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

FORM 10-Q

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

For the quarterly period ended September 30, 2012

Commission file number 1-12672

AVALONBAY COMMUNITIES, INC.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of
incorporation or organization)

77-0404318
(I.R.S. Employer
Identification No.)

Ballston Tower
671 N. Glebe Rd, Suite 800
Arlington, Virginia 22203
(Address of principal executive offices, including zip code)

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

(Former name, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding twelve (12) months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past ninety (90) days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer <input checked="" type="checkbox"/>	Accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="checkbox"/>

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

APPLICABLE ONLY TO CORPORATE ISSUERS

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

97,706,463 shares of common stock, par value \$0.01 per share, were outstanding as of October 31, 2012

Item 1. Condensed Consolidated Financial Statements

Condensed Consolidated Balance Sheets as of September 30, 2012 (unaudited) and December 31, 2011	1
Condensed Consolidated Statements of Comprehensive Income (Loss) (unaudited) for the three and nine months ended September 30, 2012 and 2011	2
Condensed Consolidated Statements of Cash Flows (unaudited) for the nine months ended September 30, 2012 and 2011	3-5
Notes to Condensed Consolidated Financial Statements (unaudited)	6-20

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	21-43
---	-------

Item 3. Quantitative and Qualitative Disclosures About Market Risk	43
--	----

Item 4. Controls and Procedures	43
---	----

PART II - OTHER INFORMATION

Item 1. Legal Proceedings	44
---	----

Item 1a. Risk Factors	44
---------------------------------------	----

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds	44
---	----

Item 3. Defaults Upon Senior Securities	45
---	----

Item 4. Mine Safety Disclosures	45
---	----

Item 5. Other Information	45
---	----

Item 6. Exhibits	45
----------------------------------	----

Signatures	48
----------------------------	----

[Table of Contents](#)

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

	<u>9-30-12</u> (unaudited)	<u>12-31-11</u>
ASSETS		
Real estate:		
Land	\$ 1,438,741	\$ 1,336,225
Buildings and improvements	7,171,769	6,681,136
Furniture, fixtures and equipment	251,497	226,359
	<u>8,862,007</u>	<u>8,243,720</u>
Less accumulated depreciation	(2,013,104)	(1,820,381)
Net operating real estate	6,848,903	6,423,339
Construction in progress, including land	725,450	597,346
Land held for development	304,295	325,918
Operating real estate assets held for sale, net	—	78,427
Total real estate, net	<u>7,878,648</u>	<u>7,425,030</u>
Cash and cash equivalents	664,133	616,853
Cash in escrow	49,851	73,400
Resident security deposits	25,242	23,597
Investments in unconsolidated real estate entities	139,405	144,561
Deferred financing costs, net	33,557	33,653
Deferred development costs	28,260	24,770
Prepaid expenses and other assets	149,470	140,526
Total assets	<u>\$ 8,968,566</u>	<u>\$ 8,482,390</u>
LIABILITIES AND EQUITY		
Unsecured notes, net	\$ 1,899,208	\$ 1,629,210
Variable rate unsecured credit facility	—	—
Mortgage notes payable	1,908,872	1,969,986
Dividends payable	94,778	84,953
Payables for construction	51,194	36,775
Accrued expenses and other liabilities	225,111	246,214
Accrued interest payable	21,571	34,210
Resident security deposits	39,754	36,620
Liabilities related to real estate assets held for sale	—	35,467
Total liabilities	<u>4,240,488</u>	<u>4,073,435</u>
Redeemable noncontrolling interests	7,203	7,063

Equity:

Preferred stock, \$0.01 par value; \$25 liquidation preference; 50,000,000 shares authorized at both September 30, 2012 and December 31, 2011; zero shares issued and outstanding at September 30, 2012 and December 31, 2011, respectively

Common stock, \$0.01 par value; 140,000,000 shares authorized at both September 30, 2012 and December 31, 2011; 97,705,713 and 95,175,677 shares issued and outstanding at September 30, 2012 and December 31, 2011, respectively

Additional paid-in capital	4,980,937		4,652,457	
Accumulated earnings less dividends	(153,811)		(171,648)	
Accumulated other comprehensive loss	(110,787)		(87,020)	
Total stockholders' equity	4,717,316		4,394,741	
Noncontrolling interest	3,559		7,151	
Total equity	4,720,875		4,401,892	
Total liabilities and equity	\$ 8,968,566		\$ 8,482,390	

See accompanying notes to Condensed Consolidated Financial Statements.

[Table of Contents](#)

AVALONBAY COMMUNITIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF
COMPREHENSIVE INCOME (LOSS)
(unaudited)
(Dollars in thousands, except per share data)

	For the three months ended		For the nine months ended	
	9-30-12	9-30-11	9-30-12	9-30-11
Revenue:				
Rental and other income	\$ 269,371	\$ 241,286	\$ 773,424	\$ 698,938
Management, development and other fees	2,533	2,433	7,852	7,085
Total revenue	271,904	243,719	781,276	706,023
Expenses:				
Operating expenses, excluding property taxes	70,365	68,268	204,836	195,542
Property taxes	26,184	23,741	75,641	70,908
Interest expense, net	33,985	42,659	100,804	130,174
Loss on extinguishment of debt, net	—	—	1,179	—
Depreciation expense	65,998	60,893	193,434	180,953
General and administrative expense	8,372	6,087	26,398	21,524
Impairment loss	—	14,052	—	14,052
Total expenses	204,904	215,700	602,292	613,153
Equity in income of unconsolidated entities	5,553	2,615	9,801	3,513
Gain on sale of land	—	13,716	280	13,716
Gain on acquisition of unconsolidated entity	14,194	—	14,194	—
Income from continuing operations	86,747	44,350	203,259	110,099
Discontinued operations:				
Income from discontinued operations	—	327	2,870	631
Gain on sale of real estate assets	—	—	95,049	7,675
Total discontinued operations	—	327	97,919	8,306
Net income	86,747	44,677	301,178	118,405
Net loss attributable to noncontrolling interests	97	147	334	132
Net income attributable to common stockholders	\$ 86,844	\$ 44,824	\$ 301,512	\$ 118,537
Other comprehensive income (loss):				
Unrealized loss on cash flow hedges	(6,977)	(60,270)	(23,767)	(79,691)
Comprehensive income (loss)	\$ 79,867	\$ (15,446)	\$ 277,745	\$ 38,846
Earnings per common share - basic:				
Income from continuing operations attributable to common stockholders	\$ 0.89	\$ 0.49	\$ 2.12	\$ 1.25
Discontinued operations attributable to common stockholders	—	—	1.02	0.09
Net income attributable to common stockholders	\$ 0.89	\$ 0.49	\$ 3.14	\$ 1.34
Earnings per common share - diluted:				
Income from continuing operations attributable to common stockholders	\$ 0.89	\$ 0.49	\$ 2.11	\$ 1.24
Discontinued operations attributable to common stockholders	—	—	1.02	0.09
Net income attributable to common stockholders	\$ 0.89	\$ 0.49	\$ 3.13	\$ 1.33
Dividends per common share:	\$ 0.9700	\$ 0.8925	\$ 2.9100	\$ 2.6775

[Table of Contents](#)

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

	For the nine months ended	
	9-30-12	9-30-11
Net income	\$ 301,178	\$ 118,405
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation expense	193,434	180,953
Depreciation expense from discontinued operations	895	6,002
Amortization of deferred financing costs and debt premium/discount	4,122	4,888
Loss on extinguishment of debt	1,781	—
Amortization of stock-based compensation	8,548	5,390
Equity in income of unconsolidated entities and noncontrolling interests, net of eliminations	(7,484)	(1,177)
Impairment loss	—	14,052
Gain on sale of real estate assets	(95,329)	(21,391)
Gain on acquisition of unconsolidated entity	(14,194)	—
Expensed acquisition costs	—	1,010
(Increase)/decrease in cash in operating escrows	6,644	(2,553)
Increase in resident security deposits, prepaid expenses and other assets	(8,069)	(17,683)
(Decrease) increase in accrued expenses, other liabilities and accrued interest payable	(16,353)	7,116
Net cash provided by operating activities	<u>375,173</u>	<u>295,012</u>
Cash flows from investing activities:		
Development/redevelopment of real estate assets including land acquisitions and deferred development costs	(567,867)	(456,965)
Acquisition of real estate assets	(105,904)	(46,275)
Capital expenditures - existing real estate assets	(13,449)	(14,838)
Capital expenditures - non-real estate assets	(1,094)	(7,911)
Proceeds from exchange/sale of real estate, net of selling costs	182,225	55,479
Increase in payables for construction	14,419	1,770
Decrease in cash in construction escrows	16,944	13,421
Increase in investments in unconsolidated real estate entities	(8,006)	(14,163)
Net cash used in investing activities	<u>(482,732)</u>	<u>(469,482)</u>
Cash flows from financing activities:		
Issuance of common stock	326,653	1,037,630
Dividends paid	(270,866)	(233,427)
Repayments of mortgage notes payable	(106,255)	(42,648)
Issuance of unsecured notes	450,000	—
Settlement of interest rate contract	(54,930)	—
Repayment of unsecured notes	(179,400)	(189,900)
Payment of deferred financing costs	(6,744)	(5,996)
Acquisition of joint venture partner equity interest	(3,350)	(6,570)
Distributions to DownREIT partnership unitholders	(22)	(20)
Distributions to joint venture and profit-sharing partners	(247)	(194)
Net cash provided by financing activities	<u>154,839</u>	<u>558,875</u>
Net increase in cash and cash equivalents	47,280	384,405
Cash and cash equivalents, beginning of period	<u>616,853</u>	<u>305,644</u>
Cash and cash equivalents, end of period	<u>\$ 664,133</u>	<u>\$ 690,049</u>
Cash paid during the period for interest, net of amount capitalized	<u>\$ 101,121</u>	<u>\$ 129,005</u>

See accompanying notes to Condensed Consolidated Financial Statements.

[Table of Contents](#)

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (continued)

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

During the nine months ended September 30, 2012:

- As described in Note 4, “Equity,” 96,592 shares of common stock valued at \$12,883,000 were issued in connection with stock grants; 1,830 shares valued at \$254,000 were issued through the Company’s dividend reinvestment plan; 120,952 shares valued at \$15,491,000 were withheld to satisfy employees’ tax withholding and other liabilities; and 7,558 shares and options valued at \$393,000 previously issued in connection with employee compensation were cancelled upon forfeiture. In addition, the Company granted 115,303 options for common stock at a value of \$3,357,000.
- The Company recorded an increase to other liabilities and a corresponding decrease to other comprehensive income of \$23,767,000; and recorded a decrease to prepaid expenses and other assets of \$11,000, with a corresponding offset to the basis of unsecured notes, net to record the impact of the Company’s hedge accounting activity.
- Common dividends declared but not paid totaled \$94,778,000.
- The Company recorded an increase of \$480,000 in redeemable noncontrolling interests with a corresponding decrease to accumulated earnings less dividends to adjust the redemption value associated with the put option held by a joint venture partner and DownREIT partnership units. For further discussion of the nature and valuation of these items, see Note 10, “Fair Value”.
- The Company assumed a 4.61% coupon fixed-rate mortgage loan with an outstanding balance of \$11,958,000 in conjunction with the acquisition of The Mark Pasadena.

During the nine months ended September 30, 2011:

- 499,461 shares of common stock valued at \$63,147,000 were issued in connection with stock grants primarily associated with the Company’s 2008 deferred stock performance plan; 2,548 shares valued at \$310,000 were issued through the Company’s dividend reinvestment plan; 129,176 shares valued at \$14,825,000 were withheld to satisfy employees’ tax withholding and other liabilities; and 505 shares valued at \$16,000 were cancelled upon forfeiture. In addition, the Company granted 144,827 options for common stock at a value of \$4,258,000.
- 7,500 units of limited partnership, valued at \$365,000 were presented for redemption to the DownREIT partnerships that issued such units and were acquired by the Company in exchange for an equal number of shares of the Company’s common stock.
- The Company recorded an increase to accrued expenses and other liabilities and a corresponding decrease to other comprehensive income of \$79,691,000 and recorded a decrease to prepaid expenses and other assets of \$1,324,000, with a corresponding offset to the basis of unsecured notes, net to record the impact of the Company’s hedge accounting activity.
- Common dividends declared but not paid totaled \$84,815,000.
- The Company recorded an increase of \$2,306,000 in redeemable noncontrolling interests with a corresponding decrease to accumulated earnings less dividends to adjust the redemption value associated with the put options held by joint venture partners and DownREIT partnership units.
- The Company repaid all amounts due under a \$93,440,000 variable-rate, tax-exempt bond financing using the proceeds which were held in escrow.
- The Company assumed a 4.75% coupon fixed-rate mortgage loan with an outstanding balance of \$44,044,000 in conjunction with the acquisition of Fairfax Towers.

[Table of Contents](#)

- As part of an asset exchange, the Company assumed a \$55,400,000 fixed-rate mortgage loan with a 5.24% interest rate and relinquished a \$55,800,000 mortgage loan with a 5.86% fixed rate.
- The Company entered into a ground lease that is considered a capital lease associated with a development community, recording a capital lease obligation of \$14,500,000 in accrued expenses and other liabilities with a corresponding offset to construction in progress including land.
- The Company recorded an increase in noncontrolling interest of \$3,350,000 associated with the consolidation of a development joint venture.

[Table of Contents](#)

AVALONBAY COMMUNITIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. Organization, Basis of Presentation and Significant Accounting Policies

Organization and Basis of Presentation

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

At September 30, 2012, the Company owned or held a direct or indirect ownership interest in 183 operating apartment communities containing 53,487 apartment homes in nine states and the District of Columbia, of which seven communities containing 1,802 apartment homes were under reconstruction. In addition, the Company owned or held a direct or indirect ownership interest in 22 communities under construction that are expected to contain an aggregate of 6,614 apartment homes when completed. The Company also owned or held a direct or indirect ownership interest in land or rights to land in which the Company expects to develop an additional 31 communities that, if developed as expected, will contain an estimated 8,837 apartment homes.

The interim unaudited financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and footnote disclosures normally included in

financial statements required by GAAP have been condensed or omitted pursuant to such rules and regulations. These unaudited financial statements should be read in conjunction with the financial statements and notes included in the Company's 2011 Annual Report on Form 10-K. The results of operations for the three and nine months ended September 30, 2012 are not necessarily indicative of the operating results for the full year. Management believes the disclosures are adequate to ensure the information presented is not misleading. In the opinion of management, all adjustments and eliminations, consisting only of normal, recurring adjustments necessary for a fair presentation of the financial statements for the interim periods, have been included.

Capitalized terms used without definition have the meaning as provided elsewhere in this Form 10-Q.

Earnings per Common Share

Basic earnings per share is computed by dividing net income attributable to common stockholders by the weighted average number of shares outstanding during the period. All outstanding unvested restricted share awards contain rights to non-forfeitable dividends and participate in undistributed earnings with common shareholders and, accordingly, are considered participating securities that are included in the two-class method of computing basic earnings per share ("EPS"). Both the unvested restricted shares and other potentially dilutive common shares, and the related impact to earnings, are considered when calculating earnings per share on a diluted basis. The Company's earnings per common share are determined as follows (dollars in thousands, except per share data):

6

[Table of Contents](#)

	For the three months ended		For the nine months ended	
	9-30-12	9-30-11	9-30-12	9-30-11
Basic and diluted shares outstanding				
Weighted average common shares - basic	97,044,603	91,388,357	95,742,676	88,312,930
Weighted average DownREIT units outstanding	7,500	7,707	7,500	8,559
Effect of dilutive securities	494,466	944,304	651,382	878,009
Weighted average common shares - diluted	<u>97,546,569</u>	<u>92,340,368</u>	<u>96,401,558</u>	<u>89,199,498</u>
Calculation of Earnings per Share - basic				
Net income attributable to common stockholders	\$ 86,844	\$ 44,824	\$ 301,512	\$ 118,537
Net income allocated to unvested restricted shares	(186)	(206)	(1,003)	(406)
Net income attributable to common stockholders, adjusted	<u>\$ 86,658</u>	<u>\$ 44,618</u>	<u>\$ 300,509</u>	<u>\$ 118,131</u>
Weighted average common shares - basic	<u>97,044,603</u>	<u>91,388,357</u>	<u>95,742,676</u>	<u>88,312,930</u>
Earnings per common share - basic	<u>\$ 0.89</u>	<u>\$ 0.49</u>	<u>\$ 3.14</u>	<u>\$ 1.34</u>
Calculation of Earnings per Share - diluted				
Net income attributable to common stockholders	\$ 86,844	\$ 44,824	\$ 301,512	\$ 118,537
Add: noncontrolling interests of DownREIT unitholders in consolidated partnerships, including discontinued operations	7	7	21	20
Adjusted net income attributable to common stockholders	<u>\$ 86,851</u>	<u>\$ 44,831</u>	<u>\$ 301,533</u>	<u>\$ 118,557</u>
Weighted average common shares - diluted	<u>97,546,569</u>	<u>92,340,368</u>	<u>96,401,558</u>	<u>89,199,498</u>
Earnings per common share - diluted	<u>\$ 0.89</u>	<u>\$ 0.49</u>	<u>\$ 3.13</u>	<u>\$ 1.33</u>

Certain options to purchase shares of common stock in the amounts of 418,177 and 320,698 were outstanding at September 30, 2012 and 2011, respectively, but were not included in the computation of diluted earnings per share because such options were anti-dilutive.

The Company is required to estimate the forfeiture of stock options and recognize compensation cost net of the estimated forfeitures. The estimated forfeitures included in compensation cost are adjusted to reflect actual forfeitures at the end of the vesting period. The forfeiture rate at September 30, 2012 is based on the average forfeiture activity over a period equal to the estimated life of the stock options, and was 1.5%. The application of estimated forfeitures did not materially impact compensation expense for the three and nine months ended September 30, 2012 and 2011.

Derivative Instruments and Hedging Activities

The Company enters into interest rate swap and interest rate cap agreements (collectively, the "Hedging Derivatives") for interest rate risk management purposes and in conjunction with certain variable rate secured debt to satisfy lender requirements. The Company does not enter into derivative transactions for trading or other speculative purposes. The Company assesses both at inception and on an on-going basis, the effectiveness of qualifying cash flow and fair value hedges. Hedge ineffectiveness is reported as a component of general and administrative expenses. The fair values of the Hedging Derivatives that are in an asset position are recorded in prepaid expenses and other assets. The fair value of the Hedging Derivatives that are in a liability position are included in accrued expenses and other liabilities. Fair value changes for derivatives that are not in qualifying hedge relationships are reported as a component of general and administrative expenses. For the derivative positions that the Company has determined qualify as effective cash flow hedges, the Company has recorded the effective portion of cumulative changes in the fair value of the Hedging Derivatives in accumulated other comprehensive loss. Amounts recorded in accumulated other comprehensive loss will be reclassified into earnings in the periods in which earnings are affected by the hedged cash flow. The effective portion of the change in fair value of the Hedging Derivatives that the Company determined qualified as effective fair value hedges is reported as an adjustment to the carrying amount of the corresponding debt being hedged.

7

[Table of Contents](#)*Legal and Other Contingencies*

The Company is involved in various claims and/or administrative proceedings that arise in the ordinary course of the Company's business. While no assurances can be given, the Company does not believe that any of these outstanding litigation matters, individually or in the aggregate, will have a material adverse effect on the Company's financial position or results of operations.

The Company accounts for recoveries from legal matters as a reduction in the legal and related costs incurred associated with the matter, with recoveries in excess of these costs reported as a gain or, where appropriate, a reduction in the basis of a community to which the suit related.

Use of Estimates

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

Reclassifications

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

2. Interest Capitalized

The Company capitalizes interest during the development and redevelopment of real estate assets. Capitalized interest associated with the Company's development or redevelopment activities totaled \$12,504,000 and \$8,946,000 for the three months ended September 30, 2012 and 2011, respectively, and \$37,449,000 and \$22,962,000 for the nine months ended September 30, 2012 and 2011, respectively.

3. Notes Payable, Unsecured Notes and Credit Facility

The Company's mortgage notes payable, unsecured notes and Credit Facility, as defined below, as of September 30, 2012 and December 31, 2011, are summarized below (dollars in thousands). The following amounts and discussion do not include the mortgage notes related to the communities classified as held for sale, if any, as of September 30, 2012 and December 31, 2011, as shown in the Condensed Consolidated Balance Sheets (see Note 6, "Real Estate Disposition Activities").

	<u>9-30-12</u>	<u>12-31-11</u>
Fixed rate unsecured notes (1)	\$ 1,901,601	\$ 1,556,001
Variable rate unsecured notes (1)	—	75,000
Fixed rate mortgage notes payable - conventional and tax-exempt (2)	1,530,681	1,528,783
Variable rate mortgage notes payable - conventional and tax-exempt	376,935	440,241
Total notes payable and unsecured notes	3,809,217	3,600,025
Credit Facility	—	—
Total mortgage notes payable, unsecured notes and Credit Facility	\$ 3,809,217	\$ 3,600,025

- (1) Balances at September 30, 2012 and December 31, 2011 exclude \$2,393 and \$1,802, respectively, of debt discount, and \$0 and \$11, respectively, for basis adjustments, as reflected in unsecured notes on the Company's Condensed Consolidated Balance Sheets.
- (2) Balances at September 30, 2012 and December 31, 2011 exclude \$1,255 and \$962, respectively of debt premium as reflected in mortgage notes payable on the Company's Condensed Consolidated Balance Sheets.

[Table of Contents](#)

The following debt activity occurred during the nine months ended September 30, 2012:

- In January 2012, the Company repaid \$179,400,000 principal amount of its 5.5% coupon unsecured notes pursuant to their scheduled maturity.
- In February 2012, in conjunction with the acquisition of a community, the Company assumed the existing 4.61% mortgage note in the amount of \$11,958,000 that matures in June 2018, and is secured by the community.
- Also in February 2012, the Company repaid a variable rate secured mortgage note in the amount of \$48,500,000 in advance of its November 2039 scheduled maturity date. In conjunction with the early retirement the Company incurred a non-cash charge of \$1,179,000 for the write off of deferred financing fees which was recognized as a loss on extinguishment of debt.
- In May 2012, the Company repaid a variable rate secured mortgage note in the amount of \$14,566,000 in accordance with its scheduled maturity date.
- Also in May 2012, in conjunction with the disposition of an operating community, the Company repaid a variable rate secured mortgage note in the amount of \$33,100,000 in advance of its scheduled maturity date. The Company incurred a charge of \$602,000 for a prepayment penalty and the write off of deferred financing fees associated with the early repayment of this note included in income from discontinued operations on the accompanying Condensed Consolidated Statements of Comprehensive Income (Loss).
- In September 2012, the Company issued \$450,000,000 principal amount of unsecured notes in a public offering under its existing shelf registration statement. The notes mature in September 2022 and were issued at a 2.95% coupon rate. The notes have an effective interest rate of approximately 4.30%, including the effect of an interest rate hedge and offering costs.

