as of the Closing Date:

(a) Existence and Power. The General Partner has been duly formed and is validly existing as a Maryland corporation, and is duly qualified to do business in all jurisdictions where such qualification is necessary to carry on its business as now conducted and is duly qualified or in the process of becoming duly qualified in all jurisdictions in which the Property is located. The General Partner has all power and authority under its organizational documents to enter into the Limited Partnership Agreement and the Related Agreements executed by it.

(b) Authorization; No Contravention. The execution and delivery of the Limited Partnership Agreement and the Related Agreements executed by the General Partner, and the performance of its obligations under the Limited Partnership Agreement and such Related Agreements executed by the General Partner will on the Closing Date have been duly authorized, executed and delivered by the General Partner. None of the foregoing requires any action by or in respect of, or filing with, any governmental body, agency or official or contravenes or constitute a default under any provision of applicable Law, any organizational document of the General Partner or any agreement, judgment, injunction, order, decree or other instrument binding upon the General Partner. The Limited Partnership Agreement and the Related Agreements executed by the General Partner when executed will constitute the valid and binding obligations of the General Partner enforceable in accordance with their respective terms, subject to bankruptcy and similar laws affecting the remedies or resources of creditors generally and general principals of equity.

(c) Pending Actions. To the best of the General Partner's and Bay's

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knowledge, there is no existing or threatened legal action or governmental proceedings of any kind involving the General Partner, any of its assets or the operation of any of the foregoing, which, if determined adversely to the General Partner or its assets, would have a material adverse effect on the consolidated financial position, stockholders' equity, results of operations, business or prospects of the General Partner or its assets or which would interfere with the General Partner's ability to execute or deliver, or perform its obligations under the Limited Partnership Agreement or any of the Related Agreements executed by it.

(d) Investment Company Act of 1940. The General Partner is not an "investment company" or an entity "controlled" by an "investment company" as such terms are defined under the Investment Company Act of 1940 and the rules and regulations of the Commission thereunder.

For purposes of this Section where the terms "to the best of the General Partner's knowledge" or "to the best of Bay's knowledge" are used, such terms shall mean that Geoffrey Baker has no actual knowledge of the matter in question as of the date with respect to which the representation or warranty is made. Nothing contained herein shall require the General Partner, Bay or Geoffrey Baker to make any special inquiry or review in connection with any of the representations or warranties contained herein or in connection with any certificate or document executed or issued in connection with the transaction that is the subject of this Agreement.

3.4 Discovery of Breach of Representation or Warranty Prior to Closing. If, prior to Closing, Bay discovers that any of the Contributor's representations or warranties in this Agreement is not true, Bay shall notify the Contributor of its finding within five (5) business days of its discovery. Except as provided below in this Section, the Contributor shall have the right to cure such untruth, if it is in Bay's and the Contributor's reasonable judgement capable of cure, within ten (10) days of notice thereof but in all events on or before the scheduled Closing Date. If in Bay's and the Contributor's reasonable judgement it would cost more than \$150,000 to cure such untruth, the Contributor otherwise does not have the right to cure such untruth under this Section or such untruth is not cured within the period provided in this Section, the Contributor shall have no right, or further right, as the case may be, to cure such untruth and Bay shall, as its sole remedy, except as provided below in this Section, have the right or further right, as the case may be, to deduct \$150,000 from the Contribution Price or terminate this Agreement. Upon any such termination, Bay shall, as its sole remedy, be entitled to return of the Deposit, and the parties rights and obligations, other than the Surviving Obligations, shall terminate without recourse and be of no further force or effect. In the event any of the Contributor's representations or warranties in this Agreement is not true as a result of any act or omission by the Contributor intended to result in termination of

the Agreement or other misconduct of the Contributor, Bay shall have all of the rights and remedies available to it pursuant to Article 7.

ARTICLE 4 - MAINTENANCE AND OPERATION OF THE PROPERTY

4.1 Maintenance and Operation. Through the Closing, the Contributor agrees to maintain and operate the Property as it is currently being operated and in accordance with reasonable operating policies and procedures. The Contributor shall perform all work required to be performed by the landlord under the terms of any Lease. On or before the Closing Date, the Contributor shall cause all vacant units vacated more than five (5) days prior to the Closing to be made tenant ready and available for occupancy, with carpet and vinyl replaced, if appropriate in accordance with the Contributor's reasonable operating policies. Until the Closing, the Contributor shall maintain all existing personnel on the Property in their current employment positions at their current (or an increased) rate of compensation.

4.2 Insurance. Through the Closing Date, the Contributor shall maintain at its sole cost and expense all insurance in effect on the date of this Agreement.

4.3 Personal Property. Bay acknowledges that the Contributor shall have the right, from and after the date of this Agreement through the Closing with respect to the Property, to remove or replace items of its Personal Property from time to time in the normal course of operation of its Property. Bay agrees that the Contributor may remove items of Personal Property from its Property if such items are obsolete or replaced by Personal Property of equal or greater utility or value. Any such Personal Property removed shall cease to constitute "Personal Property" for all purposes under this Agreement. Any Personal Property replaced in the Project pursuant to this Section 4.3 shall, to the extent not thereafter removed in accordance with the terms of this Section 4.3, constitute "Personal Property" for all purposes under this Agreement.

4.4 Leasing. The Contributor shall lease space in the Real Property to tenants in accordance with its leasing policies existing as of the date of this Agreement. All Leases entered into from and after the date of this Agreement in accordance with the terms of this Section shall constitute Leases under this Agreement.

4.5 Operating Agreements. Except as set forth in Section 4.4, the Contributor shall not enter into any contract or other agreement affecting the Property, or any amendment of any contract or agreement, that will be binding on Bay Countrybrook, the General Partner or Bay. The Contributor shall not waive, compromise or settle any rights of the Contributor under any such contract or agreement, or modify, amend or terminate any Assigned Contract

or other such contract or agreement, without in each case obtaining Bay's prior written consent thereto.

4.6 Damage or Destruction; Condemnation. The Contributor shall promptly deliver to Bay written notice of any casualty or taking involving the Property. If, prior to the Closing, all or any part of the Property is damaged or destroyed by casualty such that the cost to repair and/or restore such damage and/or destruction (which cost, for purposes of this Section, shall be deemed to include reasonably anticipated post-Closing rental loss through completion of such repair and/or restoration) would exceed Two Hundred Thousand Dollars (\$200,000.00) (a "Major Casualty"), then Bay shall have the right to terminate this Agreement by written notice to the Contributor within ten (10) business days after Bay's first learning of the occurrence of such casualty and the cost of such repair and/or restoration. If all or any part of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing but (i) the event is not a Major Casualty or (ii) the event is a Major Casualty but this Agreement is not terminated pursuant to this Section as a result thereof, then the Closing Date shall occur as scheduled notwithstanding such damage or destruction, and the Contributor's interest in all proceeds of insurance payable by reason of such casualty shall be assigned to Bay Countrybrook as of the Closing Date or credited to Bay Countrybrook if previously received by the Contributor. The Contributor's obligations pursuant to the immediately preceding sentence shall survive the Closing. If, prior to Closing, a governmental entity commences any eminent domain or condemnation proceeding to take any portion of the Property or the Contributor enters into an agreement in lieu thereof or becomes aware that any such agreement may be offered, and the award to be paid in connection therewith is to exceed One Hundred Thousand Dollars (\$100,000) (a "Major Taking"), Bay shall have the option to terminate this Agreement by written notice to the Contributor within ten (10) business days after Bay first learns of such commencement, entry or offer. If, prior to the Closing Date, a governmental entity commences any eminent domain or

condemnation proceeding to take any portion of the Property or the Contributor enters into an agreement in lieu thereof or becomes aware that any such agreement may be offered and such event does not constitute a Major Taking, then the Closing Date shall occur as scheduled notwithstanding such proceeding, entry or offer, and the Contributor's interest in all awards or payments arising out of such proceedings or agreement shall be assigned to Bay Countrybrook as of the Closing Date or credited to Bay Countrybrook if previously received by the Contributor. The Contributor's obligations under this Section shall survive the Closing. Upon any termination of this Agreement pursuant to the terms of this Section, the Deposit shall be returned promptly to Bay and the rights and obligations of the parties hereto, other than the Surviving Obligations, shall terminate without recourse and be of no further effect.

4.7 Tests and Inspections. The Contributor hereby authorizes Bay its authorized

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representatives, agents and employees to enter upon the Property on one (1) business days' notice from time to time and to perform such tests and inspections as Bay deems necessary or appropriate in its sole discretion, including, without limitation, such soil boring and compacting tests, test well and water table, soil porosity and liquid absorption tests, other environmental inspections and tests, and engineering tests. Any entry by Bay onto the Property in connection with its due diligence shall not unreasonably interfere with the rights of tenants under Leases. Bay hereby agrees to indemnify and hold the Contributor harmless from and against any and all direct, but not consequential, losses (as defined below) arising on account of any test or inspection performed by Bay. This provision shall survive a termination of this Agreement or Closing.