The Company has a variable rate unsecured credit facility (the "Credit Facility") with a syndicate of commercial banks, which has an available borrowing capacity of \$750,000,000 and a 4-year term, plus a one year extension option. The Credit Facility was entered into in September 2011 and it bears interest at varying levels based on the London InterBank Offered Rate ("LIBOR"), rating levels achieved on the Company's unsecured notes and on a maturity schedule selected by the Company. The current stated

pricing is LIBOR plus 1.075% per annum (1.29% at September 30, 2012). The Company had no borrowings outstanding under the Credit Facility and had \$45,596,000 and \$52,659,000 outstanding in letters of credit that reduced the borrowing capacity as of September 30, 2012 and December 31, 2011, respectively.

In the aggregate, secured notes payable mature at various dates from April 2013 through July 2066, and are secured by certain apartment communities and improved land parcels (with a net carrying value of \$1,525,208,000 as of September 30, 2012).

As of September 30, 2012, the Company has guaranteed approximately \$245,933,000 of mortgage notes payable held by wholly owned subsidiaries; all such mortgage notes payable are consolidated for financial reporting purposes. The weighted average interest rate of the Company's fixed rate mortgage notes payable (conventional and tax-exempt) was 5.9% at September 30, 2012 and 5.7% at December 31, 2011. The weighted average interest rate of the Company's variable rate mortgage notes payable and its Credit Facility, including the effect of certain financing related fees, was 2.4% at September 30, 2012 and 2.3% at December 31, 2011.

[Table of Contents](#)

Scheduled payments and maturities of mortgage notes payable and unsecured notes outstanding at September 30, 2012 are as follows (dollars in thousands):

Year	Secured notes payments (1)	Secured notes maturities	Unsecured notes maturities	Stated interest rate of unsecured notes
2012	\$ 3,612	\$ —	\$ 201,601	6.125%
2013	13,376	223,473	100,000	4.950%
2014	14,284	—	150,000	5.375%
2015	12,170	406,019	—	—
2016	12,807	—	250,000	5.750%
2017	13,709	18,300	250,000	5.700%
2018	14,330	11,073	—	—
2019	2,597	610,813	—	—
2020	2,768	—	250,000	6.100%
2021	2,952	—	250,000	3.950%
Thereafter	86,698	458,635	450,000	2.950%
	<u>\$ 179,303</u>	<u>\$ 1,728,313</u>	<u>\$ 1,901,601</u>	

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

The Company was in compliance at September 30, 2012 with all financial and other covenants under the Credit Facility and the Company's unsecured notes.

[Table of Contents](#)

4. Equity

The following summarizes the changes in equity for the nine months ended September 30, 2012 (dollars in thousands):

	Common stock	Additional paid-in capital	Accumulated earnings less dividends	Accumulated other comprehensive loss	Total AvalonBay stockholders' equity	Noncontrolling interests	Total equity
Balance at December 31, 2011	\$ 952	\$ 4,652,457	\$ (171,648)	\$ (87,020)	\$ 4,394,741	\$ 7,151	\$ 4,401,892
Net income attributable to common stockholders	—	—	301,512	—	301,512	—	301,512
Unrealized loss on cash flow hedges, net of reclassifications	—	—	—	(23,767)	(23,767)	—	(23,767)
Change in redemption value of redeemable noncontrolling interest	—	—	(480)	—	(480)	—	(480)
Noncontrolling interests	—	—	—	—	—	(3,592)	(3,592)
Dividends declared to common stockholders	—	—	(280,945)	—	(280,945)	—	(280,945)
Issuance of common stock, net of withholdings	25	313,455	(2,250)	—	311,230	—	311,230
Amortization of deferred compensation	—	15,025	—	—	15,025	—	15,025

Balance at September 30, 2012	\$	977	\$	4,980,937	\$	(153,811)	\$	(110,787)	\$	4,717,316	\$	3,559	\$	4,720,875
-------------------------------	----	-----	----	-----------	----	-----------	----	-----------	----	-----------	----	-------	----	-----------

During the nine months ended September 30, 2012, the Company:

- (i) issued 2,165,206 shares of common stock through public offerings under CEP II and CEP III, discussed below;
- (ii) issued 391,387 shares of common stock in connection with stock options exercised;
- (iii) issued 1,830 common shares through the Company's dividend reinvestment plan;
- (iv) issued 96,592 common shares in connection with stock grants;
- (v) withheld 120,952 common shares to satisfy employees' tax withholding and other liabilities; and
- (vi) cancelled 4,027 shares of restricted common stock upon forfeiture.

In addition, the Company granted 115,303 options for common stock to employees. Any deferred compensation related to the Company's stock option and restricted stock grants during the nine months ended September 30, 2012 is not reflected on the Company's Condensed Consolidated Balance Sheet as of September 30, 2012, and will not be reflected until earned as compensation cost.

In November 2010, the Company commenced a second continuous equity program ("CEP II"), under which the Company was authorized to sell up to \$500,000,000 of its common stock from time to time during a 36-month period. During the three and nine months ended September 30, 2012, the Company completed the sale of common stock authorized under CEP II, selling 315,323 and 1,435,215 shares at an average sales price of \$141.35 and \$140.41 per share, for net proceeds of \$43,901,000 and \$198,489,000, respectively. From program inception in November 2010 through completion, the Company issued 3,925,980 common shares at an average price of \$127.36 per share for net proceeds of \$492,490,000.

In August 2012, the Company commenced a third continuous equity program ("CEP III"), under which the Company is authorized to sell up to \$750,000,000 of shares of its common stock from time to time during a 36-month period. During the three months ended September 30, 2012, the Company sold 729,991 shares at an average sales price of \$142.09 per share, for net proceeds of \$102,168,000.

5. Investments in Real Estate Entities

Investments in consolidated entities

In July 2012, the Company acquired Avalon Del Rey, a 309 apartment home community which was owned by a joint venture in which the Company held a 30% ownership interest. As part of this transaction, the venture repaid the \$43,606,000 variable rate note secured by the community. The Company paid approximately \$67,200,000 for its joint venture partner's 70% interest as well as contributing its proportionate share of the note repayment to the venture. Upon the acquisition of Avalon Del Rey, the Company consolidated the community, recognized income

[Table of Contents](#)

from its promoted interest of \$4,055,000 included in equity in income of unconsolidated equities, and a gain of \$14,194,000, as gain on acquisition of unconsolidated entity in the Condensed Consolidated Statements of Comprehensive Income (Loss). The gain recognized reflects the amount by which the fair value of the Company's previously owned investment interest exceeded its carrying value.

The Company accounted for the acquisition of Avalon Del Rey as a business combination and recorded the acquired assets and assumed liabilities, including identifiable intangibles, at their fair values. The Company looked to internal pricing for the value of the land, and an internal model to determine the fair value of the real estate assets and in place leases. Given the heterogeneous nature of multi-family real estate, the fair values for the land, real estate assets and in place leases incorporated significant unobservable inputs and therefore are considered to be Level 3 prices within the fair value hierarchy.

Investment in unconsolidated entities

As of September 30, 2012, the Company had investments in four unconsolidated real estate entities with ownership interest percentages ranging from 15.2% to 31.3%. The Company accounts for its investments in unconsolidated real estate entities under the equity method of accounting. The significant accounting policies of the Company's unconsolidated real estate entities are consistent with those of the Company in all material respects.

There were no other changes in the Company's ownership interest in, or presentation of, its investments in unconsolidated real estate entities during the three months ended September 30, 2012.

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

	9-30-12 (unaudited)	12-31-11 (unaudited)
Assets:		
Real estate, net	\$ 1,477,756	\$ 1,583,397
Other assets	88,627	70,233
Total assets	<u>\$ 1,566,383</u>	<u>\$ 1,653,630</u>
Liabilities and partners' capital:		
Mortgage notes payable and credit facility	\$ 1,033,226	\$ 1,074,429
Other liabilities	26,379	27,335
Partners' capital	506,778	551,866
Total liabilities and partners' capital	<u>\$ 1,566,383</u>	<u>\$ 1,653,630</u>

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

	For the three months ended (unaudited)		For the nine months ended (unaudited)	
	9-30-12	9-30-11	9-30-12	9-30-11
Rental and other income	\$ 43,168	\$ 40,953	\$ 130,300	\$ 117,407
Operating and other expenses	(18,733)	(18,829)	(56,533)	(53,474)

Gain on sale of communities	44,723	12,445	57,457	12,445
Interest expense, net	(12,742)	(12,818)	(38,468)	(37,596)
Depreciation expense	(11,947)	(12,363)	(37,244)	(35,702)
Net income	\$ 44,469	\$ 9,388	\$ 55,512	\$ 3,080

12

[Table of Contents](#)

In conjunction with the formation of AvalonBay Value Added Fund I, L.P. (“Fund I”) and AvalonBay Value Added Fund II, L.P. (“Fund II”), as well as the acquisition and development of certain other investments in unconsolidated entities, the Company incurred costs in excess of its equity in the underlying net assets of the respective investments. These costs represent \$8,305,000 at September 30, 2012 and \$9,167,000 at December 31, 2011 of the respective investment balances.

As part of the formation of Fund I and Fund II, the Company provided separate and distinct guarantees to one of the limited partners in each of the ventures. These guarantees are specific to the respective fund and any impacts or obligation of the Company to perform under one of the guarantees has no impact on the Company’s obligations with respect to the other guarantee. The guarantees provide that, if, upon final liquidation of Fund I or Fund II, the total amount of all distributions to the guaranteed partner during the life of the respective fund (whether from operating cash flow or property sales) does not equal the total capital contributions made by that partner, then the Company will pay the guaranteed partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the guaranteed partner (maximum of approximately \$7,500,000 for Fund I and approximately \$8,910,000 for Fund II as of September 30, 2012). As of September 30, 2012, the expected realizable values of the real estate assets owned by Fund I and Fund II are considered adequate to cover such potential payments under a liquidation scenario. The estimated fair value of, and the Company’s obligation under these guarantees, both at inception and as of September 30, 2012, was not significant and therefore the Company has not recorded any obligation for either of these guarantees as of September 30, 2012.

Abandoned Pursuit Costs and Impairment of Long-Lived Assets

The Company capitalizes pre-development costs incurred in pursuit of new development opportunities for which the Company currently believes future development is probable (“Development Rights”). Future development of these Development Rights is dependent upon various factors, including zoning and regulatory approval, rental market conditions, construction costs and the availability of capital. Initial pre-development costs incurred for pursuits for which future development is not yet considered probable are expensed as incurred. In addition, if the status of a Development Right changes, making future development by the Company no longer probable, any capitalized pre-development costs are written off with a charge to expense. The Company expensed costs related to abandoned pursuits, which includes the abandonment of Development Rights as well as costs incurred in pursuing the acquisition of assets or the disposition of assets for which such disposition activity did not occur, in the amounts of \$608,000 and \$633,000 for the three months ended September 30, 2012 and 2011, respectively, and \$1,749,000 and \$2,636,000 for the nine months ended September 30, 2012 and 2011, respectively. These costs are included in operating expenses, excluding property taxes on the accompanying Condensed Consolidated Statements of Comprehensive Income (Loss). Abandoned pursuit costs can vary greatly, and the costs incurred in any given period may be significantly different in future periods.

The Company evaluates its operating real estate and other long-lived assets for impairment when potential indicators of impairment exist. Such assets are stated at cost, less accumulated depreciation and amortization, unless the carrying amount of the asset is not recoverable. If events or circumstances indicate that the carrying amount of a long-lived asset may not be recoverable, the Company assesses its recoverability by comparing the carrying amount of the long-lived asset to its estimated undiscounted future cash flows. If the carrying amount exceeds the aggregate undiscounted future cash flows, the Company recognizes an impairment loss to the extent the carrying amount exceeds the estimated fair value of the long-lived asset. Based on periodic tests of recoverability of long-lived assets, the Company did not record any impairment losses for its operating communities for the three and nine months ended September 30, 2012 and 2011.

The Company assesses its portfolio of land, both held for development and for investment, for impairment if the intent of the Company changes with respect to either the development of, or the expected holding period for the land. The Company did not recognize any impairment charges on its investment in land for the three and nine months ended September 30, 2012. The Company also evaluates its unconsolidated investments for impairment, considering both its carrying value of the investment, estimated as the expected proceeds that it would receive if the entity were dissolved and the net assets were liquidated at their current GAAP basis, as well as the Company’s proportionate share of any impairment of assets held by unconsolidated investments. There were no impairment losses recognized by any of the Company’s investments in unconsolidated entities during the three and nine months ended September 30, 2012.

13

[Table of Contents](#)

In the third quarter of 2011, the Company concluded that the carrying basis of two land parcels being held for investment were not fully recoverable. In addition, the Company determined that its investment in an unconsolidated development joint venture was not recoverable and that the impairment was other than temporary. As a result, the Company recognized an aggregate charge of \$14,052,000 for the impairment of these land parcels and the investment in the unconsolidated joint venture.

6. Real Estate Disposition Activities

During the three months ended September 30, 2012, the Company did not sell any communities.

As of September 30, 2012, the Company did not have any real estate assets that qualified as held for sale.

The operations for any real estate assets sold from January 1, 2011 through September 30, 2012 have been presented as income from discontinued operations in the accompanying Condensed Consolidated Statements of Comprehensive Income (Loss). Accordingly, certain reclassifications have been made to prior years to reflect discontinued operations consistent with current year presentation.

The following is a summary of income from discontinued operations for the periods presented (dollars in thousands):

	For the three months ended		For the nine months ended	
	9-30-12	9-30-11	9-30-12	9-30-11
Rental income	\$ —	\$ 9,469	\$ 6,986	\$ 27,832
Operating and other expenses	—	(5,988)	(2,486)	(17,277)
Interest expense, net	—	(1,311)	(133)	(3,922)
Loss on extinguishment of debt	—	—	(602)	—

Depreciation expense	—	(1,843)	(895)	(6,002)
Income from discontinued operations	\$ —	\$ 327	\$ 2,870	\$ 631

7. Segment Reporting

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

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

The Company's segment disclosures present the measure(s) used by the chief operating decision maker for purposes of assessing each segment's performance. The Company's chief operating decision maker is comprised of several members of its executive management team who use net operating income ("NOI") as the primary financial measure for Established Communities and Other Stabilized Communities. NOI is defined by the Company as total revenue less direct property operating expenses. Although the Company considers NOI a useful measure of a community's or communities' operating performance, NOI should not be considered an alternative to net income or net cash flow from operating activities, as determined in accordance with GAAP. NOI excludes a number of income and expense categories as detailed in the reconciliation of NOI to net income.

14

Table of Contents

A reconciliation of NOI to net income for the three and nine months ended September 30, 2012 and 2011 is as follows (dollars in thousands):

	For the three months ended		For the nine months ended	
	9-30-12	9-30-11	9-30-12	9-30-11
Net income	\$ 86,747	\$ 44,677	\$ 301,178	\$ 118,405
Indirect operating expenses, net of corporate income	7,396	7,743	24,049	22,490
Investments and investment management expense	1,582	1,328	4,526	3,860
Expensed acquisition, development and other pursuit costs	608	633	1,749	2,636
Interest expense, net	33,985	42,659	100,804	130,174
Loss on extinguishment of debt, net	—	—	1,179	—
General and administrative expense	8,372	6,087	26,398	21,524
Equity in income of unconsolidated entities	(5,553)	(2,615)	(9,801)	(3,513)
Depreciation expense	65,998	60,893	193,434	180,953
Impairment loss	—	14,052	—	14,052
Gain on sale of real estate assets	—	(13,716)	(95,329)	(21,391)
Income from discontinued operations	—	(327)	(2,870)	(631)
Gain on acquisition of unconsolidated entity	(14,194)	—	(14,194)	—
Net operating income	\$ 184,941	\$ 161,414	\$ 531,123	\$ 468,559

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

The following table provides details of the Company's segment information as of the dates specified (dollars in thousands). The segments are classified based on the individual community's status as of the beginning of the given calendar year. Therefore, each year the composition of communities within each business segment is adjusted. Accordingly, the amounts between years are not directly comparable. Segment information for the three and nine months ended September 30, 2012 and 2011 have been adjusted for the real estate assets that were sold from January 1, 2011 through September 30, 2012, or otherwise qualify as discontinued operations as of September 30, 2012, as described in Note 6, "Real Estate Disposition Activities."

15

Table of Contents

	For the three months ended			For the nine months ended			Gross real estate (1)
	Total revenue	NOI	% NOI change from prior year	Total revenue	NOI	% NOI change from prior year	
For the period ended September 30, 2012							
Established							
New England	\$ 42,755	\$ 27,374	2.7%	\$ 125,568	\$ 81,268	5.6%	\$ 1,287,578
Metro NY/NJ	59,346	41,051	5.6%	174,734	121,280	7.2%	1,966,938
Mid-Atlantic	26,300	18,618	3.7%	77,825	56,156	4.2%	591,802
Pacific Northwest	8,401	5,984	19.6%	24,426	17,207	13.6%	304,381
Northern California	32,949	24,316	15.9%	95,979	70,344	14.7%	1,180,656
Southern California	25,131	17,224	6.2%	74,000	51,225	8.8%	946,802
Total Established	194,882	134,567	7.1%	572,532	397,480	8.1%	6,278,157
Other Stabilized	39,222	25,691	N/A	110,200	71,641	N/A	1,383,135
Development / Redevelopment	35,267	24,683	N/A	90,692	62,002	N/A	1,871,336
Land Held for Future							
Development	N/A	N/A	N/A	N/A	N/A	N/A	304,295
Non-allocated (2)	2,533	N/A	N/A	7,852	N/A	N/A	54,829
Total	\$ 271,904	\$ 184,941	14.6%	\$ 781,276	\$ 531,123	14.4%	\$ 9,891,752

For the period ended September 30,
2011

Established							
New England	\$ 43,277	\$ 27,560	8.6%	\$ 126,387	\$ 80,048	8.6%	\$ 1,300,019
Metro NY/NJ	49,721	33,707	10.0%	145,912	98,420	7.3%	1,532,296
Mid-Atlantic	26,031	18,403	5.6%	76,677	55,242	6.7%	602,609
Pacific Northwest	9,560	6,120	7.1%	28,035	18,609	4.7%	362,806
Northern California	24,172	17,244	11.3%	70,449	50,445	8.9%	868,400
Southern California	19,035	12,699	13.1%	55,997	37,047	7.8%	695,828
Total Established	<u>171,796</u>	<u>115,733</u>	<u>9.3%</u>	<u>503,457</u>	<u>339,811</u>	<u>7.7%</u>	<u>5,361,958</u>
Other Stabilized	35,742	23,310	N/A	101,773	65,605	N/A	1,566,557
Development / Redevelopment	33,748	22,371	N/A	93,708	63,143	N/A	1,627,772
Land Held for Future							
Development	N/A	N/A	N/A	N/A	N/A	N/A	263,155
Non-allocated (2)	<u>2,433</u>	<u>N/A</u>	<u>N/A</u>	<u>7,085</u>	<u>N/A</u>	<u>N/A</u>	<u>76,321</u>
Total	<u>\$ 243,719</u>	<u>\$ 161,414</u>	<u>15.1%</u>	<u>\$ 706,023</u>	<u>\$ 468,559</u>	<u>14.0%</u>	<u>\$ 8,895,763</u>

(1) Does not include gross real estate assets held for sale of \$0 and \$269,719 as of September 30, 2012 and 2011, respectively.

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

8. Stock-Based Compensation Plans

Information with respect to stock options granted under the Company's 1994 Stock Option and Incentive Plan (the "1994 Plan") and its 2009 Stock Option and Incentive Plan (the "2009 Plan") is as follows:

16

[Table of Contents](#)

	2009 Plan shares	Weighted average exercise price per share	1994 Plan shares	Weighted average exercise price per share
Options Outstanding, December 31, 2011	247,403	\$ 98.42	1,112,959	\$ 94.10
Exercised	(42,204)	84.67	(349,183)	68.28
Granted	115,303	133.16	—	—
Forfeited	(11,887)	115.15	(6,779)	127.48
Options Outstanding, September 30, 2012	<u>308,615</u>	<u>\$ 112.64</u>	<u>756,997</u>	<u>\$ 105.71</u>
Options Exercisable September 30, 2012	<u>75,679</u>	<u>\$ 97.53</u>	<u>756,997</u>	<u>\$ 105.71</u>

The weighted average fair value of the options granted under the 2009 Plan during the nine months ended September 30, 2012 is estimated at \$29.11 per share on the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions: dividend yield of 3.5% over the expected life of the option, volatility of 35.00%, risk-free interest rate of 0.9% and an expected life of approximately 5 years.

At September 30, 2012, the Company had 203,308 outstanding unvested shares granted under restricted stock awards. Restricted stock vesting during the nine months ended September 30, 2012 totaled 317,685 shares and had fair values at the grant date ranging from \$48.60 to \$149.05 per share. The total grant date fair value of shares vested was \$36,232,000 and \$34,899,000 for the nine months ended September 30, 2012 and 2011, respectively.

Total employee stock-based compensation cost recognized in income was \$8,394,000 and \$7,614,000 for the nine months ended September 30, 2012 and 2011, respectively, and total capitalized stock-based compensation cost was \$3,877,000 and \$4,118,000 for the nine months ended September 30, 2012 and 2011, respectively. At September 30, 2012, there was a total of \$2,730,000 and \$8,144,000 in unrecognized compensation cost for unvested stock options and unvested restricted stock, respectively, which does not include estimated forfeitures. The unrecognized compensation cost for unvested stock options and restricted stock is expected to be recognized over a weighted average period of 1.92 years and 2.50 years, respectively.