4.8 Tax-Exempt Debt. Prior to the Closing, the Contributor will keep all debt service payments and other payments owed in connection with the Tax-Exempt Debt current on the Property and will not permit or suffer to exist any default under any document or instrument executed in connection with Tax-Exempt Debt. On or before the Closing, the Contributor will satisfy and have released of record all debts secured by the Property or other liens or judgments filed against the Property except for the Permitted Encumbrances. The Contributor will not amend or in any way modify without the prior written consent of Bay any term of the Tax-Exempt Debt or any documents or instruments executed in connection therewith.

4.9 Employee Matters. Prior to the Closing, Bay will present to HAI Management, Inc., the manager of the Property (the "Manager"), the names, if any, of employees of the Manager currently employed in connection with the on-site management of the Property which Bay wishes to hire or cause the General Partner or Bay Countrybrook to hire for management of Property. All employees of the Manager not named by Bay pursuant to this Section shall not be employed by Bay, the General Partner or Bay Countrybrook. The Contributor hereby agrees to indemnify and hold harmless Bay, the General Partner and Bay Countrybrook from and against any and all claims made by any employee hired by any of them for vacation, sick leave, back wages or any other benefits accruing to and including the day immediately preceding the Closing Date with respect to the Property and from any claims made by any employees which were not hired by the management company.

4.10 Availability of Records. Upon written request of Bay or the General Partner, on behalf of Bay Countrybrook, for a period of two (2) years after the Closing, the Contributor shall (i) make its records available to Bay and General Partner on behalf of Bay Countrybrook for inspection, copying and audit by the General Partner's designated accountants at Bay Countrybrook's sole cost and expense, and (ii) cooperate with the General Partner and Bay to the extent reasonably necessary to obtain any Licenses not in existence on

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the Closing Date and necessary for the operation of all or any portion of the Property. Without limiting the foregoing and in addition thereto, for the period of time commencing on the date of this Agreement and continuing through the second (2nd) anniversary of the Closing Date, the Contributor shall, from time to time, upon reasonable advance notice from Bay, provide Bay and its representatives, agents and employees with access to all financial and other information in its possession pertaining to the period of the Contributor's ownership and operation of the Property, which information is relevant and reasonably necessary, in the opinion of Bay's outside, third party accountants (the "Accountants"), to enable Bay and its Accountants to prepare financial statements in compliance with any or all of (a) Rule 3-14 of Regulation S-X of the Securities and Exchange Commission (the "Commission"); (b) any other rule

issued by the Commission and applicable to Bay; and (c) any registration statement, report or disclosure statement filed with the Commission by, or on behalf of, Bay; provided, however, that in any such event(s), the General Partner shall reimburse the Contributor for those third party, out-of-pocket costs and expenses that the Contributor incurs in order to comply with the foregoing requirements. The Contributor acknowledges and agrees that the following is a representative description of the information and documentation that Bay and the Accountants may require in order to comply with (a), (b) and (c) above. The Contributor shall provide such information, and documentation, if available.

- (a) Rent rolls for the calendar month in which the Closing occurs and the eleven (11) calendar months immediately preceding the calendar month in which the Closing occurs;
- (b) The Contributor's internally-prepared operating statements;
- (c) Access to Leases;
- (d) The Contributor's budgeted annual and monthly income and expenses, and actual annual and monthly income and expenses;
- (e) Access to the Contributor's cash receipt journal(s) and bank statements for the Property;
- (f) The Contributor's general ledger with respect to the Property;
- (g) The Contributor's schedule of expense reimbursements required under Leases in effect on the Closing Date, if one exists;
- (h) Schedule, if one exists, of those items of repairs and maintenance

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performed by, or at the direction of the Contributor, during the Contributor's final fiscal year in which the Contributor owned and operated the Property (the "Final Fiscal Year").

- (i) Schedule, if one exists, of those capital improvements and fixed asset additions made by, or at the direction of, the Contributor during the Final Fiscal Year;
- (j) Access to the Contributor's invoices with respect to expenditures made during the final Fiscal Year;
- (k) Access (during normal and customary business hours) to responsible personnel to answer accounting questions; and
- (l) A representation letter, signed by the individual(s) responsible for the Contributor's financial reporting, as prescribed by generally accepted auditing standards promulgated by the Auditing Standards Division of the American Institute of Certified Public Accountants, which representation letter may be required to assist the Accountants in rendering an opinion on such financial statements.

4.11 FNMA Approval. The Contributor shall fully cooperate with Bay in any effort to obtain and deliver the materials required in Sections 2.1(n) (xx) through (xxiv).

4.12 Cooperation with Bay. The Contributor shall cooperate and do all acts as may be reasonably required or requested by Bay with regard to the fulfillment of any condition to Bay's obligations hereunder but the Contributor's representations and warranties to Bay shall not be affected or released by Bay's waiver or fulfillment of any condition.

ARTICLE 5 - INTENTIONALLY OMITTED

ARTICLE 6 - CLOSING ADJUSTMENTS

6.1 Taxes, Assessments and Utilities. All real estate taxes, charges and assessments affecting the Property and all charges for water, sewer, electricity, gas, telephone and all other utilities with respect to the Property, shall be apportioned on a per diem basis as provided below. General real estate taxes and other assessments payable for the fiscal year in which the Closing occurs shall be prorated by the Contributor and Bay Countrybrook as of the Closing Date. The Contributor shall pay on or before Closing the full amount of any bonds or assessments against the Property, including, without

limitation, interest payable therewith,

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including, without limitation, any bonds or assessments that may be payable after the Closing Date as a result of or in relation to the construction or operation of any improvements on the Land or any public improvements that took place or for which any assessment was levied prior to the Closing Date. The Contributor shall cause all the utility meters to be read on the Closing Date and will be responsible for the cost of all utilities used prior to the Closing Date, except to the extent such utility charges are billed to and paid by tenants directly. If any prorations under this Section cannot be calculated finally on the Closing Date, then they shall be estimated at the Closing and calculated finally as soon after the Closing Date as feasible.

6.2 Rent. Except for delinquent rent, all rent under the Property, the Leases and other income attributable to the Property shall be apportioned on a per diem basis as of midnight on the date immediately preceding the Closing Date for the Property. All such rent and other income for the period preceding the Closing Date for the Property shall be deemed to be property of the Contributor, and all rent and other income for any period commencing as of the Closing Date for the Property and thereafter shall be the property of Bay Countrybrook and shall be adjusted at the Closing. Payments received by Bay Countrybrook from Tenants of the Contributor from and after the Closing Date with respect to the Property shall be applied first to rents then due for any period following Closing from such tenant and then to such tenant's delinquent rent as of the time of apportionment. Bay Countrybrook shall use reasonable efforts to collect delinquent rents for the benefit of the Contributor but in no event shall be obligated to evict any Tenants in order to collect such rents. Any amounts received by the Contributor on account of rent or other income from and after the Closing Date with respect to the Property shall be turned over to Bay Countrybrook for application in accordance with the terms of this Section.

6.3 Payments on Permitted Exceptions. Payments of interest on the Tax-Exempt Debt and other payments owing under the Tax-Exempt Instruments, and any other Permitted Exceptions shall be apportioned on a per diem basis as of midnight on the date immediately preceding the Closing Date for the Property to which they pertain. Such interest and other payments accruing prior to the Closing Date shall be deemed to be the responsibility of the Contributor, and, subject to the terms of this Agreement, any such interest and other payments accruing on or after such Closing Date shall be deemed to be an expense of Bay Countrybrook. The Contributor shall receive a credit for all tax escrows, replacement reserves, insurance escrows and operating deficit reserves held by the holder of the Tax-Exempt Debt, and those and any and all other escrows and reserves shall become Bay Countrybrook's.

6.4 Operating Agreement Payments and Other Expenses. Payments under all Final Operating Agreements and for the Property's operating maintenance expenses, including,

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without limitation, fuel, shall be apportioned on a per diem basis as of midnight on the date immediately preceding the Closing Date to the extent possible. All such expenses accruing prior to such Closing Date shall be deemed to be the responsibility of the Contributor and all such expenses accruing as of such Closing Date and thereafter shall be expenses of Bay Countrybrook. If final bills are not available as of Closing, amount to be prorated under this Section shall be prorated on the basis of the most current bills then available and promptly re-prorated on receipt of final bills. All such expenses for the period preceding such Closing Date shall be the responsibility of the Contributor, and all such expenses commencing as of the Closing Date with respect to the Property shall be deemed to be expenses of Bay Countrybrook.

6.5 Payment of Prorations. The parties acknowledge that prorations under this Agreement that all the responsibility of the Contributor shall be paid out of the \$1,000,000 capital contribution described in Section 1.3.