9. Related Party Arrangements

Unconsolidated Entities

The Company manages unconsolidated real estate entities for which it receives asset management, property management, development and redevelopment fee revenue. From these entities, the Company received fees of \$2,533,000 and \$2,433,000 in the three months ended September 30, 2012 and 2011, respectively, and \$7,852,000 and \$7,085,000 for the nine months ended September 30, 2012 and 2011, respectively. These fees are included in management, development and other fees on the accompanying Condensed Consolidated Statements of Comprehensive Income (Loss). In addition, the Company has outstanding receivables associated with its management role of \$3,643,000 and \$4,294,000 as of September 30, 2012 and December 31, 2011, respectively.

Director Compensation

The Company recorded non-employee director compensation expense relating to restricted stock grants and deferred stock awards in the amount of \$240,000 and \$669,000 for the three and nine months ended September 30, 2012, respectively, as a component of general and administrative expense. Deferred compensation relating to these restricted stock grants and deferred stock awards was \$576,000 and \$370,000 on September 30, 2012 and December 31, 2011, respectively.

17

[Table of Contents](#)10. [Fair Value](#)[Financial Instruments Carried at Fair Value](#)*Derivative Financial Instruments*

The Company reports its interest rate swap and interest rate cap agreements at fair value in the Company's financial statements. In adjusting the fair value of its derivative contracts for the effect of counterparty nonperformance risk, the Company has considered the impact of its net position with a given counterparty, as well as any applicable credit enhancements, such as collateral postings, thresholds, mutual puts, and guarantees. The Company minimizes its credit risk on these transactions by dealing with major, creditworthy financial institutions which have an A or better credit rating by the Standard & Poor's Ratings Group. As part of its on-going control procedures, the Company monitors the credit ratings of counterparties and the exposure of the Company to any single entity, thus minimizing credit risk concentration. The Company believes the likelihood of realizing losses from counterparty non-performance is remote. Although the Company has determined that the majority of the inputs used to value its derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with its derivatives use Level 3 inputs, such as estimates of current credit spreads, to evaluate the likelihood of default by itself and its counterparties. As of September 30, 2012, the Company assessed the significance of the impact of the credit valuation adjustments on the overall valuation of its derivative positions and has determined it is not significant. As a result, the Company has determined that its derivative valuations are classified in Level 2 of the fair value hierarchy.

Hedge ineffectiveness did not have a material impact on earnings of the Company for any prior period, and the Company does not anticipate that it will have a material effect in the future.

The following table summarizes the consolidated Hedging Derivatives at September 30, 2012, excluding derivatives executed to hedge debt on communities classified as held for sale (dollars in thousands):

	Non- designated Hedges	Cash Flow Hedges	Cash Flow Hedges
	Interest Rate Caps	Interest Rate Caps	Interest Rate Swaps
Notional balance	\$ 39,347	\$ 180,024	\$ 215,000
Weighted average interest rate (1)	1.2%	2.4%	4.6%
Weighted average capped interest rate	7.4%	5.3%	N/A
Earliest maturity date	Mar-14	Jul-13	May-13
Latest maturity date	Sep-17	Jun-15	May-13

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

Excluding derivatives executed to hedge debt on communities classified as held for sale, the Company had five derivatives designated as cash flow hedges and three derivatives not designated as hedges at September 30, 2012. In connection with the Company's September 2012 unsecured note issuance, the Company settled a forward starting interest rate swap agreement designated as a cash flow hedge of the interest rate variability on the unsecured notes, making a payment of \$54,930,000, which amount is included in accumulated other comprehensive loss on the Condensed Consolidated Balance Sheets and will be recognized as a component of interest expense, net, over the life of the unsecured notes. Fair value changes for derivatives not in qualifying hedge relationships for the nine months ended September 30, 2012, were not material. To adjust the Hedging Derivatives in qualifying cash flow hedges to their fair value and recognize the impact of hedge accounting, the Company recorded an increase in other comprehensive loss of \$23,767,000 and \$79,691,000 during the nine months ended September 30, 2012 and 2011, respectively. The amount reclassified from accumulated other comprehensive loss into earnings for the nine months ended September 30, 2012 was not material. The Company anticipates reclassifying approximately \$5,493,000 of hedging losses from accumulated other comprehensive loss into earnings within the next twelve months to offset the variability of cash flows of the hedged items during this period. The Company had derivatives designated as fair value hedges as of December 31, 2011 which matured prior to September 30, 2012. The Company recorded a decrease in the fair value of these fair value hedges of \$1,324,000 for the nine months ended September 30, 2011.

Redeemable Noncontrolling Interests

The Company provided a redemption option (the "Put") that allows a joint venture partner of the Company to require the Company to purchase its interest in the investment at a guaranteed minimum amount. The Put is payable

[Table of Contents](#)

in cash. The Company determines the fair value of the Put based on unobservable inputs considering the assumptions that market participants would make in pricing the obligation, applying a guaranteed rate of return to the joint venture partner's net capital contribution balance as of period end. Given the significance of the unobservable inputs, the valuation is classified in Level 3 of the fair value hierarchy.

The Company issued units of limited partnership interests in DownREITs which provide the DownREIT limited partners the ability to present all or some of their units for redemption for cash as determined by the partnership agreement. Under the DownREIT agreement, for each limited partnership unit, the limited partner is entitled to receive cash in the amount equal to the fair value of the Company's common stock on or about the date of redemption. In lieu of cash redemption, the Company may elect to exchange such units for an equal number of shares of the Company's common stock. The limited partnership units in the DownREIT are valued using the market price of the Company's common stock, a Level 1 price under the fair value hierarchy.

[Financial Instruments Not Carried at Fair Value](#)*Cash and Cash Equivalents*

Cash and cash equivalent balances are held with various financial institutions, with cash balances held in principal protected accounts and any cash equivalents held in the form of short term investments that do not expose the Company to principal loss. The Company monitors credit ratings of these financial institutions and the concentration of cash

and cash equivalent balances with any one financial institution and believes the likelihood of realizing material losses related to cash and cash equivalent balances is remote. Cash and cash equivalents are carried at their face amounts, which reasonably approximate their fair values.

Other Financial Instruments

Rents receivable, accounts and construction payable and accrued expenses and other liabilities are carried at their face amounts, which reasonably approximate their fair values.

The Company values its unsecured notes using quoted market prices, a Level 1 price within the fair value hierarchy. The Company values its notes payable and outstanding amounts under the Credit Facility using a discounted cash flow analysis on the expected cash flows of each instrument. This analysis reflects the contractual terms of the instrument, including the period to maturity, and uses observable market-based inputs, including interest rate curves. The process also considers credit valuation adjustments to appropriately reflect the Company's nonperformance risk. The Company has concluded that the value of its notes payable and amounts outstanding under its credit facility are Level 2 prices as the majority of the inputs used to value its positions fall within Level 2 of the fair value hierarchy.

Financial Instruments Measured at Fair Value on a Recurring Basis

The following table summarizes the classification between the three levels of the fair value hierarchy of the Company's financial instruments measured and /or disclosed at fair value on a recurring basis (dollars in thousands):

Description	9/30/2012	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Interest Rate Caps	\$ 28	\$ —	\$ 28	\$ —
Interest Rate Swaps	(54,812)	—	(54,812)	—
Put	(5,748)	—	—	(5,748)
DownREIT units	(1,020)	(1,020)	—	—
Indebtedness	(4,064,394)	(2,070,262)	(1,994,132)	—
Total	\$ (4,125,946)	\$ (2,071,282)	\$ (2,048,916)	\$ (5,748)

19

[Table of Contents](#)

11. Subsequent Events

The Company has evaluated subsequent events through the date on which this Form 10-Q was filed, the date on which these financial statements were issued, and identified the following for disclosure.

In November 2012, the Company repaid \$201,601,000 principal amount of its 6.125% coupon unsecured notes pursuant to their scheduled maturity.

20

[Table of Contents](#)

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

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to help provide an understanding of our business and results of operations. This MD&A should be read in conjunction with our Condensed Consolidated Financial Statements and the accompanying Notes to Condensed Consolidated Financial Statements included elsewhere in this report. This report, including the following MD&A, contains forward-looking statements regarding future events or trends as described more fully under "Forward-Looking Statements" included in this report. Actual results or developments could differ materially from those projected in such statements as a result of the factors described under "Forward-Looking Statements" below and the risk factors described in Item 1a, "Risk Factors," of our Form 10-K for the year ended December 31, 2011 (our "Form 10-K").

All capitalized terms have the meaning as provided elsewhere in this Form 10-Q.

Executive Overview

Business Description

We are primarily engaged in developing, acquiring, owning and operating apartment communities in high barrier to entry markets of the United States. We believe that apartment communities are an attractive long-term investment opportunity compared to other real estate investments because a broad potential resident base should help reduce demand volatility over a real estate cycle. We seek to create long-term shareholder value by accessing capital at cost effective terms; deploying that capital to develop, redevelop and acquire apartment communities in high barrier to entry markets; operating apartment communities; and selling communities when they no longer meet our long-term investment strategy or when pricing is attractive. Barriers to entry in our markets generally include a difficult and lengthy entitlement process with local jurisdictions and dense urban or suburban areas where zoned and entitled land is in limited supply.

Our strategy is to be leaders in market research and capital allocation, delivering a range of multifamily offerings tailored to serve the needs of the most attractive customer segments in the best-performing submarkets of the United States. Our communities are predominately upscale, which generally command among the highest rents in their markets. However, we also pursue the ownership and operation of apartment communities that target a variety of customer segments and price points, consistent with our goal of offering a broad range of products and services. We regularly evaluate the allocation of our investments by the amount of invested capital and by product type within our individual markets, which are located in New England, the New York/New Jersey metro area, the Mid-Atlantic, the Pacific Northwest, and the Northern and Southern California regions of the United States.

Third Quarter 2012 Highlights

Solid apartment fundamentals continued to support earnings growth in the third quarter of 2012.

- Net income attributable to common stockholders for the quarter ended September 30, 2012 was \$86,844,000, an increase of \$42,020,000 or 93.7% over the prior year period. The increase is attributable primarily to an increase in NOI from our communities and a gain on the acquisition of an unconsolidated entity in 2012, as well as a decrease in net interest expense.
- For the quarter ended September 30, 2012, Established Communities NOI increased by \$8,876,000 or 7.1% over the prior year period. This year-over-year increase was driven by an increase in rental revenue of 5.6% offset by an increase in operating expenses of 2.6% as compared to the prior year period.

We also had liquidity at September 30, 2012, with \$664,133,000 in unrestricted cash.

Financial Outlook

Our portfolio results for the quarter ended September 30, 2012 reflect both year-over-year revenue growth, as well as strengthening sequential rental revenue growth. The increase in revenues was driven by an increase in both rental rates and occupancy for our Established Communities as well as portfolio growth and leasing activity from new development. We expect year-over-year revenue growth to continue for the balance of 2012, although at a slower

[Table of Contents](#)

rate of growth in certain markets. Our expectation of revenue growth for the balance of 2012 is based on continued strong fundamentals in the multifamily sector, supported by a combination of a decline in the homeownership rate, continued growth in the population segments with the highest propensity to rent, and limited supply of new multifamily rental product. However, increases in development activity by others and related supply may moderate future revenue growth in certain markets as further discussed in this Form 10-Q. We believe the current continued favorable apartment fundamentals, combined with a capital markets environment that provides for cost effective access to capital, supports our expanded investment activity as further discussed below.

During the quarter ended September 30, 2012, we completed the construction of two communities with an aggregate of 337 apartment homes for a total capitalized cost of \$101,100,000. Also, we started construction of four communities containing 837 apartment homes with an expected aggregate total capitalized cost of \$258,900,000. At September 30, 2012, 22 communities were under construction with a total projected capitalized cost of approximately \$1,802,100,000. As of September 30, 2012, approximately \$840,866,000 of the capital for this development was invested, with \$961,234,000 remaining to invest.

During the three months ended September 30, 2012, we started the redevelopment of The Avalon located in Bronxville, NY. The Avalon contains 110 apartment homes and is expected to be redeveloped for a total capitalized cost of \$8,300,000, excluding costs incurred prior to redevelopment. At September 30, 2012, there were seven communities under redevelopment, with an expected investment of approximately \$72,300,000, excluding costs incurred prior to the start of redevelopment, with \$26,878,000 remaining to be invested.

Cash on hand and available capital from our Credit Facility are sufficient to provide the capital necessary to fund our committed development and redevelopment activities as of September 30, 2012. We believe that our balance sheet, as measured by our current level of indebtedness, our current ability to service interest and other fixed charges and our current limited use of financial encumbrances (such as secured financing), provides adequate access to liquidity from the capital markets through the issuance of corporate securities (which could include unsecured debt and/or common and preferred equity) and secured debt, as well as other sources of liquidity such as from joint ventures or from our retained cash, to meet any reasonably foreseeable liquidity needs as they arise. See the discussion under *Liquidity and Capital Resources*.

While we continue to grow principally through our demonstrated core competency of developing wholly owned assets, we also acquire operating assets. During the three months ended September 30, 2012, we purchased our joint venture partner's 70% interest in Avalon Del Rey, a 309 apartment home community, for \$67,200,000. See further discussion under *Unconsolidated Real Estate Investments and Off-balance Sheet Arrangements* below.

Communities Overview

Our real estate investments consist primarily of current operating apartment communities, communities in various stages of development ("Development Communities") and Development Rights as defined below. Our current operating communities are further distinguished as Established Communities, Other Stabilized Communities, Lease-Up Communities and Redevelopment Communities. While we establish the classification of communities on an annual basis, we may update the classification of communities during the calendar year to the extent that our plans with regard to the disposition or redevelopment of a community change during the year. The following is a description of each category:

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

- *Established Communities (also known as Same Store Communities)* are consolidated communities where a comparison of operating results from the prior year to the current year is meaningful, as these communities were owned and had stabilized occupancy and operating expenses as of the beginning of the prior year. For the period ended September 30, 2012, the Established Communities are communities that are consolidated for financial reporting purposes, had stabilized occupancy and operating expenses as of January 1, 2011, are not conducting or planning to conduct substantial redevelopment activities and are not held for sale or planned for disposition within the current year. A community is considered to have stabilized

[Table of Contents](#)

occupancy at the earlier of (i) attainment of 95% physical occupancy or (ii) the one-year anniversary of completion of development or redevelopment.

- *Other Stabilized Communities* are all other completed communities that we own or have a direct or indirect ownership interest in, and that have stabilized occupancy, as defined above. Other Stabilized Communities do not include communities that are conducting or planning to conduct substantial redevelopment activities within the current year.
- *Lease-Up Communities* are communities where construction has been complete for less than one year and where physical occupancy has not reached 95%.
- *Redevelopment Communities* are communities where substantial redevelopment is in progress or is planned to begin during the current year. Redevelopment is considered substantial when capital invested during the reconstruction effort is expected to exceed either \$5,000,000 or 10% of the community's pre-redevelopment basis and is expected to have a material impact on the operations of the community, including occupancy levels and future rental rates.

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

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

We currently lease our corporate headquarters located in Arlington, Virginia under an operating lease. The lease term ends in 2020, subject to two five year renewal options. All other regional and administrative offices are leased under operating leases.

[Table of Contents](#)

As of September 30, 2012, communities that we owned or held a direct or indirect interest in were classified as follows:

	<u>Number of communities</u>	<u>Number of apartment homes</u>
Current Communities		
Established Communities:		
New England	28	7,066
Metro NY/NJ	23	7,893
Mid-Atlantic	11	4,748
Pacific Northwest	8	1,908
Northern California	18	5,220
Southern California	16	4,899
Total Established	<u>104</u>	<u>31,734</u>
Other Stabilized Communities:		
New England	10	1,823
Metro NY/NJ	11	3,762
Mid-Atlantic	9	3,465
Pacific Northwest	6	1,535
Northern California	10	2,904
Southern California	20	5,238
Total Other Stabilized	<u>66</u>	<u>18,727</u>
Lease-Up Communities	6	1,224
Redevelopment Communities	<u>7</u>	<u>1,802</u>
Total Current Communities	<u>183</u>	<u>53,487</u>
Development Communities	<u>22</u>	<u>6,614</u>
Development Rights	<u>31</u>	<u>8,837</u>

Results of Operations

Our year-over-year operating performance is primarily affected by both overall and individual geographic market conditions and apartment fundamentals and is reflected in changes in NOI of our Established Communities; NOI derived from acquisitions and development completions; the loss of NOI related to disposed communities; and capital market and financing activity. A comparison of our operating results for the three and nine months ended September 30, 2012 and 2011 follows (unaudited, dollars in thousands):

[Table of Contents](#)

	<u>For the three months ended</u>				<u>For the nine months ended</u>			
	<u>9-30-12</u>	<u>9-30-11</u>	<u>\$ Change</u>	<u>% Change</u>	<u>9-30-12</u>	<u>9-30-11</u>	<u>\$ Change</u>	<u>% Change</u>
Revenue:								
Rental and other income	\$ 269,371	\$ 241,286	\$ 28,085	11.6%	\$ 773,424	\$ 698,938	\$ 74,486	10.7%
Management, development and other fees	2,533	2,433	100	4.1%	7,852	7,085	767	10.8%
Total revenue	<u>271,904</u>	<u>243,719</u>	<u>28,185</u>	<u>11.6%</u>	<u>781,276</u>	<u>706,023</u>	<u>75,253</u>	<u>10.7%</u>
Expenses:								
Direct property operating expenses, excluding property taxes	58,240	56,145	2,095	3.7%	166,644	159,493	7,151	4.5%
Property taxes	26,184	23,741	2,443	10.3%	75,641	70,908	4,733	6.7%
Total community operating expenses	<u>84,424</u>	<u>79,886</u>	<u>4,538</u>	<u>5.7%</u>	<u>242,285</u>	<u>230,401</u>	<u>11,884</u>	<u>5.2%</u>
Corporate-level property management and other indirect operating expenses	9,935	10,162	(227)	(2.2)%	31,917	29,553	2,364	8.0%
Investments and investment management expense	1,582	1,328	254	19.1%	4,526	3,860	666	17.3%
Expensed acquisition, development and other pursuit costs	608	633	(25)	(3.9)%	1,749	2,636	(887)	(33.6)%
Interest expense, net	33,985	42,659	(8,674)	(20.3)%	100,804	130,174	(29,370)	(22.6)%
Loss on extinguishment of debt, net	—	—	—	—	1,179	—	1,179	100.0%
Depreciation expense	65,998	60,893	5,105	8.4%	193,434	180,953	12,481	6.9%

General and administrative expense	8,372	6,087	2,285	37.5%	26,398	21,524	4,874	22.6%
Impairment loss	—	14,052	(14,052)	(100.0)%	—	14,052	(14,052)	(100.0)%
Gain on sale of land	—	(13,716)	13,716	(100.0)%	(280)	(13,716)	13,436	(98.0)%
Gain on acquisition of unconsolidated entity	(14,194)	—	(14,194)	100.0%	(14,194)	—	(14,194)	(100.0)%
Total other expenses	106,286	122,098	(15,812)	(13.0)%	345,533	369,036	(23,503)	(6.4)%
Equity in income of unconsolidated entities	5,553	2,615	2,938	112.4%	9,801	3,513	6,288	179.0%
Income from continuing operations	86,747	44,350	42,397	95.6%	203,259	110,099	93,160	84.6%
Discontinued operations:								
Income from discontinued operations	—	327	(327)	(100.0)%	2,870	631	2,239	354.8%
Gain on sale of communities	—	—	—	—	95,049	7,675	87,374	1,138.4%
Total discontinued operations	—	327	(327)	(100.0)%	97,919	8,306	89,613	1,078.9%
Net income	86,747	44,677	42,070	94.2%	301,178	118,405	182,773	154.4%
Net loss attributable to noncontrolling interests	97	147	(50)	(34.0)%	334	132	202	153.0%
Net income attributable to common stockholders	\$ 86,844	\$ 44,824	\$ 42,020	93.7%	\$ 301,512	\$ 118,537	\$ 182,975	154.4%

Net income attributable to common stockholders increased \$42,020,000 or 93.7%, to \$86,844,000 for the three months ended September 30, 2012 and increased \$182,975,000 or 154.4% to \$301,512,000 for the nine months ended September 30, 2012. The increase for the three months ended September 30, 2012 over the prior year period is due primarily to an increase in Net Operating Income ("NOI") from existing and newly developed and acquired communities, a gain on the acquisition of an unconsolidated entity, and a decline in net interest expense. The increase for the nine months ended September 30, 2012 is due primarily to an increase in asset sales and associated gains in 2012 as compared to the prior year period, as well as an increase in NOI and decrease in net interest expense.

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

[Table of Contents](#)

development and other pursuit costs, net interest expense, gain (loss) on extinguishment of debt, general and administrative expense, joint venture income (loss), depreciation expense, impairment loss on land holdings, gain on sale of real estate assets and income from discontinued operations.

NOI does not represent cash generated from operating activities in accordance with GAAP. Therefore, NOI should not be considered an alternative to net income as an indication of our performance. NOI should also not be considered an alternative to net cash flow from operating activities, as determined by GAAP, as a measure of liquidity, nor is NOI indicative of cash available to fund cash needs. Reconciliations of NOI for the three and nine months ended September 30, 2012 and 2011 to net income for each period are as follows (unaudited, dollars in thousands):

	For the three months ended		For the nine months ended	
	09-30-12	09-30-11	09-30-12	09-30-11
Net income	\$ 86,747	\$ 44,677	\$ 301,178	\$ 118,405
Indirect operating expenses, net of corporate income	7,396	7,743	24,049	22,490
Investments and investment management expense	1,582	1,328	4,526	3,860
Expensed acquisition, development and other pursuit costs	608	633	1,749	2,636
Interest expense, net	33,985	42,659	100,804	130,174
Loss on extinguishment of debt, net	—	—	1,179	—
General and administrative expense	8,372	6,087	26,398	21,524
Equity in income of unconsolidated entities	(5,553)	(2,615)	(9,801)	(3,513)
Depreciation expense	65,998	60,893	193,434	180,953
Impairment loss	—	14,052	—	14,052
Gain on sale of real estate assets	—	(13,716)	(95,329)	(21,391)
Income from discontinued operations	—	(327)	(2,870)	(631)
Gain on acquisition of unconsolidated entity	(14,194)	—	(14,194)	—
Net operating income	\$ 184,941	\$ 161,414	\$ 531,123	\$ 468,559

The NOI changes for the three and nine months ended September 30, 2012, as compared to the prior year periods, consist of changes in the following categories (unaudited, dollars in thousands):

	For the three months ended		For the nine months ended	
	9-30-12	9-30-11	9-30-12	9-30-11
Established Communities	\$ 8,876	\$ 29,934		
Other Stabilized Communities	4,704	14,294		
Development and Redevelopment Communities	9,947	18,336		
Total	\$ 23,527	\$ 62,564		

The increases in our Established Communities' NOI for the three and nine months ended September 30, 2012 are due to a combination of increased rental revenues offset somewhat by increased operating expenses. For the balance of 2012, we expect continued rental revenue growth over the prior year period, offset partially by an expected increase in operating expenses.