6.6 Post-Closing Audit. As soon as the necessary information is available, Bay Countrybrook shall conduct a post-Closing audit to determine the accuracy of all prorations made under this Article (the "Post-Closing Audit"). Either party owing the other party a sum of money based on post-Closing prorations required under this Article or the Post-Closing Audit shall promptly pay such sum to the other party, together with interest thereon at the rate of two percent (2%) over the "prime rate" (as announced from time to time in the Wall Street Journal) per annum from the Closing Date to the date of payment if

payment is not made within ten (10) days after delivery of a bill therefor. The Contributor shall reserve and set aside cash of not less than \$200,000 to satisfy any obligations it may have under this Section. This Article shall survive Closing.

ARTICLE 7 - DEFAULTS AND REMEDIES

7.1 Defaults. In the event of (i) a failure by a party to perform its obligations hereunder, which failure is not cured prior to the earlier of (A) the Closing Date and (B) five (5) business days following notice thereof from Bay (ii) the material inaccuracy of any representation or warranty made by such party hereunder, (iii) a Major Casualty, (iv) a Major Taking or (v) the failure of any condition to any party's obligations hereunder, then the other party may elect (except, with respect to a Major Casualty or a Major Taking, only Bay may elect) to terminate this Agreement by written notice to the first party so long as the terminating party has performed or is in a position to perform all obligations to be performed by it hereunder as of the date of its notice. Upon such a termination, the parties shall return all funds and documents, if any, then held by them to the party delivering the same.

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7.2 Remedies.

(a) Of Bay. In the event the Contributor fails to perform its obligations hereunder, subject to the terms of Section 3.4 any representation or warranty of the Contributor contained herein is materially inaccurate or any condition to Bay's, Bay Countrybrook's or the General Partner's obligations hereunder within the control of the Contributor is not satisfied, and as a result thereof Bay is entitled hereunder to terminate this Agreement, then Bay shall have the right to (i) enforce specific performance of this Agreement; (ii) initiate an action to recover damages, including, without limitation, its out-of-pocket costs and expenses incurred in connection with the negotiation and administration of this Agreement, not to exceed \$250,000, except in an action to recover such damages for breach of a surviving obligation, it being agreed by the Contributor that such limitation or recovery shall not be applicable; (iii) receive back the Deposit; and/or (iv) exercise any other right or remedy available at law or in equity, subject, with respect to an action for damages, other than on account of a breach of a surviving obligation, to the limitation set forth in item (ii) above. In the event of a failure of a condition precedent to Bay's, Bay Countrybrook's or the General Partner's obligations hereunder that is not within the Contributor's control, Bay's sole remedy shall be to have the Deposit returned to it. Notwithstanding the foregoing, nothing shall limit Bay's rights and remedies in the event of fraud on the part of the Contributor or its general partners. Except as provided below in this Section, no general partner of the Contributor shall be personally liable for damages under this Agreement, including, without limitation, for misrepresentation, and Bay shall look solely to the assets of the Contributor to satisfy any liability of the Contributor to Bay under this Agreement.

Nothing contained in this Agreement shall limit any such general partner's personal liability or Bay's recovery against such general partner personally in the event of fraud on the part of the Contributor or such general partner.

(b) OF THE CONTRIBUTOR. IN THE EVENT BAY FAILS TO PERFORM ITS OBLIGATIONS HEREUNDER, OR ANY REPRESENTATION OR WARRANTY OF BAY CONTAINED HEREIN IS MATERIALLY INACCURATE, OR ANY CONDITION TO THE CONTRIBUTOR'S OBLIGATIONS HEREUNDER IS NOT SATISFIED AND AS A RESULT THEREOF THE CONTRIBUTOR IS ENTITLED HEREUNDER TO TERMINATE THIS AGREEMENT, THEN, UPON SUCH TERMINATION, THE DEPOSIT SHALL BE PAID TO AND RETAINED BY THE CONTRIBUTOR AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT THE CONTRIBUTOR'S ACTUAL DAMAGES, IN THE EVENT THE CONTRIBUTOR BECOMES ENTITLED TO TERMINATE THIS AGREEMENT PURSUANT TO THIS SECTION 7.2, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO

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DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF THE CONTRIBUTOR'S DAMAGES AND AS THE CONTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY AGAINST BAY, THE GENERAL PARTNER AND BAY COUNTRYBROOK, AT LAW OR IN EQUITY (OTHER THAN WITH RESPECT TO THE SURVIVING OBLIGATIONS AND FOR FRAUD BY BAY). IN THE EVENT THE CONTRIBUTOR BECOMES ENTITLED TO TERMINATE THIS AGREEMENT AS PROVIDED IN THIS ARTICLE, THE CONTRIBUTOR HEREBY WAIVES ANY AND ALL BENEFITS IT MAY HAVE UNDER CALIFORNIA CIVIL CODE SECTION 3389.