Rental and other income increased in the three and nine months ended September 30, 2012 as compared to the prior year periods due to additional rental income generated from newly developed and acquired communities and increases in rental rates at our Established Communities.

Overall Portfolio — The weighted average number of occupied apartment homes for consolidated communities increased to 43,597 apartment homes for the nine months ended September 30, 2012 as compared to 42,502 homes for the prior year period. This increase is primarily due to new homes from increased development activity and acquisitions, offset by communities sold in 2011 and 2012. The

[Table of Contents](#)

weighted average monthly revenue per occupied apartment home increased to \$1,983 for the nine months ended September 30, 2012 as compared to \$1,895 in the prior year period.

Established Communities — Rental revenue increased \$10,418,000, or 5.6% and \$32,431,000, or 6.0%, for the three and nine months ended September 30, 2012, respectively, over the prior year periods. The increase for the three months ended September 30, 2012 is due to increases in both rental rates of 5.1% and economic occupancy of 0.5%. The increase for the nine months ended September 30, 2012, is due to an increase in rental rates of 5.8% and economic occupancy of 0.2%. Economic occupancy takes into account the fact that apartment homes of different sizes and locations within a community have different economic impacts on a community's gross revenue. Economic occupancy is defined as gross potential revenue less vacancy loss, as a percentage of gross potential revenue. Gross potential revenue is determined by valuing occupied homes at leased rates and vacant homes at market rents. We experienced increases in rental revenue from Established Communities in all six of our regions for the nine months ended September 30, 2012 over the prior year period. Information for each of our regions is discussed in more detail below.

The Metro New York/New Jersey region, which accounted for 30.5% of Established Community rental revenue for the nine months ended September 30, 2012, experienced an increase in rental revenue of 5.6% as compared to the prior year period. Average rental rates increased 5.3% to \$2,550, and economic occupancy increased 0.3% to 96.4% for the nine months ended September 30, 2012. On a sequential basis, Metro New York/New Jersey reported rental revenue growth of 2.0% during the third quarter of 2012. Our Metro New York/New Jersey portfolio includes assets located in Central and Northern New Jersey, New York City and its northern suburbs, and Long Island. Solid job growth in the technology sector continues to support the improvement in apartment fundamentals in New York City and Northern New Jersey. Revenue growth for the region may be impacted somewhat by the ongoing contraction in the financial services sector, primarily in the suburbs of Westchester, Central New Jersey and Long Island.

The New England region accounted for 21.9% of the Established Community rental revenue for the nine months ended September 30, 2012 and experienced a rental revenue increase of 4.6% over the prior year period. Average rental rates increased 5.2% to \$2,067, offset partially by a decrease in economic occupancy of 0.6% to 95.5% for the nine months ended September 30, 2012, as compared to the prior year period. Sequential revenue increased over the prior quarter by 2.4% during the three months ended September 30, 2012. The New England region's growth is driven by a renewed expansion in employment for the technology sector, primarily in the greater Boston area, offset somewhat by weakness in the financial services sector impacting the Fairfield-New Haven area. We expect continued but moderating revenue growth, with the increasing affordability of home ownership and future supply from new development impacting the longer term outlook.

Northern California accounted for 16.8% of the Established Community rental revenue for the nine months ended September 30, 2012 and experienced a rental revenue increase of 10.3% over the prior year period. Average rental rates increased 10.3% to \$2,125, while maintaining economic occupancy at 96.1% for the nine months ended September 30, 2012 as compared to the prior year period. The Northern California region also continued to show strong sequential rental revenue growth in our markets, increasing 3.2% over the second quarter of 2012. The growth in rental revenue is driven by the strength of Northern California's technology sector, which we expect will continue for the balance of 2012 into 2013. An increase in development activity and future supply may slow revenue growth in future periods.

The Mid-Atlantic region, which represented 13.6% of Established Community rental revenue for the nine months ended September 30, 2012, experienced an increase in rental revenue of 4.2% over the prior year period. Average rental rates increased by 3.6% to \$1,898, while economic occupancy increased 0.6% to 96.0% for the nine months ended September 30, 2012 as compared to the prior year period. The Mid-Atlantic region experienced sequential quarterly rental revenue growth of 1.8%. The Mid-Atlantic region, while maintaining a moderate pace of growth, is facing challenges resulting from additional supply due to new development and the uncertainty surrounding federal spending. We expect these factors will result in revenue growth at a slower pace relative to our other markets in future periods.

Southern California accounted for 12.9% of the Established Community rental revenue for the nine months ended September 30, 2012. The region experienced a rental revenue increase of 4.9% over the prior year period driven by an increase in average rental rates of 4.6% to \$1,745 over the prior year period, and an

[Table of Contents](#)

increase in economic occupancy of 0.3% to 96.2% for the nine months ended September 30, 2012. On a sequential basis, the Southern California region saw rental revenue growth of 2.6%. The improvement in the Southern California market is driven by above average job growth and limited new supply, and we expect this trend will continue into 2013.

The Pacific Northwest region accounted for 4.3% of the Established Community rental revenue for the nine months ended September 30, 2012 and experienced a rental revenue increase of 9.1% over the prior year period. Average rental rates increased 7.6% to \$1,472, and economic occupancy increased 1.5% to 96.6% for the nine months ended September 30, 2012 as compared to the prior year period. The Pacific Northwest showed the strongest sequential rental revenue growth in our markets of 3.5%, led by job gains in the region's professional services sector. The Pacific Northwest's retail, technology and manufacturing sectors continue to support job creation and apartment fundamentals. Consistent with most of our other markets, new development and resulting additional supply may moderate revenue growth in future periods.

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

The following table reconciles total rental revenue in conformity with GAAP to total rental revenue adjusted to state concessions on a cash basis for our Established Communities for the three and nine months ended September 30, 2012 and 2011 (unaudited, dollars in thousands):

	For the three months ended		For the nine months ended	
	9-30-12	9-30-11	9-30-12	9-30-11
Rental revenue (GAAP basis)	\$ 194,812	\$ 184,394	\$ 572,316	\$ 539,885

Concessions amortized	59	794	354	3,577
Concessions granted	(53)	(97)	(139)	(1,231)
Rental revenue adjusted to state concessions on a cash basis	\$ 194,818	\$ 185,091	\$ 572,531	\$ 542,231
Year-over-year % change — GAAP revenue		5.6%		6.0%
Year-over-year % change — cash concession based revenue		5.3%		5.6%

Management, development and other fees increased \$767,000, or 10.8% for the nine months ended September 30, 2012 as compared to the prior year period due primarily to increased asset management fees and property management fees from Fund II.

Direct property operating expenses, excluding property taxes increased \$2,095,000, or 3.7% for the three months ended September 30, 2012 and \$7,151,000, or 4.5% for the nine months ended September 30, 2012 as compared to the prior year periods, primarily due to the addition of recently developed and newly acquired apartment homes.

For Established Communities, direct property operating expenses, excluding property taxes for the three and nine months ended September 30, 2012 were consistent with the respective prior year periods.

Property taxes increased \$2,443,000, or 10.3% and \$4,733,000, or 6.7% for the three and nine months ended September 30, 2012, respectively, over the prior year periods, due to the addition of newly developed and redeveloped apartment homes, coupled with increased property taxes at our Established Communities.

For Established Communities, property taxes increased by \$1,515,000, or 8.6%, and \$2,476,000, or 4.6%, for the three and nine months ended September 30, 2012, respectively, over the prior year periods due to higher rates and

[Table of Contents](#)

assessments. Changes in reported property tax expenses are often impacted by the size and timing of successful tax appeals. For communities in California, property tax changes are determined by the change in the California Consumer Price Index, with increases limited by law (Proposition 13). Massachusetts also has laws in place to limit property tax increases. We evaluate property tax increases internally and also engage third-party consultants to assist in our evaluations. We appeal property tax increases when appropriate.

Corporate-level property management and other indirect operating expenses increased by \$2,364,000 or 8.0% for the nine months ended September 30, 2012 over the prior year period. The increase is due primarily to costs related to the introduction of our AVA and Eaves by Avalon brands and corporate technology initiatives.

Expensed acquisition, development and other pursuit costs primarily reflect the costs incurred related to our asset investment activity, abandoned pursuit costs, which include costs incurred for development pursuits not yet considered probable for development, as well as the abandonment of Development Rights, acquisition pursuits and disposition pursuits. These costs can be volatile, particularly in periods of increased acquisition activity, periods of economic downturn or when there is limited access to capital, and the costs may vary significantly from period to period.

Interest expense, net decreased \$8,674,000, or 20.3% and \$29,370,000, or 22.6% for the three and nine months ended September 30, 2012, respectively, from the prior year periods. This category includes interest costs offset by interest capitalized and interest income. The decrease for the three and nine months ended September 30, 2012 is due primarily to a decrease in average debt outstanding and an increase in the amount of capitalized interest in the three and nine months ended September 30, 2012 compared to the prior year periods. The increase in capitalized interest over the prior year periods was driven primarily by the increase in our development activity and development pursuits in 2012 compared to 2011. The year-over-year decrease in interest expense, net, for the nine months ended September 30, 2012 was offset somewhat by interest income associated with escrow accounts for certain tax exempt secured borrowings recognized in 2011 that were not present in 2012.

Loss on the extinguishment of debt, net reflects the impact from prepayment penalties, expensing deferred financing costs from our debt repurchase and retirement activity, or payments above or below the carrying basis, excluding assets sold or held for sale, which is included in discontinued operations, below. During the nine months ended September 30, 2012 we recognized a non-cash charge on the extinguishment of debt from the early retirement of a secured note, with no comparable activity in the prior year period.

Depreciation expense increased \$5,105,000, or 8.4% and \$12,481,000, or 6.9% in the three and nine months ended September 30, 2012, respectively, over the prior year periods. The increase is primarily due to the net increase in assets from the completion of development and redevelopment activities and new acquisitions.

General and administrative expense (“G&A”) increased \$2,285,000, or 37.5% and \$4,874,000, or 22.6% for the three and nine months ended September 30, 2012, respectively, over the prior year periods. The increases are due primarily to an increase in compensation costs and professional fees.

Impairment loss decreased for the three and nine months ended September 30, 2012 due to the absence of impairments in 2012 as compared to the write down of two land parcels and an other than temporary impairment of an investment in unconsolidated joint venture recognized in 2011.

Gain on sale of land decreased for the three and nine months ended September 30, 2012 from the prior year periods due to a decrease in the volume of land sales and associated gains.

Gain on acquisition of unconsolidated entity represents the amount by which the fair value of our prior ownership interest in the joint venture that owned Avalon Del Rey exceeded our carrying value.

Equity in income of unconsolidated entities increased \$2,938,000, or 112.4% and \$6,288,000, or 179.0% for the three and nine months ended September 30, 2012, respectively, as compared to the prior year periods. The increases are due primarily to the recognition of income for our promoted interest for Avalon Del Rey and an increase in our proportionate share of gains from Fund I disposition activity over the prior year periods.

Income from discontinued operations represents the net income generated by real estate sold or qualifying as discontinued operations during the period from January 1, 2011 through September 30, 2012. This income increased for the nine months ended September 30, 2012 due to changes in the number of communities sold in 2011 and 2012.

Gain on sale of communities increased for the nine months ended September 30, 2012 due to an increase in the volume of community disposition activity and associated gains in 2012 as compared to the prior year period. The amount of gain realized upon disposition of a community depends on many factors, including the number of communities sold, the size and carrying value of those communities and the market conditions in the local area.

Funds from Operations Attributable to Common Stockholders (“FFO”)

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

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

- gains or losses on sales of previously depreciated operating communities;
- extraordinary gains or losses (as defined by GAAP);
- cumulative effect of change in accounting principle;
- impairment write-downs of depreciable real estate assets;
- write-downs of investments in affiliates due to a decrease in the value of depreciable real estate assets held by those affiliates;
- depreciation of real estate assets; and
- adjustments for unconsolidated partnerships and joint ventures.

FFO does not represent net income attributable to common stockholders in accordance with GAAP, and therefore it should not be considered an alternative to net income, which remains the primary measure of performance. In addition, FFO as calculated by other REITs may not be comparable to our calculation of FFO.

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

	<u>For the three months ended</u>		<u>For the nine months ended</u>	
	<u>9-30-12</u>	<u>9-30-11</u>	<u>9-30-12</u>	<u>9-30-11</u>
Net income attributable to common stockholders	\$ 86,844	\$ 44,824	\$ 301,512	\$ 118,537
Depreciation - real estate assets, including discontinued operations and joint venture adjustments	67,590	64,499	199,593	191,933
Distributions to noncontrolling interests, including discontinued operations	7	7	21	20
Gain on sale of unconsolidated entities holding previously depreciated real estate assets	—	(1,743)	(1,471)	(1,743)
Gain on sale of operating communities depreciated real estate assets	—	—	(95,049)	(7,675)
Gain on acquisition of unconsolidated entity	(14,194)	—	(14,194)	—
FFO attributable to common stockholders	\$ 140,247	\$ 107,587	\$ 390,412	\$ 301,072
Weighted average common shares outstanding - diluted	97,546,569	92,340,368	96,401,558	89,199,498
EPS per common share - diluted	\$ 0.89	\$ 0.49	\$ 3.13	\$ 1.33
FFO per common share - diluted	\$ 1.44	\$ 1.17	\$ 4.05	\$ 3.38

Table of Contents

FFO also does not represent cash generated from operating activities in accordance with GAAP, and therefore should not be considered an alternative to net cash flows from operating activities, as determined by GAAP, as a measure of liquidity. Additionally, it is not necessarily indicative of cash available to fund cash needs.

A presentation of GAAP based cash flow metrics is as follows (unaudited, dollars in thousands) and a discussion of “Liquidity and Capital Resources” can be found later in this report:

	<u>For the three months ended</u>		<u>For the nine months ended</u>	
	<u>9-30-12</u>	<u>9-30-11</u>	<u>9-30-12</u>	<u>9-30-11</u>
Net cash provided by operating activities	\$ 152,705	\$ 89,133	\$ 375,173	\$ 295,012
Net cash used in investing activities	(289,981)	(176,454)	(482,732)	(469,482)
Net cash provided by financing activities	\$ 443,146	\$ 488,048	\$ 154,839	\$ 558,875

Liquidity and Capital Resources

We believe our principal short-term liquidity needs are to fund:

- development and redevelopment activity in which we are currently engaged;
- the minimum dividend payments on our common stock required to maintain our REIT qualification under the Code;
- debt service and principal payments either at maturity or opportunistically before maturity; and
- normal recurring operating expenses.

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

redevelopment, acquisition and disposition activity, are affected by changes in the capital markets environment, such as changes in interest rates or the availability of cost-effective capital. We regularly review our liquidity needs, the adequacy of cash flows from operations and other expected liquidity sources to meet these needs.

For the balance of 2012, we expect to meet our liquidity needs from a variety of internal and external sources, which may include cash balances on hand, borrowing capacity under our Credit Facility, secured and unsecured debt financings, and other public or private sources of liquidity including common and preferred equity, asset dispositions as well as from our operating activities. Our ability to obtain additional financing will depend on a variety of factors such as market conditions, the general availability of credit, the overall availability of credit to the real estate industry, our credit ratings and credit capacity, as well as the perception of lenders regarding our long or short-term financial prospects.

At September 30, 2012, we had unrestricted cash, cash equivalents and cash in escrow of \$713,984,000 available for both current liquidity needs as well as development activities.

Unrestricted cash and cash equivalents totaled \$664,133,000 at September 30, 2012, an increase of \$47,280,000 over \$616,853,000 at December 31, 2011. The following discussion relates to changes in cash due to operating, investing and financing activities, which are presented in our Condensed Consolidated Statements of Cash Flows included elsewhere in this report.

Operating Activities — Net cash provided by operating activities increased to \$375,173,000 for the nine months ended September 30, 2012 from \$295,012,000 for the nine months ended September 30, 2011. The change was driven primarily by increased NOI from our communities and the timing of payments of corporate obligations.

Investing Activities — Net cash used in investing activities of \$482,732,000 for the nine months ended September 30, 2012 related to investments in assets primarily through development and redevelopment and the

[Table of Contents](#)

acquisition of operating communities, partially offset by proceeds of \$182,225,000 from the sale of real estate. During the nine months ended September 30, 2012, we invested \$688,314,000 in the following:

- we invested approximately \$567,867,000 in the development and redevelopment of communities;
- we invested \$105,904,000 in the acquisition of three apartment communities; and
- we had capital expenditures of \$14,543,000 for real estate and non-real estate assets.

Financing Activities — Net cash provided by financing activities totaled \$154,839,000 for the nine months ended September 30, 2012. The net cash provided is due to \$326,653,000 received from the issuance of common stock, primarily through CEP II and CEP III and stock option exercises, and the proceeds from our \$450,000,000 unsecured notes offering, offset partially by \$270,866,000 of dividends paid, repayment of unsecured notes of \$179,400,000, the repayment of mortgage notes payable of \$106,255,000, and the settlement of an interest rate derivative contract for \$54,930,000.

Variable Rate Unsecured Credit Facility

We currently have a \$750,000,000 Credit Facility with a syndicate of commercial banks that matures in September 2015, plus a one-year extension option. The Credit Facility bears interest at varying levels based on LIBOR, our credit rating and on a maturity schedule selected by us. The current stated pricing is LIBOR plus 1.075% per annum (1.29% on October 31, 2012). At October 31, 2012, there were no amounts outstanding on the Credit Facility, \$46,696,000 was used to provide letters of credit, and \$703,304,000 was available for borrowing under the Credit Facility.

Financial Covenants

We are subject to financial and other covenants contained in the Credit Facility and the indenture under which our unsecured notes were issued. The financial covenants include the following:

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

We were in compliance with these covenants at September 30, 2012.

In addition, our secured borrowings may include yield maintenance, defeasance, or prepayment penalty provisions, which would result in us incurring an additional charge in the event of a full or partial prepayment of outstanding principal before the scheduled maturity. These provisions in our secured borrowings are generally consistent with other similar types of debt instruments issued during the same time period in which our borrowings were secured.

Continuous Equity Program

In November 2010, we commenced our second continuous equity program (“CEP II”), under which we were authorized to sell up to \$500,000,000 of our common stock during a 36-month period. In conjunction with CEP II, we engaged sales agents who received compensation of approximately 1.5% of the gross sales price for shares sold. For the three and nine months ended September 30, 2012 we sold 315,323 and 1,435,215 shares under CEP II at an average sales price of \$141.35 and \$140.41 per share, for aggregate net proceeds of \$43,901,000 and \$198,489,000, respectively. From program inception in November 2010 through completion in July 2012, we sold 3,925,980 shares at an average price of \$127.36 per share, for aggregate net proceeds of \$492,490,000.

In August 2012, we commenced our third continuous equity program (“CEP III”), under which we are authorized to sell up to \$750,000,000 of shares of our common stock during a 36-month period. In conjunction with CEP III we have engaged sales agents who receive compensation of approximately 1.5% of the gross sales price for shares sold. From program inception through September 30, 2012, we sold 729,991 shares at an average sales price of \$142.09 per share, for net proceeds of \$102,168,000.

[Table of Contents](#)

Future Financing and Capital Needs — Debt Maturities

One of our principal long-term liquidity needs is the repayment of long-term debt at the time that such debt matures. For both our unsecured and secured notes, a portion of the principal of these notes may be repaid prior to maturity. Early retirement of our secured or unsecured notes could result in gains or losses on extinguishment. If we do not have funds on hand sufficient to repay our indebtedness as it becomes due, it will be necessary for us to refinance the debt. This refinancing may be accomplished by uncollateralized private or public debt offerings, additional debt financing that is secured by mortgages on individual communities or groups of communities or draws on our Credit Facility. Although we believe we will have the capacity to meet our currently anticipated liquidity needs, we cannot assure you that additional debt financing or debt or equity offerings will be available or, if available, that they will be on terms we consider satisfactory.

In addition to the proceeds received under CEP II and CEP III discussed above, the following financing activity occurred in 2012:

- In January 2012, we repaid \$179,400,000 principal amount of 5.5% coupon unsecured notes pursuant to their scheduled maturity.
- In February 2012, we repaid a variable rate secured mortgage note in the amount of \$48,500,000 in advance of its November 2039 scheduled maturity date. As part of this transaction, we incurred a non-cash charge of \$1,179,000 for the write-off of deferred financing fees which was recognized as a loss on extinguishment of debt, net.
- Also in February 2012, in conjunction with the acquisition of a wholly-owned operating community, we assumed a 4.61% \$11,958,000 note maturing in June 2018.
- In May 2012, we repaid a variable rate secured mortgage note in the amount of \$14,566,000 in accordance with its scheduled maturity date.
- Also in May 2012, we repaid a variable rate secured mortgage in the amount of \$33,100,000 in advance of its July 2014 scheduled maturity date. In conjunction with the early retirement, we incurred a prepayment penalty and non-cash charges for the write-off of deferred financing fees of \$602,000 recognized as a component of income from discontinued operations. We repaid this secured note in advance of its scheduled maturity in conjunction with the disposition of the apartment community collateralizing the mortgage note.
- In September 2012, we issued \$450,000,000 principal amount of unsecured notes in a public offering under our existing shelf registration statement. The notes mature in September 2022 and were issued at a 2.95% interest rate. The notes have an effective interest rate of approximately 4.3%, including the effect of an interest rate hedge and offering costs.
- Also in September 2012, in connection with our unsecured notes issuance, we settled an outstanding interest rate hedge for \$54,930,000. The payment to settle this position will be recognized in interest expense, net over the term of the hedged unsecured notes.
- In November 2012, we repaid \$201,601,000 principal amount of 6.125% coupon unsecured notes pursuant to their scheduled maturity.

The following table details our consolidated debt maturities for the next five years, excluding our Credit Facility and amounts outstanding related to communities classified as held for sale, for debt outstanding at September 30, 2012 (dollars in thousands). We are not directly or indirectly (as borrower or guarantor) obligated in any material respect to pay principal or interest on the indebtedness of any unconsolidated entities in which we have an equity or other interest.

[Table of Contents](#)

Community	All-In interest rate (1)	Principal maturity date	Balance Outstanding		2012	2013	2014	2015	2016	Thereafter
			12-31-11	9-30-12						
Tax-exempt bonds										
<i>Fixed rate</i>										
Eaves Washingtonian Center I	7.81%	May-2027	\$ 9,103	\$ 8,851	\$ 87	\$ 364	\$ 390	\$ 419	\$ 449	\$ 7,142
Avalon Oaks	7.49%	Feb-2041	16,468	16,334	47	195	209	223	240	15,420
Avalon Oaks West	7.54%	Apr-2043	16,367	16,247	42	173	185	198	211	15,438
Avalon at Chestnut Hill	6.15%	Oct-2047	40,781	40,490	99	411	434	457	482	38,607
Avalon Morningside Park	6.87%	May-2046	100,000	100,000(6)	—	—	—	—	—	100,000
			182,719	181,922	275	1,143	1,218	1,297	1,382	176,607
<i>Variable rate (2)</i>										
Avalon at Mountain View	1.09%	Feb-2017	18,300	18,300(3)	—	—	—	—	—	18,300
Avalon at Mission Viejo	1.32%	Jun-2025	7,635	7,635(3)	—	—	—	—	—	7,635
AVA Nob Hill	1.26%	Jun-2025	20,800	20,800(3)	—	—	—	—	—	20,800
Avalon Campbell	1.58%	Jun-2025	38,800	38,800(3)	—	—	—	—	—	38,800
Avalon Pacifica	1.59%	Jun-2025	17,600	17,600(3)	—	—	—	—	—	17,600
Avalon Bowery Place I	3.13%	Nov-2037	93,800	93,800(3)	—	—	—	—	—	93,800
Avalon Bowery Place II	—	Nov-2039	48,500	—(5)	—	—	—	—	—	—
Avalon Acton	1.71%	Jul-2040	45,000	45,000(3)	—	—	—	—	—	45,000
Avalon Walnut Creek	2.80%	Mar-2046	116,000	116,000	—	—	—	—	—	116,000
Avalon Walnut Creek	2.75%	Mar-2046	10,000	10,000	—	—	—	—	—	10,000
			\$ 416,435	\$ 367,935	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 367,935
Conventional loans (4)										
<i>Fixed rate</i>										
\$250 Million unsecured notes	—	Jan-2012	104,400	—(7)	—	—	—	—	—	—
\$250 Million unsecured notes	6.26%	Nov-2012	201,601	201,601(7)	201,601	—	—	—	—	—
\$100 Million unsecured notes	5.11%	Mar-2013	100,000	100,000	—	100,000	—	—	—	—
\$150 Million unsecured notes	5.52%	Apr-2014	150,000	150,000	—	—	150,000	—	—	—
\$250 Million unsecured notes	5.89%	Sep-2016	250,000	250,000	—	—	—	—	250,000	—
\$250 Million unsecured notes	5.82%	Mar-2017	250,000	250,000	—	—	—	—	—	250,000
\$250 Million unsecured notes	6.19%	Mar-2020	250,000	250,000	—	—	—	—	—	250,000
\$250 Million unsecured notes	4.04%	Jan-2021	250,000	250,000	—	—	—	—	—	250,000
\$450 Million unsecured notes	4.29%	Sep-2022	—	450,000	—	—	—	—	—	450,000
Avalon at Tysons West	5.55%	Jul-2028	5,668	5,517	52	216	229	242	255	4,523
Avalon Orchards	7.78%	Jul-2033	18,321	18,037	99	412	441	472	506	16,107
Avalon at Arlington Square	4.81%	Apr-2013	170,125	170,125	—	170,125	—	—	—	—
Avalon Crescent	5.59%	May-2015	110,600	110,600	—	—	—	110,600	—	—
Avalon at Silicon Valley	5.74%	Jul-2015	150,000	150,000	—	—	—	150,000	—	—
Avalon Darien	6.22%	Nov-2015	49,907	49,401	244	742	789	47,626	—	—
Avalon Greyrock Place	6.12%	Nov-2015	60,133	59,511	221	905	962	57,423	—	—
Avalon Walnut Creek	4.00%	Jul-2066	2,500	2,500	—	—	—	—	—	2,500
Avalon Shrewsbury	5.92%	May-2019	20,991	20,803	66	273	289	307	323	19,545
Eaves Trumbull	5.93%	May-2019	41,048	40,682	129	534	566	601	631	38,221
Avalon at Stamford Harbor	5.92%	May-2019	65,261	64,679	206	848	900	955	1,003	60,767
Avalon Freehold	5.94%	May-2019	36,388	36,064	116	473	502	532	559	33,882
Avalon Run East	5.94%	May-2019	38,991	38,643	123	507	538	571	599	36,305
Eaves Nanuet	6.06%	May-2019	65,800	65,213	209	855	907	963	1,011	61,268
Avalon at Edgewater	5.94%	May-2019	78,046	77,350	249	1,014	1,076	1,142	1,199	72,670
Avalon Foxhall	6.05%	May-2019	58,620	58,098	187	762	808	858	901	54,582
Avalon at Gallery Place	6.05%	May-2019	45,547	45,141	144	592	628	667	700	42,410
Avalon at Traville	5.91%	May-2019	77,187	76,499	245	1,003	1,065	1,130	1,186	71,870
Avalon Bellevue	5.91%	May-2019	26,522	26,285	83	345	366	388	408	24,695
Avalon on The Alameda	5.90%	May-2019	53,624	53,145	169	697	740	785	824	49,930
Avalon at Mission Bay North	5.90%	May-2019	72,785	72,136	231	946	1,004	1,065	1,118	67,772
Fairfax Towers	5.01%	Aug-2015	43,426	42,708	248	1,020	1,070	40,370	—	—
Eaves Phillips Ranch	5.75%	Jun-2013	54,574	53,664	316	53,348	—	—	—	—
The Mark Pasadena	4.77%	Jun-2018	—	11,958	—	89	186	195	202	11,286
			2,902,065	3,250,360	204,938	335,706	163,066	416,892	261,425	1,868,333
<i>Variable rate (2)</i>										

Avalon at Bedford Center	—	May-2012	14,806	—(7)	—	—	—	—	—	—	—
Avalon Walnut Creek	2.79%	Mar-2046	9,000	9,000	—	—	—	—	—	—	9,000
\$250 Million unsecured notes	—	Jan-2012	75,000	—(7)	—	—	—	—	—	—	—
			\$ 98,806	\$ 9,000	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 9,000
Total indebtedness - excluding unsecured credit facility			<u>\$ 3,600,025</u>	<u>\$ 3,809,217</u>	<u>\$ 205,213</u>	<u>\$ 336,849</u>	<u>\$ 164,284</u>	<u>\$ 418,189</u>	<u>\$ 262,807</u>	<u>\$ 2,421,875</u>	

- (1) Includes credit enhancement fees, facility fees, trustees' fees, the impact of interest rate hedges, offering costs and other fees.
- (2) Variable rates are given as of September 30, 2012.
- (3) Financed by variable rate debt, but interest rate is capped through an interest rate protection agreement.
- (4) Balances outstanding represent total amounts due at maturity, and are net of \$2,393 and \$1,791 of debt discount and basis adjustments associated with the unsecured notes as of September 30, 2012 and December 31, 2011, respectively, and \$1,255 and \$962 premium associated with secured notes as of September 30, 2012 and December 31, 2011, respectively, as reflected on our Condensed Consolidated Balance Sheets included elsewhere in this report.
- (5) In February 2012, we elected to repay this mortgage note at par in advance of its maturity date.
- (6) In July 2012 we remarketed the bonds converting them to a variable rate through July 2017.

34

[Table of Contents](#)

- (7) Borrowing was repaid at par upon its scheduled maturity.

Future Financing and Capital Needs — Portfolio and Other Activity

As of September 30, 2012, we had 22 wholly-owned communities under construction, for which a total estimated cost of approximately \$961,234,000 remained to be invested. We also had seven wholly-owned communities under reconstruction, for which a total estimated cost of approximately \$26,878,000 remained to be invested. Substantially all of the capital expenditures necessary to complete the communities currently under construction and reconstruction, and fund development costs related to pursuing Development Rights will be funded from:

- our \$750,000,000 Credit Facility until it expires in 2016, assuming execution of a one-year extension option;
- cash currently on hand invested in highly liquid overnight money market funds and repurchase agreements, and short-term investment vehicles;
- retained operating cash;
- the net proceeds from sales of existing communities;
- the issuance of debt or equity securities; and/or
- private equity funding, including joint venture activity.

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

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

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

Unconsolidated Real Estate Investments and Off-balance Sheet Arrangements

As of September 30, 2012, we had investments in four unconsolidated real estate entities with ownership interest percentages ranging from 15.2% to 31.3%. We account for these investments in unconsolidated real estate entities under the equity method of accounting. Refer to Note 5 "Investments in Real Estate Entities", of the Condensed Consolidated Financial Statements located elsewhere in this report, which includes information on the aggregate assets, liabilities and equity, and operating results of the entities, as well as our proportionate share of their operating results.

Two of the unconsolidated entities are discretionary real estate investment funds, Fund I and Fund II (collectively "the Funds"), which were established to engage in multi-family real estate acquisition programs. We believe this investment format provides the following attributes: (i) third-party joint venture equity as an additional source of financing to expand and diversify our portfolio; (ii) additional sources of income in the form of property management and asset management fees and, potentially, incentive distributions if the performance of the Funds

35

[Table of Contents](#)

exceeds certain thresholds; and (iii) visibility into the transactions occurring in multi-family assets that helps us with other investment decisions related to our wholly-owned portfolio.

Fund I has nine institutional investors, including us. One of our wholly owned subsidiaries is the general partner of Fund I and excluding costs incurred in excess of our equity in the underlying net assets of Fund I, we have made an equity investment of approximately \$35,758,000 in Fund I (net of distributions and excluding the purchase by us of a mortgage note secured by a Fund I community), representing a 15.2% combined general partner and limited partner equity interest. Fund I was our principal vehicle for acquiring apartment communities through the close of its investment period in March 2008.

Fund II has six institutional investors, including us. One of our wholly owned subsidiaries is the general partner of Fund II and excluding costs incurred in excess of our equity in the underlying net assets of Fund II, we have made an equity investment of \$109,813,000 (net of distributions), representing a 31.3% combined general partner and limited partner equity interest. Fund II served as the exclusive vehicle, through which we acquired investment interests in apartment communities through the close of its investment period in August 2011.

We are not presently pursuing the formation of a third fund.

Unconsolidated Real Estate Investments	Company Ownership Percentage	# of Apartment Homes	Total Capitalized Cost (1)	Debt			
				Amount (2)	Type	Interest Rate (3)	Maturity Date
Fund I							
1. Avalon Sunset - Los Angeles, CA		82	\$ 20,939	\$ 12,750	Fixed	5.41%	Mar 2014
2. Avalon at Civic Center - Norwalk, CA		192	42,780	27,001	Fixed	5.38%	Aug 2013
3. Avalon Paseo Place - Fremont, CA		134	25,094	11,800	Fixed	5.74%	Nov 2014
4. Avalon at Yerba Buena - San Francisco, CA		160	66,812	41,500	Fixed	5.88%	Mar 2014
5. Avalon at Aberdeen Station - Aberdeen, NJ		290	58,646	39,842	Fixed	5.64%	Sep 2013
6. The Springs - Corona, CA (4)		320	30,004	23,292	Fixed	6.06%	Oct 2014
7. Avalon Cedar Place - Columbia, MD		156	24,505	12,000	Fixed	5.68%	Feb 2015
8. Avalon Centerpoint - Baltimore, MD (5)		392	80,536	45,000	Fixed	5.74%	Dec 2014
9. Middlesex Crossing - Billerica, MA		252	38,553	24,100	Fixed	5.49%	Dec 2014
10. Avalon Crystal Hill - Ponomo, NY		168	38,888	24,500	Fixed	5.43%	Dec 2014
11. Avalon Skyway - San Jose, CA		348	78,395	37,500	Fixed	6.11%	Mar 2014
12. Avalon Rutherford Station - East Rutherford, NJ		108	36,849	19,203	Fixed	6.13%	Sep 2016
13. South Hills Apartments - West Covina, CA		85	24,871	11,761	Fixed	5.92%	Oct 2014
14. Weymouth Place - Weymouth, MA		211	25,327	13,455	Fixed	5.12%	Mar 2015
Total Fund I	15.2%	2,898	\$ 592,199	\$ 343,704		5.73%	
Fund II							
1. Avalon Bellevue Park - Bellevue, WA		220	\$ 33,993	\$ 21,515	Fixed	5.52%	Jun 2019
2. Avalon Fair Oaks - Fairfax, VA		491	72,164	42,600	Fixed	5.26%	May 2017
3. Avalon Rothbury - Gaithersburg, MD		203	31,592	18,750	Variable	2.82%	Jun 2017
4. The Apartments at Briarwood - Owings Mills, MD		348	45,422	26,850	Fixed	3.64%	Nov 2017
5. Eaves Gaithersburg - Gaithersburg, MD (6)		684	102,085	63,200	Fixed	5.42%	Jan 2018
6. Eaves Tustin - Tustin, CA		628	100,450	59,100	Fixed	3.81%	Oct 2017
7. Eaves Los Alisos - Lake Forest, CA		140	27,226	—	N/A	N/A	N/A
8. Fox Run Apartments - Plainsboro, NJ (6)		776	87,432	53,381	Fixed	4.56%	Nov 2014
9. Eaves Carlsbad - Carlsbad, CA		448	79,038	46,141	Fixed	4.68%	Feb 2018
10. Yale Village - Rockville, MD		210	51,147	31,588	Fixed	4.26%	Aug 2019
11. Captain Parker Arms - Lexington, MA		94	21,309	13,500	Fixed	3.90%	Sep 2019
12. Eaves Rancho San Diego - San Diego, CA		676	125,426	73,239	Fixed	3.45%	Nov 2018
13. Avalon Watchung - Watchung, NJ		334	63,226	40,950	Fixed	3.37%	Apr 2019
Total Fund II	31.3%	5,252	\$ 840,510	\$ 490,814		4.28%	
Other Operating Joint Ventures							
1. Avalon Chrystie Place I - New York, NY (7)	20.0%	361	\$ 137,066	\$ 117,000	Variable	1.09%	Nov 2036
2. Avalon at Mission Bay North II - San Francisco, CA (7)	25.0%	313	124,220	105,000	Fixed	6.02%	Dec 2015
Total Other Joint Ventures		674	\$ 261,286	\$ 222,000		3.42%	
Total Unconsolidated Investments		8,824	\$ 1,693,995	\$ 1,056,518		4.57%	

(1) Represents total capitalized cost as of September 30, 2012.

(2) We have not guaranteed the debt of unconsolidated investees and bear no responsibility for the repayment, other than the construction and completion and related financing guarantee for Avalon Chrystie Place I associated with the construction completion and occupancy certificate.

(3) Represents weighted average rate on outstanding debt as of September 30, 2012.

[Table of Contents](#)

(4) Beginning in the third quarter of 2010, we consolidated the net assets and results of operations of The Springs.

(5) Borrowing on this community is comprised of three mortgage loans.

(6) Borrowing on this community is comprised of two mortgage loans.

(7) After the venture makes certain threshold distributions to the third-party partner, we generally receive 50% of all further distributions.

[Off-Balance Sheet Arrangements](#)

In addition to our investment interests in consolidated and unconsolidated real estate entities, we have certain off-balance sheet arrangements with the entities in which we invest. Additional discussion of these entities can be found in Note 5, "Investments in Real Estate Entities," of our Condensed Consolidated Financial Statements located elsewhere in this report.

- CVP I, LLC has outstanding tax-exempt, variable rate bonds maturing in November 2036 in the amount of \$117,000,000, which have permanent credit enhancement. We have agreed to guarantee, under limited circumstances, the repayment to the credit enhancer of any advances it may make in fulfillment of CVP I, LLC's repayment obligations under the bonds. We have also guaranteed to the credit enhancer that CVP I, LLC will obtain a final certificate of occupancy for the project (Christie Place in New York City), which is expected in 2013. Our 80% partner in this venture has agreed that it will reimburse us its pro rata share of any amounts paid relative to these guaranteed obligations. The estimated fair value of and our obligation under these guarantees, both at inception and as of September 30, 2012, were not significant. As a result we have not recorded any obligation associated with these guarantees at September 30, 2012.
- Subsidiaries of Fund I have 16 loans secured by individual assets with amounts outstanding in the aggregate of \$343,704,000, including \$23,292,000 for the mortgage note of a Fund I subsidiary that we purchased during 2010. Fund I subsidiary loans have varying maturity dates (or dates after which the loans can be prepaid without penalty), ranging from August 2013 to September 2016. These mortgage loans are secured by the underlying real estate. The mortgage loans are payable by the subsidiaries of Fund I with operating cash flow or disposition proceeds from the underlying real estate. We have not guaranteed the debt of Fund I, nor do we have any obligation to fund this debt should Fund I be unable to do so.

In addition, as part of the formation of Fund I, we have provided to one of the limited partners a guarantee. The guarantee provides that if, upon final liquidation of Fund I, the total amount of all distributions to that partner during the life of Fund I (whether from operating cash flow or property sales) does not equal a minimum of the total capital contributions made by that partner, then we will pay the partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner (maximum of approximately \$7,500,000 as of September 30, 2012). As of September 30, 2012, the expected realizable value of the real estate assets owned by Fund I is considered adequate to cover such potential payment to that partner under the expected Fund I liquidation scenario. The estimated fair value of, and our obligation under this guarantee, both at inception and as of September 30, 2012 was not significant and therefore we have not recorded any obligation for this guarantee as of September 30, 2012.

- As of September 30, 2012, subsidiaries of Fund II have 14 loans secured by individual assets with amounts outstanding in the aggregate of \$490,814,000 with varying maturity dates (or dates after which the loans can be prepaid without penalty), ranging from November 2014 to September 2019. The mortgage loans are payable by the subsidiaries of Fund II with operating cash flow or disposition proceeds from the underlying real estate. We have not guaranteed the debt of Fund II, nor do we have any obligation to fund this debt should Fund II be unable to do so.

In addition, as part of the formation of Fund II, we have provided to one of the limited partners a guarantee. The guarantee provides that if, upon final liquidation of Fund II, the total amount of all distributions to that partner during the life of Fund II (whether from operating cash flow or property sales) does not equal a minimum of the total capital contributions made by that partner, then we will pay the partner an amount equal to the shortfall, but in no event more than 10% of the total capital contributions made by the partner (maximum of approximately \$8,910,000 as of September 30, 2012). As of September 30, 2012, the expected realizable value of the real estate assets owned by Fund II is considered adequate to cover such potential payment to that partner under the expected Fund II liquidation scenario. The estimated fair value

[Table of Contents](#)

of, and our obligation under this guarantee, both at inception and as of September 30, 2012 was not significant and therefore we have not recorded any obligation for this guarantee as of September 30, 2012.

- Each individual mortgage loan of Fund I or Fund II was made to a special purpose, single asset subsidiary of the Funds. Each mortgage loan provides that it is the obligation of the respective subsidiary only, except under exceptional circumstances (such as fraud or misapplication of funds) in which case the respective Fund could also have obligations with respect to the mortgage loan. In no event do the mortgage loans provide for recourse against investors in the Funds, including against us or our wholly-owned subsidiaries that invest in the Funds. A default by a Fund or a Fund subsidiary on any loan to it would not constitute a default under any of our loans or any loans of our other non-Fund subsidiaries or affiliates. If either the Funds or a subsidiary of one of the Funds were unable to meet its obligations under a loan, the value of our investment in that Fund would likely decline and we might also be more likely to be obligated under the guarantee we provided to one of the Fund partners in each Fund as described above. If either of the Funds or a subsidiary of one of the Funds were unable to meet its obligations under a loan, we and/or the other investors might evaluate whether it was in our respective interests to voluntarily support the Fund through additional equity contributions and/or take other actions to avoid a default under a loan or the consequences of a default (such as foreclosure of a Fund asset).

In the future, in the event either of the Funds were unable to meet their obligations under a loan, we cannot predict at this time whether we would provide any voluntary support, or take any other action, as any such action would depend on a variety of factors, including the amount of support required and the possibility that such support could enhance the return of either of the Funds and/or our returns by providing time for performance to improve.

- MVP I, LLC, the entity that owns Avalon at Mission Bay North II, has a loan secured by the underlying real estate assets of the community for \$105,000,000. The loan is a fixed rate, interest-only note bearing interest at 6.02%, maturing in December 2015. We have not guaranteed the debt of MVP I, LLC, nor do we have any obligation to fund this debt should MVP I, LLC be unable to do so.
- In July 2012, one of our wholly owned subsidiaries acquired Avalon Del Rey, a 309 apartment home community which was owned by a joint venture in which we held a 30% ownership interest. As part of this transaction, the venture repaid the \$43,606,000 variable rate note secured by the community. We paid approximately \$67,200,000 to purchase our joint venture partner's 70% interest as well as paying the venture our proportionate share of the note repayment.
- In 2007 we entered into a non-cancelable commitment (the "Commitment") to acquire parcels of land in Brooklyn, New York for an aggregate purchase price of approximately \$111,000,000. Under the terms of the Commitment, we closed on the various parcels over a period determined by the seller's ability to execute unrelated purchase transactions and achieve deferral of gains for the land sold under this Commitment. During the three months ended September 30, 2012, we completed our commitment, purchasing the remaining outstanding parcels for \$17,620,000.

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

Contractual Obligations

We currently have contractual obligations consisting primarily of long-term debt obligations and lease obligations for certain land parcels and regional and administrative office space. As of September 30, 2012 there have been no material changes in our scheduled contractual obligations as disclosed in our Form 10-K.