(c) Survival of Representations and Warranties. Subject to the terms of this Section below, all representations and warranties of the Contributor, Bay and the General Partner contained in this Agreement (other than those contained in Sections 9.1 and 9.16) shall survive Closing for a period of one hundred eighty (180) days and shall not be merged in any instrument of conveyance. None of the Contributor, Bay or the General Partner shall have any liability for any misrepresentation that is not material, and the Contributor, Bay or the General Partner shall not have any liability on account of any material misrepresentation contained herein (other than in Sections 9.1 or 9.16) with respect to which it does not receive written notice of possible claim on or before the expiration of such one hundred eighty (180) day-period.

ARTICLE 8- INDEMNITIES

8.1 By the Contributor. Without limiting any other term of this Agreement, the Contributor shall indemnify and hold Bay, Bay Countrybrook, and the General Partner harmless from and against any and all claims, losses, damages, costs, liabilities, causes of action and expenses, including, without limitation, attorney's fees and disbursements, whether direct, contingent or consequential, incurred by any of them on account of a breach of a representation or warranty which has not terminated in accordance with the terms of this Agreement or which is covered by the Contributor's issuance. Notwithstanding the foregoing, no general partner in the Contributor shall have personal liability under this Section.

8.2 By Bay. Bay Countrybrook shall indemnify and hold the Contributor harmless from and against any and all losses, damages, costs, liabilities, causes of action and expenses, including, without limitation, attorneys' fees and disbursements, whether direct, contingent or consequential, incurred by Contributor on account of a breach of a representation or warranty

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by Bay or the General Partner which is not terminated in accordance with the terms of this Agreement or which is covered by Bay Countrybrook's insurance.

8.3 Cooperation in Defense. Each party indemnified under any indemnity contained in this Agreement shall cooperate in all reasonable respects in the defense of the third-party claim pursuant to which the indemnifying party is alleged to have liability.

ARTICLE 9- MISCELLANEOUS

9.1 Brokers. Neither party to this Agreement has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein, except for Marcus & Millichap (the "Broker"), whose entire commission shall be the responsibility of the Contributor (pursuant to separate agreement between the Contributor and the Broker). In the event that any other broker or finder claims a commission or finder's fee based upon any contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for such commission or fee and all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the other party in defending against the same. The party through whom any other broker or finder makes a claim shall hold harmless, indemnify and defend the other party hereto, its successors and assigns, agents, employees, officers and directors, and the Property from and against any and all obligations, liabilities, claims, demands, liens, encumbrances and losses (including, without limitation, attorneys' fees and disbursements) (collectively, "Losses"), whether direct, contingent or consequential, arising out of, based on, or incurred as a result of such claim. The provisions of this Section shall survive the Closing or termination of this Agreement.

9.2 Marketing. The Contributor agrees not to negotiate or execute an agreement for the sale of the Property or any interest therein during the term of this Agreement.

9.3 Entire Agreement; No Amendment. This Agreement represents the entire agreement among each of the parties hereto. It is expressly understood that no representations, warranties, guarantees or other statements shall be valid or binding upon a party unless expressly set forth in this Agreement. It is further understood that any prior agreements or understandings between or among any of the parties have merged in this Agreement, which alone fully expresses all agreements of the parties hereto and supersedes all such prior agreements and understandings. This Agreement may not be amended, modified or otherwise altered except by a written agreement signed by the parties hereto

is sought. It is agreed that no obligation under this Agreement which by its terms is to be performed or continue to be performed after Closing and no provision of this Agreement which is expressly to survive Closing shall merge upon Closing, but shall survive Closing.