Development Communities

As of September 30, 2012, we had 22 Development Communities under construction. We expect these Development Communities, when completed, to add a total of 6,614 apartment homes to our portfolio for a total capitalized cost, including land acquisition costs, of approximately \$1,802,100,000. We cannot assure you that we

[Table of Contents](#)

will meet our schedule for construction completion or that we will meet our budgeted costs, either individually or in the aggregate. You should carefully review Item 1a., “Risk Factors,” of our Form 10-K for a discussion of the risks associated with development activity.

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

	Number of apartment homes	Total capitalized cost (1) (\$ millions)	Construction start	Initial occupancy (2)	Estimated completion	Estimated stabilization (3)
1. Avalon Green II <i>Greenburgh, NY</i>	444	\$ 107.8	Q3 2010	Q3 2011	Q4 2012	Q2 2013
2. Avalon at Wesmont Station I <i>Wood-Ridge, NJ</i>	266	62.5	Q4 2010	Q1 2012	Q4 2012	Q2 2013
3. Avalon Garden City <i>Garden City, NY</i>	204	68.0	Q2 2011	Q2 2012	Q4 2012	Q2 2013
4. Avalon Park Crest <i>Tysons Corner, VA</i>	354	77.6	Q4 2010	Q3 2012	Q2 2013	Q4 2013
5. Avalon Somerset <i>Somerset, NJ</i>	384	79.5	Q4 2011	Q3 2012	Q4 2013	Q2 2014
6. Avalon Irvine II <i>Irvine, CA</i>	179	46.2	Q3 2011	Q4 2012	Q2 2013	Q4 2013
7. Avalon Exeter <i>Boston, MA</i>	187	114.0	Q2 2011	Q3 2013	Q1 2014	Q3 2014
8. AVA Ballard <i>Seattle, WA</i>	265	68.8	Q3 2011	Q2 2013	Q3 2013	Q1 2014
9. Avalon Shelton III <i>Shelton, CT</i>	251	47.9	Q3 2011	Q1 2013	Q3 2013	Q1 2014
10. Avalon Hackensack <i>Hackensack, NJ</i>	226	47.2	Q3 2011	Q2 2013	Q4 2013	Q2 2014
11. AVA H Street <i>Washington, D.C.</i>	138	35.1	Q4 2011	Q4 2012	Q2 2013	Q4 2013
12. Avalon West Chelsea/AVA High Line <i>New York, NY</i>	715	276.1	Q4 2011	Q4 2013	Q1 2015	Q3 2015
13. Avalon Natick <i>Natick, MA</i>	407	82.9	Q4 2011	Q2 2013	Q2 2014	Q4 2014
14. Avalon Mosaic <i>Tysons Corner, VA</i>	531	120.9	Q1 2012	Q4 2013	Q3 2014	Q1 2015
15. Avalon East Norwalk <i>Norwalk, CT</i>	240	45.5	Q2 2012	Q2 2013	Q1 2014	Q3 2014
16. Avalon Dublin Station II <i>Dublin, CA</i>	255	73.0	Q2 2012	Q4 2013	Q2 2014	Q4 2014
17. Avalon/AVA Assembly Row <i>Somerville, MA</i>	448	113.5	Q2 2012	Q4 2013	Q3 2014	Q1 2015
18. AVA University District <i>Seattle, WA</i>	283	76.7	Q2 2012	Q1 2014	Q3 2014	Q1 2015
19. Avalon at Wesmont Station II <i>Wood-Ridge, NJ</i>	140	24.8	Q3 2012	Q2 2013	Q4 2013	Q2 2014
20. Avalon Bloomingdale <i>Bloomingdale, NJ</i>	174	31.1	Q3 2012	Q3 2013	Q1 2014	Q3 2014
21. Avalon Morrison Park <i>San Jose, CA</i>	250	79.7	Q3 2012	Q1 2014	Q3 2014	Q1 2015
22. AVA 55 Ninth <i>San Francisco, CA</i>	273	123.3	Q3 2012	Q2 2014	Q4 2014	Q2 2015
Total	6,614	\$ 1,802.1				

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

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

[Table of Contents](#)

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

Redevelopment Communities

As of September 30, 2012, there were seven communities under redevelopment. We expect the total capitalized cost to redevelop these communities to be \$72,300,000 excluding costs prior to redevelopment. We have found that the cost to redevelop an existing apartment community is more difficult to budget and estimate than the cost to develop a new community. Accordingly, we expect that actual costs may vary from our budget by a wider percentage than for a new development community. We cannot assure you that we will meet our schedule for reconstruction completion or increasing operations, or that we will meet our budgeted costs, either individually or in the aggregate. We anticipate maintaining or increasing our current level of redevelopment activity related to communities in our current operating portfolio for the remainder of 2012. You should carefully review Item 1a., "Risk Factors," of our Form 10-K for a discussion of the risks associated with redevelopment activity.

The following presents a summary of these Redevelopment Communities:

	<u>Number of apartment homes</u>	<u>Total capitalized cost (1) (\$ millions)</u>	<u>Reconstruction Start</u>	<u>Estimated reconstruction completion</u>	<u>Estimated restabilized operations (2)</u>
1. Avalon Sunset Towers <i>San Francisco, CA</i>	243	\$ 13.1	Q4 2010	Q3 2013	Q1 2014
2. AVA Ballston <i>Arlington, VA</i>	344	13.9	Q3 2011	Q4 2012	Q2 2013
3. Avalon at Center Place <i>Providence, RI</i>	225	6.7	Q4 2011	Q4 2012	Q2 2013
4. AVA Cortez Hill (3) <i>San Diego, CA</i>	299	10.5	Q4 2011	Q4 2012	Q2 2013
5. Eaves San Jose <i>San Jose, CA</i>	440	14.9	Q4 2011	Q2 2013	Q4 2013
6. Eaves Fairfax <i>Fairfax, VA</i>	141	4.9	Q2 2012	Q4 2012	Q2 2013
7. The Avalon <i>Bronxville, NY</i>	110	8.3	Q3 2012	Q3 2013	Q1 2014
Total	<u>1,802</u>	<u>\$ 72.3</u>			

- (1) Total capitalized cost does not include capitalized incurred prior to redevelopment.
- (2) Restabilized operations is defined as the earlier of (i) attainment of 95% or greater physical occupancy or (ii) the one-year anniversary of completion of redevelopment.
- (3) As part of the budgeted redevelopment for this community, we converted vacant retail space into five additional apartment homes.

Development Rights

At September 30, 2012, we had \$304,295,000 in acquisition and related capitalized costs for land parcels we own, and \$28,260,000 in capitalized costs (including legal fees, design fees and related overhead costs) related to Development Rights for which we control the land parcel, typically through an option to purchase or lease the land. Collectively, the land held for development and associated costs for deferred development rights relate to 31 Development Rights for which we expect to develop new apartment communities in the future.

For 21 Development Rights, we control the land through an option to purchase or lease the parcel. While we generally prefer to hold Development Rights through options to acquire land, for the remaining 10 Development Rights we currently own the land on which a community would be built if we proceeded with development. The cumulative capitalized costs for land held for development as of September 30, 2012, includes approximately \$232,562,000 in original land acquisition costs. The original land acquisition cost per home ranged from \$9,000 per home in Connecticut to \$149,000 per home in New York City. The Development Rights range from those beginning design and architectural planning to those that have completed site plans and drawings and can begin construction almost immediately. We estimate that the successful completion of all of these communities would ultimately add approximately 8,837 apartment homes to our portfolio. Substantially all of these apartment homes will offer features like those offered by the communities we currently own.

Table of Contents

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

You should carefully review Section 1a., "Risk Factors," of our Form 10-K for a discussion of the risks associated with Development Rights.

<u>Market</u>	<u>Number of rights</u>	<u>Estimated number of homes</u>	<u>Total capitalized cost (\$ millions) (1)</u>
Boston, MA	5	1,515	\$ 547
Fairfield-New Haven, CT	2	290	63
New York, NY	3	1,405	545
New Jersey	8	2,131	468

Long Island, NY	1	303	76
Washington, DC Metro	3	885	216
Seattle, WA	3	739	174
Oakland-East Bay, CA	1	255	73
San Francisco, CA	1	182	85
Los Angeles, CA	3	911	342
San Diego, CA	1	221	55
Total	31	8,837	\$ 2,644

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

Land Acquisitions

During the third quarter of 2012, we acquired four land parcels for an aggregate purchase price of approximately \$51,294,000. We expect to commence construction on all four land parcels in 2012 and 2013.

Other Land and Real Estate Assets

We own land parcels with a carrying value of approximately \$23,729,000 that we do not currently plan to develop. These parcels consist of land that we (i) originally planned to develop and (ii) ancillary parcels acquired in connection with Development Rights that we had not planned to develop. We believe that the current carrying value for all of these land parcels is such that there is no indication of impaired value, or further need to record a charge for impairment in the case of assets previously impaired. However, we may be subject to the recognition of further charges for impairment in the event that there are indicators of such impairment and we determine that the carrying value of the assets is greater than the current fair value, less costs to dispose.

[Table of Contents](#)

Insurance and Risk of Uninsured Losses

We carry commercial general liability insurance and property insurance with respect to all of our communities. These policies, and other insurance policies we carry, have policy specifications, insured limits and deductibles that we consider commercially reasonable. There are, however, certain types of losses (such as losses arising from acts of war) that are not insured, in full or in part, because they are either uninsurable or the cost of insurance makes it, in management's view, economically impractical. You should carefully review the discussion under Item 1a., "Risk Factors," of our Form 10-K for a discussion of risks associated with an uninsured property or liability loss. In May 2012 we renewed our property insurance policy, with no material change in coverage. In August 2012 we renewed our general liability and workers compensation insurance policies with no material change in coverage. Our Northeast communities may have been impacted by Hurricane Sandy. As of the date of this Form 10-Q, we were early in the stages of damage assessment and review of the extent to which losses may be covered by insurance.

Inflation and Deflation

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

Forward-Looking Statements

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

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

We cannot assure the future results or outcome of the matters described in these statements; rather, these statements merely reflect our current expectations of the approximate outcomes of the matters discussed. We do not undertake a duty to update these forward-looking statements, and therefore they may not represent our estimates and assumptions after the date of this report. You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, some of which are beyond our control. These risks, uncertainties and other factors may cause our actual results, performance or achievements to differ materially from the anticipated future results, performance or achievements expressed or implied by these forward-looking statements. You should carefully review the discussion under Item 1a., "Risk Factors," on our Form 10-K for a discussion of risks associated with forward-looking statements.

[Table of Contents](#)

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

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

[Critical Accounting Policies](#)

The preparation of financial statements in conformity with GAAP requires management to use judgment in the application of accounting policies, including making estimates and assumptions. If our judgment or interpretation of the facts and circumstances relating to various transactions had been different, or different assumptions were made, it is possible that different accounting policies would have been applied, resulting in different financial results or a different presentation of our financial statements. Our critical accounting policies consist primarily of the following: (i) principles of consolidation, (ii) cost capitalization, (iii) asset impairment evaluation and (iv) REIT status. Our critical accounting policies and estimates have not changed materially from the discussion of our significant accounting policies found in Management's Discussion and Analysis and Results of Operations in our Form 10-K.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

There have been no material changes to our exposures to market risk since December 31, 2011.

Item 4. Controls and Procedures

(a) Evaluation of disclosure controls and procedures.

The Company carried out an evaluation under the supervision and with the participation of the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures as of September 30, 2012. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission's rules and forms.

We continue to review and document our disclosure controls and procedures, including our internal controls and procedures for financial reporting, and may from time to time

[Table of Contents](#)

make changes aimed at enhancing their effectiveness and to ensure that our systems evolve with our business.

(b) Changes in internal controls over financial reporting.

None.

Part II. OTHER INFORMATION

Item 1. Legal Proceedings

The Company is involved in various claims and/or administrative proceedings that arise in the ordinary course of our business. While no assurances can be given, the Company does not believe that any of these outstanding litigation matters, individually or in the aggregate, will have a material adverse effect on its financial condition or its results of operations.

Item 1a. Risk Factors

In addition to the other information set forth in this report, you should carefully consider the risk factors which could materially affect our business, financial condition or future results discussed in the Form 10-K in Part I, "Item 1a. Risk Factors." The risks described in our Form 10-K are not the only risks that could affect the Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results in the future. There have been no material changes to our risk factors since December 31, 2011.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Issuer Purchases of Equity Securities

Period	(a) Total Number of Shares Purchased (1)	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Dollar Amount that May Yet be Purchased Under the Plans or Programs (in thousands) (2)
July 1 — July 31, 2012	233	\$ 143.20	—	200,000
August 1 — August 31, 2012	641	\$ 144.81	—	200,000
September 1 — September 30, 2012	—	\$ 0.00	—	200,000

- (1) Reflects shares surrendered to the Company in connection with exercise of stock options as payment of exercise price, as well as for taxes associated with the vesting of restricted share grants.
- (2) As disclosed in our Form 10-Q for the quarter ended March 31, 2008, represents amounts outstanding under the Company's \$500,000,000 Stock Repurchase Program. There is no scheduled expiration date to this program.

[Table of Contents](#)

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

[Table of Contents](#)

Exhibit No.	Description
3(i).1	— Articles of Amendment and Restatement of Articles of Incorporation of AvalonBay Communities (the "Company"), dated as of June 4, 1998. (Incorporated by reference to Exhibit 3(i).1 to Form 10-K of the Company filed on March 1, 2007.)
3(i).2	— Articles of Amendment, dated as of October 2, 1998. (Incorporated by reference to Exhibit 3(i).2 to Form 10-K of the Company filed on March 1, 2007.)
3(ii).1	— Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on May 21, 2009. (Filed herewith.)
3(ii).2	— Amendment to Amended and Restated Bylaws of the Company, dated February 10, 2010. (Filed herewith.)
3(ii).3	— Amendment to Amended and Restated Bylaws of the Company, dated September 19, 2012. (Filed herewith.)
4.1	— Indenture for Senior Debt Securities, dated as of January 16, 1998, between the Company and State Street Bank and Trust Company, as Trustee. (Incorporated by reference to Exhibit 4.1 to Registration Statement on form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.2	— First Supplemental Indenture, dated as of January 20, 1998, between the Company and the State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.2 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.3	— Second Supplemental Indenture, dated as of July 7, 1998, between the Company and State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.3 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.4	— Amended and Restated Third Supplemental Indenture, dated as of July 10, 2000 between the Company and State Street Bank and Trust Company as Trustee. (Incorporated by reference to Exhibit 4.4 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)
4.5	— Fourth Supplemental Indenture, dated as of September 18, 2006 between the Company and U.S. Bank National Association as Trustee. (Incorporated by reference to Exhibit 4.5 to Registration Statement on Form S-3 of the Company (File No. 333-139839), filed January 8, 2007.)

- 4.6 — Dividend Reinvestment and Stock Purchase Plan of the Company. (Incorporated by reference to Exhibit 8.1 to Registration Statement on Form S-3 of the Company (File No. 333-87063), filed September 14, 1999.)
- 4.7 — Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on December 17, 1999. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(2) of the Securities Act of 1933 on December 17, 1999.)
- 4.8 — Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on March 26, 2004. (Incorporated by reference to the Prospectus Supplement filed pursuant to Rule 424(b)(3) of the Securities Act of 1933 on March 26, 2004.)
- 4.9 — Amendment to the Company's Dividend Reinvestment and Stock Purchase Plan filed on May 15, 2006. (Incorporated by references to the Prospectus Supplement filed pursuant to Rule 424(b)(3) of the Securities Act of 1933 on May 15, 2006.)
- 12.1 — Statements re: Computation of Ratios. (Filed herewith.)

[Table of Contents](#)

- 31.1 — Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer). (Filed herewith.)
- 31.2 — Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer). (Filed herewith.)
- 32 — Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer and Chief Financial Officer). (Furnished herewith.)
- 101 — XBRL (Extensible Business Reporting Language). The following materials from AvalonBay Communities, Inc.'s Quarterly Report on form 10-Q for the period ended September 30, 2012, formatted in XBRL: (i) condensed consolidated balance sheets, (ii) condensed consolidated statements of comprehensive income (loss), (iii) condensed consolidated statements of cash flows, and (iv) notes to condensed consolidated financial statements.*

* As provided in Rule 406T of Regulation S-T, this information is furnished and not filed for purposes of Sections 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934.

[Table of Contents](#)

SIGNATURES

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

AVALONBAY COMMUNITIES, INC.

Date: November 2, 2012

/s/ Timothy J. Naughton
Timothy J. Naughton
Chief Executive Officer and President
(Principal Executive Officer)

Date: November 2, 2012

/s/ Thomas J. Sargeant
Thomas J. Sargeant
Chief Financial Officer
(Principal Financial Officer)

AMENDED AND RESTATED BYLAWS
OF
AVALONBAY COMMUNITIES, INC.
May 21, 2009

AMENDED AND RESTATED BYLAWS
OF
AVALONBAY COMMUNITIES, INC.
TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I MEETINGS OF STOCKHOLDERS	1
1.01 PLACE	1
1.02 ANNUAL MEETINGS	1
1.03 MATTERS TO BE CONSIDERED AT ANNUAL MEETING	1
1.04 SPECIAL MEETINGS	4
1.05 NOTICE	6
1.06 SCOPE OF NOTICE	7
1.07 QUORUM	7
1.08 VOTING	7
1.09 PROXIES	8
1.10 CONDUCT OF MEETINGS	8
1.11 TABULATION OF VOTES	8
1.12 VOTING OF STOCK BY CERTAIN HOLDERS	9
1.13 INFORMAL ACTION BY STOCKHOLDERS	9
1.14 VOTING BY BALLOT	10
ARTICLE II DIRECTORS	10
2.01 GENERAL POWERS	10
2.02 OUTSIDE ACTIVITIES	10
2.03 NUMBER, TENURE AND QUALIFICATION	10
2.04 NOMINATION OF DIRECTORS	11
2.05 ANNUAL AND REGULAR MEETINGS	14
2.06 SPECIAL MEETINGS	14
2.07 NOTICE	14
2.08 QUORUM	15
2.09 VOTING	15
2.10 CONDUCT OF MEETINGS	15
2.11 RESIGNATIONS	16
2.12 REMOVAL OF DIRECTORS	16
2.13 VACANCIES	16
2.14 CONSENT BY DIRECTORS WITHOUT A MEETING	16
2.15 COMPENSATION	16
2.16 LEAD INDEPENDENT DIRECTOR	16
2.17 RELIANCE	16
2.18 RATIFICATION	16
2.19 EMERGENCY PROVISIONS	17
ARTICLE III COMMITTEES	17
3.01 NUMBER, TENURE AND QUALIFICATION	17
3.02 DELEGATION OF POWER	18
3.03 QUORUM AND VOTING	18
3.04 CONDUCT OF MEETINGS	18
3.05 CONSENT BY COMMITTEES WITHOUT A MEETING	19
3.06 VACANCIES	19
ARTICLE IV OFFICERS	19
4.01 TITLES AND ELECTION	19
4.02 REMOVAL AND RESIGNATION	19
4.03 OUTSIDE ACTIVITIES	20
4.04 VACANCIES	20
4.05 CHAIRMAN OF THE BOARD	20
4.06 CHIEF EXECUTIVE OFFICER	20
4.07 PRESIDENT	20
4.08 VICE PRESIDENTS	20

4.09	CHIEF FINANCIAL OFFICER	21
4.10	CHIEF OPERATING OFFICER	21
4.11	SECRETARY	21
4.12	TREASURER	21
4.13	ASSISTANT SECRETARIES AND ASSISTANT TREASURERS	21
4.14	SUBORDINATE OFFICERS	22
4.15	COMPENSATION	22

ARTICLE V SHARES OF STOCK		22
5.01	FORM OF CERTIFICATES	22
5.02	TRANSFER OF SHARES	22
5.03	STOCK LEDGER	23
5.04	LOST CERTIFICATE	23
5.05	EMPLOYEE STOCK PURCHASE PLANS	23
5.06	FIXING OF RECORD DATE	23

ARTICLE VI DIVIDENDS AND DISTRIBUTIONS		24
6.01	AUTHORIZATION	24
6.02	CONTINGENCIES	24

ARTICLE VII INDEMNIFICATION		24
7.01	INDEMNIFICATION TO THE EXTENT PERMITTED BY LAW	24
7.02	INDEMNIFICATION OF EMPLOYEES AND AGENTS OF THE CORPORATION	25
7.03	INSURANCE	25
7.04	NON-EXCLUSIVE RIGHTS TO INDEMNITY; HEIRS AND PERSONAL REPRESENTATIVES	25
7.05	NO LIMITATION	25
7.06	AMENDMENT, REPEAL OR MODIFICATION	25
7.07	RIGHT OF CLAIMANT TO BRING SUIT	26
7.08	VESTING	26

ii

ARTICLE VIII NOTICES		26
8.01	NOTICES	26
8.02	SECRETARY TO GIVE NOTICE	26
8.03	WAIVER OF NOTICE	27

ARTICLE IX MISCELLANEOUS		27
9.01	EXEMPTION FROM MARYLAND CONTROL SHARE ACQUISITION ACT	27
9.02	OFFICES OF THE CORPORATION	27
9.03	BOOKS AND RECORDS	27
9.04	INSPECTION OF BYLAWS AND CORPORATE RECORDS	27
9.05	CONTRACTS	28
9.06	CHECKS, DRAFTS, ETC.	28
9.07	LOANS	28
9.08	FISCAL YEAR	29
9.09	ANNUAL REPORT	29
9.10	INTERIM REPORTS	29
9.11	BYLAWS SEVERABLE	29

ARTICLE X AMENDMENT OF BYLAWS		29
10.01	BY DIRECTORS	29
10.02	BY STOCKHOLDERS	29

iii

ARTICLE I

MEETINGS OF STOCKHOLDERS

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

1.02 **ANNUAL MEETINGS.** An annual meeting of the Stockholders for the election of directors of the Corporation (“Directors”) and the transaction of such other business as may be properly brought before the meeting shall be held on the date and at the time set by the Board of Directors. Failure to hold an annual meeting shall not invalidate the Corporation’s existence or affect any otherwise valid acts of the Corporation.

1.03 **MATTERS TO BE CONSIDERED AT ANNUAL MEETING.**

(a) A proposal of business to be considered by the Stockholders may be made at an annual meeting of Stockholders (i) pursuant to the Corporation’s notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any Stockholder who was a Stockholder of record of a class of stock of the Corporation (“Stock”) entitled to vote on the matter being proposed (A) at the time of giving of notice provided for in this Section 1.03, (B) as of the record date for the annual meeting in question and (C) at the time of such annual meeting, and who complied with this Section 1.03. For a proposal of business to be properly brought before an annual meeting by a

Stockholder, the Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation, such business must otherwise be a proper matter for action by the Stockholders and such Stockholder must be present in person or by proxy at the annual meeting.

To be timely, a Stockholder's notice shall set forth all information required under this Section 1.03 and be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting (the "Notice Anniversary Date"); provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than thirty (30) days from the first anniversary of the date of the preceding year's annual meeting, notice by the Stockholder to be timely must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made. The public announcement of a postponement or an adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described above.

For purposes of these Bylaws, "public announcement" shall mean disclosure in a (i) press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service, (ii) document publicly filed by the

Corporation with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or (iii) letter or report sent to Stockholders of record of the Corporation entitled to vote at the meeting.

(b) A Stockholder's notice to the Secretary shall set forth:

(i) as to any business that the Stockholder proposes to bring before the annual meeting, a description of such business, the Stockholder's reasons for proposing such business at the annual meeting and any material interest in such business of such Stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the Stockholder or any Stockholder Associated Person therefrom;

(ii) as to the Stockholder giving the notice and any Stockholder Associated Person,

(A) the class, series and number of all shares of Stock or other securities of the Corporation or any affiliate thereof (collectively, the "Company Securities"), if any, which are owned (beneficially or of record) by such stockholder or Stockholder Associated Person, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such Stockholder or Stockholder Associated Person,

(C) whether and the extent to which such Stockholder or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of (x) Company Securities or (y) any security of any entity that was listed in the Peer Group in the Stock Performance Graph in the most recent annual report to security holders of the Corporation (a "Peer Group Company") for such stockholder or Stockholder Associated Person or (II) increase or decrease the voting power of such stockholder or Stockholder Associated Person in the Corporation or any affiliate thereof (or, as applicable, in any Peer Group Company) disproportionately to such person's economic interest in the Company Securities (or, as applicable, in any Peer Group Company); and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such Stockholder or Stockholder Associated Person, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such Stockholder or Stockholder Associated Person

2

receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series;

(iii) as to the Stockholder giving the notice and any Stockholder Associated Person with an interest or ownership referred to in clause (ii) of this paragraph (b) of this Section 1.03,

(A) the name and address of such Stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and

(B) the investment strategy or objective, if any, of such Stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such Stockholder and each such Stockholder Associated Person; and

(iv) to the extent known by the Stockholder giving the notice, the name and address of any other stockholder supporting the proposal for business on the date of such Stockholder's notice.

For purposes of these Bylaws, "Stockholder Associated Person" of any Stockholder shall mean (i) any person acting in concert with such Stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such Stockholder (other than a stockholder that is a depository) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Stockholder or such Stockholder Associated Person.

(c) If information submitted pursuant to this Section 1.03 by any Stockholder proposing business at an annual meeting of Stockholders shall be inaccurate in any material respect, such information may be deemed not to have been provided in accordance with this Section 1.03. Any such Stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days (as defined below) of becoming aware of such inaccuracy or change) in any such information. Upon written request by the Secretary or the Board of Directors, any such Stockholder shall provide, within five (5) Business Days after delivery of such request (or such other period as may be specified in such request), (i) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the Stockholder pursuant to this Section 1.03, and (ii) a written update of any information submitted by the Stockholder pursuant

to this Section 1.03 as of an earlier date. If a Stockholder fails to provide such written verification or written update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 1.03.

(d) Only such business shall be conducted at an annual meeting of Stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.03. The Presiding Officer (as defined in Section 1.10 hereof) of the meeting shall have the power to determine whether any business proposed to be brought before the meeting was proposed in accordance with this Section 1.03.

3

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

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

1.04 SPECIAL MEETINGS.

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

(b) (1) Any Stockholder of record seeking to have Stockholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the Stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at such meeting, shall be signed by one or more Stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such Stockholder (or such agent) and shall set forth all information relating to each such Stockholder and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of Directors in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such a solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act. Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten (10) days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within fifteen (15) days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the fifteenth (15th) day after the first date on which the Record Date Request Notice is received by the Secretary.

(2) In order for any Stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by

4

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

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

(4) In the case of any special meeting called by the Secretary upon the request of Stockholders (a "Stockholder-Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder-Requested Meeting shall be not more than ninety (90) days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Directors fails to designate, within fifteen (15) days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date and time for a Stockholder-Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the ninetieth (90th) day after the Meeting Record Date or, if such ninetieth (90th) day is not a Business Day, on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder-Requested Meeting within fifteen (15) days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any special meeting, the Chairman of the Board of Directors, the President, the Chief Executive Officer or the Board of Directors may consider such factors as he, she or it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder-Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within thirty (30) days after the Delivery Date, then the close of business on the thirtieth (30th) day after the Delivery Date shall be the Meeting Record Date. The Board of Directors

5

may revoke the notice for any Stockholder-Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 1.04(b).

(5) If written revocations of the Special Meeting Request have been delivered to the Secretary and the result is that Stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting to the Secretary: (i) if the notice of the meeting has not already been delivered, the Secretary shall refrain from delivering the notice of the meeting and send to all requesting Stockholders who have not revoked such requests written notice of any revocation of a request for the special meeting, or (ii) if the notice of meeting has been delivered and if the Secretary first sends to all requesting Stockholders who have not revoked requests for a special meeting on a matter written notice of any revocation of a request for the special meeting and written notice of the Corporation's intention to revoke the notice of the meeting or for the Presiding Officer to adjourn the meeting without action on the matter, (A) the Secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the Presiding Officer may call the meeting to order and adjourn the meeting without acting on the matter. Any request for a special meeting received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The Chairman of the Board of Directors, the President, the Chief Executive Officer or the Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been delivered to the Secretary until the earlier of (i) five (5) Business Days after receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent, as of the Request Record Date, Stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any Stockholder shall not be entitled to contest the validity of any request, whether during or after such five (5) Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

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

1.05 NOTICE. Not fewer than ten (10) nor more than ninety (90) days before the date of each meeting of Stockholders, the Secretary shall give to each Stockholder entitled to vote at such meeting and to each Stockholder not entitled to vote who is entitled to notice of the meeting notice in writing or electronic transmission, stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called. A single notice to all Stockholders who share an address shall be effective as to any Stockholder at such address who consents to such notice or after having been notified

6

of the Corporation's intent to give a single notice fails to object in writing to such single notice within sixty (60) days. Failure to give notice of any meeting to one or more Stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with these Bylaws, or the validity of any proceedings at any such meeting. The Corporation may postpone or cancel a meeting of Stockholders by making a public announcement of such postponement or cancellation prior to the meeting. Notice of the date to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this section.

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

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

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

7

the foregoing, the affirmative vote of holders of Shares entitled to cast a majority of all of the votes entitled to be cast in the election of Directors shall be required to elect a Director. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted.

1.09 PROXIES. A Stockholder may cast the votes entitled to be cast by the holder of the Shares owned of record by the Stockholder in person or by proxy executed by the Stockholder or by the Stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary of the Corporation before or at the time of the meeting. No proxy shall be valid more than eleven (11) months after its date unless otherwise provided in the proxy.

1.10 CONDUCT OF MEETINGS.

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

(b) The order of business and all other matters of procedure at any meeting of Stockholders shall be determined by the Presiding Officer. The Presiding Officer may prescribe such rules, regulations and procedures and take such action as, in the discretion of the Presiding Officer and without any action by the Stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (i) restricting admission to the time set for the commencement of the meeting; (ii) limiting attendance at the meeting to Stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the Presiding Officer may determine; (iii) limiting participation at the meeting on any matter to Stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the Presiding Officer may determine; (iv) limiting the time allotted to questions or comments; (v) determining when and for how long the polls should be opened and when the polls should be closed; (vi) maintaining order and security at the meeting; (vii) removing any Stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the Presiding Officer; (viii) concluding a meeting or recessing or adjourning the meeting to a later date and time, and at a place announced at the meeting; and (ix) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the Presiding Officer, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

1.11 TABULATION OF VOTES. At any annual or special meeting of Stockholders, the Presiding Officer shall be authorized to appoint one or more persons as tellers (the "Teller" or "Tellers") or inspectors (the "Inspector" or "Inspectors") for such meeting. A Teller may, but need not, be an officer or employee of the Corporation. An Inspector may not be an officer or

8

employee of, or otherwise affiliated with, the Corporation. The Teller or Inspector, if any, shall be responsible for (i) determining the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receiving and tabulating all votes, ballots or consents, (iii) reporting such tabulation to the Presiding Officer and (iv) doing such acts as are proper to fairly conduct the election or vote. In tabulating votes, a Teller or Inspector shall be entitled to rely in whole or in part on tabulations and analyses made by personnel of the Corporation, its counsel, its transfer agent, its registrar or such other organizations that are customarily employed to provide such services. The Teller, if any, may be authorized by the Presiding Officer to determine on a preliminary basis the legality and sufficiency of all votes cast and proxies delivered under the Corporation's Charter, Bylaws and applicable law. The Presiding Officer may review all preliminary determinations made by the Teller hereunder, and in doing so, the Presiding Officer shall be entitled to exercise his or her sole judgment and discretion and he or she shall not be bound by any preliminary determinations made by the Teller. The Inspector, if any, shall hear and determine all challenges and questions arising in connection with the right to vote. Each report of a Teller or Inspector shall be in writing and signed by him or her or by a majority of them if there is more than one. The report of the majority shall be the report of the Tellers or Inspectors. The report of the Inspector or Inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

1.12 VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Corporation registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any director or other fiduciary may vote stock registered in his or her name in his or her capacity as such fiduciary, either in person or by proxy.

The Board of Directors may adopt by resolution a procedure by which a Stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the Stockholder are held for the account of a specified person other than the Stockholder. The resolution shall set forth the class of Stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the Stockholder of record of the specified stock in place of the Stockholder who makes the certification.

1.13 INFORMAL ACTION BY STOCKHOLDERS. Any action required or permitted to be taken at a meeting of Stockholders may be taken without a meeting if a unanimous consent setting forth such action is given in writing or by electronic transmission by each Stockholder entitled to vote on the matter and filed with the minutes of proceedings of the Stockholders. Such written consents may be signed by different Stockholders on separate counterparts.

9

1.14 VOTING BY BALLOT. Voting on any question or in any election may be *viva voce* unless the Presiding Officer shall order that voting be by ballot.

ARTICLE II

DIRECTORS

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

2.02 OUTSIDE ACTIVITIES. The Board of Directors and its members are required to spend only such time managing the business and affairs of the Corporation as is necessary to carry out their duties in accordance with Section 2-405.1 of the Maryland General Corporation Law, as amended from time to time (the "MGCL"). Except as set forth in the Charter or by separate agreement, arrangement or policy of the Corporation, the Board of Directors, each Director, and the agents, officers and employees of the Corporation or of the Board of Directors or of any Director may engage with or for others in business activities of the types conducted by the Corporation. Except as set forth in the Charter or by separate agreement, arrangement or policy of the Corporation, none of such individuals has an obligation to notify or present to the Corporation or each other any investment opportunity that may come to such person's attention even though such investment might be within the scope of the Corporation's purposes or various investment objectives. Any interest that a Director has in any investment opportunity presented to the Corporation must be disclosed by such Director to the Board of Directors (and, if voting thereon, to the Stockholders or to any committee of the Board of Directors) within ten (10) days after the later of the date upon which such Director becomes aware of such interest or the date upon which such Director becomes aware that the Corporation is considering such investment opportunity. If such interest comes to the interested Director's attention after a vote to take such investment opportunity, the voting body shall be notified of such interest and shall reconsider such investment opportunity if not already consummated or implemented.

2.03 NUMBER, TENURE AND QUALIFICATION. The number of Directors of the Corporation shall be that number set forth in the Charter or such other number as may be designated from time to time by resolution of a majority of the entire Board of Directors; provided, however, that the number of Directors shall be not less than five (5) nor greater than fifteen (15) and further provided that the tenure of office of a Director shall not be affected by any decrease in the number of Directors. The minimum or maximum number of Directors provided in this Section 2.03 may be changed only by amendment to these Bylaws or by amendment to the Corporation's Charter,

provided that any such amendment shall be both duly adopted by the affirmative vote of a majority of the outstanding shares entitled to vote and deemed advisable or approved by the Board of Directors. Each Director shall serve for the term set forth in the Charter and until his or her successor is elected and qualified.

2.04 NOMINATION OF DIRECTORS

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

(b) For nominations to be properly brought before an annual meeting by a Stockholder pursuant to clause (iii) of paragraph (a) of this Section 2.04, the Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a Stockholder's notice shall set forth all information required under this Section 2.04 and be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the Notice Anniversary Date; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than thirty (30) days from the first anniversary of the date of the preceding year's annual meeting, notice by the Stockholder to be timely must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made. The public announcement of a postponement or an adjournment of an annual meeting shall not commence a new time period for the giving of a Stockholder's notice as described above.

(c) A Stockholder's notice to the Secretary shall set forth:

(i) as to each individual whom the Stockholder proposes to nominate for election or reelection as a Director (each, a "Proposed Nominee"), all information relating to the Proposed Nominee that would be required to be disclosed in connection with the solicitation of proxies for the election of the Proposed Nominee as a Director in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Regulation 14A (or any successor provision) under the Exchange Act and the rules thereunder (including the Proposed Nominee's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected);

(ii) as to the Stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person,

(A) the class, series and number of Company Securities, if any, which are owned (beneficially or of record) by such Stockholder, Proposed Nominee or Stockholder Associated Person, the date on which each such Company Security was acquired

and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such Stockholder, Proposed Nominee or Stockholder Associated Person,

(C) whether and the extent to which such Stockholder, Proposed Nominee or Stockholder Associated Person, directly or indirectly (through brokers, nominees or otherwise), is subject to or during the last six months has engaged in any hedging, derivative or other transaction or series of transactions or entered into any other agreement, arrangement or understanding (including any short interest, any borrowing or lending of securities or any proxy or voting agreement), the effect or intent of which is to (I) manage risk or benefit of changes in the price of (x) Company Securities or (y) any security of any entity that was a Peer Group Company for such stockholder, Proposed Nominee or Stockholder Associated Person or (II) increase or decrease the voting power of such Stockholder, Proposed Nominee or Stockholder Associated Person in the Corporation or any affiliate thereof (or, as applicable, in any Peer Group Company) disproportionately to such person's economic interest in the Company Securities (or, as applicable, in any Peer Group Company); and

(D) any substantial interest, direct or indirect (including, without limitation, any existing or prospective commercial, business or contractual relationship with the Corporation), by security holdings or otherwise, of such Stockholder, Proposed Nominee or Stockholder Associated Person, in the Corporation or any affiliate thereof, other than an interest arising from the ownership of Company Securities where such stockholder, Proposed Nominee or Stockholder Associated Person receives no extra or special benefit not shared on a *pro rata* basis by all other holders of the same class or series;

(iii) as to the Stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clause (ii) of this paragraph (c) of this Section 2.04 and any Proposed Nominee,

(A) the name and address of such Stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such Stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person; and

(iv) to the extent known by the Stockholder giving the notice, the name and address of any other Stockholder supporting the nominee for election or reelection as a Director on the date of such Stockholder's notice.

(d) Notwithstanding anything in this Section 2.04 to the contrary, in the event that the number of Directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 130 days prior to the Notice Anniversary Date, a Stockholder's notice required by this Section 2.04 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(e) Nominations of individuals for election to the Board of Directors may be made at a special meeting of Stockholders at which Directors are to be elected only (i) by or at the direction of the Board of Directors, (ii) by a Stockholder that has requested that a special meeting be called for the purpose of electing Directors in compliance with Section 1.04 of these Bylaws and that has supplied the information required by Section 1.04 about each individual whom the Stockholder proposes to nominate for election of Directors or (iii) provided that the special meeting has been called by the Chairman of the Board of Directors, the Chief Executive Officer, the President or the Board of Directors in accordance with Section 1.04 of these Bylaws for the purpose of electing Directors, by any Stockholder of the Corporation who is a Stockholder of record of a class of Stock entitled to vote in the election of Directors (A) at the time of giving of notice provided for in this Section 2.04, (B) as of the record date for the special meeting in question and (C) at the time of such special meeting, and who complied with this Section 2.04. Any Stockholder who seeks to make such a nomination must be present in person or by proxy at the special meeting. In the event the Corporation calls a special meeting of Stockholders for the purpose of electing one or more individuals to the Board of Directors, any such Stockholder may nominate an individual or individuals (as the case may be) for election as a Director as specified in the Corporation's notice of meeting, if the Stockholder's notice containing the information required by paragraphs (b) and (c) of this Section 2.04 shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period for the giving of a Stockholder's notice as described above.

(f) If information submitted pursuant to this Section 2.04 by any Stockholder proposing a nominee for election as a Director at a meeting of Stockholders shall be inaccurate in any material respect, such information may be deemed not to have been provided in accordance with this Section 2.04. Any such Stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information. Upon written request by the Secretary or the Board of Directors, any such Stockholder shall provide, within five (5) Business Days after delivery of such request (or such other period as may be specified in such request), (i) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the Stockholder pursuant to this Section 2.04, and (ii) a written update of any information submitted by the Stockholder pursuant to this Section 2.04 as of an earlier date. If a Stockholder fails to provide such written verification or written

13

update within such period, the information as to which written verification or a written update was requested may be deemed not to have been provided in accordance with this Section 2.04.

(g) Only such individuals who are nominated in accordance with this Section 2.04 shall be eligible for election by Stockholders as Directors. The Presiding Officer of the meeting shall have the power to determine whether a nomination was made in accordance with this Section 2.04.

(h) Notwithstanding the foregoing provisions of this Section 2.04, a Stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.04. Nothing in this Section 2.04 shall be deemed to affect any right of a Stockholder to request inclusion of a proposal in, nor the right of the Corporation to omit a proposal from, the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 2.04 shall require disclosure of revocable proxies received by the Stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such Stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

2.05 ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of Stockholders and no notice other than this Bylaw shall be necessary for the calling of such meeting. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings of the Board of Directors without other notice than such resolution.

2.06 SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the Chairman, the Chief Executive Officer, the President or by a majority of the Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place as the place for holding any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place for the holding of special meetings of the Board of Directors without other notice than such resolution.

2.07 NOTICE. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, United States mail or courier to each Director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least one (1) Business Day (or, if given on a day other than a Business Day, at least twenty-four (24) hours) prior to the meeting. Notice by United States mail shall be given at least three (3) days prior to the meeting. Notice by courier shall be given at least two (2) days prior to the meeting. Telephone notice shall be deemed to be given when the Director or his or her agent is personally given such notice in a telephone call to which the Director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the Director. Facsimile transmission notice

14

shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the Director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

2.08 QUORUM. A majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided, however, that a quorum for the transaction of business with respect to any matter in which any Director (or affiliate of such Director) who is not an Independent Director (as defined in the Charter) has any interest shall consist of a majority of the Directors that includes a majority of the Independent Directors then in office. If less than a majority of such Directors is present at such meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

The Directors present at a meeting which has been duly called and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough Directors to leave fewer than were required to establish a quorum.

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

2.10 CONDUCT OF MEETINGS. At each meeting of the Board of Directors, the Chairman or, in the absence of the Chairman, the Chief Executive Officer (if a member of the Board of Directors) or, in the absence of the Chairman and the Chief Executive Officer, a Director who has previously been designated as Lead Independent Director or, in the absence of the Chairman, the Chief Executive Officer and such Director, a Director chosen by a majority of the Directors present, shall act as chairman of the meeting. The Secretary of the Corporation or, in his or her absence, an Assistant Secretary of the Corporation shall act as Secretary of the meeting or, in the absence of the Secretary and all Assistant Secretaries, the presiding officer of the meeting shall designate any individual to act as secretary of the meeting. Directors may participate in a meeting by conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a

15

meeting by these means constitute presence in person at such meeting for all purposes of these Bylaws.

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

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

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

2.14 CONSENT BY DIRECTORS WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each Director and is filed with the minutes of the Board of Directors. Written consents may be signed by different Directors on separate counterparts.

2.15 COMPENSATION. Directors shall not receive any stated salary for their services as directors but, by resolution of the Board of Directors, may receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned or leased by the Corporation and for any service or activity they performed or engaged in as Directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board of Directors or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they performed or engaged in as Directors; but nothing herein contained shall be construed to preclude any Directors from serving the Corporation in any other capacity and receiving compensation therefor.

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

2.17 RELIANCE. Each Director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the Director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the Director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the Director does not serve, as to a matter within its designated authority, if the Director reasonably believes the committee to merit confidence.

2.18 RATIFICATION. The Board of Directors or the Stockholders may ratify and make binding on the Corporation any action or inaction by the Corporation or its officers to the extent that the Board of Directors or the Stockholders could have originally authorized the

16

matter. Moreover, any action or inaction questioned in any Stockholders' derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a Director, officer or Stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Directors or by the Stockholders, and if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Corporation and its Stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

2.19 EMERGENCY PROVISIONS. Notwithstanding any other provision in the Charter or these Bylaws, this Section 2.19 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Directors under Article II of these Bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Directors, (i) a meeting of the Board of Directors or a committee thereof may be called by any Director or officer by any means feasible under the circumstances; (ii) notice of any meeting of the Board of Directors during such an Emergency may be given less than twenty-four (24) hours prior to the meeting to as many Directors and by such means as may be feasible at the time, including publication, television or radio, and (iii) the number of Directors necessary to constitute a quorum shall be one-third of the entire Board of Directors.

ARTICLE III

COMMITTEES

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

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

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

17

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

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

3.02 DELEGATION OF POWER. The Board of Directors may, by resolution or adoption of a committee charter, delegate to committees appointed under Section 3.01 any of the powers of the Board of Directors, except those powers which the Board of Directors is specifically prohibited from delegating pursuant to Section 2-411 of the MGCL, and may prescribe rules governing the conduct and proceedings of these committees.

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

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

18

3.05 CONSENT BY COMMITTEES WITHOUT A MEETING. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and is filed with the minutes of proceedings of such committee. Written consents may be signed by different members on separate counterparts.