9.4 Certain Expenses. Each party hereto will pay all of its own expenses incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, all costs and expenses herein stated to be borne by such party and all of its respective accounting, legal, investigatory and appraisal fees. Bay Countybank shall be responsible for paying all amounts required to be paid to FNMA in connection with the assumption of the Tax-Exempt Debt. The Contributor shall be responsible for all County transfer taxes and/or transfer fees applicable to the sale of the Property and recording costs. Each of Bay Countybank and the Contributor shall be responsible for fifty percent (50%) of all City transfer taxes and/or transfer fees applicable to the sale of the Property. Each of Bay Countybank and the Contributor shall be responsible for fifty percent (50%) of escrow fees due to the Escrow Agent in connection with the holding of the Deposit. All other costs and charges in connection with the purchase and sale of the Property contemplated by this Agreement not otherwise provided for in this Agreement shall be allocated by standard accounting practices in accordance with the applicable California Codes and California closing customs. Each party to this Agreement shall bear its own costs and expenses, including, without limitation, attorney's fees and disbursements in connection with any litigation arising in connection with the transaction that is the subject of this Agreement.

9.5 Title Insurance, Survey and UCC Costs. The Contributor shall be responsible for all costs associated with obtaining and issuing the Title Policy, including, without limitation, examination costs, commitment fees and premiums, not to exceed such costs required to cause the Title Policy to be a CLTA title insurance policy. Bay shall pay all additional costs associated with causing the Title Policy to meet ALTA standards and all costs of any endorsements desired by Bay. The Contributor shall be responsible for all costs associated with obtaining the UCC searches required under Section 2.1(d). Notwithstanding the foregoing, each of Bay Countybank and the Contributor shall be responsible for fifty percent (50%) of all costs associated with obtaining a survey as required under Section 2.1(c).

9.6 Occupancy Credit. If the Actual Occupancy level (as defined below) of the Property as of Closing is less than eighty-four percent (84%), Bay Countrybrook shall be entitled to a credit (the "Occupancy Credit") against the Contribution Price in an amount equal to the product obtained by multiplying the Vacant Unit Rental Amount (as defined below) by a fraction, the numerator of which is the amount by which the Actual Occupancy Level is less than eighty-four percent (84%) and the denominator of which is the amount by which the Actual Occupancy Level is less than one hundred percent (100%). As used herein, the "Actual

Occupancy Level" shall mean the percentage of the total apartment units on the Property that as of the Closing are physically occupied by Qualified Tenants. As used herein, the "Vacant Unit Rental Amount" shall mean the aggregate sum of one month's rental for each apartment unit on the Property that as of the Closing is not physically occupied by a Qualified Tenant, which rental amount shall be based on the monthly rental last payable under a lease for each apartment unit.

9.7 Notices. Any notice, communication or writing required under or otherwise delivered in connection with this Agreement to any of the parties hereto will be delivered to such party at the following address:

If to the Contributor to:

Countrybrook of Berryessa Associates
c/o HAI Management, Inc.
1829 Alison Way
San Jose, CA 95132
Attn: Donald J. Tishman, President
Fax: (408) 942-0495

with copy to:

Rudnick & Wolfe

203 North LaSalle Street
Suite 1500
Chicago, IL 60601
Attn: Kenneth Hartmann, Esq.
Fax: (312) 236-7516

If to Bay to:

Bay Apartment Communities, Inc.
4340 Stevens Creek Boulevard
Suite 275
San Jose, CA 95129
Attn: Geoffrey L. Baker
Fax: (408) 984-7060

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with a copy to:

Goodwin, Procter & Hoar LLP
Exchange Place
53 State Street
Boston, MA 02109
Attn: Gilbert G. Menna, P.C.
Fax: (617) 570-1231

Each notice shall be in writing and shall be sent to the party to receive it, postage prepaid by certified mail, return receipt requested, or by a nationally recognized overnight courier service that provides tracking and proof of receipt. Inclusion of fax numbers is for conveniences only, and notice by fax shall neither be sufficient nor required. Notices shall be deemed delivered upon receipt.

9.8 No Assignment. Except as provided in this Section below, neither this Agreement nor any of the rights or obligations hereunder may be assigned by either party without the prior written consent of the other party.

9.9 Governing Law. The laws of the State of California shall govern the validity, enforcement and interpretation of this Agreement.

9.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts. If so executed, all of such counterparts shall constitute but one agreement, and, in proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

9.11 Further Assurances. From and after the date of this Agreement and after the Closing, the parties hereto shall take such further actions and execute and deliver such further documents and instruments as may be reasonably necessary to provide to the respective parties hereto the benefits intended to be afforded hereby, including, without limitation, all books and records relating to the Property and the addresses of all parties.