3.06 VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill any vacancy or to dissolve any such committee.

ARTICLE IV

OFFICERS

4.01 TITLES AND ELECTION. The Corporation shall have a Chairman of the Board, a Chief Executive Officer, a President, a Chief Operating Officer, a Chief Financial Officer, one or more Vice Presidents (including Vice Presidents of varying degrees, such as Executive, Regional or Senior Vice Presidents), a Secretary, a Treasurer and such Assistant Secretaries and Assistant Treasurers and such other officers as the Board of Directors, or any committee or officer appointed by the Board of Directors for such purpose, may from time to time elect. The Chief Executive Officer may from time to time appoint one or more Vice Presidents, Assistant Secretaries and Assistant Treasurers or other officers. Notwithstanding the foregoing, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Secretary and the Treasurer shall be elected by a majority of the Directors at the time in office. The officers of the Corporation elected by the Board of Directors shall be elected annually at the first meeting of the Board of Directors following each annual meeting of Stockholders. If the election of such officers shall not take place at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until the first meeting of the Board of Directors following the next annual meeting of Stockholders and until his or her successor is duly elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices, except President and Vice President, may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent. No officer need be a Stockholder or a Director of the Corporation.

4.02 REMOVAL AND RESIGNATION. Any officer or agent of the Corporation may be removed, either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board of Directors, or, except in the case of an officer elected by the Board of Directors, by a committee or an officer upon whom such power of removal may be conferred by the Board of Directors, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President or the Secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

19

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

4.04 VACANCIES. A vacancy in any office may be filled by the Board of Directors, or any committee or officer authorized by these Bylaws or the Board of Directors for such purpose, for the balance of the term. A vacancy in any office previously appointed by the Chief Executive Officer may be filled by the Chief Executive Officer for the balance of the term.

4.05 CHAIRMAN OF THE BOARD. The Chairman of the Board shall, if present, preside at all meetings of the Stockholders and the Board of Directors, and shall exercise and perform such other powers and duties as may from time to time be assigned to him by the Board of Directors or prescribed by these Bylaws.

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

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

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

20

4.09 CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall have all the powers of the Treasurer and shall have such other responsibilities and duties as determined by the Board of Directors or the Chief Executive Officer. For purposes of Section 4.08 of these Bylaws, the Chief Financial Officer shall be considered to have the rank of Executive Vice President.

4.10 CHIEF OPERATING OFFICER. The Chief Operating Officer shall have the responsibilities and duties as determined by the Board of Directors or the Chief Executive Officer. For purposes of Section 4.08 of these Bylaws, the Chief Operating Officer shall be considered to have the rank of Executive Vice President.

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

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

4.12 TREASURER.

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

(b) The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chairman, Chief Executive Officer, President and Board of Directors, whenever any of them requests it, an account of all of his transactions as Treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

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

21

by the Chairman, Chief Executive Officer, President or the Board of Directors, or any such designated committee or officer.

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

4.15 COMPENSATION. The compensation of the officers shall be fixed from time to time by or under the authority of the Board of Directors and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a Director.

ARTICLE V

SHARES OF STOCK

5.01 **FORM OF CERTIFICATES.** The Corporation may issue some or all of the shares of any or all of the Corporation's classes or series of stock without certificates if authorized by the Board of Directors. In the event that the Corporation issues shares of Stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in the manner permitted by the MGCL. In the event that the Corporation issues shares of Stock without certificates, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates. If a class or series of Stock is authorized by the Board of Directors to be issued without certificates, no Stockholder shall be entitled to a certificate or certificates representing any shares of such class or series of Stock held by such Stockholder unless otherwise determined by the Board of Directors and then only upon written request by such Stockholder to the secretary of the Corporation.

5.02 **TRANSFER OF SHARES.** All transfers of shares of Stock by the holder of the shares, in person or by his attorney, shall be made on the books of the Corporation in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors that such shares shall no longer be represented by certificates. Upon the transfer of uncertificated shares, to the extent then required by the MGCL, the Corporation shall provide to record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates.

Notwithstanding the foregoing, transfers of shares of any class or series of Stock will be subject in all respects to the Charter and all of the terms and conditions contained therein.

22

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

5.04 **LOST CERTIFICATE.** Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such Stockholder and the Board of Directors has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct as indemnity against any claim that may be made against the Corporation.

5.05 **EMPLOYEE STOCK PURCHASE PLANS.** The Board of Directors shall have the authority, in its discretion, to adopt one or more employee stock purchase plans or agreements, containing such terms and conditions as the Board may prescribe, for the issue and sale of unissued shares of Stock, or of its issued shares acquired or to be acquired, to the employees of the Corporation or to the employees of its subsidiary corporations or to a trustee on their behalf, and for the payment of such shares in installments or at one time, and for such consideration as may be fixed by the Board or any committee thereof, and may provide for aiding any such employees in paying for such shares by compensation for services rendered, promissory notes or otherwise. The Board of Directors, or any committee thereof, may carry out and administer any such plan or delegate part or all of the administration of any such plan to any other entity or person.

5.06 **FIXING OF RECORD DATE.**

(a) The Board of Directors may set, in advance, a date as the record date for the purpose of determining Stockholders entitled to receive notice of, or to vote at, any meeting

23

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

(b) When a record date for the determination of Stockholders entitled to notice of and vote at any meeting of Stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned to a date more than 120 days or postponed to a date more than 90 days after the record date originally fixed for the meeting, in which case a new record date for such meeting may be determined as set forth herein.

ARTICLE VI

DIVIDENDS AND DISTRIBUTIONS

6.01 **AUTHORIZATION.** Dividends and other distributions upon the Stock may be authorized by the Board of Directors, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or Stock of the Corporation, subject to the provisions of law and of the Charter.

6.02 **CONTINGENCIES.** Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies,

for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

ARTICLE VII

INDEMNIFICATION

7.01 INDEMNIFICATION TO THE EXTENT PERMITTED BY LAW. The Corporation shall indemnify, to the full extent authorized or permitted by Maryland statutory or decisional law or any other applicable law, any person made, or threatened to be made, a party to any action or proceeding (whether civil or criminal or otherwise) by reason of the fact he, his testator or intestate is or was a Director or officer of the Corporation or any predecessor of the Corporation, or is or was serving at the request of the Corporation or any predecessor of the Corporation as a director or officer of, or in any other capacity with respect to, any other corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise (an "Indemnified Person"), including the advancement of expenses under procedures provided under such law; provided, however, that no indemnification shall be provided for expenses relating to any willful or grossly negligent failure to make disclosures required by the next to last sentence of Sections 2.02 or 4.03 hereof as applied to Directors and officers respectively. The Corporation shall indemnify any Indemnified Person's spouse (whether by statute or at common

24

law and without regard to the location of the governing jurisdiction) and children to the same extent and subject to the same limitations applicable to any Indemnified Person hereunder for claims arising out of the status of such person as a spouse or child of such Indemnified Person, including claims seeking damages from marital property (including community property) or property held by such Indemnified Person and such spouse or property transferred to such spouse or child, but such indemnity shall not otherwise extend to protect the spouse or child against liabilities caused by the spouse's or child's own acts. The provisions of this Section 7.01 shall constitute a contract with each Indemnified Person who serves at any time while these provisions are in effect and may be modified adversely only with the consent of affected Indemnified Persons and each such Indemnified Person shall be deemed to be serving as such in reliance on these provisions.

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

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

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

7.05 NO LIMITATION. In addition to any indemnification permitted by these Bylaws, the Board of Directors shall, in its sole discretion, have the power to grant such indemnification to such persons as it deems in the interest of the Corporation to the full extent permitted by law. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payments or reimbursement of expenses may be or may become entitled under any bylaw, regulation, insurance, agreement or otherwise. This Article shall not limit the Corporation's power to indemnify against liabilities other than those arising from a person's serving the Corporation as a Director or officer.

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

25

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

7.08 VESTING. The rights to indemnification and advance of expenses provided by the Charter and these Bylaws shall vest immediately upon election or appointment of a director or officer.

ARTICLE VIII

NOTICES

8.01 NOTICES. Unless otherwise provided in these Bylaws, whenever notice is required to be given pursuant to these Bylaws, it shall be construed to mean either written notice personally delivered against written receipt, or notice in writing transmitted by mail, by depositing the same in a post office or letter box, in a post-paid sealed wrapper, addressed, if to the Corporation, to 2900 Eisenhower Avenue, Suite 300, Alexandria, Virginia 22314 (or any subsequent address selected by the Board of Directors), attention Chief Executive Officer, or if to a Stockholder, Director or officer, at the address of such person as it appears on the records of the Corporation. In addition, whenever notice is required to be given to a Stockholder, such requirement shall be satisfied when written notice is left at such Stockholder's residence or usual place of business or is delivered to such Stockholder by any other means permitted by Maryland law. If transmitted electronically, notice to a Stockholder shall be deemed to be

given when transmitted to the Stockholder by an electronic transmission to any address or number of the Stockholder at which the Stockholder receives electronic transmissions. Unless otherwise specified, notice sent by mail shall be deemed to be given at the time mailed.

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

26

meeting called pursuant to these Bylaws upon the request of any Stockholders or Directors, by any person directed to do so by the Stockholders or Directors upon whose request the meeting is called.

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

ARTICLE IX

MISCELLANEOUS

9.01 EXEMPTION FROM MARYLAND CONTROL SHARE ACQUISITION ACT. Notwithstanding any other provision of the Charter or these Bylaws, the provisions of the Maryland Control Share Acquisition Act (Sections 3-701 to 3-710 of the MGCL) shall not apply to any share of Stock of the Corporation now or hereafter held by any current or future Stockholders. All shares of Stock currently outstanding or issued in the future are exempted from the Maryland Control Share Acquisition Act to the fullest extent permitted by Maryland law. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

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

9.03 BOOKS AND RECORDS. The Corporation shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its Stockholders and Board of Directors meetings and of its executive or other committees when exercising any of the powers or authority of the Board of Directors. The books and records of the Corporation may be in written form or in any other form that can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form but may be maintained in the form of a reproduction.

9.04 INSPECTION OF BYLAWS AND CORPORATE RECORDS. These Bylaws, the minutes of proceedings of the Stockholders, annual statements of affairs and any voting trust

27

agreements on record shall be open to inspection upon written demand delivered to the Corporation by any Stockholder or holder of a voting trust certificate at any reasonable time during usual business hours, for a purpose reasonably related to such holder's interests as a Stockholder or as the holder of such voting trust certificate, in each case as set forth in the MGCL. Other documents, such as the Corporation's books of account, stock ledger and Stockholder lists, may be made available for inspection by any Stockholder or holder of a voting trust certificate to the extent required by the MGCL.

9.05 CONTRACTS. The Board of Directors may authorize any Director(s), officer(s) or agent(s) to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

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

9.07 LOANS.

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

(b) From time to time the Corporation shall certify to each bank, trust company, institution, corporation, firm or person so designated, the signatures of the officers or agents so authorized. Each bank, trust company, institution, corporation, firm or person so designated is authorized to rely upon such certification until it has received written notice that the Board of Directors has revoked the authority of those officers or agents.

28

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

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

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

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

ARTICLE X

AMENDMENT OF BYLAWS

10.01 BY DIRECTORS. The Board of Directors shall have the power, at any annual or regular meeting, or at any special meeting if notice thereof is included in the notice of such special meeting, to alter or repeal any Bylaws of the Corporation and to make new Bylaws, except that the Board of Directors shall not alter or repeal (i) Section 2.03 to change the minimum or maximum number of Directors without the vote of the Stockholders required therein, (ii) Section 7.01 without a vote of the Stockholders and the consent of any Indemnified Persons whose rights to indemnification, based on conduct prior to such amendment, would be adversely affected by such proposed alteration or repeal; (iii) this Section 10.01; or (iv) Section 10.02.

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

AVALONBAY COMMUNITIES, INC.

Secretary's Certificate

Amendment to Bylaws

On February 10, 2010, at a duly called and held meeting of the Board of Directors of AvalonBay Communities, Inc. (the "Company"), the Board adopted the following amendment to the Company's Bylaws:

Sections 2.08 and 2.10 of the Amended and Restated Bylaws of the Company, as adopted by its Board of Directors on May 21, 2009, are hereby amended to read as follows (new language is **bold and underlined** and deleted language is struckthrough):

2.08 QUORUM. A majority of the Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided, however, that a quorum for the transaction of business with respect to any matter in which any Director (or affiliate of such Director) who is not an Independent Director (as defined ~~in the Charter~~ **by the rules of the New York Stock Exchange, as such rules shall be amended from time to time**) has any interest shall consist of a majority of the Directors that includes a majority of the Independent Directors then in office. If less than a majority of such Directors is present at such meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

* * *

2.10 CONDUCT OF MEETINGS. At each meeting of the Board of Directors, the Chairman or, in the absence of the Chairman, ~~the Chief Executive Officer (if a member of the Board of Directors) or, in the absence of the Chairman and the Chief Executive Officer,~~ a Director who has previously been designated as Lead Independent Director or, in the absence of the Chairman, ~~the Chief Executive Officer~~ and such Director, a Director chosen by a majority of the Directors present, shall act as chairman of the meeting. The Secretary of the Corporation or, in his or her absence, an Assistant Secretary of the Corporation shall act as Secretary of the meeting or, in the absence of the Secretary and all Assistant Secretaries, the presiding officer of the meeting shall designate any individual to act as secretary of the meeting. Directors may participate in a meeting by conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means constitute presence in person at such meeting for all purposes of these Bylaws.

IN WITNESS WHEREOF, the undersigned has signed this certificate as of February 10, 2010.

AVALONBAY COMMUNITIES, INC.

/s/ Edward M. Schulman

Name: Edward M. Schulman

Title: Secretary



Secretary's Certificate

Amendment to Bylaws

On September 19, 2012, at a duly called and held meeting of the Board of Directors of AvalonBay Communities, Inc. (the "Company"), the Board adopted the following amendment to the Company's Bylaws:

That Section 1.08 of the Amended and Restated Bylaws of the Company, as adopted by the Board of Directors on May 21, 2009 and amended on February 10, 2012, is hereby amended in its entirety to read as follows (new language is **bold and underlined** and deleted language is ~~struck through~~):

1.08 VOTING.

(a) A majority of the votes cast at a meeting of Stockholders duly called and at which a quorum is present shall be sufficient to take or authorize action upon any matter which may properly come before the meeting, unless more than a majority of the votes cast is specifically required by statute, the Charter or these Bylaws. Unless otherwise provided by statute or by the Charter, each outstanding share (a "Share") of Stock of the Corporation, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of Stockholders. Any holder of shares entitled to vote on any matter may vote part of the shares in favor of the proposal and refrain from voting the remaining shares or, other than elections to office, vote them against the proposal but, if the Stockholder fails to specify the number of shares such Stockholder is voting affirmatively, it shall be conclusively presumed that the Stockholder's approving vote is with respect to all votes said Stockholder is entitled to cast. Shares of its own Stock directly or indirectly owned by the Corporation shall not be voted at any meeting and shall not be counted in determining the total number of outstanding Shares entitled to vote at any given time, but Shares of its own voting Stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding Shares at any given time. Notwithstanding anything else contained in these Bylaws, the rights of any class of "Excess Stock" (as such term is defined in the Charter) and the rights of holders of any class of Excess Stock shall be limited to the rights with respect thereto provided in the Charter. ~~Notwithstanding the foregoing, the affirmative vote of holders of Shares entitled to cast a majority of all of the votes entitled to be cast in the election of Directors shall be required to elect a Director. Each share may be voted for as many individuals as there are directors~~ **Notwithstanding the foregoing, a nominee for Director shall be elected as a Director only if such nominee receives the affirmative vote of a majority of the total votes cast for and affirmatively withheld as to such nominee at a meeting of Stockholders duly called and at which a quorum is present. However, Directors shall be elected by a plurality of votes cast at a meeting of Stockholders duly called and at which a quorum is present for which (i) the Secretary of the Corporation receives notice that a Stockholder has nominated an individual for election as a Director in compliance with the requirements of advance notice of Stockholder nominees for Director set forth in Section 1.03, and (ii) such nomination has not been withdrawn by such Stockholder on or before the close of business on the tenth day before the date of filing of the definitive proxy statement of the Corporation with the Securities and Exchange Commission, and, as a result of which, the number of nominees is greater than the number of Directors to be elected at the meeting. Each share may be voted for as many individuals as there are Directors** to be elected and for whose election the share is entitled to be voted.

(b) **If an incumbent Director fails to receive the required vote for re-election in accordance with paragraph (a) of this Section 1.08 in an election where the number of nominees is not greater than the number of Directors to be elected at the meeting, he or she shall offer to resign from the Board of Directors and the Nominating and Corporate Governance Committee of the Board of Directors will consider such offer to resign, will act on an expedited basis to determine whether to accept such Director's**

resignation and will submit such recommendation for prompt consideration by the Board of Directors. The Director whose resignation is under consideration shall not participate in any deliberation or vote of the Nominating and Corporate Governance Committee or the Board of Directors regarding that resignation but may participate in the deliberation or vote on any other business transacted by the Board of Directors or any committee thereof. Notwithstanding the foregoing, in the event that no nominee for Director receives the vote required in paragraph (a) of this Section 1.08, the Nominating and Corporate Governance Committee shall make a final determination as to whether to recommend to the Board of Directors whether to accept any or all resignations, including those resignations from members of the Nominating and Corporate Governance Committee, and any and all Directors may participate in the Board of Directors' deliberation and vote on such recommendation. The Nominating and Corporate Governance Committee and the Board of Directors may consider any factors they deem relevant in deciding whether to accept a Director's resignation. Within 90 days after the date of certification of the election results, the Board of Directors will promptly disclose its decision and basis for whether to accept the resignation (or the reasons for not accepting the resignation, if applicable) in a press release, in a filing with the Securities and Exchange Commission or by other public announcement (including a posting on the Corporation's website). If such incumbent Director's resignation is not accepted by the Board of Directors, such Director will continue to serve until his or her successor is elected and qualifies, or his or her death, resignation, retirement or removal, whichever event shall occur first. If a Director's resignation is accepted by the Board of Directors, or if a nominee for Director is not elected and the nominee is not an incumbent Director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the Charter or decrease the size of the Board of Directors pursuant to Section 2.03.

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

	Nine Months Ended September 30, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010 (1)	Year Ended December 31, 2009 (1)	Year Ended December 31, 2008 (1)
Income from continuing operations before cumulative effect of change in accounting principle	\$ 203,259	\$ 160,493	\$ 99,482	\$ 78,328	\$ 98,173
(Plus):					
Equity in income of unconsolidated entities, net of distributions received	2,306	618	4,856	5,475	6,728
Amortization of capitalized interest (2)	12,208	16,277	15,149	14,035	12,428
Earnings before fixed charges	\$ 217,773	\$ 177,388	\$ 119,487	\$ 97,838	\$ 117,329
(Plus) Fixed charges:					
Portion of rents representative of the interest factor	\$ 5,256	\$ 6,933	\$ 11,785	\$ 6,241	\$ 5,287
Interest expense	100,804	167,814	169,997	145,090	110,249
Interest capitalized	37,449	33,863	33,393	48,226	74,621
Preferred dividend	—	—	—	—	10,454
Total fixed charges (3)	\$ 143,509	\$ 208,610	\$ 215,175	\$ 199,557	\$ 200,611
(Less):					
Interest capitalized	37,449	33,863	33,393	48,226	74,621
Preferred dividend	—	—	—	—	10,454
Earnings (4)	\$ 323,833	\$ 352,135	\$ 301,269	\$ 249,169	\$ 232,865
Ratio (4 divided by 3)	2.26	1.69	1.40	1.25	1.16

AVALONBAY COMMUNITIES, INC.
RATIOS OF EARNINGS TO FIXED CHARGES

	Nine Months Ended September 30, 2012	Year Ended December 31, 2011	Year Ended December 31, 2010 (1)	Year Ended December 31, 2009 (1)	Year Ended December 31, 2008 (1)
Income from continuing operations before cumulative effect of change in accounting principle	\$ 203,259	\$ 160,493	\$ 99,482	\$ 78,328	\$ 98,173
(Plus):					
Equity in income of unconsolidated entities, net of distributions received	2,306	618	4,856	5,475	6,728
Amortization of capitalized interest (2)	12,208	16,277	15,149	14,035	12,428
Earnings before fixed charges	\$ 217,773	\$ 177,388	\$ 119,487	\$ 97,838	\$ 117,329
(Plus) Fixed charges:					
Portion of rents representative of the interest factor	\$ 5,256	\$ 6,933	\$ 11,785	\$ 6,241	\$ 5,287
Interest expense	100,804	167,814	169,997	145,090	110,249
Interest capitalized	37,449	33,863	33,393	48,226	74,621
Total fixed charges (3)	\$ 143,509	\$ 208,610	\$ 215,175	\$ 199,557	\$ 190,157
(Less):					
Interest capitalized	37,449	33,863	33,393	48,226	74,621
Earnings (4)	\$ 323,833	\$ 352,135	\$ 301,269	\$ 249,169	\$ 232,865
Ratio (4 divided by 3)	2.26	1.69	1.40	1.25	1.22

(1) The results of operations for 2008 through 2011 have been adjusted to reflect discontinued operations for properties sold or held for sale as of September 30, 2012.

(2) Represents an estimate of capitalized interest costs based on the Company's established depreciation policy and an analysis of interest costs capitalized since 1998 (the year in which AvalonBay was formed).

CERTIFICATION

I, Timothy J. Naughton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AvalonBay Communities, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2012

/s/ Timothy J. Naughton
Timothy J. Naughton
Chief Executive Officer and President
(Principal Executive Officer)

CERTIFICATION

I, Thomas J. Sargeant, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AvalonBay Communities, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 2, 2012

/s/ Thomas J. Sargeant
Thomas J. Sargeant
Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION

The undersigned officers of AvalonBay Communities, Inc. (the "Company") hereby certify that the Company's quarterly report on Form 10-Q to which this certification is attached (the "Report"), as filed with the Securities and Exchange Commission on the date hereof, fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 2, 2012

/s/ Timothy J. Naughton

Timothy J. Naughton
Chief Executive Officer and President
(Principal Executive Officer)

/s/ Thomas J. Sargeant

Thomas J. Sargeant
Chief Financial Officer
(Principal Financial Officer)

This certification is being furnished and not filed, and shall not be incorporated into any document for any purpose, under the Securities Exchange Act of 1934 or the Securities Act of 1933.