9.12 Miscellaneous. Whenever herein the singular number is used, the same shall include the plural, and the plural shall include the singular where appropriate, and words of any gender shall include the other gender when appropriate. The headings of the Articles and the Sections contained in this Agreement are for convenience only and shall not be taken into account in determining the meaning of any provision of this Agreement. The words "hereof" and "herein" refer to this entire Agreement and not merely the Section in which such words

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appear. If the last day for performance of any obligation hereunder is not a Business Day, then the deadline for such performance or the expiration of the applicable period or date shall be extended to the next Business Day.

9.15 Invalid Provisions. If any provision of this Agreement (except the provision relating to the Contributor's obligation to contribute the Property, the invalidity of which shall cause this Agreement to be null and void) is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

9.16 Confidentiality; Publicity. The Contributor agrees that this

Agreement shall not be recorded in any public real estate registry. Bay agrees to maintain in confidence through Closing, unless otherwise required by applicable Law, reporting requirement or accounting or auditing standard, to disclose, all material and information received from the Contributor or otherwise regarding the Property. In the event this Agreement is terminated, Bay shall return to the Contributor all materials delivered to Bay by the Contributor and Bay's obligations under the immediately preceding sentence shall continue indefinitely. The Contributor and Bay agree that, prior to the Closing Date, neither of them, without the prior written consent of the other, shall publicly or privately reveal any information relating to the existence or terms and conditions of the transactions contemplated hereby, except as permitted below in this Section. The Contributor agrees that nothing in this Section shall prevent Bay from disclosing or accessing any information otherwise deemed confidential under this Section (i) in connection with Bay's enforcement of its rights hereunder, or (ii) pursuant to any legal requirement, including, without limitation, any securities Laws, any reporting requirement or any accounting or auditing standard. The Contributor and Bay further agree that nothing in this Section shall prevent either of them from disclosing or accessing any information otherwise deemed confidential under this Section to its agents, employees, counsel and other third parties to the extent reasonably necessary to perform due diligence and complete the transactions contemplated hereby, including, without limitation, to limited partners and the Contributor for purposes of obtaining the Partnership's consent. Notwithstanding anything to the contrary contained herein, Bay shall have the sole right to determine the form, timing and substance of, and to issue, all publicity concerning the transactions contemplated by this Agreement.

9.17 Time of Essence. Time is of the essence with respect to this Agreement.

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9.18 "As-Is" Acquisition. Bay represents and warrants to the Contributor that Bay has had an opportunity to review all information it desires regarding the Property, that Bay understands the risks of, and other considerations relating to, investment in the Property, that Bay has performed all diligence desired by Bay with respect to the Property and that Bay is acquiring the Property, subject to the Contributor's representations and warranties contained in this Agreement, in its "as is", "with all faults" condition as of the Diligence Period Expiration Date. Bay represents and warrants to the Contributor that Bay has been given the opportunity to make a thorough investigation of the Property and has been furnished with materials relating to the Property, that Bay has had the opportunity to obtain information deemed necessary by it, that all documents, records and books requested by Bay in connection with the Property have been made available or delivered to Bay, and that Bay has had an opportunity to ask questions of and receive answers from the Contributor and its general partners concerning the Property.

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IN WITNESS WHEREOF, the parties hereto have executed this Contribution Agreement as an instrument under seal as of the date and year first above written.

CONTRIBUTOR:

COUNTRYBROOK OF
BERRYESSA ASSOCIATES

By: _____
Name: _____
Title: _____

BAY:

BAY APARTMENT COMMUNITIES, INC.

By:

Name: -----

Title: -----

CONSENT OF INDEPENDENT ACCOUNTANTS

We consent to the incorporation by reference in the registration statements of Bay Apartment Communities, Inc. on Form S-3 (File No. 33-92688) and Form S-8 (File No. 33-80249) of our reports dated July 3, 1996, on our audits of the Historical Summary of Gross Income and Direct Operating Expenses of Countrybrook Apartments for the three months ended March 31, 1996, and the year ended December 31, 1995, the Historical Summary of Gross Income and Direct Operating Expenses of Parkside Commons Apartments for the three months ended March 31, 1996, and the year ended December 31, 1995, the Historical Summary of Gross Income and Direct Operating Expenses of Villa Marguerite Apartments for the three months ended March 31, 1996, and the year ended December 31, 1995, and the Historical Summary of Gross Income and Direct Operating Expenses of Sunset Towers Apartments for the three months ended March 31, 1996, and the year ended December 31, 1995, which reports are included in this Current Report on Form 8-K/A.

/s/ COOPERS & LYBRAND L.L.P.

COOPERS & LYBRAND L.L.P.

San Francisco, California
July 5, 1996